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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED-DOCKETING DIV

2014 JUN 30 PM 3:48

In the Matter of the Application of :  
Woodbran Realty Corporation for :  
Approval of a Long-Term Financing :  
Arrangement. :

Case No. 12-2594-ST-AIS

PUCO

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REPORT OF WOODBRAN REALTY CORPORATION

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By its finding and order in this docket of December 18, 2013, the Commission approved the amended supplemental application of Woodbran Realty Corporation ("Woodbran") for approval of a long-term financing arrangement with Huntington National Bank ("Huntington"). The finding and order required that Woodbran report the "full particulars" of the loan in question to the Commission after the loan was obtained. Woodbran has now received copies of the final loan document and other related instruments and documents from Huntington and hereby submits same as exhibits to this report.

Exhibit A.....Loan and Security Agreement (Redacted)

Exhibit B.....Promissory Note

Exhibit C.....Open-End Mortgage, Assignment  
of Leases and Rents, and Security  
Agreement

Exhibit D.....Security Agreement – Equipment,  
Fixtures, Inventory and Accounts

Exhibit E..... Stock Pledge and Security  
Agreement (Redacted)

Exhibit F ..... Guaranty of Payment (Redacted)

Exhibit G ..... UCC Financing Statement

This is to certify that the images appearing are an  
accurate and complete reproduction of a case file  
document delivered in the regular course of business.

Technician                      Date Processed                      JUN 30 2014.

Exhibit H ..... UCC Financing Statement – County

Exhibit I ..... UCC Financing Statement – State

As indicated above, the copies of Exhibits A, E, and F represent the public, redacted versions of these documents. The confidential, unredacted pages of these documents have been filed herewith under seal pursuant to a motion for a protective order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Barth E. Royer', with a long horizontal flourish extending to the right.

Barth E. Royer  
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Columbus, Ohio 43215-3927  
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Woodbran Realty Corporation

WOODBРАН REALTY CORPORATION  
Case No. 12-2578-ST-AIS

EXHIBIT A  
(Public, Redacted Version)

**LOAN AND SECURITY AGREEMENT**

by and between

Woodbran Realty Corporation, as Borrower,

and

The Huntington National Bank, as Lender

Dated April 24, 2014

## LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT ("Agreement"), is made and entered into as of the 24<sup>th</sup> day of April, 2014 by and between **Woodbran Realty Corporation**, an Ohio corporation ("Borrower") with a principal address at 3439 W. Brainard Rd., Suite 260, Woodmere, Ohio 44122, and The Huntington National Bank, a national banking association ("Lender") with an address at 200 Public Square CM 17, Cleveland, Ohio 44114.

### RECITALS

A. Borrower operates a waste water treatment facility located on certain real property in Woodmere, Cuyahoga County, Ohio, as more particularly described on Exhibit A attached and made a part hereof ("Land") (said improvements, which term shall include such present improvements and all rights, privileges, easements, hereditaments and appurtenances thereunto relating or appertaining, and all buildings, structures and other improvements, including all common areas, now or hereafter located on the Land, hereinafter the "Improvements", and the Land together with the Improvements hereinafter collectively the "Property").

B. Borrower has requested and Lender has agreed to provide Borrower with a loan in the amount of up to \$1,100,000.00 (the "Loan") and evidenced by a promissory note in the amount of up to \$1,100,000.00 (the "Note").

C. The Loan is secured by, among other things, a first-mortgage lien on the Property, a first perfected security interest in the business assets of Borrower, and a collateral assignment of the stock of Borrower.

d. Lender is willing to make the Loan upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, the parties hereto represent and agree as follows:

### SECTION 1

#### INCORPORATION AND DEFINITIONS

##### 1.1. Definitions.

The foregoing recitals and all exhibits hereto are made a part of this Agreement. The following terms shall have the following meanings in this Agreement:

Affiliate: means as to any Person, any other Person (excluding any Subsidiary) which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person. For purposes of this definition, a Person shall be deemed to be "controlled by" a Person if such Person possesses, directly or indirectly, power either: (i) to vote ten percent (10%) or more of the securities having ordinary voting power for the election of directors of such Person;

or (ii) to direct or cause the direction of the management and policies of such Person whether by control or otherwise.

Anti-Terrorism Laws: mean those laws and sanctions relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act (Public Law 107-56), the Bank Secrecy Act (Public Law 91-508), the Trading with the Enemy Act (50 U.S.C. App. Section 1 et. seq.), the International Emergency Economic Powers Act (50 U.S.C. Section 1701 et. seq.), and the sanction regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sections 1956 and 1957 (as any of the foregoing may from time to time be amended, renewed, extended or replaced).

Annual Debt Service: As defined in Section 4.9.

Appraisal: A fair market value real estate appraisal prepared by an appraiser satisfactory to Lender, in form and substance satisfactory to Lender.

Assignment of Licenses and Permits: An assignment to Lender from Borrower of the licenses, permits and other rights with respect to the Property, and which assignment is prior to all other such assignments and valid as such against all creditors of Borrower.

Blocked Person: means any of the following: (a) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order No. 13224; (c) a Person with which Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order No. 13224; (e) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (f) a Person who is affiliated or associated with a Person listed above.

Borrower: As such term is defined in the opening paragraph.

Business Day: means any day other than a Saturday, a Sunday, or a federal holiday, on which Lender is open for business.

Capital Expenditures: mean the aggregate of all expenditures (whether paid in cash or accrued as liabilities) that in accordance with Borrower's tax accounting practices, PUCO requirements, or GAAP are required to be included in or reflected by the property, plant, equipment or similar fixed asset accounts.

Collateral: All real and personal property owned by Borrower, whether now owned or existing, or hereafter arising or acquired or received by Borrower, wherever located, including:

- (a) all Accounts;
- (b) all Inventory;
- (c) all Equipment and Fixtures;
- (d) all General Intangibles, Payment Intangibles and Intellectual Property;
- (e) all Investment Property;
- (f) all Deposit Accounts and any and all monies credited by or due from any financial institution or any other depository;

(g) all of Borrower's right, title and interest in and to (i) its Goods and other personal property including all merchandise returned or rejected by Account Debtors, relating to or securing any of the Accounts; (ii) its rights as a consignor, a consignee, an unpaid vendor, mechanic, artisan, or other lien or, including stoppage in transit, setoff, detinue, replevin, reclamation, and repurchase; (iii) all additional amounts due to such Person from any Account Debtors relating to the Accounts; (iv) other property, including warranty claims, relating to any Goods; (v) all of such Person's contract rights, rights of payment earned under a contract right, Instruments (including promissory notes), Chattel Paper (including electronic chattel paper), Documents, warehouse receipts, letters of credit, and money; (vi) all Commercial Tort Claims (whether now existing or hereafter arising); (vii) if and when obtained by Borrower, all real and personal property of third parties in which such Person has been granted a lien or security interest as security for the payment or enforcement of Accounts; and (viii) any other goods or personal property, if any, in which such Person may hereafter in writing grant a security interest to Lender hereunder, or in any amendment or supplement hereto or thereto, or under any other agreement between Lender and Borrower;

(h) Borrower's ledger sheets, ledger cards, files, correspondence, records, books of account, business papers, computer software (owned by Borrower or in which it has an interest), computer programs, tapes, disks and documents relating to (a), (b), (c), (d), (e) or (f) of this Paragraph;

(i) the Property; and

(j) all proceeds and products of (a), (b), (c), (d), (e), (f), (g), (h), and (i) in whatever form, including: cash, deposit accounts (whether or not comprised solely of proceeds), certificates of deposit, insurance proceeds (including hazard, flood and credit insurance), negotiable instruments and other instruments for the payment of money, chattel paper, security agreements, documents, eminent domain proceeds, condemnation proceeds and tort claim proceeds.

Control or control: As such term is used with respect to any person or entity, including the correlative meanings of the terms "controlled by" and "under common control with", shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the

management policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

County: Cuyahoga County, Ohio.

Debt Service Coverage Ratio: As defined in Section 4.9.

Default: Any event, condition or circumstances, which if it were to continue uncured would, with notice or lapse of time or both, constitute an Event of Default hereunder, under any Loan Documents.

Default Rate: As set forth in the Note.

Environmental Law(s): means any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law, relating to protection of human health or the environment, relating to Hazardous Materials, relating to liability for or costs of Remediation or prevention of releases of Hazardous Materials or relating to liability for or costs of other actual or future danger to human health or the environment or relating to any wrongful death, personal injury or property damage that is caused by or related to the presence, growth, proliferation, reproduction, dispersal, or contact with any biological organism or portion thereof, including molds or other fungi, bacteria or other microorganisms or any etiologic agents or materials arising from or at the Property. The term "Environmental Law" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act (including, but not limited to, Subtitle I relating to underground Storage Tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term "Environmental Law" also includes, but is not limited to, any present and future federal, state and local laws, statutes, ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a Governmental Authority of the environmental condition of the Property; requiring notification or disclosure of releases of Hazardous Materials or other environmental condition of the Property to any Governmental Authority or other person or entity, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Property; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or the presence of biological or etiologic agents or materials or use, management, or maintenance of the Property.

Event of Default: As defined in Section 8.



Governmental Approvals: All consents, licenses and permits and all other authorizations or approvals required from any Governmental Authority.

Governmental Authority: Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court, administrative tribunal, or public utility.

\*\*\* REDACTED

Guarantor(s): [REDACTED] (each a "Guarantor" and, collectively, the "Guarantors").  
REDACTED\*\*\*

Guaranty of Payment: The limited recourse guaranty of payment and performance executed by Guarantor jointly and severally guarantying the payment and performance obligations of Borrower under the Note and Loan Documents as provided in such Guaranty of Payment.

Hazardous Material(s): Gasoline, petroleum, asbestos containing materials, explosives, radioactive materials or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such under any applicable Environmental Law.

Hedging Contract: means any foreign exchange contract, currency swap agreement, futures contract, commodities hedge agreement, interest rate protection agreement, interest rate future agreement, interest rate swap agreement, interest rate cap agreement, interest rate collar agreement, option agreement or any other similar hedging agreement or arrangement entered into by a Person in the ordinary course of business.

Improvements: As defined in the recitals.

Indebtedness: means all liabilities, obligations, and indebtedness, whether now or hereafter owing, arising, due or payable, including but not limited to: (a) indebtedness in the nature of loans, overdrafts, letters of credit, capital leases, obligations under derivative contracts (including interest rate swaps) and guarantees of the obligations of third parties; and (b) all liabilities of any person secured by a lien on Borrower's property.

Land: As defined in the recitals.

Law(s): Collectively, all present and future federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedential authority in the applicable jurisdiction.

Lender: As such term is defined in the opening paragraph.

Loan: As defined in the recitals.

Loan Amount: Up to the lesser of (i) \$1,100,000.00 or (ii) such amount as approved by the Public Utilities Commission of Ohio ("PUCO").

Loan Closing Date: The date on which all conditions of the Agreement have been satisfied or performed.

Loan Fee: \$5,500.00

Loan Documents: This Agreement, the documents specified in Section 3 hereof, and any other instruments evidencing or securing the obligations of Borrower under the Note or any of the other Loan Documents executed from time to time, including any Hedging Contracts.

Loan Proceeds: All amounts or any portion advanced as part of the Loan, whether advanced directly to Borrower or other parties.

Material Adverse Change or material adverse change: Lender, in its reasonable discretion, determines that the business prospects, operations or financial condition of the Borrower, or Property has changed in a manner which has materially impaired the value of the collateral for the Loan, prevent timely repayment of the Loan or otherwise prevent the applicable person or entity from timely performing any of its material obligations under the Loan Documents.

Maturity Date: May 1, 2019 (60 months), unless accelerated sooner pursuant to the terms hereof.

Mortgage: An Open-End Mortgage, Assignment of Leases and Rents and Security Agreement duly executed by the Borrower and granting a valid and subsisting first lien on the Land and the portions of the Property constituting real property, and a security interest in the personal property and fixtures securing all obligations of the Borrower under all of the Loan Documents, subject only to the Permitted Exceptions.

Net Operating Income: As defined in Section 4.9.

Note: The Promissory Note (and all amendments, modifications, restatements and replacements thereto) of even date herewith, executed by Borrower and payable to the order of Lender in the amount of up to \$1,100,000.00.

Operating Account: A deposit account with Lender that Borrower shall open on or prior to the Loan Closing Date.

Operating Company: Any operating company that operates the Property on behalf of Borrower. As of the date of this Agreement, Veolia Water North America Central, LLC is the Operating Company.

Operating Contract. A copy of the operating contract with the Operating Company, if any, which agreement, if requested by Lender, shall be assigned by Borrower to Lender by an assignment of operating contract and, if further requested by Lender, shall be consented to by the Operating Company.

OSHA: the Occupational Safety and Hazard Act of 1970.

Permitted Exceptions: Defects, liens and encumbrances, and other items affecting title to the Land and shown on Exhibit B attached hereto.

Person: Any individual, sole proprietorship, partnership, corporation, business trust, joint stock company, trust, unincorporated organization, association, limited liability company, institution, public benefit corporation, joint venture, entity or governmental body.

Prohibited Transfer: Any conveyance, sale, assignment, transfer, lien, pledge, mortgage, security interest, encumbrance or alienation of all or any portion of, or any interest in Borrower, the Land, or the Property, whether effected directly, indirectly, voluntarily, involuntarily, or by operation of Law or otherwise; provided, however, that the foregoing shall not apply to (i) liens securing the Loan, (ii) the lien of current taxes and assessments not in default, (iii) any pledge made in connection with indebtedness in respect of purchase money financings of personal property, (iv) any pledge made in connection with indebtedness that is expressly subordinated to the Borrower's indebtedness to the Lender, on terms and conditions that are satisfactory to the Lender pursuant to any subordination agreement required in connection with this Agreement, and (v) Permitted Exceptions.

Property: As defined in the Recitals.

Rate Agreement(s): Those certain agreements between Borrower and various municipalities to provide for waste water treatment, including, but not limited to, that certain Rate Agreement between Borrower and the Village of Woodmere, Ohio, effective January 1, 2011, and that certain Sanitary Sewage Disposal Agreement with the City of Beachwood, Ohio dated November 14, 2011.

Required Permits: Each building permit, environmental permit, utility permit, land use permit, wetland permit and any other permits, approvals or licenses issued by any Governmental Authority which are required in connection the construction or operation of the Property.

Security Agreement: The Security Agreement of even date herewith from Borrower in favor of or for the benefit of Lender and relating to all of Borrower's business assets and properties, securing the Note, which shall be a valid first security interest on the property described therein, as the same may from time to time be amended, modified, supplemented, substituted, extended, revised or restated including, but not limited to, all right, title and interest of Borrower in and to inventory, equipment, general intangibles, permits and all incidental, supplemental, related and ancillary rights attendant to, or in connection with any of the foregoing.

State: Means the State of Ohio.

Stock Pledge: That certain Stock Pledge and Security Agreement of even date herewith which pledges for the benefit of Lender 100% of the stock of the Borrower, which shall be a first, best and only security interest granted in such stock.

Stock Power: One or more Stock Powers executed by each of the shareholders of Borrower in connection with the Stock Pledge.

Subsidiary: A corporation or other entity of whose shares of stock or other ownership interests having ordinary voting power (other than stock or other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the directors of such corporation, are owned, directly or indirectly, by Borrower.

Survey: A survey of the Land acceptable to Lender.

Title Agent: Guardian Title and Guaranty Agency, Inc., Attn: Kim McNally.

Title Commitment: A commitment for issuance of an ALTA Loan Policy of Title Insurance with respect to the Property.

1.2 Definitions in Loan Documents. All terms not otherwise defined in the Loan Documents shall have the same meanings as set forth herein. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement.

1.3 Accounting Terms. All accounting terms not specifically defined herein shall be defined in accordance with Generally Accepted Accounting Principles as promulgated by the United States of America Financial Accounting Standards Board in the United States of America in effect from time to time ("GAAP"), unless Borrower's tax accounting practices or PUCO require otherwise. All financial computations to be made under this Agreement, unless otherwise specifically provided herein or unless Borrower's tax accounting practices or PUCO require otherwise, shall be construed in accordance with GAAP. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis unless the context clearly requires otherwise.

1.4 Uniform Commercial Code Terms. All terms used herein and defined in the Uniform Commercial Code as adopted in the State of Ohio from time to time shall have the meaning given therein unless otherwise defined herein. Such terms shall include: "Account", "Account Debtor", "Certificated Security", "Chattel Paper", "Commercial Tort Claim", "Commodity Account", "Deposit Account", "Document", "Equipment", "Farm Products", "Financial Asset", "Fixture", "General Intangible", "Goods", "Instrument", "Inventory", "Investment Property", "Lease", "Lessor", "Letter-of-Credit Rights", "money", "Payment

Intangibles", "Proceeds", "Record", "Secured Party", "Securities Account", "Security", "Security Entitlement", "Security Interest" and "Supporting Obligation". To the extent the definition of any category or type of Collateral is expanded by any amendment, modification or revision to the Uniform Commercial Code, such expanded definition will apply automatically as of the effective date of such amendment, modification or revision.

## SECTION 2

### REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties. To induce Lender to execute and perform its obligations under this Agreement, Borrower hereby represents, covenants and warrants to Lender as follows:

(a) Title to Assets. On the Loan Closing Date and at all times thereafter until the Loan is paid in full, the Borrower will have good and marketable indefeasible fee simple title to the Property, subject only to Permitted Exceptions.

(b) Financial Statements. All financial statements and other financial information furnished by Borrower (now or in the future) to Lender in connection with the Loan are true, complete and correct and fairly present the financial condition of the subjects thereof as of the respective dates thereof and do not fail to state any material fact necessary to make such statements or information not misleading, and no Material Adverse Change with respect to Borrower has occurred since the respective dates of such statements and information. Furthermore, all financial statements and other financial information which shall be furnished by Borrower to Lender in connection with the Loan shall be true, complete and correct and shall fairly present the financial condition of the subjects thereof as of the respective dates thereof and shall not fail to state any material fact necessary to make any statements or information not misleading. Borrower does not have any material liability, contingent or otherwise, not disclosed in such financial statements and information. No other information or documents provided by Borrower is false, incomplete or inaccurate in any material respect.

(c) Binding Obligations. The Borrower has full power and authority to enter into the transactions provided for in this Agreement and has been duly authorized to do so by appropriate action of its members, or otherwise, as may be required by law, charter, other organizational documents or agreements; and the Loan Documents, when executed and delivered by the Borrower, will constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their terms.

(d) Existence, Power and Authority. Borrower is duly organized, validly existing and in good standing under the laws of the State of its organization and has the power and authority to own and operate its assets and to conduct its business as now or proposed to be carried on, and is duly qualified, licensed and in good standing to do business in all jurisdictions where its ownership of property or the nature of its business requires such qualification or licensing. The Borrower is duly authorized to execute and deliver the Loan Documents, all necessary action to

authorize the execution and delivery of the Loan Documents has been properly taken, and the Borrower is and will continue to be duly authorized to borrow under this Agreement and to perform all of the other terms and provisions of the Loan Documents.

(e) No Defaults or Violations. There does not exist any Event of Default under this Agreement or any default or violation by the Borrower of or under any of the terms, conditions or obligations of: (i) its operating agreement, its articles or certificate of incorporation, or other organizational documents as applicable; (ii) any indenture, mortgage, deed of trust, franchise, permit, contract, agreement, or other instrument to which it is a party or by which it is bound; or (iii) any law, ordinance, regulation, ruling, order, injunction, decree, condition or other requirement applicable to or imposed upon it by any law, the action of any court or any governmental authority or agency; and the consummation of this Agreement and the transactions set forth herein will not result in any such default or violation or Event of Default.

(f) Tax Returns. The Borrower has filed all returns and reports that are required to be filed by it in connection with any federal, state or local tax, duty or charge levied, assessed or imposed upon it or its property or withheld by it, including income, unemployment, social security and similar taxes, and all of such taxes have been either paid or adequate reserve or other provision has been made therefor.

(g) Employee Benefit Plans. Each employee benefit plan as to which the Borrower may have any liability complies in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974 (as amended from time to time, "ERISA"), including minimum funding requirements, and (i) no Prohibited Transaction (as defined under ERISA) has occurred with respect to any such plan, (ii) no Reportable Event (as defined under Section 4043 of ERISA) has occurred with respect to any such plan which would cause the Pension Benefit Guaranty Corporation to institute proceedings under Section 4042 of ERISA, (iii) the Borrower has not withdrawn from any such plan or initiated steps to do so, and (iv) no steps have been taken to terminate any such plan.

(h) Margin Stock. No part of the proceeds of the Loan will be used for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board of Governors of the Federal Reserve System as now and from time to time in effect or for any purpose which violates the provisions of the Regulations of such Board of Governors.

(i) Solvency. As of the date hereof and after giving effect to the transactions contemplated by the Loan Documents: (i) the aggregate value of the Borrower's assets will exceed its liabilities (including contingent, subordinated, unmatured and unliquidated liabilities), (ii) the Borrower will have sufficient cash flow to enable it to pay its debts as they become due, and (iii) the Borrower will not have unreasonably small capital for the business in which it is engaged.

(j) No Material Adverse Change. None of the Loan Documents contains or will contain any untrue statement of material fact or omits or will omit to state a material fact

necessary in order to make the statements contained in this Agreement or the Loan Documents not misleading. There is no fact known to the Borrower which materially adversely affects or, so far as the Borrower can now foresee, might materially adversely affect the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower and which has not otherwise been fully set forth in this Agreement or in the Loan Documents and no condition, circumstance, event, agreement, document, instrument, restriction, or pending or threatened litigation or proceeding exists which could cause a Material Adverse Change to the Borrower or the Property.

(k) Land Use. To Borrower's knowledge, the Land, the present use and occupancy of the Land, and the use and occupancy of the Property do not violate or conflict with any lease, any applicable law, statute, ordinance, rule, regulation or order of any kind, including, without limitation, zoning, building, environmental, land use, noise abatement, occupational health and safety or other laws, any building permit or any condition, grant, easement, covenant, condition or restriction, whether recorded or not.

(l) Material Facts. All financial statements, budgets, schedules, opinions, certificates, confirmations, applications, rent rolls, affidavits, agreements, and other materials submitted to the Lender in connection with or in furtherance of this Agreement, and by or on behalf of the Borrower, fully and fairly state the matters with which they purport to deal, do not misstate any material fact, nor, separately or in the aggregate, fail to state any material fact necessary to make the statements made not misleading.

(m) Utilities. All utility and municipal services required for the occupancy and operation of the Property, including, but not limited to, water supply, storm and sanitary sewage disposal system, gas, electric and telephone facilities are available for use and provide the Property with such services to the extent necessary for operation of the Property.

(n) Storm and Sanitary Sewers. To Borrower's knowledge, the storm and sanitary sewage disposal system, water system and all mechanical systems of the Land and the Property comply with all applicable environmental, pollution control and ecological Laws, ordinances, rules and regulations.

(o) Easements. All utility, parking, vehicular access (including curb cuts and highway access), and other permits and easements required for the use and operation of the Property have been granted and issued to the extent necessary or required for the operation and use of the Property.

(p) No Encroachment. Except as shown on the Survey and approved by the Lender in writing, the Property does not encroach upon any building line, set back line, side yard line, or any recorded or visible easement, or other easement of which Borrower is aware or has reason to believe may exist, affecting the Land.

(q) Ingress and Egress. All roads necessary for ingress and egress to the Property and for the full utilization of the Improvements for their intended purposes have been completed

pursuant to easements or the necessary rights-of-way thereof have been dedicated to public use and accepted by the appropriate Governmental Authority.

(r) No Condemnation. (i) No condemnation of any portion of the Property and (ii) no proceedings to deny access to the Property from any point of access to the Property, has commenced, or to the best of Borrower's knowledge, is contemplated by any Governmental Authority.

(s) Environmental Matters. Borrower represents and warrants that, to its knowledge: (i) the Property is in compliance with all Environmental Laws; (ii) neither Borrower nor, to the best knowledge of Borrower, any other person or entity, has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under, at or in a manner to affect the Property, or any part thereof except in compliance with all Environmental Laws; and (iii) neither the Property nor Borrower is subject to any existing, pending, or, to the best of Borrower's knowledge, threatened investigation or inquiry by any Governmental Authority, and the Property is not subject to any remedial obligations under any applicable Laws pertaining to health or the environment.

(t) Foreign Person. Neither Borrower nor any Guarantor is a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code.

(u) Trade Names. Borrower uses no trade name other than its actual name set forth herein. The principal place of business of Borrower is the address listed on the first page of this Agreement.

(v) Separate Tax Parcels. Except as shown on the Survey, the Property is taxed separately without regard to any other property and for all purposes the Property may be mortgaged, conveyed and otherwise dealt with as an independent parcel.

(w) Leases; Rate Agreements. Borrower and its agents have not entered into any leases, subleases, Rate Agreements or other arrangements for occupancy of the Property. True, correct and complete copies of all Rate Agreements, as amended, have been delivered to Lender. All Rate Agreements are in full force and effect. Borrower is not in default under any Rate Agreements.

(x) Company Organization. The organizational documents submitted by Borrower in accordance with Section 6.1(j) are true, complete, and accurate. Borrower does not own any subsidiaries or have any affiliates.

(y) Permits and Approvals. All Required Permits have been issued and are in full force and effect.

(z) Anti-Terrorism Laws. Borrower is not in violation of any Anti-Terrorism Law or engaged in nor has it conspired to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any



Anti-Terrorism Law. Neither Borrower nor any Guarantor: (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person; or (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224.

(aa) Compliance with OSHA. Borrower is in compliance with OSHA, unless failure to comply or maintain would not reasonably be expected to have a Material Adverse Effect on Borrower.

2.2 Continuation of Representations and Warranties. Except for matters disclosed by Borrower and approved in writing by Lender, the Borrower hereby covenants, warrants and agrees that each of the representations and warranties made in Section 2.1 hereof shall be and shall remain true and correct as of the Loan Closing Date and at all times thereafter so long as any part of the Loan shall remain outstanding.

### SECTION 3

#### THE LOAN AND LOAN DOCUMENTS

3.1 Agreement to Borrow and Lend. Borrower agrees to borrow from Lender, and Lender agrees to lend to Borrower, the Loan Amount on the terms and subject to the conditions of this Agreement. The Loan shall be evidenced by the Note. Borrower has received approval from PUCO to borrow up to \$1,100,000.00 on the terms and conditions contained in this Agreement and the other Loan Documents. At no time shall Lender have any obligation to advance funds in excess of the loan amount approved by PUCO.

3.2 Loan Documents. Borrower agrees to execute and deliver to Lender, on or prior to the Loan Closing Date, the following documents, all of which must be satisfactory to Lender and Lender's counsel in form, substance and execution and all of which are executed on or about the date hereof:

(a) The Note.

(b) The Mortgage.

(c) The Security Agreement.

(d) Uniform Commercial Code ("UCC") Financing Statements. Borrower hereby authorizes Lender to file UCC financing statements naming Borrower as debtor with respect to the Mortgage and the collateral described in the Mortgage and other Loan Documents and which financing statements are prior to all other such financing statements and valid as such against all creditors of Borrower.

(e) Intentionally deleted.

(f) The Guaranty of Payment.

(g) The Assignment of Licenses and Permits.

(h) The Stock Pledge and Stock Powers.

(i) An assignment to Lender of all of Borrower's rights, title and interest in and to: (i) Rate Agreements, (ii) Governmental Approvals issued from time to time in connection with the operation of the Property, and (iii) all trademarks, trade names, logos, and all other materials used to identify or advertise the Property, and which assignment is prior to all other such assignments and valid as such against all creditors of Borrower; provided, however, Borrower provides no representation or warranty as to the effectiveness of assignment of Borrower's rights, title and interest in and to the foregoing Rate Agreements or Governmental Approvals.

(j) If required by Lender, consents to the foregoing assignments by: (i) the other parties to the leases, licenses, contracts, permits, and agreements being assigned and (ii) any guarantors of the performance of the obligations of such other parties under such leases, licenses, contracts, permits, and agreements, together with the confirmation by such other parties and guarantors that they will continue to perform and guaranty performance of such leases, licenses, contracts, permits, and agreements, as the case may be, after enforcement of and realization on such assignment by Lender.

(k) Such other papers and documents as may be required by this Agreement or as Lender may reasonably require.

#### SECTION 4

##### AFFIRMATIVE COVENANTS

4. From the date of execution of this Agreement until the Loan has been paid in full the Borrower agrees as follows:

4.1 Books and Records. Borrower shall maintain books and records for the Collateral and give representatives of the Lender access thereto at all reasonable times, including permission to examine, copy and make abstracts from any of such books and records and such other information as the Lender may from time to time reasonably request, and the Borrower will make available to the Lender for examination copies of any reports, statements and returns which the Borrower may make to or file with any federal, state or local governmental department, bureau or agency.

4.2 Financial Statement, Rent Roll and Tax Return Reporting. Borrower shall furnish or cause to be furnished to Lender whatever information, books and records the Lender may reasonably request, including at a minimum:

(a) Within 120 days after and as of the end of each fiscal year, Borrower's detailed financial statement including a balance sheet and statements of income, expense, retained

earnings, and cash flow in form and substance acceptable to Lender.

(b) Within 30 days after filing with the IRS, but in no event later than October 31 of any given year, Borrower's annual Federal Income Tax Returns, with exhibits and schedules; and if any such return is the subject of an extension, a copy of the request for extension shall be provided to Lender on or before May 15<sup>th</sup> of the applicable year.

(c) Within 180 days after the end of each year, but in no event later than June 30 of each year, the signed personal financial statement of each Guarantor, prepared in substantial conformity with those personal financial statements previously provided to Lender by such Guarantor.

(d) Within 30 days after filing with the IRS, but in no event later than October 31 of each year, a signed copy of each Guarantor's annual federal tax return, with exhibits and schedules including the actual K-1's, and if any such return is the subject of an extension, a copy of the request for extension shall be provided to Lender on or before May 15<sup>th</sup> of the applicable year.

(e) Within 180 days after the end of each year, but in no event later than June 30 of each year, a detailed global cash flow statement of each Guarantor together with copies of bank and/or broker statements to support the liquid assets reported on their personal financial statements.

If the Borrower has Subsidiaries, all financial statements required will be provided on a separate and consolidated basis.

4.3 Maintenance of Existence, Operation and Assets. Borrower shall do all things necessary to (i) maintain, renew and keep in full force and effect its organizational existence and all rights, permits and franchises necessary to enable it to continue its business as currently conducted; (ii) continue in operation in substantially the same manner as at present; (iii) keep its properties in good operating condition and repair; and (iv) make all necessary and proper repairs, renewals, replacements, additions and improvements thereto.

4.4 Insurance and Payment of Taxes and Escrows.

(a) Insurance. At all times during the term of the Loan, Borrower shall: (i) cause general liability and property hazard insurance policies to be maintained in compliance with Lender's insurance requirements as modified and amended from time to time, and (ii) provide originals or copies of the same to Lender, as required by Lender. Borrower shall timely pay all premiums on all insurance policies required hereunder, and as and when any policies of insurance may expire, furnish to Lender, evidence of payment of premiums prior to such expiration, and maintain insurance policies with companies, coverage and in amounts satisfactory to Lender.

(b) Payment of Taxes. Borrower shall pay all real estate taxes and assessments and

charges of every kind upon the Property before the same become delinquent, provided, however, that Borrower shall have the right to pay such tax under protest or to otherwise contest any such tax or assessment, but only if (i) such contest has the effect of preventing the collection of such taxes so contested and also of preventing the sale or forfeiture of the Property or any part thereof or any interest therein, (ii) Borrower has notified Lender in writing of Borrower's intent to contest such taxes, and (iii) Borrower has deposited with Lender security in form and amount satisfactory to Lender, in its reasonable discretion, and has increased the amount of such security so deposited promptly after Lender's request therefor. If Borrower fails to commence such contest or, having commenced to contest the same, and having deposited such security required by Lender for its full amount, shall thereafter fail to prosecute such contest in good faith or with due diligence, or, upon adverse conclusion of any such contest, shall fail to pay such tax, assessment or charge, Lender may, at its election (but shall not be required to), pay and discharge any such tax, assessment or charge, and any interest or penalty thereon, and any amounts so expended by Lender shall be deemed to constitute Loan proceeds hereunder (even if the total amount disbursed would exceed the Loan Amount). Borrower shall furnish to Lender evidence that taxes have been paid within thirty (30) days after the last date for payment of such taxes may be paid without imposition of any penalty or accrual of interest. Notwithstanding the foregoing, Borrower may not enter into any payment plan with the appropriate real estate taxing authority without the prior written consent of Lender.

(c) Escrow Accounts. Borrower shall, following the written request of Lender and upon the occurrence of any Event of Default, make insurance and tax escrow deposits, in amounts reasonably determined by Lender from time to time as being needed to pay taxes and insurance premiums when due, in an interest bearing escrow account held by Lender in Borrower's name and under Lender's sole dominion and control, and if required by Lender, Borrower shall execute a separate pledge and account control agreement for this account only with Lender. All payments deposited in the escrow account, and all interest accruing thereon, are pledged as additional collateral for the Loan. Notwithstanding Lender's holding of the escrow account, nothing herein shall obligate Lender to pay any insurance premiums or real property taxes with respect to any portion of the Property during the continuance of an Event of Default.

If the amount of the funds held by Lender shall not be sufficient to pay taxes, assessments and insurance premiums as they fall due, Borrower shall pay to Lender the amount of any such deficiency within thirty (30) days after notice from Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by the Mortgage, Lender shall promptly refund to Borrower any funds held by Lender pursuant to this Section.

4.5 Compliance with Laws. Borrower shall comply with all laws applicable to the Borrower and to the operation of its business (including without limitation any statute, ordinance, rule or regulation relating to employment practices, pension benefits or environmental, occupational and health standards and controls).

4.6 Bank Accounts. Borrower shall establish and maintain at the Lender the Borrower's

primary depository accounts.

4.7 Financial Covenants. Borrower shall comply with all of the financial and other covenants.

4.8 Additional Reports. Borrower shall within ten (10) Business Days of its knowledge of the same, provide written notice to the Lender of the occurrence of any of the following (together with a description of the action which the Borrower proposes to take with respect thereto): (i) any Event of Default or any event, act or condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default, (ii) any litigation filed by or against the Borrower except for claims brought in small claims court or for controversies claiming damages of less than \$20,000.00, (iii) any Reportable Event or Prohibited Transaction with respect to any Employee Benefit Plan(s) (as defined in ERISA) or (iv) any event which might result in a Material Adverse Change in the business, assets, operations, condition (financial or otherwise) or results of operation of the Borrower.

4.9 Debt Service Coverage Ratio: During the term of the Loan, the Property shall maintain a Debt Service Coverage Ratio of not less than 1.30 to 1.00, as of December 31 of each year. "Debt Service Coverage Ratio" shall mean the ratio of Net Operating Income to Annual Debt Service; "Net Operating Income" shall mean for a twelve (12) month period the difference between (i) the actual income of Borrower (including capital improvement reserve account allocations from the Village of Woodmere, the City of Beachwood and Orange Village), but excluding charges reasonably deemed by Lender to be of a non-recurring nature and (ii) the actual expenses on a trailing twelve (12) month basis for the Borrower; and "Annual Debt Service" shall mean the actual annual principal and interest payments of the Loan during any period for which a Hedging Contract is in effect and if a Hedging Contract is not in place, Annual Debt Service shall mean the principal and interest payments that would be due on the Loan assuming an interest rate of 6.25% and a fifteen (15) year amortization.

4.10 Furnishing Reports. Borrower shall provide Lender with copies of all inspections, reports, test results and other information received by Borrower from time to time from its employees, agents, representatives, architects, engineers, any contractors and any other parties involved in the construction, the design, development or operation of the Property, which in any material way relate to the Property or the construction, or any part thereof.

4.11 Lost Note. Borrower shall, if the Note is mutilated, destroyed, lost or stolen, deliver to Lender, in substitution therefor, a new promissory note containing the same terms and conditions as the Note with a notation thereon of the unpaid principal accrued and unpaid interest.

4.12 Hazardous Materials. Borrower shall comply with any and all Laws, regulations or orders with respect to the discharge and removal of Hazardous Materials, shall pay immediately when due the costs of removal of any such Hazardous Materials, and shall keep the Property free of any lien imposed pursuant to Environmental Laws, regulations or orders. In the event Borrower fails to do so, after notice to Borrower and the expiration of the earlier of: (i)

applicable cure periods hereunder; or (ii) the cure period permitted under applicable Law, regulation or order, Lender may declare an Event of Default and/or cause the remediation of the Hazardous Materials with the cost of the remediation added to the indebtedness evidenced by the Note and secured by the Mortgage (regardless of whether such indebtedness then increases the outstanding balance of the Note to an amount in excess of the face amount thereof). Borrower further agrees that Borrower shall not, except in the ordinary course of Borrower's business and in compliance with all Environmental Laws, release or dispose of any Hazardous Materials at the Property without the express prior approval of Lender. Any release or disposal will be in compliance with all applicable Environmental Laws, other Laws and regulations and conditions, if any, established by Lender, including, without limitation, those set forth in Section 6 of the Mortgage. Lender shall have the right at any time after an Event of Default to conduct an environmental audit of the Property for reasonable cause related to an adverse environmental condition or event, at Borrower's sole cost and expense, and Borrower shall cooperate in the conduct of such environmental audit. Lender will obtain three (3) competitive bids for such assessment from Lender's approved list of providers and obtain such report from the best bidder. Borrower shall give Lender and its agents and its employees access to the Property to inspect and test the Property and to remove Hazardous Materials. Borrower shall cause Lender to be added as an additional insured on any insurance policy Borrower maintains insuring against loss or damage resulting from any claims relating to Environmental Laws and/or Hazardous Materials (the "Environmental Insurance"). In addition, Borrower shall cause Lender to be an indemnified party under any indemnification agreement from Operating Company (the "Operating Company Indemnity"). In the event Borrower does not fulfill and maintain its obligations to provide protection to Lender through the Environmental Insurance and Operating Company Indemnity (for example, and not by way of limitation, by allowing the Environmental Insurance to lapse), Borrower shall indemnify Lender and defend Lender and hold Lender harmless from and against all claims, injuries, losses, costs, damages, liabilities and expenses (including attorneys' fees and consequential damages) by reason of any claim in connection with any Hazardous Materials which were present at the Property during or prior to Borrower's ownership of the Property. The foregoing indemnification shall be included within the indemnity agreement referred to in Section 4 hereof, and shall survive repayment of the Note.

4.13 Costs and Expenses. Borrower agrees to pay all costs, expenses (including reasonable attorneys' fees), and disbursements incurred by Lender on Borrower's behalf: (a) in all efforts made to enforce payment of the Loan or effect collection of any Collateral; (b) in connection with entering into, modifying, amending, and enforcing this Agreement or any consents or waivers hereunder and all related agreements, documents and instruments; (c) in maintaining, storing, or preserving any Collateral, or in instituting, enforcing and foreclosing on Lender's security interest in any Collateral or possession of any premises containing any Collateral, whether through judicial proceedings or otherwise, (d) in defending or prosecuting any actions or proceedings arising out of or relating to Lender's transactions with Borrower; or (e) in connection with any advice given to Lender with respect to its rights and obligations under this Agreement and all related agreements. Expenses being reimbursed by Borrower under this section include costs and expenses incurred in connection with: (s) appraisals and insurance reviews; (t) environmental examinations and reports; (u) field examinations and the preparation of reports based thereon; (v) the fees charged by a third party retained by Lender or the internally

allocated fees for each Person employed by Lender with respect to each field examination; (w) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of Lender; (x) taxes, fees and other charges for: (i) lien and title searches and title insurance, and (ii) the recording of any mortgages, filing of any financing statements and continuations, and other actions to perfect, protect, and continue Lender's security interests; (y) sums paid or incurred to take any action required of Borrower under the Loan Documents that Borrower fails to pay or take; and (z) forwarding loan proceeds, collecting checks and other items of payment, and costs and expenses of preserving and protecting the Collateral.

4.14 ERISA. Borrower shall not create, maintain or become obligated to contribute to any Plan or Multiemployer Plan, as such terms are defined in Sections 3(2), 3(37) and 4001(a)(3) of ERISA without Lender's prior written consent, which consent shall not be unreasonably withheld.

4.15 Hedging Contracts. Except as authorized by Lender, Borrower is not currently a party to, nor will it be a party to any Hedging Contract. Lender acknowledges that the Hedging Contract required as a closing condition under Section 6.1(m) is authorized.

## SECTION 5

### NEGATIVE COVENANTS

5 Negative Covenants. The Borrower covenants and agrees that from the date of this Agreement until the Loan has been paid in full, the Borrower shall not:

5.1 Indebtedness, Liens and Encumbrances by Borrower. Create, effect, consent to, attempt, contract for, agree to make, suffer or permit any additional secured indebtedness, encumbrances or liens other than: (i) the Loan; (ii) the Permitted Exceptions; and (iii) operating expenses with respect to the Property and/or trade credit incurred in the ordinary course of business.

5.2 Mechanics' Liens. Suffer or permit any mechanics' lien claims to be filed or otherwise asserted against the Property or any funds due any contractor, and will, within 30 days of written notice from Lender, bond or discharge the same if any claims for lien or any proceedings for the enforcement thereof are filed or commenced; provided, however, that Borrower shall have the right to contest in good faith and with due diligence the validity of any such lien or claim upon furnishing to the Title Agent such security or indemnity as it may require to induce the Title Agent to issue a loan policy or an endorsement thereto insuring against all such claims, liens or proceedings. In the event Borrower elects to bond any mechanic's lien claim, such bond shall be in an amount equal to at least one hundred fifty percent (150%) of such claim.

5.3 Settlement of Mechanics' Lien Claims. If Borrower shall fail promptly to bond or discharge any mechanics' lien claim filed or otherwise asserted or to contest any such claims and

give security or indemnity in the manner provided in Section 5.2 above, or, having commenced to contest the same, and having given such security or indemnity, shall thereafter fail to prosecute such contest in good faith or with due diligence, or fail to maintain such indemnity or security so required by the Title Agent for its full amount, or, upon adverse conclusion of any such contest, shall fail to cause any judgment or decree to be satisfied and lien to be released, then, and in any such event, Lender may at its election (but shall not be required to): (i) procure the release and discharge of any such claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such lien or claim; and (ii) effect any settlement or compromise of the same, or may furnish such security or indemnity to the Title Agent, and any amounts so expended by Lender, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute disbursements of the Loan Proceeds hereunder (even if the total amount of disbursements would exceed the face amount of the Note).

5.4 Guarantees. Guarantee, endorse or become contingently liable for the obligations of any person, firm, corporation or other entity, except: (i) in connection with the endorsement and deposit of checks in the ordinary course of business for collection; or (ii) as disclosed on the Borrower's financial statements or acceptable to the Lender in its reasonable discretion.

5.5 Loans or Advances. Purchase or hold beneficially any stock, other securities or evidences of indebtedness of, or make or have outstanding, any loans or advances to, or otherwise extend credit to, or make any investment or acquire any interest whatsoever in, any other person, firm, corporation or other entity, except: (i) investments disclosed on the Borrower's financial statements, (ii) made in the ordinary course of business, or (iii) acceptable to the Lender in its reasonable discretion.

5.6 Merger or Transfer of Assets. Liquidate or dissolve, or merge or consolidate with or into any person, firm, corporation or other entity, or sell, lease (except in the ordinary course of business), transfer or otherwise dispose of all or any substantial part of its property, assets, operations or business, whether now owned or hereafter acquired. Notwithstanding the foregoing, Borrower and its members may transfer interests in the Borrower for estate planning purposes so long as the aggregate result of such transfers does not result in a transfer of the Property or a Change of Control of the Borrower. As used herein, "Change of Control" shall mean that the Guarantors and/or another entity or entities owned or controlled by the Guarantors either no longer owns at least 51% of the Borrower or no longer maintains control of the Borrower. As used herein, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Borrower, whether through the ownership of membership interest, voting securities, by contract or otherwise. Borrower shall promptly notify Lender of any such transfer.

5.7 Change in Business, Management or Ownership. Permit or suffer: (i) a material amendment or modification of its organizational documents, (ii) the admission of any new member, partner or shareholder, or (iii) any dissolution or termination of its existence. Notwithstanding the foregoing, Borrower and its members may transfer interests in the Borrower for estate planning purposes so long as the aggregate result of such transfers does not result in a



transfer of the Property or a Change of Control of the Borrower. Borrower shall promptly notify Lender of any such transfer.

5.8 Dividends. During any Default or Event of Default (or if doing so would result in a Default or Event of Default), declare or pay any distribution with respect to any equity or ownership interest in Borrower, or purchase, redeem, retire or otherwise acquire any of its equity.

5.9 Intentionally deleted.

5.10 Management, Operating and Broker Contracts. Borrower shall not modify or amend the Operating Contract or enter into any management contracts for the Property or agreements with agents or brokers, without the prior written approval of Lender which approval shall not unreasonably be withheld. All such contracts shall be subordinate to the Loan and the Loan Documents.

5.11 Intentionally deleted.

5.12 Anti-Terrorism Laws. Borrower shall not, at any time: (a) directly or through its Affiliates and agents, conduct any business or engage in any transaction or dealing with any Blocked Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person; (b) directly or through its Affiliates and agents, deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224; (c) directly or through its Affiliates and agents, engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law; or (d) fail to deliver to Lender any certification or other evidence requested from time to time by Lender in its sole discretion, confirming the compliance of Borrower with this section.

5.13 Capital Expenditures. During any Event of Default or if making a Capital Expenditure will result in an Event of Default, Borrower will not make or incur any Capital Expenditures, including by way of the incurrence of capital lease obligations, expenditures for maintenance and repairs in accordance with GAAP or otherwise without Lender's prior written consent..

5.14 Fiscal Year/Accounting Treatment. Borrower shall not change its fiscal year for accounting or tax purposes from a period consisting of the twelve (12) month period ending on December 31st of each calendar year, and shall not make any change in accounting treatment and reporting practices or tax reporting treatment except as required for tax accounting purposes, by PUCO, GAAP, or law and disclosed in writing to Lender at the address set forth in the notices provision of this Agreement.

5.15 Prepayment of Additional Indebtedness. Except in the normal course of its

business activities, Borrower shall not, without the prior written consent of Lender: (a) prepay, redeem, defease, purchase, or otherwise acquire any of its indebtedness (other than the Loan to Lender in accordance with this Agreement); or (b) directly or indirectly materially amend, modify, alter, increase, or change any of the terms or conditions of any agreement, instrument, document, indenture, or other writing evidencing or concerning any of Borrower's indebtedness permitted under this Agreement. Notwithstanding the foregoing, Borrower shall not make any payments contemplated by this Section 5.15 during an Event of Default or if the making of any such payment could result in an Event of Default.

## SECTION 6

### CONDITIONS TO LOAN CLOSING

6.1 Lender shall have been satisfied that there is no Default or Event of Default under this Agreement or the other Loan Documents, and there is no litigation (existing, pending or threatened) which could cause a Material Adverse Change in the Borrower or the Property. The Loan Closing Date shall occur at such time as all of the conditions and requirements of this Agreement required to be performed by Borrower or other parties have been satisfied or performed. Borrower shall furnish the following to Lender at least ten (10) Business Days prior to the Loan Closing Date or at such time as is set forth below, all of which must be strictly satisfactory to Lender and Lender's counsel in their reasonable discretion, in form, content and execution:

(a) Title. The Title Commitment in form and substance acceptable to Lender.

(b) Survey. If required by Lender, Borrower shall provide a survey in form and substance acceptable to Lender.

(c) Insurance Policies. Evidence of insurance in compliance with Lender's insurance requirements, as modified and amended from time to time, satisfactory to Lender, as determined in its sole discretion.

(d) Compliance with Laws. Evidence satisfactory to Lender that the Property is in compliance with all governmental, zoning and building Laws, and ordinances and regulations (including, without limitation, requirements for parking and operation of the Property), and that any approvals thereof required from third parties or any Governmental Authorities have been obtained. Such evidence shall include, to the extent applicable, copies of all letters of or grants or approvals of all zoning changes, all variances of zoning regulations affecting the height, bulk, location or configuration of the Improvements (or evidence satisfactory to Lender that the same are not required), all vacations of plats or of streets, alleys or other public rights-of-way, all approvals or variances relating to parking or loading areas (both on-street and off-street), approval of the height, design and lighting of the Property as affecting navigable airspace by the FAA and any similar approval required from any state agency. Lender acknowledges that it has received evidence satisfying the zoning, parking and use requirements.

(e) Financial Statements. Current financial statements for Borrower and Guarantors in a form and substance reasonably acceptable to Lender.

(f) Stock Certificates. Borrower shall cause to be delivered to Lender 100% of the original stock certificates in Borrower.

(g) Environmental Assessment; Wetlands; Flood Plain Determination. Evidence indicating that the Land, and the Improvements, in Lender's sole judgment, is not located in a "Flood Plain" (as defined under the Flood Disaster Protection Act of 1973, as amended from time to time). If the Land lies within an area in which flood insurance is required to be maintained under the Flood Disaster Protection Act of 1973, as amended from time to time, Borrower shall provide flood insurance acceptable to Lender, as determined in its reasonable discretion, at a limit equal to the full value of the building. Lender acknowledges that it has received evidence satisfying this requirement.

(h) Payment of Loan Origination Fee. Payment to Lender of the Loan Fee.

(i) Documents of Record. Borrower shall provide to Lender copies of all covenants, conditions, restrictions, easements and matters of record which affect the Land.

(j) Organizational Documents.

(1) Certified copy of Borrower's Articles of Incorporation;

(2) Certified copy of Borrower's By-laws, Close Corporation Agreement, or other applicable governing documents;

(3) Borrower's Resolutions to enter into Loan and designating the members/officers authorized to execute all Loan Documents; and

(4) Good Standing Certificate from the Secretary of State of State of Formation.

(k) Appraisal. Lender shall have obtained (at Borrower's cost) an Appraisal of the Property demonstrating a Loan-to-as stabilized value ratio of 50% or lower based on the aggregate maximum Loan Amount which Appraisal shall be satisfactory to Lender, as determined in its sole discretion. Lender acknowledges that it has received evidence satisfying this requirement.

(l) UCC, Tax and Judgment Searches: Lender shall have received UCC, tax and judgment lien searches on the Borrower.

(m) Interest Rate Protection. Borrower shall have entered into one or more Hedging Contracts in form and substance (including, without limitation, the level thereof) reasonably

acceptable to Lender, protecting against fluctuations in interest rates. The principal purpose of any such Hedging Contracts shall be to provide Borrower with protection from fluctuations and other changes in interest rates and not for speculative purposes. From time to time upon Lender's request, Borrower shall provide Lender with true, accurate and complete copies of: (i) any such interest rate protection agreements with respect to any interest rate swap, collar, cap, floor or forward rate agreement or other agreement regarding the hedging of interest rate risk exposure executed in connection with hedging the interest rate exposure of Borrower, including any schedules, exhibits, confirmations, credit support documents or other documents executed pursuant to or in connection with such interest rate protection agreements, all as amended, restated or otherwise modified from time to time, and (ii) such other information, valuations, statements, reports and documents regarding such interest rate protection agreements as Lender may reasonably request.

(n) No Default. There is no Default or Event of Default under this Agreement or the other Loan Documents.

(o) Borrower's and Guarantor's Attorney's Opinion. The opinion of Borrower's and Guarantor's legal counsel that with respect to the Borrower, Guarantor, the Property: (i) the transactions contemplated by this Agreement do not violate any provision of any Law, restriction or other document affecting the Borrower, Guarantor, the Property; (ii) the Loan Documents have been duly executed and delivered, constitute legal, valid and binding obligations of the Borrower and Guarantor, as applicable, and are enforceable in accordance with their terms; (iii) Borrower is a validly organized and existing under the Laws of the State of its formation and qualified to do business in the State where the Property is located, that Borrower has the legal capacity to own, develop and operate the Land and the Property, and has the legal capacity to perform its obligations under the Loan Documents, and that the Loan has been duly authorized by the Borrower; (iv) the individuals executing the Loan Documents (and Guaranty) are properly authorized to do so on behalf of Borrower (and Guarantor), and its respective action with respect to the Loan has been duly authorized; and (v) such other matters concerning the Loan, the Loan Documents, and the Property, and the Borrower, as the Lender or its counsel may require.

(o) Additional Documents. Borrower shall have provided Lender such other papers and documents regarding Borrower, the Land or the Property as Lender may reasonably require.

Notwithstanding the foregoing or anything to the contrary contained herein or in any other Loan Document, to the extent that Lender may have acquiesced in noncompliance with any requirements precedent to the Loan Closing Date, or precedent to any subsequent Disbursement of Loan Proceeds, such acquiescence shall not constitute a waiver by Lender, and Lender may at any time after such acquiescence require Borrower to comply with all such requirements prior to any additional Disbursement.

## SECTION 7

### CASUALTIES AND CONDEMNATION

7.1 Notice. In case of the occurrence of any loss or damage to all or any portion of the Property resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty") that exceeds \$25,000 in costs to repair such loss or damage, or any exercise of the power of condemnation or eminent domain (a "Taking"), of the Property, or any part thereof, or any interest therein or right accruing thereto, Borrower shall promptly give to Lender written notice generally describing the nature and extent of such Casualty or Taking. So long as Borrower is not in Default, Borrower may adjust, settle and compromise any such insurance policy or any proposed condemnation award, but in any event, no final adjustment, compromise or settlement of any insurance claim in excess of \$25,000 or condemnation award shall be entered into without the prior written approval of Lender as to such settlement, adjustment or compromise thereof, and Borrower shall deposit with Lender all proceeds from any insurance policies ("Proceeds") and all awards from any Taking ("Awards"). Lender may appear in any such proceedings and negotiations and Borrower shall promptly deliver to Lender copies of all notices and pleadings in any such proceedings. Borrower will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage, destruction or taking. Upon a Default, Borrower shall reimburse Lender for all reasonable costs and actual out-of-pocket expenses incurred by Lender in exercising its rights under this section and such costs shall constitute indebtedness secured by the Mortgage and other Loan Documents. Upon a Default, Borrower hereby authorizes Lender, at Lender's option, to adjust, settle, compromise and collect any Proceeds under any insurance with respect to the Property which is kept, or caused to be kept, by Borrower, and any Awards pursuant to any Taking, and after such Default hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, for such purposes.

7.2 Application of Insurance Proceeds and Condemnation Awards. (a) Upon a Casualty (as defined in Section 7.1 above), or a Taking (as defined in Section 7.1 above), subject to the provisions of subsection (b) below, Lender may elect to apply as a Loan prepayment, all Proceeds of any insurance policies collected or claimed as a result of such Casualty and all Awards resulting from such Taking after deduction of all expenses of collection and settlement, including attorney's and adjusters' fees and charges. Any Proceeds or Awards remaining after payment in full of the Loan and all other sums due Lender hereunder shall be paid by Lender to Borrower without any allowance for interest thereon.

(b) Notwithstanding the provisions of Section 7.2(a) above, or anything to the contrary contained herein, as long as: (i) no Event of Default has occurred and is continuing hereunder, (ii) the Proceeds or Awards, as the case may be, are sufficient to rebuild the Property or, if they are insufficient, as determined by Lender in its reasonable discretion, Borrower either deposits with Lender or provides evidence to reasonably satisfactory to Lender such additional funds necessary, as determined in Lender's reasonable discretion, to rebuild the Property (the "Additional Funds"), (iii) construction can be completed not less than two (2) months prior to the Maturity Date, and (iv) after completion of the construction, the loan to value ratio of the Property is satisfactory to Lender, as determined in Lender's reasonable discretion, then the Proceeds or Awards, as the case may be, may, at Borrower's request, be applied towards reconstruction of the Property, which Proceeds or Awards or Additional Funds shall be deposited with Lender (or if Borrower provides evidence of the Available Funds, such funds shall be used

to directly pay the cost of reconstruction prior to any Proceeds or Awards) and disbursed pursuant the Lender's disbursement provisions for construction loans of Lender, as those are amended from time to time, or as otherwise prescribed by Lender. To the extent Borrower deposits Additional Funds with Lender, Borrower hereby pledges to Lender as collateral for the Loan all Additional Funds. In the event the Proceeds or the Award is \$100,000.00 or less, provided items (i) through (iv) are satisfied, Borrower shall only be required to provide Lender with invoices, lien waivers and/or other proof of payment of restoration costs reasonably satisfactory to Lender and will not have to go through Lender's full disbursement procedures.

(c) In the event Lender does not apply the Proceeds or Awards to prepayment of the Loan as provided for in Section 7.2(a) or Lender does not have the right to apply the Proceeds or Awards pursuant to Section 7.2(b) to prepayment of the Loan, or, in the event such Proceeds or Awards, if applied, do not fully discharge the Loan, Borrower will:

(i) Proceed with diligence to make settlement (which shall be subject to the prior written approval of Lender) with insurers or with condemning authorities and cause the Proceeds or Awards to be deposited with Lender, unless Lender shall elect to make such settlement without the consent of Borrower.

(ii) In the event of any delay (of six (6) months or more from the date of the Casualty or Taking and Borrower is not otherwise in Default under the Loan) in making settlement with insurers or effecting collection of Proceeds or Awards, that Lender determines to be unreasonable, Borrower shall deposit with Lender within thirty (30) days of request the full amount required to complete construction and restoration, disregarding such Proceeds or Awards.

(iii) Promptly proceed with construction and restoration of the Property, including the repair of all such loss or damage.

In the event of deposit by Borrower of the full amount required to complete construction of the Property, as aforesaid, upon the subsequent receipt of Proceeds or Awards, such Proceeds or Awards, as and when received, may be collected and retained by Borrower.

(d) Lender shall not be obligated to see to the proper application of any of the Proceeds nor shall the amount so released or used be deemed a payment on any indebtedness evidenced by the Note or secured by any of the Loan Documents. In the event of foreclosure of the Mortgage or other transfer of title in lieu of foreclosure, all right, title and interest of Lender, in and to any insurance policies then in force shall pass to the purchaser or Lender, as the case may be.

(e) All proceeds of use and occupancy or rental value insurance shall be paid to Lender for the purposes of paying, in the following order: (i) insurance premiums payable with respect to any insurance required to be carried by Borrower hereunder; (ii) taxes, assessments and charges payable by Borrower under any of the Loan Documents; and (iii) all amounts payable on the Note, together with any and all other amounts evidenced or secured by any of the Loan Documents, and to the extent that such insurance proceeds are available to pay the items listed in

clauses(i), (ii) and (iii), Lender shall pay such items for the account of Borrower. All such insurance proceeds not deemed necessary, in Lender's sole opinion, to pay (or establish reserves for the payment of) the above items shall be paid over to Borrower. Notwithstanding the foregoing, so long as there is no Event of Default under the Loan and Borrower is restoring the Property under subsection (b), Borrower may retain the insurance proceeds referred to in this subsection (e).

(f) Upon failure on the part of Borrower promptly to commence or continue the repair or restoration of the Property after settlement of any claim with the insurer, Lender shall have the right to apply such Proceeds to the payment of any indebtedness secured by the Loan Documents, and resort to such other remedies available to Lender hereunder; provided, however, that nothing herein contained shall prevent Lender from applying at any time the whole or any part of such insurance Proceeds to the curing of any Event of Default hereunder.

## SECTION 8

### DEFAULTS BY BORROWER

The occurrence of any one or more of the following shall constitute an "Event of Default" hereunder, and any Event of Default which may occur hereunder shall constitute an Event of Default under each of the other Loan Documents:

(a) A failure by Borrower to make any payment on the Note when and as the same becomes due or failure to pay any other amount when due under this Agreement, or any other Loan Document.

(b) The failure of Borrower for a period of fifteen (15) days after written notice from Lender to Borrower, to observe or perform any of the covenants (other than any payment on the Note or under this Agreement), contained in this Agreement or any of the other Loan Documents, provided, however, that no Event of Default shall be deemed to have occurred if any such failure is corrected or addressed within any such fifteen (15) day period or, if any such failure cannot reasonably be corrected or addressed in fifteen (15) days and Borrower commences to remedy such failure within the fifteen (15) day period and proceeds therewith with due diligence, Borrower shall have an additional thirty (30) day period to remedy such failure and, so long as Borrower cures such failure within such period, then no Event of Default shall be deemed to have occurred.

(c) The occurrence of a Prohibited Transfer.

(d) The existence of any collusion, fraud, dishonesty or bad faith by or with the acquiescence of Borrower, which in any way relates to or affects the Loan or the Property.

(e) If, at any time, any representation, statement, report or certificate made now or hereafter by Borrower is not true and correct, or if at any time any material statement or representation made in the Loan application or any supporting materials submitted to Lender for

this Loan is not true and correct.

(f) If all or a substantial part of the assets of Borrower are attached, seized, subjected to a writ or distress warrant, or are levied upon, and such attachment, seizure, writ, warrant or levy is not vacated within thirty (30) days thereafter.

(g) If Borrower is enjoined or restrained or in any way prevented by court or administrative order from performing any of its obligations hereunder or under the other Loan Documents or conducting all or a substantial part of its business affairs.

(h) If Borrower:

(i) Shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the federal bankruptcy code or any similar Law, now or hereafter in effect;

(ii) Shall file an answer or other pleading in any proceedings admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

(iii) Within ninety (90) days after the filing against it of any involuntary proceedings under the federal bankruptcy code or similar Law, now or hereafter in effect, such proceedings shall not have been vacated;

(iv) Have an order issued appointing a receiver, trustee or liquidator for it or for all or a major part of its property or the Land which is not vacated within sixty (60) days following entry thereof;

(v) Shall be adjudicated bankrupt;

(vi) Shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property, or the Land;

(vii) Shall for any reason cease to exist/or cease operating its business.

(i) One or more final judgments for the payment of money are entered (i) against Borrower in amounts aggregating in excess of \$100,000 or (ii) against any Guarantor in amounts aggregating in excess of \$300,000 and said judgment(s) remains unpaid or unstayed and undischarged for a period of thirty (30) days after the date on which the right to appeal has expired.

(j) The occurrence of any other event or circumstance denominated as an Event of Default herein or under any of the other Loan Documents and the expiration of any applicable grace or cure periods, if any, specified for such Event of Default herein or therein, as the case



may be.

(k) Borrower fails to comply with or to perform any term, obligation, covenant or condition contained in or the occurrence or existence of any event of default, termination event or other similar event under or with respect to any Hedging Contract.

(l) Borrower fails to furnish the information in the form and substance required by Section 4.2, above, in the requisite time periods denoted therein.

(m) The failure of Guarantor to observe or perform any of the covenants contained in the Guaranty or any of the other Loan Documents that Guarantor is a party to.

(n) Any action at law, suit in equity, or other legal proceeding to amend, cancel, revoke or rescind any Loan Document shall be commenced by or on behalf of Borrower, or any other Person bound by any Loan Document, or by any court or any other governmental or regulatory authority or agency of competent jurisdiction; or any court or any other governmental or regulatory authority or agency of competent jurisdiction shall make a determination that, or shall issue a judgment, order, decree, or ruling to the effect that, any one or more of the material covenants, agreements, or obligations of Borrower under any one or more of the Loan Documents are illegal, invalid or unenforceable in accordance with the terms thereof.

(o) The failure at any time of the Mortgage to be a valid first lien upon the Property or any portion thereof, other than as a result of any release or reconveyance of the Mortgage with respect to all or any portion of the Property pursuant to the terms and conditions of this Agreement.

## SECTION 9

### LENDER'S REMEDIES UPON DEFAULT

9.1 Remedies Conferred Upon Lender. Upon the occurrence of any Event of Default, Lender, in addition to all remedies conferred upon Lender by Law and by the terms of the Note, Security Agreement, Mortgage and the other Loan Documents, may pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any others:

(a) Declare the Note to be due and payable forthwith, without presentment, demand, protest or other notice or action of any kind, all of which are hereby expressly waived.

(b) In addition to any rights of set-off that Lender may have under applicable Law (including, but not limited to, garnishment actions) which may or may not require notice to the Borrower, Lender may, upon thirty (30) days notice to Borrower, appropriate and apply to the payment of the Note or of any sums due under this Agreement, any and all of the Borrower's balances, Borrower's deposits, Borrower's credits, Borrower's accounts, Borrower's certificates of deposit, Borrower's instruments or Borrower's money then or thereafter in the possession of

Lender, or its Affiliates. Lender may, immediately upon providing such notice, place a hold on any such account, but Lender will not apply any proceeds from the account to any amounts due under the Loan until the expiration of such thirty (30) day notice period. Borrower hereby irrevocably authorizes and directs Lender from time to time to charge Borrower's accounts and Borrower's deposits with Lender (or its Affiliates), and to pay over to Lender an amount equal to any amounts from time to time due and payable to Lender hereunder, under the Note or under any other Loan Document. Borrower hereby grants to Lender a security interest in and to all such accounts and deposits maintained by the Borrower with Lender (or its Affiliates).

(c) Exercise or pursue any other remedy or cause of action permitted at Law or at equity or under this Agreement or any other Loan Document, including but not limited to foreclosure of the Mortgage and enforcement of all Loan Documents.

(d) Intentionally deleted.

(e) Have the Collateral appraised, at Borrower's cost.

(f) Cause an environmental assessment to be conducted on the Property, at Borrower's cost.

(g) Lender shall have the right to exercise any and all other rights and remedies provided for herein, under the Uniform Commercial Code and at law or equity generally, including: (i) the right to foreclose the security interests granted herein and to realize upon any Collateral by any available judicial procedure and/or to take, to the extent permitted by applicable law, possession of and sell any or all of the Collateral with or without judicial process; (ii) settle or adjust disputes and claims directly with Account Debtors for amounts and upon terms that Lender considers advisable, and in such cases, Lender will credit the Loan Account with only the net amounts received by Lender in payment of such disputed Accounts after deducting all costs and expenses incurred or expended in connection therewith; (iii) without notice to or demand upon any Loan Party, make such payments and do such acts as Lender considers necessary to protect its security interests in the Collateral; and (iv) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell any Collateral. With or without having the Collateral at the time or place of sale, Lender may sell the Collateral, or any part thereof, at public or private sale, at any time or place, in one or more sales, at such price or prices, and upon such terms, either for cash, credit or future delivery, as Lender may elect. Except as to that part of the Collateral that is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give the Loan Parties reasonable notification of such sale or sales, it being agreed that in all events written notice mailed to the Loan Parties at least five (5) days prior to such sale or sales is reasonable notification. At any public sale Lender may bid for and become the purchaser, and Lender, or any other purchaser at any such sale thereafter shall hold the Collateral sold absolutely free from any claim or right of whatsoever kind, including any equity of redemption and such right and equity are hereby expressly waived and released by each Loan Party. In connection with the exercise of the foregoing remedies. The proceeds realized from the sale of any Collateral shall be applied as follows: first, to the reasonable costs, expenses and attorneys' fees and expenses incurred by

Lender for collection and for acquisition, completion, protection, removal, storage, sale and delivery of the Collateral; second, to interest due upon any of the Obligations and any fees payable under this Agreement; and, third, to the principal of the Obligations. If any deficiency shall arise, the Loan Parties shall remain liable to Lender therefor.

9.2 Right of Lender to Make Advances to Cure Defaults. In the event that Borrower shall fail to perform any of its covenants or agreements herein or in any of the other Loan Documents contained, Lender may after fifteen (15) days written notice to Borrower (but shall not be required to) perform any of such covenants and agreements, and any amounts so expended by Lender shall be deemed advanced by Lender under an obligation to do so regardless of the identity of the person or persons to whom said funds are disbursed. Loan Proceeds advanced by Lender in the exercise of its judgment that the same are needed to protect its security for the Loan are obligatory advances hereunder and shall constitute additional indebtedness payable on demand which is evidenced and secured by the Loan Documents.

9.3 No Waiver. No failure by Lender to exercise, or delay by Lender in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement and in the Loan Documents are cumulative and not exclusive of each other or of any right or remedy provided by law or equity. No notice to or demand on Borrower in any case shall, in itself entitle Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or further action in any circumstances without notice or demand.

9.4 Availability of Remedies. All of the remedies set forth herein, in the other Loan Documents and/or provided by Law or equity shall be equally available to Lender, and the choice by Lender of one (1) such alternative over another shall not be subject to question or challenge by Borrower or any other person, nor shall any such choice be asserted as a defense, set-off, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Agreement or any of the Loan Documents, nor shall such choice preclude Lender from subsequently electing to exercise a different remedy, except as otherwise provided by Law. The parties have agreed to the alternative remedies hereof specified in part because they recognize that the choice of remedies in the event of a failure hereunder will necessarily be and should properly be a matter of business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by Lender at the lowest cost to Borrower. It is the intention of the parties that such choice by Lender be given conclusive effect regardless of such subsequent developments. At any sale of the security or collateral for the Loan or any part thereof whether by foreclosure or otherwise, Lender may in its discretion purchase all or any part of such collateral so sold or offered for sale for its own account and may apply against the balance due Lender pursuant to the terms of the Note the amount bid therefore.

## SECTION 10

### MISCELLANEOUS

10.1 Time Is of the Essence. Lender and Borrower agree that time is of the essence of all of Borrower's covenants under this Agreement.

10.2 Prior Agreements. This Agreement and the other Loan Documents, and any other documents or instruments executed pursuant thereto or contemplated thereby, shall represent the entire, integrated agreement between the parties hereto with respect to the Loan and shall supersede all prior negotiations, representations, or term sheets or commitment letters, if any or agreements pertaining thereto, either oral or written. This Agreement and any provision hereof shall not be modified, amended, waived or discharged in any manner other than by a written amendment executed by all parties to this Agreement. An action on the part of the Lender waiving a specific provision or requirement herein contained, shall not be construed to be a waiver of future application of such provision or requirement or a waiver of any other provision or requirement hereunder.

10.3 Indemnification. To the fullest extent permitted by Law, Borrower hereby agrees to protect, indemnify, defend and save harmless, Lender and its directors, officers, agents and employees from and against any and all liability, expense or damage of any kind or nature and from any suits, claims, or demands, including reasonable out-of-pocket legal fees and expenses, arising out of this Agreement or in connection herewith, except to the extent such suit, claim or damage is caused by the gross negligence or willful misconduct of Lender. This obligation on the part of Borrower shall survive the closing of the Loan, the repayment thereof and any cancellation of this Agreement.

10.4 Captions. The captions and headings of various sections of this Agreement and exhibits pertaining hereto are for convenience only and not to be considered as defining or limiting in any way the scope or intent of the provisions hereof.

10.5 Inconsistent Terms and Partial Invalidity. In the event of any inconsistency among the terms hereof (including incorporated terms), or between such terms and the terms of any other Loan Document, this Agreement shall be controlling. If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word, or the application thereof, in any circumstances, is adjudicated by a court of competent jurisdiction to be invalid, the validity of the remainder of this Agreement shall be construed as if such invalid part were never included herein.

10.6 Gender and Number. Any word herein which is expressed in the masculine or neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural number shall be deemed, whenever appropriate in the context, to include the singular and plural.

10.7 Definitions Included in Amendments. Definitions contained in this Agreement which identify documents, including, without limitation, the Loan Documents, shall be deemed to include all written amendments and supplements to such documents from the date hereof, and all future written amendments and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of the Lender. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all written amendments and supplements to this Agreement.

**10.8 WAIVER OF JURY TRIAL. THE PARTIES HERETO ACKNOWLEDGE AND AGREE THAT THERE MAY BE A CONSTITUTIONAL RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM, DISPUTE OR LAWSUIT ARISING BETWEEN OR AMONG THEM, BUT THAT SUCH RIGHT MAY BE WAIVED. ACCORDINGLY, THE PARTIES AGREE THAT, NOTWITHSTANDING SUCH CONSTITUTIONAL RIGHT, IN THIS COMMERCIAL MATTER, THE PARTIES BELIEVE AND AGREE THAT IT SHALL BE IN THEIR BEST INTERESTS TO WAIVE SUCH RIGHT, AND, ACCORDINGLY, HEREBY WAIVE SUCH RIGHT TO A JURY TRIAL, AND FURTHER AGREE THAT THE BEST FORUM FOR HEARING ANY CLAIM, DISPUTE, OR LAWSUIT, IF ANY, ARISING IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR THE RELATIONSHIP AMONG THE PARTIES HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, OR WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE, SHALL BE A COURT OF COMPETENT JURISDICTION SITTING WITHOUT A JURY.**

10.9 Notices. Except for service of process as set forth in Section 10.10 below, any notice required under applicable Law to be given in another manner, any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered or if sent by telecopy, effective upon receipt or (ii) if delivered by overnight courier service, effective upon receipt, or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective upon receipt, or rejection or refusal; addressed in each case as follows:

If to Borrower:

Woodbran Realty Corp.  
3439 W. Brainard Rd., Suite 260  
Woodmere, Ohio 44122  
Attn: Randy Kertesz

with a copy to:

Jordan Berns, Esq.  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200

Beachwood, Ohio 44122

and

Bruce K. Karberg, Esq.  
Karberg & Associates Co., LPA  
Suite 306, Executive Commons I  
29425 Chagrin Boulevard  
Cleveland, Ohio 44122-4637

If to Lender:

The Huntington National Bank  
200 Public Square CM17  
Cleveland, Ohio 44114  
Attn: Laura Mazuchowski

With a Copy To:

Porter Wright Morris & Arthur, LLP  
925 Euclid Avenue, Suite 1700  
Cleveland, Ohio 44115  
Attn: William R. Weir

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

**10.10. Service of Process.** BORROWER FURTHER AGREES AND CONSENTS THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED ABOVE, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

**10.11. Governing Law and Jurisdiction.** This Agreement has been delivered to and accepted by the Lender and will be deemed to be made in the State where the Lender's office indicated above is located. **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LENDER'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Lender's office indicated above is located;

provided that nothing contained in this Agreement will prevent the Lender from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Lender and the Borrower agree that the venue provided above is the most convenient forum for both the Lender and the Borrower. The Borrower waives any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

10.12 Waiver of Damages. In no event shall Lender be liable to Borrower for punitive, exemplary or consequential damages, including, without limitation, lost profits, whatever the nature of a breach by Lender of its obligations under this Agreement or any of the Loan Documents, and Borrower for itself and its Guarantors waives all claims for punitive, exemplary or consequential damages.

10.13 Important Information About Procedures Required by the USA Patriot Act. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each entity or person who opens an account or establishes a relationship with Lender.

*What this means:* When an entity or person opens an account or establishes a relationship with Lender, Lender may ask for the name, address, date of birth, and other information that will allow the Lender to identify the entity or person who opens an account or establishes a relationship with Lender. Lender may also ask to see identifying documents for the entity or person.

10.14. Preservation of Rights. No delay or omission on the Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Lender's action or inaction impair any such right or power. The Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Lender may have under other agreements, at law or in equity.

10.15 Counterparts. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

10.16 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Borrower and the Lender and their respective heirs, executors, administrators, successors and assigns; provided, however, that the Borrower may not assign this Agreement in whole or in part without the Lender's prior written consent and the Lender at any time may assign this Agreement in whole or in part.

10.17. Assignments and Participations. At any time, without any notice to the Borrower, the Lender may sell, assign, transfer, negotiate, grant participations in, or otherwise dispose of all or any part of the Lender's interest in the Loan. The Borrower hereby authorizes the Lender to provide, without any notice to the Borrower, any information concerning the Borrower, including information pertaining to the Borrower's financial condition, business operations or general creditworthiness, to any person or entity which may succeed to or participate in all or any part of the Lender's interest in the Loan, or which is considering doing so.

10.18 Waiver of Marshalling of Assets. TO THE GREATEST EXTENT PERMITTED BY LAW, BORROWER HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER.

10.19 Fees and Costs. All references in this Agreement and the other Loan Documents to the payment of attorney's fees, costs and expenses of the Lender shall mean all reasonable, out-of-pocket attorney's fees, costs and expenses.

10.20 Further Assurances. Borrower covenants and agrees to execute any and all other documents required by Lender in connection with this Agreement required to perfect Lender's security interest(s) in the Collateral or to otherwise comply with and effectuate the terms of the Loan Documents.

The Borrower acknowledges that it has read and understood all the provisions of this Agreement, including the waiver of jury trial, and has been advised by counsel as necessary or appropriate.

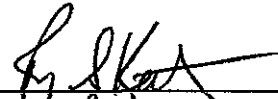
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SIGNATURE PAGE TO IMMEDIATELY FOLLOW]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

**BORROWER:**

**Woodbran Realty Corporation, an Ohio corporation**

By:   
Name: Ruby Kertesz  
Title: President

**LENDER:**

**The Huntington National Bank**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

**BORROWER:**

**Woodbran Realty Corporation, an Ohio corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LENDER:**

**The Huntington National Bank**

By: Mary Ann Weiss  
Name: Mary Ann Weiss  
Title: Authorized Signer

## **Exhibit A**

### **Parcel No. 1:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being all of Sublots Nos. 387, 388, 389, 390 and 391 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

### **Parcel No. 2:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 270 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 8 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

### **Parcel No. 3:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 323 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

### **Parcel No. 4:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 392 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways

Also that part of Belmont Avenue as vacated in Plat Volume 238 of Maps, Page 45 of Cuyahoga County Map Records.

## **Exhibit B**

### **Permitted Exceptions**

1. Taxes and assessments, which are a lien, but not yet due and payable.
2. Plat recorded in Volume 238 of Maps, Page 45 of Cuyahoga Records shows the following:  
  
Vacation of Belmont Avenue  
Easement reservation  
Permanent turn-around easement
3. Grant of Easment for Sanitary Sewer recorded in Volume 10938, Page 339, of Cuyahoga County Records.
4. Easement Agreement recorded in Volume 93-07227, Page 11 of Cuyahoga County Records.

WOODBРАН REALTY CORPORATION  
Case No. 12-2594-ST-AIS

EXHIBIT B

## PROMISSORY NOTE

\$1,100,000.00

April 24, 2014

FOR VALUE RECEIVED **Woodbran Realty Corporation**, an Ohio corporation, with a principal address at 3439 W. Brainard Rd., Suite 260, Woodmere, Ohio 44122 ("**Borrower**"), promises to pay to the order of **The Huntington National Bank** at its offices located at 200 Public Square CM 17, Cleveland, Ohio 44114 ("**Lender**," which term shall include any holder hereof) or at such other place as the holder hereof may designate, up to One Million One Hundred Thousand and No/100 Dollars (U.S. \$1,100,000.00) or so much thereof as shall have been advanced by the Lender, together with interest as set forth herein (the "**Loan**"). This Note is issued in connection with a Loan and Security Agreement by and between the Borrower and the Lender, dated on or before the date hereof (as amended, modified or renewed from time to time the "**Loan Agreement**") and the other agreements and documents executed and/or delivered in connection therewith or referred to therein, the terms of which are incorporated herein by reference (as amended, modified or renewed from time to time, collectively the "**Loan Documents**"), and is secured by the property described in the Loan Documents and by such other collateral as previously may have been or may in the future be granted to the Lender to secure this Note. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

### 1. Interest Rate.

Beginning on the date of the initial disbursement of proceeds hereunder, interest shall accrue on the unpaid balance of the principal amount outstanding under this Note at a variable rate of interest per annum (based on a 360 day year as provided below), which shall change in the manner set forth below, equal to two and three-quarters percent (2.75%) (the "**Applicable Margin**") in excess of the LIBO Rate (defined below).

Interest on the unpaid principal balance of the Loan is computed on a 365/360 basis, that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Any reference in this Note to a "per annum" rate shall be based on a year of 360 days.

"**LIBO Rate**" means the rate obtained by dividing: (i) the actual or estimated per annum rate, or the arithmetic mean of the per annum rates, of interest for deposits in U.S. dollars for the related LIBO Rate Interest Period, as determined by Lender, in its discretion, based upon reference to information which appears on page LIBOR01, captioned British Bankers Assoc. Interest Settlement Rates, of the Reuters America Network, a service of Reuters America Inc. (or such other page that may replace that page on that service for the purpose of displaying London interbank offered rates; or, if such service ceases to be available or ceases to be used by Lender, such other reasonably comparable money rate service as Lender may select) or upon information obtained from any other reasonable procedure, as of two Banking Days prior to the first day of a LIBO Rate Interest Period; by (ii) an amount equal to one minus the stated maximum rate (expressed as a decimal), if any, of all reserve requirements (including, without limitation, any

marginal, emergency, supplemental, special or other reserves) that is specified on the first day of each LIBO Rate Interest Period by the Board of Governors of the Federal Reserve System (or any successor agency thereto) for determining the maximum reserve requirement with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of such Board) maintained by a member bank of such System, or any other regulations of any governmental authority having jurisdiction with respect thereto as conclusively determined by Lender. Subject to any maximum or minimum interest rate limitation specified herein or by applicable law, any variable rate of interest on the obligation evidenced hereby shall change automatically, without notice to Borrower, on the first day of each LIBO Rate Interest Period. The interest rate change will not occur more often than each month.

"LIBO Rate Interest Period" shall mean one (1) month; provided that if any LIBO Rate Interest Period would otherwise expire on a day which is not a Banking Day, the LIBO Rate Interest Period shall be extended to the next succeeding Banking Day (provided, however, that if such next succeeding Banking Day occurs in the following calendar month, then the LIBO Rate Interest Period shall expire on the immediately preceding Banking Day).

"Banking Day" means any day other than a Saturday or a Sunday on which banks are open for business in Columbus, Ohio, and on which banks in London, England, settle payments.

## **2. Change in Law; Capital Adequacy; Loss; and Indemnity.**

In the event that Lender reasonably determines that by reason of (a) any change arising after the date of this Note affecting the interbank eurocurrency market or affecting the position of Lender with respect to such market, adequate and fair means do not exist for ascertaining the applicable interest rates by reference to which the LIBO Rate then being determined is to be fixed, (b) any change arising after the date of this Note in any applicable law or governmental rule, regulation or order (or any interpretation thereof, including the introduction of any new law or governmental rule, regulation or order), or (c) any other circumstance affecting Lender or the interbank eurocurrency market (such as, but not limited to, official reserve requirements required by Regulation D of the Board of Governors of the Federal Reserve System), the LIBO Rate, plus the Applicable Margin, shall not represent the effective pricing to Lender of accruing interest based upon the LIBO Rate, then, and in any such event, the accrual of interest based upon the LIBO Rate shall be suspended until Lender shall notify Borrower that the circumstances causing such suspension no longer exist, and beginning on the date of such suspension, interest shall accrue at a variable rate of interest per annum, which shall change in the manner set forth below, equal to the Prime Commercial Rate.

In the event that on any date the Lender shall have reasonably determined that the making or continuation of advances based upon the LIBO Rate has become unlawful by compliance by the Lender in good faith with any law, governmental rule, regulation or order, then, and in any such event, the Lender shall promptly give notice thereof to Borrower. In such case, the ability of Borrower to request an advance hereunder based upon the LIBO Rate shall be terminated and thereafter interest shall accrue on the unpaid outstanding principal balance at a variable rate of interest per annum, which shall change in the manner set forth below, equal to the Prime Commercial Rate.

**"Prime Commercial Rate"** means the rate established by the Lender from time to time based on its consideration of economic, money market, business and competitive factors, and it is not necessarily Lender's most favored rate. Subject to any maximum or minimum interest rate limitation specified herein or by applicable law, any variable rate of interest on the obligation evidenced hereby shall change automatically without notice to Borrower immediately with each change in the Prime Commercial Rate. The interest rate change will not occur more often than each Business Day. If the Prime Commercial Rate becomes unavailable, Lender may designate a substitute index after notifying Borrower.

If, due to: (1) the introduction of or any change in or in the interpretation of any law or regulation; (2) the compliance with any guideline or request from any central bank or other public authority (whether or not having the force of law); or (3) the failure of Borrower to repay any advance when required by the terms of this Note, there shall be any loss or increase in the cost to the Lender of agreeing to make or making, funding or maintaining any advance hereunder based upon the LIBO Rate, then Borrower agrees that Borrower shall, from time to time, upon demand by the Lender, pay to the Lender additional amounts determined in good faith by Lender to be sufficient to compensate the Lender for such loss or increased cost. A certificate as to the amount of such loss or increase cost setting forth in reasonable detail the basis for such determination and submitted to Borrower by Lender, shall be conclusive evidence, absent manifest error, of the correctness of such amount. Such amount shall be due and payable by Borrower to Lender within ten (10) days after such certificate is received by Borrower.

### **3. Payment Terms and Maturity Date.**

The principal balance shall be due and payable in sixty (60) consecutive monthly installments, beginning on June 1, 2014. Each installment of the principal balance shall be in the amount listed on Schedule A attached hereto and incorporated herein by this reference, with the amount of the principal due appearing under the column in said Schedule headed "Period End Principal Payment" and with said principal due on the date appearing under the column in said Schedule headed "End Date." Accrued interest shall be payable on the same dates as installments of the principal balance. If not sooner paid as herein permitted, the entire unpaid principal balance and all accrued interest and other charges hereunder shall be due on May 1, 2019 (the "Maturity Date").

If the due date of any payment under this Note shall be a day that is not a LIBO Rate Banking Day (as defined herein), the due date shall be extended to the next succeeding LIBO Rate Banking Day; provided, however, that if such next succeeding LIBO Rate Banking Day occurs in the following calendar month, then the due date shall be the immediately preceding LIBO Rate Business Day.

Borrower shall have the right to make prepayments of the Loan, in whole or in part, without prepayment penalty, upon not less than five (5) days' prior written notice to Bank. No prepayment of all or part of the Loan shall be permitted unless same is made together with the payment of all interest accrued on the Loan through the date of prepayment and an amount equal to all Breakage Costs and attorneys' fees and disbursements incurred by Bank as a result of the prepayment. "Breakage Costs" shall mean (a) the cost to Bank of re-employing funds bearing



interest at a LIBO Rate, incurred (or expected to be incurred) in connection with (i) any payment of any portion of the Loan bearing interest at the LIBO Rate prior to the termination of any applicable LIBO Rate Interest Period, or (ii) the conversion of the LIBO Rate to any other applicable interest rate on a date other than the last day of the LIBO Rate Interest Period, and (b) any amounts payable by Borrower under any Hedging Contract in connection with termination of such Hedging Contract.

#### **4. Events of Default.**

An "Event of Default" shall exist if any of the following occurs and is continuing:

- (a) Borrower fails to make any payment of interest and/or principal hereunder or any other payment required hereunder when and as the same becomes due; or
- (b) An Event of Default occurs under the Loan Agreement which extends beyond any applicable notice and cure period.

Upon the occurrence of an Event of Default: (a) Lender shall be under no further obligation to make advances hereunder; (b) the outstanding principal balance and accrued interest hereunder together with any additional amounts payable hereunder and under any other Loan Document shall be immediately due and payable without demand or notice of any kind; (c) at Lender's option, this Note will bear interest at the Default Rate (defined below) from the date of the occurrence of the Event of Default; and (d) the Lender may exercise from time to time any of the rights and remedies available under the Loan Documents or under applicable law. Each of the foregoing remedies is distinct and cumulative to all the other rights or remedies under this Note or afforded by law or equity, and may be exercised concurrently, independently or successively, in any order whatsoever.

No course of dealing on the part of the Lender and no delay or failure on the part of the Lender to exercise any right shall operate as a waiver of such right or otherwise prejudice the Lender's rights, powers and remedies.

#### **5. Late Payment Charge; Default Rate.**

If the Borrower fails to make any payment of principal, interest or other amount coming due pursuant to the provisions of this Note or the Loan Documents within fifteen (15) calendar days of the date due and payable, the Borrower also shall pay to Lender a late charge equal to five percent (5.00%) of the amount of such payment (the "Late Charge"). Such fifteen (15) day period shall not be construed in any way to extend the due date of any such payment. Upon maturity, whether by acceleration, demand or otherwise, and at Lender's option upon the occurrence of any Event of Default and during the continuance thereof, principal amounts outstanding under this Note shall bear interest at a rate per annum (based on the actual number of days that principal is outstanding over a year of 360 days) which shall be three percentage points (3.00%) in excess of the interest rate in effect from time to time under this Note but not more than the maximum rate allowed by law (the "Default Rate"). The Default Rate shall continue to apply whether or not judgment shall be entered on this Note. Both the Late Charge and the

Default Rate are imposed as liquidated damages for the purpose of defraying the Lender's expenses incident to the handling of delinquent payments, but are in addition to, and not in lieu of, the Lender's exercise of any rights and remedies hereunder, under the other Loan Documents or under applicable law, and any fees and expenses of any agents or attorneys which the Lender may employ. In addition, the Default Rate reflects the increased credit risk to the Lender of carrying a loan that is in default. The Borrower agrees that the Late Charge and Default Rate are reasonable forecasts of just compensation for anticipated and actual harm incurred by the Lender, and that the actual harm incurred by the Lender cannot be estimated with certainty and without difficulty.

#### **6. Right of Setoff.**

Upon the occurrence of an Event of Default, in addition to any rights of set-off that Lender may have under applicable law (including, but not limited to, garnishment actions), Lender shall have, with respect to the Borrower's obligations to the Lender under this Note and to the extent permitted by law, a contractual right of setoff against: all of the Borrower's right, title and interest in and to all of the Borrower's deposits, Borrower's moneys, Borrower's securities and Borrower's other property now or hereafter in the possession of or on deposit with, Lender, whether held in a general or special account or deposit, excluding, however, all IRA, Keogh, and trust accounts. Lender will provide thirty (30) days notice to Borrower prior to the exercise of such contractual right of set-off, provided, however, that Lender may, immediately upon providing such notice, place a hold on any such account, but Lender will not apply any proceeds from the account to any amounts due under this Note until the expiration of such thirty (30) day notice period and Lender may, in its discretion, release funds from such account upon the written request of Borrower to pay for trade debt and other obligations of Borrower incurred in the normal course of Borrower's business. Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action of the Lender, although the Lender may enter such setoff on its books and records at a later time.

#### **7. Loan Fee.**

Upon execution of this Note, Borrower shall pay Lender a Loan Fee as set forth in the Loan Agreement.

#### **8. Miscellaneous.**

(i) *Notices.* All notices, demands, requests, consents, approvals and other communications required or permitted hereunder shall be given in the manner prescribed in the Loan Agreement.

(ii) *Delay Not Prejudicial to Lender.* No delay or omission on the Lender's part to exercise any right or power arising hereunder will impair any such right or power or be considered a waiver of any such right or power, nor will the Lender's action or inaction impair any such right or power.

(iii) *Lender's Remedies Cumulative.* The Lender's rights and remedies hereunder are cumulative and not exclusive of any other rights or remedies which the Lender may have under other agreements, at law or in equity.

(iv) *No Oral Modification.* No modification, amendment or waiver of, or consent to any departure by the Borrower from, any provision of this Note will be effective unless made in a writing signed by the Lender.

(v) *Lender's Costs/Expenses.* The Borrower agrees to pay on demand, to the extent permitted by law, all costs and expenses incurred by the Lender in the enforcement of its rights in this Note and in any security therefore, including without limitation reasonable fees and expenses of the Lender's counsel.

(vi) *Partial Invalidity; Severability.* If any provision of this Note is found to be invalid, illegal or unenforceable in any respect by a court, all the other provisions of this Note will remain in full force and effect.

(vii) *Waivers.* Borrower and all other makers and indorsers of this Note hereby forever waive presentment, protest, notice of dishonor and notice of non-payment, and demand, with respect to any and all instruments, notice of acceptance hereof, notice of loans or advances made, credit extended, collateral received or delivered, or any other action taken in reliance hereon, and all other demands and notices of any description, except such as are expressly provided for herein. The Borrower also waives all defenses based on suretyship or impairment of collateral. If this Note is executed by more than one Borrower, the obligations of such persons or entities hereunder are joint and several.

(viii) *Successors and Assigns Bound.* This Note shall bind the Borrower and its heirs, executors, administrators, successors and assigns, and the benefits hereof shall inure to the benefit of the Lender and its successors and assigns; provided, however, that the Borrower may not assign this Note in whole or in part without the Lender's written consent and the Lender at any time may assign this Note in whole or in part.

(ix) *Governing Law; Jurisdiction.* This Note has been delivered to and accepted by the Lender and will be deemed to be made in the State where the Lender's office indicated above is located. **THIS NOTE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE LENDER AND THE BORROWER DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LENDER'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES.** The Borrower hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district where the Lender's office indicated above is located; provided that nothing contained in this Note will prevent the Lender from bringing any action, enforcing any award or judgment or exercising any rights against the Borrower individually, against any security or against any property of the Borrower within any other county, state or other foreign or domestic jurisdiction. The Borrower acknowledges and agrees that the venue provided above is the most convenient forum for both the Lender and the Borrower. The Borrower waives any objection to

venue and any objection based on a more convenient forum in any action instituted under this Note.

(x) *Index Value.* This Note expresses an initial interest rate and an initial index value to two (2) places to the right of the decimal point. This expression is done solely for convenience. The reference sources for the index used by Lender, as stated in this Note, may actually quote the index on any given day to as many as five (5) places to the right of the decimal point. Therefore, the actual index value used to calculate the interest rate on and the amount of interest due under this Note will be to 5 places to the right of the decimal point.

(xi) *Posting and Application of Payments.*

(a) All payments of principal, interest and other amounts payable hereunder, or under any of the other Loan Documents shall be made to Lender at the Payment Office not later than 4:00 p.m. on the due date. Lender shall not be required to credit the Operating Account (as defined in the Loan Agreement) for the amount of any item of payment or other payment that is unsatisfactory to Lender. All credits shall be provisional, subject to verification and final settlement. Lender may charge the Operating Account for the amount of any item of payment or other payment that is returned to Lender unpaid or otherwise not collected.

(b) Prior to an Event of Default under this Note, payments shall be applied first to interest, then to principal, then to any fees or other amounts due and owing to Lender in connection with the Loan. After an Event of Default under this Note, payments may be applied, at Lender's option, as follows: first to any collection costs or expenses (including reasonable attorneys' fees), then to any late charges or other fees owing under the Loan Documents, then to accrued interest, then to principal. To the extent that Borrower makes a payment or Lender receives any payment or proceeds of the Collateral (as defined in the Loan Agreement) for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Loan, or part thereof intended to be satisfied, shall be revived and continue as if such payment or proceeds had not been received by Lender.

(c) Borrower shall pay principal, interest, and all other amounts payable hereunder, or under any other Loan Document, without any deduction whatsoever, including any deduction for any setoff or counterclaim.

(xii) *IMPORTANT INFORMATION ABOUT PROCEDURES REQUIRED BY THE USA PATRIOT ACT.* To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each entity or person who opens an account or establishes a relationship with Lender.

**What this means:** When an entity or person opens an account or establishes a relationship with Lender, Lender may ask for the name, address, date of birth, and other information that will allow the Lender to identify the entity or person who opens an account or establishes a relationship with Lender. Lender may also ask to see identifying documents for the entity or person.

**9. Power To Confess Judgment.**

The undersigned authorizes any attorney at law to appear in any court of record in the State of Ohio or in any other state or territory of the United States after this Note becomes due and waive the issuance and service of process, enter an appearance and confess a judgment against the undersigned in favor of any holder of this Note for the amount then appearing due pursuant to this Note, or any other Loan Documents, including any Hedging Contracts, together with costs of suit, and thereupon to release all errors and waive all rights of appeal and stay of execution. If any judgment against Borrower is vacated for any reason, this warrant of attorney may be used to obtain additional judgments. The attorney-at-law authorized hereby to appear for Borrower may be an attorney-at-law representing Lender, and Borrower expressly waives any conflict of interest that may exist by virtue of such representation. Borrower also agrees that the attorney acting for Borrower and as set forth in this section may be compensated by Lender for such services.

**10. WAIVER OF JURY TRIAL.**

**BORROWER ACKNOWLEDGES AND AGREES THAT THERE MAY BE A CONSTITUTIONAL RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM, DISPUTE OR LAWSUIT ARISING BETWEEN OR AMONG BORROWER AND LENDER, BUT THAT SUCH RIGHT MAY BE WAIVED. ACCORDINGLY, THE BORROWER AGREES THAT, NOTWITHSTANDING SUCH CONSTITUTIONAL RIGHT, IN THIS COMMERCIAL MATTER, BORROWER BELIEVES AND AGREES THAT IT SHALL BE IN THEIR BEST INTERESTS TO WAIVE SUCH RIGHT, AND, ACCORDINGLY, HEREBY WAIVES SUCH RIGHT TO A JURY TRIAL, AND FURTHER AGREES THAT THE BEST FORUM FOR HEARING ANY CLAIM, DISPUTE, OR LAWSUIT, IF ANY, ARISING IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS, OR THE RELATIONSHIP AMONG THE BORROWER, LENDER, AND ANY OTHER PARTY TO THE LOAN DOCUMENTS, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, OR WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE, SHALL BE A COURT OF COMPETENT JURISDICTION SITTING WITHOUT A JURY.**

The Borrower acknowledges that it has read and understood all the provisions of this Note, including the confession of judgment and waiver of jury trial, and has been advised by counsel as necessary or appropriate.

Borrower has executed this Note in Cuyahoga County, Ohio and has executed and delivered this Note as of the day and year first set forth above.

**WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

Woodbran Realty Corporation, an Ohio  
corporation

By: [Signature]  
Name: Randy S. Kerkosz  
Its: President

## **SCHEDULE A**

**Woodbran Realty Corporation Amortization Schedule**

<u>Beg. Date</u>	<u>End Date</u>	<u>Month</u>	<u>Principal</u>	<u>Period End</u> <u>Principal Payment</u>
4/25/2014	6/1/2014	1	1,100,000.00	4,115.40
6/1/2014	7/1/2014	2	1,095,884.60	4,132.54
7/1/2014	8/1/2014	3	1,091,752.06	4,149.76
8/1/2014	9/1/2014	4	1,087,602.30	4,167.05
9/1/2014	10/1/2014	5	1,083,435.25	4,184.42
10/1/2014	11/1/2014	6	1,079,250.83	4,201.85
11/1/2014	12/1/2014	7	1,075,048.98	4,219.36
12/1/2014	1/1/2015	8	1,070,829.62	4,236.94
1/1/2015	2/1/2015	9	1,066,592.68	4,254.59
2/1/2015	3/1/2015	10	1,062,338.09	4,272.32
3/1/2015	4/1/2015	11	1,058,065.77	4,290.12
4/1/2015	5/1/2015	12	1,053,775.65	4,308.00
5/1/2015	6/1/2015	13	1,049,467.65	4,325.95
6/1/2015	7/1/2015	14	1,045,141.70	4,343.97
7/1/2015	8/1/2015	15	1,040,797.73	4,362.07
8/1/2015	9/1/2015	16	1,036,435.66	4,380.25
9/1/2015	10/1/2015	17	1,032,055.41	4,398.50
10/1/2015	11/1/2015	18	1,027,656.91	4,416.83
11/1/2015	12/1/2015	19	1,023,240.08	4,435.23
12/1/2015	1/1/2016	20	1,018,804.85	4,453.71
1/1/2016	2/1/2016	21	1,014,351.14	4,472.27
2/1/2016	3/1/2016	22	1,009,878.87	4,490.90
3/1/2016	4/1/2016	23	1,005,387.97	4,509.61
4/1/2016	5/1/2016	24	1,000,878.36	4,528.40
5/1/2016	6/1/2016	25	996,349.96	4,547.27
6/1/2016	7/1/2016	26	991,802.69	4,566.22
7/1/2016	8/1/2016	27	987,236.47	4,585.24
8/1/2016	9/1/2016	28	982,651.23	4,604.35
9/1/2016	10/1/2016	29	978,046.88	4,623.53
10/1/2016	11/1/2016	30	973,423.35	4,642.80
11/1/2016	12/1/2016	31	968,780.55	4,662.14
12/1/2016	1/1/2017	32	964,118.41	4,681.57
1/1/2017	2/1/2017	33	959,436.84	4,701.08
2/1/2017	3/1/2017	34	954,735.76	4,720.66
3/1/2017	4/1/2017	35	950,015.10	4,740.33
4/1/2017	5/1/2017	36	945,274.77	4,760.09
5/1/2017	6/1/2017	37	940,514.68	4,779.92
6/1/2017	7/1/2017	38	935,734.76	4,799.84
7/1/2017	8/1/2017	39	930,934.92	4,819.83
8/1/2017	9/1/2017	40	926,115.09	4,839.92
9/1/2017	10/1/2017	41	921,275.17	4,860.08
10/1/2017	11/1/2017	42	916,415.09	4,880.33
11/1/2017	12/1/2017	43	911,534.76	4,900.67
12/1/2017	1/1/2018	44	906,634.09	4,921.09
1/1/2018	2/1/2018	45	901,713.00	4,941.59
2/1/2018	3/1/2018	46	896,771.41	4,962.18
3/1/2018	4/1/2018	47	891,809.23	4,982.86
4/1/2018	5/1/2018	48	886,826.37	5,003.62
5/1/2018	6/1/2018	49	881,822.75	5,024.47
6/1/2018	7/1/2018	50	876,798.28	5,045.40
7/1/2018	8/1/2018	51	871,752.88	5,066.43
8/1/2018	9/1/2018	52	866,686.45	5,087.54
9/1/2018	10/1/2018	53	861,598.91	5,108.73
10/1/2018	11/1/2018	54	856,490.18	5,130.02
11/1/2018	12/1/2018	55	851,360.16	5,151.40
12/1/2018	1/1/2019	56	846,208.76	5,172.86
1/1/2019	2/1/2019	57	841,035.90	5,194.41
2/1/2019	3/1/2019	58	835,841.49	5,216.06
3/1/2019	4/1/2019	59	830,625.43	5,237.79
4/1/2019	5/1/2019	60	825,387.64	825,387.64



WOODBРАН REALTY CORPORATION  
Case No. 12-2594-ST-AIS

EXHIBIT C

CUYAHOGA COUNTY  
OFFICE OF FISCAL OFFICER - 21  
MORT 4/30/2014 3:35:01 PM  
**201404300545**

**OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
AND SECURITY AGREEMENT**

DATED AS OF

APRIL 24, 2014

FROM

**WOODBРАН REALTY CORPORATION**, an Ohio corporation

TO

**THE HUNTINGTON NATIONAL BANK**, a national banking association

**OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,  
AND SECURITY AGREEMENT**

THIS OPEN-END MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND SECURITY AGREEMENT (the "Mortgage") is made this 24<sup>th</sup> day of April, 2014, between **Woodbran Realty Corporation**, an Ohio corporation ("Mortgagor"), and **The Huntington National Bank**, a national banking association, organized and existing under the laws of the United States of America, with a place of business and address at 200 Public Square, Cleveland, Ohio 44114 ("Mortgagee").

WHEREAS, pursuant to the Loan and Security Agreement dated on or about the date above by and between Mortgagor and Mortgagee (the "Loan Agreement," as amended from time to time), Mortgagor has agreed to borrow from Mortgagee the principal sum of up to One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00) (the "Loan") and to evidence the Loan, Mortgagor has executed and delivered to the Mortgagee a Promissory Note (the "Note," as amended from time to time) of even date herewith for said principal sum bearing interest on the balance thereof remaining unpaid at a rate or rates which may vary from time to time as specified in the Note, and payable in the manner specified in the Note, reference to which is hereby made, the Loan Agreement is incorporated by reference and made a part of this Mortgage. Terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement;

TO SECURE TO Mortgagee the following obligations (the "Indebtedness"): (a) the repayment of the indebtedness evidenced by the Note, with interest thereon, prepayment and late charges, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Mortgagor herein contained, and (b) the repayment of any future advances, with interest thereon, made to Mortgagor by Mortgagee pursuant to paragraph 20 hereof (herein "Future Advances"), and (c) the full payment of amounts due under and performance and observance of all the provisions, conditions, covenants and agreements contained herein, in the Loan Agreement, or in any of the other Loan Documents, (d) any and all obligations, contingent or otherwise, whether now existing or hereafter arising, of Borrower to Mortgagee arising under or in connection with any Rate Management Transaction, and (e) any and all costs and expenses herein provided for or which may arise in respect of this Mortgage or the indebtedness hereby secured or the property herein described, Mortgagor does hereby mortgage, grant and convey to Mortgagee all of Mortgagor's right, title and interest to the following described property (herein referred to collectively as the "Property"):

(a) All of the land located in the County of Cuyahoga, State of Ohio, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises");

**GUARDIAN TITLE**  
**ORDER NO. 1223335**  
CLEVELAND/416315v.4 Escrow only

(b) All the improvements now or hereafter erected on the Premises (the "Improvements"), and all easements, rights of way, appurtenances, uses, servitudes, licenses, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, waters, water rights, and water stock, and any and all fixtures, goods, chattels, equipment and articles of personal property of every kind and character, including any replacements, additions, substitutions therefore, now or at any time in the future owned by Mortgagor and affixed to or placed upon or used in connection with the occupancy, enjoyment and operation of the Premises all of which are hereby declared and shall be deemed to be a portion of the security for the Indebtedness herein described and to be subject to the lien of this Mortgage, including but not limiting the generality of the foregoing, all heating, lighting, incinerating, power and total energy equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, ventilating, and communications apparatus, air cooling and air-conditioning apparatus, elevators, escalators, wall-to-wall carpeting, shades, awnings, screens, storm doors and windows, attached cabinets, partitions, ducts and compressors, and such other goods, chattels, and equipment as are adapted to the complete and comfortable use, enjoyment and occupancy of the Property, excluding any of the aforesaid which is owned by any tenant of any individual space leased to such tenant and which according to the terms of any applicable lease may be removed by such tenants at the expiration or termination of said lease;

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

(e) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest

extent of the law to be real property for purposes of this Mortgage; and any manufacturer's warranties with respect thereto;

(f) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

(g) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Mortgagor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit, which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally; and any builder's or manufacturer's warranties with respect thereto;

(h) All insurance policies pertaining to the Premises or Property and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Property, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(i) All "Equipment" as that term is defined in the Uniform Commercial Code;

(j) All "Goods" as that term is defined in the Uniform Commercial Code;

(k) All "Accounts" as that term is defined in the Uniform Commercial Code.

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above;

Mortgagor covenants with Mortgagee that Mortgagor is the lawful owner in fee simple of the above described Property hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is free and clear of all defects, liens and encumbrances except those items set forth on Exhibit B attached hereto (the "Permitted Exceptions"), and that Mortgagor will warrant and defend the title to the Property unto the Mortgagee against all claims and demands whatsoever except for Permitted Exceptions.

The Mortgagor covenants, agrees and stipulates to and with the Mortgagee as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Mortgagor shall promptly pay when due the principal of and interest on the Indebtedness at a rate or rates which may vary from time to time as specified in the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any advances, including Future Advances provided by this Mortgage, and any other fees or amounts due under the Loan Documents.

2. **TAXES AND INSURANCE.** Mortgagor will pay or cause to be paid all real estate taxes and assessments on the Property and all insurance premiums for hazard and liability insurance covering the Property as the same shall become due as required by the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default under this Mortgage or any of the Loan Documents, Mortgagee shall have the right (but not the obligation) to place and maintain insurance required to be placed and maintained by Mortgagor pursuant to the Loan Agreement and treat the amounts expended therefor as additional disbursements of Loan Proceeds (even if the total amount of disbursements would exceed the face amount of the Note). In the event of a default in the payment of such taxes or insurance when due then Mortgagee shall be permitted to (but shall not be required to) pay the taxes and/or insurance to protect the Property and charge the same to the Mortgagor as additional Indebtedness secured by this Mortgage. In such case, Mortgagee may require Mortgagor to deposit monthly, with Mortgagee, an amount equal to one-twelfth (1/12) of the annual taxes, insurance premiums, and other charges against the Property and the Project.

3. **APPLICATION OF PAYMENTS.** Prior to an Event of Default, unless applicable law provides otherwise, all payments received by Mortgagee under the Note and paragraphs 1 and 2 hereof shall be applied by Mortgagee first in payment of amounts payable to Mortgagee by Mortgagor under paragraph 2 hereof, then to interest payable on the Note and on Future Advances, if any, and then to the principal of the Note and to the principal of Future Advances, if any.

4. **LIENS.** Mortgagor shall not, without Mortgagee's prior written approval, directly or indirectly create or permit or suffer to be created or to remain, and will, discharge to Mortgagee's satisfaction, or promptly cause to be discharged to Mortgagee's satisfaction, any lien, encumbrance or charge (pursuant to Section 5 of the Loan Agreement) or pledge of, or conditional sale, or other title encumbrance with respect to the Property or any part thereof, other than Permitted Exceptions.

5. **INSURANCE.** Mortgagor shall keep the Improvements now existing or hereafter erected on the Property insured in accordance with the requirements set forth in Section 4 of the Loan Agreement.

Mortgagee is authorized and empowered to collect any proceeds from any insurance policy or policies resulting from any loss to the Property, and, subject to Section 7 of the Loan Agreement, to apply the proceeds as a credit on any portion of the Indebtedness, or to apply the proceeds to the restoration or repair of the Property so damaged.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

If, under paragraph 18, hereof the Property is acquired by Mortgagee, all right, title and interest of Mortgagor in and to any insurance policies and in and to the proceeds thereof (to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition) resulting from damage to the Property prior to the sale or acquisition shall pass to Mortgagee.

6. **PRESERVATION AND MAINTENANCE OF PROPERTY.** Mortgagor shall keep the Property in good repair and shall not permit or commit waste, impairment, or deterioration of the Property. Mortgagor shall comply with the provisions of any Lease covering the Property. Furthermore, Mortgagor shall restore or repair promptly and in good and workmanlike manner, free of mechanics, materialman's, laborer's and like liens and claims therefor, all or any part of the Property to the equivalent of its original condition, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of restoration or repair.

7. **PROTECTION OF MORTGAGEE'S SECURITY.** If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially and adversely affects Mortgagee's interest in the Property, as determined by Mortgagee in its sole discretion, including, but not limited to, eminent domain,

insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Mortgagee at Mortgagee's option, upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as is necessary to protect Mortgagee's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Mortgagee pursuant to this Paragraph 7, with interest thereon, shall become additional Indebtedness of Mortgagor secured by this Mortgage. Unless Mortgagor and Mortgagee agree in writing to other terms of payment, such amount shall be immediately due and payable upon notice from Mortgagee to Mortgagor requesting payment thereof, and shall bear interest from the date of disbursement at the rate applicable in the Note. Nothing contained in Paragraph 8 shall require Mortgagee to incur any expense or do any act hereunder.

8. **INSPECTION.** Mortgagee, for the protection of its interest in the Property, upon reasonable notice to the Mortgagor, may make or cause to be made reasonable entries upon and inspections of the Property.

9. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be applied in the manner set forth in Section 7 of the Loan Agreement.

10. **MORTGAGOR NOT RELEASED.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

11. **FORBEARANCE BY MORTGAGEE NOT A WAIVER.** Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the Indebtedness secured by this Mortgage.

12. **REMEDIES CUMULATIVE.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or the Loan Documents or afforded by law or equity, and may be exercised concurrently, independently or successively.



**13. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Mortgagee and Mortgagor, subject to the provisions of Paragraph 18. All covenants and agreements of Mortgagor contained in this Mortgage shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

**14. COMPLIANCE WITH LAWS.** Mortgagor hereby covenants and agrees to comply with, and to cause all occupants of all or any portion of the Property to comply with, all applicable zoning, building, use and environmental restrictions, all permits, approvals, licenses and other governmental impositions (collectively "Permits"), and all laws, rules, statutes, ordinances, regulations, codes, orders and requirements, including, without limitation, environmental matters and notices of violation of all governmental authorities having jurisdiction over the Property or the maintenance, use and operation thereof, and all restrictions and requirements of record (collectively, "Laws"). Mortgagor will deliver to Mortgagee within ten (10) Business Days after Mortgagee's request therefor any additional Permits or renewals, issued and approved or disapproved with respect to the Property. Mortgagor hereby indemnifies and agrees to defend and hold harmless Mortgagee from and against any and all claims, demands, loss, cost, damage, liability or expense incurred or suffered by Mortgagee arising from any failure of the Property to comply with all Laws, or from any failure of Mortgagor to obtain, maintain or renew, or to have obtained, maintained or renewed, any Permit required with respect to the Property. Mortgagor hereby warrants and represents that, on the date hereof, the Property complies with all Laws.

**15. NOTICE.** Except for any notice required under applicable law to be given in another manner, any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be given in the manner prescribed in the Loan Agreement.

**16. GOVERNING LAW; SEVERABILITY.** This Mortgage shall be governed by the law of the jurisdiction in which the Property is located, except to the extent pre-empted by Federal laws, without reference to the choice of law or conflicts of law principles of that State. In the event that any provision or clause of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage, which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage are declared to be severable.

**17. TRANSFER OF THE PROPERTY; ASSUMPTION.** Subject to Section 5.1 (which includes, among other items, the Permitted Exceptions) and Section 5.6 of the Loan Agreement (which includes, among other items, permitted transfers of membership interests), until such time as the Indebtedness is paid in full, no portion of the Property, nor any direct or indirect interest in Mortgagor shall be sold, assigned, transferred, leased, conveyed, contracted to be sold, mortgaged or in any way encumbered or disposed of directly or indirectly, without the prior written consent of Mortgagee in each such event. Mortgagee shall be under no obligation to consent to such transfer or conveyances. If Mortgagee agrees to such transfer or conveyance, to the extent permitted by applicable law, Mortgagee may charge a reasonable fee as a condition to Mortgagee's consent to such transfer or conveyance. However, no payment of or tender of any consideration to Mortgagee in connection with any proposed transfer or conveyance shall obligate Mortgagee to consent to such transfer or conveyance. Mortgagee may also require the transferee to sign an assumption agreement that is acceptable to Mortgagee and that obligates the transferee to keep all the promises and agreements made in the Note, in this Mortgage or any other Loan Documents. Mortgagor will continue to be obligated under the Note and this Mortgage unless Mortgagee releases Mortgagor in writing in Mortgagee's sole and absolute discretion. Any sale, assignment, transfer, lease, conveyance or mortgage of the Property without Mortgagee's consent (where such consent is required) shall be null and void, provided however that any lease or conveyance made to a tenant for purposes of the normal operation of the Property shall be permitted.

**18. EVENT OF DEFAULT; ACCELERATION.** The occurrence of any one or more of the following shall constitute an "Event of Default" as said term is used herein:

(a) Mortgagor shall fail to pay any principal of or interest or any other amounts due on the Note when the same becomes due and payable or within any grace period described in the Note or Loan Agreement or any other Loan Documents; or

(b) Mortgagor shall fail to comply with any of the provisions, conditions, or covenants contained in this Mortgage within any grace period described herein; or

(c) There shall be any default or termination event under any Rate Management Transaction; or

(d) An Event of Default occurs under the Loan Agreement or any other Loan Document.

**18.1. Remedies.** Upon the occurrence of any Event of Default, Mortgagor agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and

enforce its rights against Mortgagor and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(a) declare the entire unpaid principal balance of the Note together with all other Indebtedness to be immediately due and payable, which unpaid sums shall bear interest at the Default Rate from the due date until paid; and/or

(b) with or without entry, institute proceedings, by judicial action, advertisement or such other statutory procedures as are available in the state where the Property is located, for the complete or partial foreclosure of this Mortgage under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner, any partial foreclosure to be subject to the continuing lien and security interest of this Mortgage for the balance of the Indebtedness not then due, unimpaired and without loss of priority; and/or

(c) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale, judicial decree or otherwise, at one or more sales, as an entirety or in one or more parcels; and/or

(d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note or in the other Loan Documents; and/or

(e) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents; and/or

(f) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Mortgagor, any principal or any guarantor or of any other person, firm or other entity liable for the payment of the Indebtedness in accordance with and in the manner prescribed by applicable law in the state where the Property is located and in accordance with the terms hereof; and/or

(g) enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom without liability for trespass, damages or otherwise and exclude Mortgagor and its agents

or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may exercise all rights and powers of Mortgagor with respect to the Property including, without limitation:

(1) the right to use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; and/or

(2) the right to make or complete any construction, alterations, additions, renewals, replacements and improvements to or on the Property as Mortgagee deems advisable; and/or

(3) the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents (defined below) of the Property and every part thereof;

(h) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents (defined below), the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Mortgagor; and/or

(i) require Mortgagor to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and/or

(j) apply the receipts from the Property, and/or any unearned insurance premiums paid to Mortgagee upon the surrender of any insurance policies maintained pursuant to the Loan Agreement (it being agreed that Mortgagee shall have the right to surrender such insurance policies upon the occurrence of an Event of Default), to the payment of the Indebtedness, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion; and/or

(k) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing:

(1) the right to take possession of the personal property pledged hereunder (the "Collateral") or any part thereof, and to take such other measures

as Mortgagee may deem necessary for the care, protection and preservation of the Collateral, and

(2) request Mortgagor at its expense to assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor.

(l) upon any foreclosure or other sale of the Property pursuant to the terms hereof, Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit against the purchase price.

(m) without limiting any other provisions of this Mortgage, Mortgagee shall have the right to conduct any such sale on the Property, and Mortgagee shall have such right of possession of the Property as shall be necessary or convenient for such purpose or any other purpose under this paragraph 18.1. Mortgagee may sell the Property without giving any warranties relating to title, possession, quiet enjoyment, merchantability, fitness or the like as to the Property and may specifically disclaim any warranties, which shall not be considered to adversely affect the commercial reasonableness of any sale of the Property. Mortgagee has no obligation to clean up or otherwise prepare the Property for sale.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

18.2. Application of Proceeds. The proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Mortgage or the other Loan Documents, shall be applied as follows:

(a) First, to pay the portion of the Indebtedness attributable to the expenses of sale, costs of any action and any other sums for which Mortgagor is obligated to reimburse Mortgagee under the Loan Documents and under this Mortgage;

(b) Second, to pay the portion of the Indebtedness attributable to any sums expended or advanced by Mortgagee under the terms of this Mortgage which then remain unpaid;

(c) Third, to pay all other Indebtedness and any Hedging Obligation in any order and proportions as Mortgagee in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled to it.

18.3. Right to Cure Defaults. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder or curing or being deemed to have cured any default hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Indebtedness, and the cost and expense thereof (including actual reasonable attorneys' fees to the extent permitted by law), with interest as provided in this sub-paragraph 18.3, shall constitute a portion of the Indebtedness and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Indebtedness and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefore.

18.4. Receiver. Upon the occurrence of an Event of Default, Mortgagee shall be entitled as a matter of right without notice and without regard to the solvency or insolvency of Mortgagor, or the existence of waste of the Property or adequacy of the security of the Property, and without giving bond to apply for the appointment of a receiver in accordance with the statutes and law made and provided for who shall collect the Rents, and all other income of any kind; manage the Property so to prevent waste; execute Leases within or beyond the period of receivership, pay all expenses for normal maintenance of the Property and perform the terms of this Mortgage and apply the Rents, issues, income and profits to the costs and expenses of the receivership, including actual attorneys' fees, to the repayment of the Indebtedness and to the operation, maintenance and upkeep and repair of the Property, including payment of taxes on the Property and payments of premiums of insurance on the Property and any other rights permitted by law. Mortgagor does hereby irrevocably consent to such appointment. The receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Property, or any part thereof, by force, summary proceedings, ejectment or otherwise, and remove Mortgagor or any other person or entity and any personal property therefrom, and may

hold, operate and manage the same, receive all rents, earnings, incomes, issues and proceeds and do the things the receiver finds necessary to preserve and protect the Property, whether during pendency of foreclosure, during a redemption period, if any, or otherwise.

18.5. **Rights Under Uniform Commercial Code.** In addition to the rights available to a mortgagee of real property, Mortgagee shall also have all the rights, remedies and recourse available to a secured party under the Uniform Commercial Code in the State where the Property are located (the "Code") including the right to proceed under the provisions of the Code governing default as to any Collateral as defined in this Mortgage which may be included on the Property or which may be deemed nonrealty in a foreclosure of this Mortgage or to proceed as to such Collateral in accordance with the procedures and remedies available pursuant to a foreclosure of real estate.

18.6. **Mortgagor Not Released.** No delay or omission by Mortgagee in the exercise of any rights or remedies arising under this Mortgage, the Note or any other Loan Document at any time following the happening of an Event of Default shall constitute a waiver of the right of Mortgagee to exercise such rights and remedies at a later time by reason of such Event of Default or by reason of any subsequently occurring Event of Default.

19. **ASSIGNMENT OF LEASES AND RENTS; SECURITY AGREEMENT.** As additional security for the Indebtedness, Mortgagor hereby irrevocably, absolutely, presently and unconditionally assigns to Mortgagee all rents, royalties, issues, profits, revenue, income, accounts, proceeds and other benefits of the Property, whether now due, past due or to become due, including all prepaid rents and security deposits (some or all collectively, as the context may require, "Rents"). This is an absolute assignment, not an assignment for security only.

Mortgagee hereby confers upon Mortgagor a license ("License") to collect and retain the Rents as they become due and payable, so long as no Event of Default, as defined in Paragraph 18, has occurred and is continuing. If an Event of Default occurs, this License shall automatically terminate without notice to or demand upon Mortgagor, and without regard to the adequacy of Mortgagee's security under this Mortgage.

The parties intend for this Mortgage to create a lien on the Property, and an absolute assignment of the Rents, all in favor of Mortgagee. The parties acknowledge that some of the Property and some or all of the Rents may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be or be determined to be personal property, Mortgagor as debtor hereby grants Mortgagee as secured party a security interest in all such Property and Rents, to secure payment and performance of the Indebtedness. This Mortgage constitutes a security agreement under the Code covering all such Property and

Rents.

20. **FUTURE ADVANCES; OPEN END MORTGAGE.** This Mortgage is an Open-End Mortgage under Section 5301.232 of the Ohio Revised Code and is intended to secure the unpaid balances of loan advances to be made under the Note after this Mortgage has been delivered to the appropriate county recorder's office for recordation. The maximum amount of the unpaid principal indebtedness secured hereby, exclusive of interest thereon, and advances for the payment of taxes, assessments, insurance premiums or costs incurred for the protection of the Property, which may be outstanding at any time is One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00). If and to the extent applicable, Mortgagor hereby waives any right it may have under Section 5301.232(c) of the Ohio Revised Code.

21. **RIGHT TO PERFORM MORTGAGOR'S COVENANTS, PROTECTIVE ADVANCES, ETC.** If Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder within the time specified, Mortgagee, after such notice to Mortgagor as may be reasonable under the circumstances, without waiving or releasing any obligation or default, shall have the right, but shall not be obligated, to make such payment or perform such act at any time thereafter for the account and at the expense of Mortgagor, and shall have the right to enter upon the Property or any part thereof for such purpose and take all such action thereon as, in the opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all costs and expenses (including, without limitation, reasonable out-of-pocket attorneys' costs and expenses to the fullest extent permitted by law) so incurred, together with any other sums expended by Mortgagee for the payment of real estate taxes and assessments, insurance premiums, utilities, charges, costs of maintenance and repair and other expenditures for the protection of the Property and/or Mortgagee's interest therein, also together with interest thereon at the Default Rate, from the date of payment or incurring, shall constitute indebtedness secured by this Mortgage with the highest priority allowed by law, and shall be payable by Mortgagor to Mortgagee immediately. Mortgagee shall have the right, but not the obligation, to make protective advances with respect to the Property for the payment of taxes, assessments, insurance premiums, and costs incurred in the protection of the Property as contemplated by Section 5301.233 of the Ohio Revised Code, and such protective advances, together with interest thereon at the Default Rate from the date of each such advance until it is repaid in full, shall be secured by this Mortgage to the fullest extent and with the highest priority contemplated by said Section 5301.233. If and to the extent applicable, Mortgagor waives any right Mortgagee may have under Section 5301.233(c) of the Ohio Revised Code.

22. **PRIORITY OF MORTGAGE LIEN.** Mortgagee, at Mortgagee's option, is authorized and empowered to do all things provided to be done by a mortgagee under Section 1311.14 of the Revised Code of Ohio, and any present or future amendments or supplements



thereto, for the protection of Mortgagee's interest in the Property.

23. **RELEASE.** Upon payment of all sums secured by the Note and this Mortgage, and the performance of all the terms, conditions and covenants contained therein, this Mortgage shall be void. Mortgagor shall pay all costs of recordation of any cancellation or satisfaction hereof.

24. **WAIVER OF TRIAL BY JURY.** MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

25. **INCONSISTENCIES.** In the event of any inconsistency between this Mortgage and the Loan Agreement, the terms hereof shall be controlling as necessary to create, preserve and/or maintain a valid mortgage lien and security interest upon the Property, otherwise the provisions of the Loan Agreement shall be controlling.

26. **UCC FINANCING STATEMENTS.** Mortgagor hereby authorizes Mortgagee to file UCC financing statements to perfect Mortgagee's security interest in any part of the Property. In addition, Mortgagor agrees to sign any and all other documents that Mortgagee deems necessary in its sole discretion to perfect, protect, and continue Mortgagee's lien and security interest on the Property.

27. **REIMBURSEMENT, EXCULPATION, INDEMNIFICATION.**

(a) Mortgagor agrees to pay fees for any services that Mortgagee may render in connection with this Mortgage, including providing a statement of the Indebtedness or

providing the release of this Mortgage. Mortgagor further agrees to pay or reimburse Mortgagee for all reasonable, out-of-pocket costs, expenses and other advances which may be incurred or made by Mortgagee in any efforts to enforce any terms of this Mortgage, the Loan Agreement or any of the other Loan Documents, whether any lawsuit is filed or not, or in defending any action or proceeding arising under or relating to this Mortgage, the Loan Agreement or any of the other Loan Documents, including out-of-pocket reasonable attorneys' fees and other legal costs, costs of any foreclosure sale and any cost of evidence of title. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Loan Agreement or any of the other Loan Documents, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' costs and fees (including the costs and fees of paralegals), survey charges, appraiser's fees, inspecting engineer's and/or architect's fees, fees for environmental studies and assessments and all additional expenses incurred by Mortgagee with respect to environmental matters. All expenditures and expenses of this paragraph, and such expenses and fees as may be incurred in the protection of the Property and maintenance of the lien of this Mortgage, shall be immediately due and payable by Mortgagor, with interest thereon at the Default Rate and shall be secured by this Mortgage.

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

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

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

(iii) Any loss sustained by Mortgagor resulting from Mortgagee's failure to lease the Property, or from any other act or omission of Mortgagee in managing the Property, after an Event of Default, unless the loss is caused by the willful misconduct of Mortgagee.

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

(c) Mortgagor agrees to indemnify Mortgagee against and hold it harmless from all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other costs and expenses which Mortgagee may suffer or incur:

(i) In performing any act required or permitted by this Mortgage or any of the other Loan Documents or by law; or

(ii) Because of any failure of Mortgagor to perform any of its obligations.

This agreement by Mortgagor to indemnify Mortgagee shall survive the release and cancellation of any or all of the Indebtedness and the full or partial release of this Mortgage.

**28. FIXTURE FILING.** This Mortgage constitutes a financing statement filed as a fixture filing under Article 9 of the Code in the State, covering any Property which now is or later may become fixtures attached to the Property. For this purpose, the respective addresses of Mortgagor, as debtor, and Mortgagee, as secured party from which information concerning the security interest may be obtained, are as set forth in the preambles of this Mortgage. Mortgagor's place of business, or its chief executive office if it has more than one place of business, is located at the address specified in this Mortgage as Mortgagor's notice address.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK—  
SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

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

MORTGAGOR:

Woodbran Realty Corporation, an Ohio corporation

By: [Signature]  
Name: Randy S. Kertesz  
Title: President

STATE OF OHIO                    )  
  ) SS.  
COUNTY OF Cuyahoga        )

The foregoing instrument was acknowledged before me this 14th day of February, 2014, by Randy S. Kertesz, the President of Woodbran Realty Corporation, an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public

[Signature]  
~~JORDAN BERNIS, Attorney~~  
Notary Public - State of Ohio  
My Commission has no expiration date.  
Section 147.03 R.C.

This instrument prepared by:  
William R. Weir, Esq.  
Porter, Wright, Morris & Arthur  
925 Euclid Avenue, Suite 1700  
Cleveland, Ohio 44115

**EXHIBIT "A"**  
**Legal Description**  
**For File: 1223335**

**Parcel No. 1:**

**Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being all of Sublots Nos. 387, 388, 389, 390 and 391 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.**

**PPN 891-08-048, 049, 050, 051 & 052**

**Parcel No. 2:**

**Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 270 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 8 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.**

**PPN 891-08-046**

**Parcel No. 3:**

**Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 323 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.**

**PPN 891-08-045**

**Parcel No. 4:**

**Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 392 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.**

**PPN 891-08-047**

**Also that part of Belmont Avenue as vacated in Plat Volume 238 of Maps, Page 45 of Cuyahoga County Map Records.**

**EXHIBIT "B"**  
**PERMITTED EXCEPTIONS**

1. Taxes and assessments which are a lien, but not yet due and payable.
2. Plat recorded in Volume 238 of Maps, Page 45 of Cuyahoga Records shows the following:  
  
Vacation of Belmont Avenue  
Easement reservation  
Permanent turn-around easement
3. Grant of Easment for Sanitary Sewer recorded in Volume 10938, Page 339, of Cuyahoga County Records.
4. Easement Agreement recorded in Volume 93-07227, Page 11 of Cuyahoga County Records.

WOODBРАН REALTY CORPORATION

Case No. 12-2594-ST-AIS

EXHIBIT D

## **SECURITY AGREEMENT**

### **EQUIPMENT, FIXTURES, INVENTORY AND ACCOUNTS**

This Security Agreement (this "Agreement") is executed as of April 24, 2014.

Woodbran Realty Corporation, an Ohio corporation having an address of 3439 W. Brainard Rd., Suite 260, Woodmere, Ohio 44122 (hereinafter called "Debtor"), for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, pledges and assigns to The Huntington National Bank (hereinafter called "Lender"), a security interest in the following property, whether the Borrower's interest therein be as owner, co-owner, lessee, consignee, secured party or otherwise, and whether the same be now owned or existing or hereafter arising or acquired, and wherever located, together with all substitutions, replacements, additions and accessions therefor or thereto:

All assets and personal property of Debtor, including the following types or items of property defined in the Uniform Commercial Code as adopted in the State of Ohio and in effect from time to time, whether now owned or hereafter arising or acquired by Debtor, together with all replacements, additions, accessions, substitutions and accessories thereto: all accounts, inventory, equipment, fixtures, general intangibles, chattel paper, instruments, commercial tort claims, deposit accounts, documents, investment property, letter of credit rights or letters of credit, goods (whether inventory or equipment), and all other personal property of Debtor, together with all proceeds thereof, including cash proceeds and non-cash proceeds, all as more particularly described on Exhibit A attached hereto and made a part hereof.

The security interest hereby granted is to secure the prompt and full payment and complete performance of all obligations of Debtor to Lender under this Agreement, the Loan and Security Agreement by and between Debtor and Lender of even date herewith (the "Loan Agreement"), the Note and the Mortgage by Debtor to Lender (collectively, the "Obligations"). Capitalized terms not otherwise defined herein shall have the meanings given in the Loan Agreement.

The security interest hereby granted is to secure the prompt and full payment and complete performance of all Obligations of Debtor to Lender. The word "Obligations" is used in its most comprehensive sense and includes, without limitation, all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorneys' fees and the like) of Debtor to Lender, whether now existing or hereafter arising, either created by Debtor alone or together with another or others, primary or secondary, secured or unsecured, absolute or contingent, liquidated or unliquidated, direct or indirect, whether evidenced by note, draft, application for letter of credit or otherwise, and any and all renewals of or substitutes therefor.



It is Debtor's express intention that this Agreement and the continuing security interest granted hereby, in addition to covering all present Obligations of Debtor to Lender, shall extend to all future Obligations of Debtor to Lender, whether or not such Obligations are reduced or entirely extinguished and thereafter increased or reincurred, whether or not such Obligations are related to the indebtedness identified above by class, type or kind and whether or not such Obligations are specifically contemplated by Debtor and Lender as of the date hereof. The absence of any reference to this Agreement in any documents, instruments or agreements evidencing or relating to any Obligation secured hereby shall not limit or be construed to limit the scope or applicability of this Agreement.

1. General Covenants. Debtor represents, warrants and covenants as follows:

(a) (i) Debtor is, or as to Collateral arising or to be acquired after the date hereof, shall be, the sole and exclusive owner of the Collateral free from any and all liens, security interests, encumbrances, claims and interests; and (ii) no security agreement, financing statement, equivalent security or lien instrument or continuation statement covering any of the Collateral is on file or of record in any public office.

(b) Except for the security interests granted hereby, Debtor shall not create, permit or suffer to exist, and shall take such action as is necessary to remove, any claim to or interest in or lien or encumbrance upon the Collateral, other than those granted hereby, and shall defend the right, title and interest of Lender in and to the Collateral against all claims and demands of all persons and entities at any time claiming the same or any interest therein.

(c) Debtor's principal place of business and chief executive office is set forth in the Loan Agreement, and Debtor has no other place of business; and, unless Lender consents in writing to a change in the location of the Equipment, Inventory or Debtor's records concerning the Accounts prior to such a change in location, the Equipment, Inventory and Debtor's records concerning the Accounts shall be kept at that address.

(d) At least thirty (30) days prior to the occurrence of any of the following events, Debtor shall deliver to the loan officer who is handling Debtor's Obligations on behalf of Lender written notice of such impending events: (i) a change in Debtor's principal place of business, chief executive office and/or the location of the Collateral; (ii) the opening or closing of any place of business; or (iii) a change in Debtor's name, identity or corporate structure.

(e) Subject to any limitation stated therein or in connection therewith, all information furnished by Debtor concerning the Collateral or otherwise in connection with the Obligations, is or shall be at the time the same is furnished, accurate, correct and complete in all material respects.

(f) The Collateral is and shall be used primarily for business purposes.

2. Collection of Accounts. Debtor shall cause all accounts to be collected in a commercially reasonable manner, and whenever Debtor shall receive any payment of any Account, Debtor shall hold such payment in trust for Lender and shall forthwith deliver the same to Lender in the form received by Debtor without commingling with any funds belonging to Debtor. With respect to any Accounts collected by Lender, Debtor authorizes Lender to indorse the name of Debtor upon any checks or other items received in payment of any Account and to do any and all things necessary in order to reduce the same to money. All amounts received by Lender representing payment of Accounts may be applied by Lender to the payment of the Obligations in such order of preference as Lender may determine, or Lender may, at its option, impound all or any portion of such amounts and retain said amounts as security for the payment of the Obligations, with the right on the part of Debtor, upon approval by Lender, to obtain the release of all or part of such impounded amounts. Lender may, however, at any time, apply all or any part of such impounded amounts as aforesaid. Debtor also authorizes Lender at any time, without notice, to appropriate and apply any balances, credits, deposits, accounts or money of Debtor in Lender's possession, custody or control to the payment of any of the Obligations.

If any of Debtor's Accounts arise out of contracts with or orders from the United States or any State or any department, agency or instrumentality thereof, Debtor shall immediately notify Lender thereof in writing and shall execute any instrument and take any steps required by Lender in order that all money due and to become due under such contract or order shall be assigned to Lender and due notice thereof given to the appropriate governmental agency.

Debtor agrees to execute, deliver, file and record all such notices, affidavits, assignments, financing statements and other instruments as shall in the judgment of Lender be necessary or desirable to evidence, validate and perfect the security interest of Lender in the Accounts. Lender shall have the right to notify any persons or entities owing any Accounts and to demand and receive payment, but Lender shall have no duty so to do. Upon request of Lender at any time after the occurrence and continuance of an "Event of Default" under the Loan Agreement, Debtor shall notify such account Debtors and shall indicate on all invoices to such account Debtors that the accounts are payable to Lender.

3. Insurance. Debtor shall have and maintain insurance at all times with respect to all Equipment and Inventory (i) insuring against risks of fire (including so-called extended coverage), explosion, theft, sprinkler leakage and such other casualties as Lender may designate, and (ii) insuring against liability for personal injury and property damage relating to the Equipment and Inventory, containing such terms, in such form, for such periods and written by such companies as may be satisfactory to Lender, such insurance to be payable to Lender and Debtor as their interests may appear. All policies of insurance shall provide for twenty (20) days' written minimum cancellation notice to Lender and, at request of Lender, shall be delivered to and held by Lender.

Lender may act as attorney for Debtor in obtaining, adjusting, settling and cancelling such insurance and indorsing any drafts. In the event of failure to provide insurance as herein provided, Lender may, at its option, provide such insurance and Debtor shall pay to Lender, upon demand, the cost thereof. Should Debtor fail to pay said sum to Lender upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the highest rate set forth in any document or instrument evidencing any of the Obligations.

4. Inspection. Debtor shall at all times keep accurate and complete records of the Accounts and Debtor shall, at all reasonable times and from time to time, allow Lender, by or through any of its officers, agents, attorneys or accountants, to examine, inspect and make extracts from Debtor's books and records and to arrange for verification of the Accounts directly with account Debtors or by other methods and to examine and inspect the Collateral wherever located.

5. Further Assurances. Debtor shall perform, do, make, execute and deliver all such additional and further acts, things, deeds, assurances and instruments as Lender may require to more completely vest in and assure to Lender its rights hereunder and in or to the Collateral.

6. Preservation and Disposition of Collateral.

(a) Debtor shall keep the Collateral free from any and all liens, security interests, encumbrances, claims and interests. Debtor shall advise Lender promptly, in writing and in reasonable detail, (i) of any material encumbrance upon or claim asserted against any of the Collateral; (ii) of any material change in the composition of the Collateral; and (iii) of the occurrence of any other event that would have a material effect upon the aggregate value of the Collateral or upon the security interest of Lender.

(b) Debtor shall not sell or otherwise dispose of the Collateral; provided, however, that until the occurrence and continuance of an Event of Default pursuant to the Loan Agreement, Debtor may use the Equipment and Inventory in any lawful manner not inconsistent with this Agreement or with the terms or conditions of any policy of insurance thereon and may also sell or otherwise dispose of the Inventory in the ordinary course of Debtor's business. A disposition in the ordinary course of business shall not include a transfer in partial or total satisfaction of a debt.

(c) Debtor shall keep the Collateral in good condition and shall not misuse, abuse, secrete, waste or destroy any of the same.

(d) Debtor shall not use the Collateral in violation of any statute, ordinance, regulation, rule, decree or order.

(e) Debtor shall pay promptly when due all taxes, assessments, charges or levies upon the Collateral or in respect to the income or profits therefrom, except that no such charge need

be paid if (i) the validity thereof is being contested in good faith by appropriate proceedings; (ii) such proceedings do not involve any danger of sale, forfeiture or loss of any Collateral or any interest therein; and (iii) such charge is adequately reserved against in accordance with generally accepted accounting principles.

(f) At its option, Lender may discharge taxes, liens, security interests or other encumbrances at any time levied or placed on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse Lender upon demand for any payment made or any expense incurred (including reasonable attorneys' fees) by Lender pursuant to the foregoing authorization. Should Debtor fail to pay said sum to Lender upon demand, interest shall accrue thereon, from the date of demand until paid in full, at the highest rate set forth in any document or instrument evidencing any of the Obligations.

(g) Upon Lender's request at any time or times, Debtor shall assign and deliver to Lender any Collateral and shall furnish to Lender additional collateral of value and character satisfactory to Lender as security for the Obligations.

7. Extensions and Compromises. With respect to any Collateral held by Lender as security for the Obligations, Debtor assents to all extensions or postponements of the time of payment thereof or any other indulgence in connection therewith, to each substitution, exchange or release of Collateral, to the addition or release of any party primarily or secondarily liable, to the acceptance of partial payments thereon and to the settlement, compromise or adjustment thereof, all in such manner and at such time or times as Lender may deem advisable. Lender shall have no duty as to the collection or protection of Collateral or any income therefrom, nor as to the preservation of rights against prior parties, nor as to the preservation of any right pertaining thereto, beyond the safe custody of Collateral in the possession of Lender.

8. Financing Statements. At the request of Lender, Debtor shall join with Lender in executing one or more financing statements in a form satisfactory to Lender and shall pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable. A carbon, photographic or other reproduction of this Agreement or of a financing statement shall be sufficient as a financing statement.

9. Lender's Appointment as Attorney-in-Fact. Debtor hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as Debtor's true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Debtor and in the name of Debtor or in Lender's own name, from time to time in Lender's discretion, for the purpose of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby grants to Lender the power and right, on behalf of Debtor, without notice to or assent by Debtor:

(a) To execute, file and record all such financing statements, certificates of title and other certificates of registration and operation and similar documents and instruments including, but not limited to, those relating to aircraft or marine vessels, as Lender may deem necessary or desirable to protect, perfect and validate Lender's security interest.

(b) Upon the occurrence and continuance of any Event of Default under the Loan Agreement or any breach of any term, condition or provision of this Agreement, (i) to sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against Debtors, assignments, verifications and notices in connection with accounts and other documents relating to the Collateral; (ii) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (iii) to defend any suit, action or proceeding brought against Debtor with respect to any Collateral; (iv) to settle, compromise or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (v) generally, to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option and Debtor's expense, at any time or from time to time, all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as Debtor might do.

Debtor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable.

The powers conferred upon Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon Lender to exercise any such powers. Lender shall be accountable only for amounts that Lender actually receives as a result of the exercise of such powers and neither Lender nor any of its officers, directors, employees or agents shall be responsible to Debtor for any act or failure to act, except for Lender's own gross negligence or willful misconduct.

10. Default. Upon the occurrence and continuance of any Event of Default under the Loan Agreement or any breach of any term, condition, or provision of this Agreement:

(a) Lender may, at its option and without notice, declare the unpaid balance of any or all of the Obligations immediately due and payable and this Agreement and any or all of the Obligations in default.

(b) All payments received by Debtor under or in connection with any of the Collateral shall be held by Debtor in trust for Lender, shall be segregated from other funds of Debtor and shall forthwith upon receipt by Debtor be turned over to Lender in the same form as received by

Debtor (duly indorsed by Debtor to Lender, if required). Any and all such payments so received by Lender (whether from Debtor or otherwise) may, in the sole discretion of Lender, be held by Lender as collateral security for, and/or then or at any time thereafter be applied in whole or in part by Lender against, all or any part of the Obligations in such order as Lender may elect. Any balance of such payments held by Lender and remaining after payment in full of all the Obligations shall be paid over to Debtor or to whomsoever may be lawfully entitled to receive the same. Nothing set forth in this subparagraph (b) shall authorize or be construed to authorize Debtor to sell or otherwise dispose of any Collateral except as provided in subparagraph 6(b) hereof.

(c) Lender shall have the rights and remedies of a secured party under this Agreement, under any other instrument or agreement securing, evidencing or relating to the Obligations and under the law of the State of Ohio. Without limiting the generality of the foregoing, Lender shall have the right to take possession of the Collateral and all books and records relating to the Collateral and for that purpose Lender may enter upon any premises on which the Collateral or books and records relating to the Collateral or any part thereof may be situated and remove the same therefrom. Debtor expressly agrees that Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notices specified below of time and place of public sale or disposition or time after which a private sale or disposition is to occur) to or upon Debtor or any other person or entity (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase or sell or otherwise dispose of and deliver the Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any of Lender's offices or elsewhere at such prices as Lender may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Debtor. Debtor further agrees, at Lender's request, to assemble the Collateral and to make it available to Lender at such places as Lender may reasonably select, whether at Debtor's premises or elsewhere. Debtor further agrees to allow Lender to use or occupy Debtor's premises, without charge, for the purpose of effecting Lender's remedies in respect of the Collateral. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any or all of the Collateral or in any way relating to the rights of Lender hereunder, including reasonable attorneys' fees and legal expenses, to the payment in whole or in part of the Obligations, in such order as Lender may elect, and only after so paying over such net proceeds and after the payment by Lender of any other amount required by any provision of law, including Ohio Revised Code Section 1309.47(A)(3), need Lender account for the surplus, if any, to Debtor. To the extent permitted by applicable law, Debtor waives all claims, damages and demands against Lender arising out of the repossession, retention, sale or disposition of the Collateral. Debtor agrees that Lender need not give more than ten (10) days' notice (which notification shall be deemed given when

mailed, postage prepaid, addressed to Debtor at Debtor's address set forth at the beginning of this Agreement or when telecopied or telegraphed to that address or when telephoned or otherwise communicated orally to Debtor or any agent of Debtor at that address) of the time and place of any public sale or of the time after which a private sale may take place and that such notice is reasonable notification of such matters. Debtor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all amounts to which Lender is entitled. Debtor shall also be liable for the costs of collecting any of the Obligations or otherwise enforcing the terms thereof or of this Agreement including reasonable attorneys' fees.

11. General. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Lender shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by Debtor unless such waiver be in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. All of Lender's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singularly or concurrently. Any written demand upon or written notice to Debtor shall be effective when deposited in the mails addressed to Debtor at the address shown at the beginning of this Agreement. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the law of the State of Ohio, without giving effect to the conflict of law rules thereof. The provisions hereof shall, as the case may require, bind or inure to the benefit of, the respective heirs, successors, legal representatives and assigns of Debtor and Lender.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –  
SIGNATURE PAGE TO IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, Debtor has signed this Agreement as of the date set forth above.

Debtor:

Woodbran Realty Corporation, an Ohio corporation

By: [Signature]  
Name: Randy S. Kates  
Title: President

STATE OF OHIO                    )  
  ) ss  
COUNTY OF CUYAHOGA        )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of February, 2014, by Randy S. Kates the President of Woodbran Realty Corporation, an Ohio corporation, on behalf of the corporation.

[Signature]  
Notary Public  
JORDAN BEANS, Attorney  
Notary Public - State of Ohio  
My Commission has no expiration date.  
Section 147.03 R.C.



## **EXHIBIT A**

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Debtor: Woodbran Realty Corporation

Secured Party: The Huntington National Bank

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### **Description of Property**

All personal property of Debtor, whether now owned or hereafter acquired or received, and all Proceeds, products, profits and rents thereof, including, without limitation:

- (a) all of Debtor's Accounts Receivable or Deposit Accounts;
- (b) all of Debtor's Inventory;
- (c) all of Debtor's Equipment;
- (d) all funds on deposit in the Cash Collateral Account;
- (e) all of Debtor's Cash Security;
- (f) all of Debtor's General Intangibles and Payment Intangibles;
- (g) all of Debtor's Investment Property;
- (h) all of Debtor's Letter-of-Credit Rights; and
- (i) all of Debtor's rights in Commercial Tort Claims.

All of the foregoing hereinafter sometimes referred to as the "Collateral."

For purposes of this Exhibit A,

"Account" shall have the meaning ascribed to such term in the Uniform Commercial Code, as enacted in the State of Ohio from time to time (the "UCC"), including, without limitation: (a) any account, (b) any right to payment for Goods sold or leased or for services rendered which is not evidenced by an Instrument or Chattel Paper, whether or not it has been earned by performance, (c) any right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State, or (d) any health-care-insurance receivables (as defined in the UCC).

"Accounts Receivable" means:

- (a) any account receivable, Account, Chattel Paper, Contract Right, General Intangible, Payment Intangible, Document, or Instrument owned, acquired, or received by a Person;
- (b) any other indebtedness owed to or receivable owned, acquired, or received by any Person of whatever kind and however evidenced; and
- (c) any right, title, and interest in a Person's Goods which were sold, leased, or furnished by that Person and gave rise to either (a) or (b) above, or both of them. This includes, without limitation:
  - (i) any rights of stoppage in transit of a Person's sold, leased, or furnished Goods;
  - (ii) any rights to reclaim a Person's sold, leased, or furnished Goods; and
  - (iii) any rights a Person has in such sold, leased, or furnished Goods that have been returned to or repossessed by that Person.

"Agreement" means that certain Loan Agreement dated on or about of even date herewith between Debtor and Lender.

"Chattel Paper" means (a) any chattel paper, and (b) any writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific Goods. If a transaction is evidenced both by such an agreement for security or a lease and by an Instrument or a series of Instruments, the group of writings taken together constitutes Chattel Paper.

"Commercial Tort Claim" shall have the meaning ascribed to such term in the UCC, including, without limitation, a claim arising in tort with respect to which:

- (a) The claimant is an organization; or
- (b) The claimant is an individual, and the claim:
  - (i) Arose in the course of the claimant's business or profession; and
  - (ii) Does not include damages arising out of personal injury to or the death of an individual.

"Contract Right" shall have the meaning set forth in the UCC, including, without limitation: (a) any contract right (including, without limitation, any right of Debtor to be indemnified by any other Person); and (b) any right to payment under a contract not yet earned by performance and not evidenced by an Instrument or Chattel Paper.

"Document" shall have the meaning set forth in the UCC, including, without limitation: (a) any document, (b) any document of title, including a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of Goods, and any other document which in the regular course of business or financing is treated as adequately evidencing that the Person in possession of it

is entitled to receive, hold, and dispose of the document and the Goods it covers and (c) any receipt covering Goods stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts even though issued by a Person who is the owner of the Goods and is not a warehouseman.

"Deposit Account" means (a) any deposit account, and (b) any demand, time, savings, passbook, or a similar account maintained with a bank, savings and loan association, credit union, or similar organization, other than an account evidenced by a certificate of deposit.

"Instrument" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any instrument;
- (b) any negotiable or nonnegotiable instrument (including, without limitation, drafts, checks, acceptances, certificates of deposit, and notes);
- (c) any security; and
- (d) any other writing which:
  - (i) evidences a right to the payment of money,
  - (ii) is not itself a security agreement or lease, and
  - (iii) is of a type which in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

"Inventory" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any inventory;
- (b) all Goods that are raw materials;
- (c) all Goods that are work in process;
- (d) all Goods that are materials used or consumed in the ordinary course of a Person's business;
- (e) all Goods that are, in the ordinary course of a Person's business, held for sale or lease or furnished or to be furnished under contracts of service; and
- (f) all substitutes and replacements for, and parts, accessories, additions, attachments, or accessions to (a) to (e) above.

"Equipment" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any equipment, including without limitation, machinery, office furniture and furnishings, tools, dies, jigs, and molds;
- (b) all Goods that are used or bought for use primarily in a Person's business;
- (c) all Goods that are not consumer goods, farm products, or inventory;
- (d) all titled vehicles; and
- (e) all substitutes or replacements for, and all parts, accessories, additional attachments, or accessions to (a) to (d) above.

"Cash Security" means all cash, Instruments, Deposit Accounts, and other cash equivalents, whether matured or unmatured, whether collected or in the process of collection upon which Debtor presently has or may hereafter have any claim, that are presently or may hereafter be existing or maintained with, issued by, drawn upon, or in the possession of Lender.

"Cash Collateral Account" means a commercial Deposit Account designated "cash collateral account" and maintained by Debtor with Lender, without liability by Lender to pay interest thereon, from which account Lender shall have the exclusive right to withdraw funds until all Obligations are paid, performed, satisfied, enforced, and observed in full, and with respect to which account Lender shall have a first priority security interest.

"General Intangible" means (a) any general intangible, including without limitation, any patent, trademark, service mark, goodwill, copyright, license and any applications or rights with respect to the foregoing; and (b) any personal property (including things in action) other than Goods, Accounts, Contract Rights, Chattel Paper, Documents, Instruments, and money.

"Goods" shall have the meaning set forth in the UCC and shall include, without limitation: (a) any goods, and (b) all things which are movable at the time the security interest granted Lender under the Agreement attaches or which are fixtures but does not include money, Instruments, Documents, Accounts, Chattel Paper, General Intangibles, and Contract Rights.

"Investment Property" shall have the meaning set forth in the UCC.

"Lender" or "a Lender" or "any Lender" or "each Lender" means The Huntington National Lender and any other financial institution which from time to time becomes a party to the Agreement.

"Letter-of-Credit Right" shall have the meaning ascribed to such term in the UCC, including without limitation, a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

"Obligations" means any of the following obligations, whether direct or indirect, absolute or contingent, secured or unsecured, matured or unmatured, originally contracted with Lender or any other Person and now owing to or hereafter acquired in any manner partially or totally by Lender pursuant to or in connection with the Agreement or the related Loan Documents or in which Lender may have acquired a participation, contracted by Debtor alone or jointly or severally with another Person:

- (a) any and all indebtedness, obligations, liabilities, contracts, indentures, agreements, warranties, covenants, guarantees, representations, provisions, terms, and conditions

of whatever kind, now existing or hereafter arising, and however evidenced, that are now or hereafter owed, incurred, or executed by Debtor to, in favor of, or with Lender (including, without limitation, those as are set forth or contained in, referred to, evidenced by, or executed with reference to the Agreement, the Loan Account, any promissory notes, letter of credit agreements, advance agreements, Rate Management Transactions, indemnity agreements, guaranties, lines of credit, mortgage deeds, security agreements, assignments, pledge agreements, hypothecation agreements, Instruments, and acceptance financing agreements), and including any partial or total extension, restatement, renewal, amendment, and substitution thereof or therefor;

- (b) any and all claims of whatever kind of Lender against Debtor, now existing or hereafter arising including, without limitation, any arising out of or in any way connected with warranties made by Debtor to Lender in connection with any Instrument deposited with or purchased by Lender;
- (c) any and all of Debtor's Reimbursement Obligations; and
- (d) any and all of Lender's Related Expenses.

"Organization" means a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more Persons having a joint or common interest, and any other legal or commercial entity.

"Payment Intangible" shall have the meaning ascribed to such term in the UCC, including, without limitation, any General Intangible under which the account debtor's principal obligation is a monetary obligation.

"Person" means an individual or an Organization.

"Proceeds" means (a) any proceeds, and (b) whatever is received upon the sale, exchange, collection, or other disposition of Collateral or Proceeds, whether cash or non-cash. Cash Proceeds includes, without limitation, moneys, checks, and Deposit Accounts. Proceeds includes, without limitation, any Account arising when the right to payment is earned under a Contract Right, any insurance payable by reason of loss or damage to the Collateral, and any return or unearned premium upon any cancellation of insurance. Except as expressly authorized in the Agreement, Lender's right to Proceeds specifically set forth herein or indicated in any financing statement shall never constitute an express or implied authorization on the part of Lender to Debtor's sale, exchange, collection, or other disposition of any or all of the Collateral.

Any capitalized term used but not defined in this Exhibit A shall have the same meaning as ascribed to such term in the Agreement.

WOODBРАН REALTY CORPORATION  
Case No. 12-2578-ST-AIS

EXHIBIT E  
(Public, Redacted Version)

## STOCK PLEDGE AND SECURITY AGREEMENT

THIS STOCK PLEDGE AND SECURITY AGREEMENT ("Agreement") is made this 24<sup>th</sup> day of April, 2014, by and between D.A. Visconsi, Trustee of the D.A. Visconsi Trust under the D.A. Visconsi Trust Agreement dated January 4, 1993, Dominic A. Visconsi, Jr., Trustee of the Dominic A. Visconsi, Jr. Trust under Restatement of Trust dated October 8, 2001, Anthoni Visconsi II, Trustee of the Anthoni Visconsi II Revocable Trust dated September 23, 1999, as amended, and Nicole V. Mawby, Trustee of the Nicole V. Mawby Trust under Declaration of Trust dated October 25, 1989, as amended, Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Co-Trustees of the Alex Kertesz Revocable Trust dated June 28, 1993, and Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Trustees of the Alex Kertesz Irrevocable Trust dated 12/30/98 (collectively, "Pledgor") and The Huntington National Bank ("Secured Party").

### **RECITALS:**

WHEREAS, Secured Party has extended a loan in the amount of up to \$1,100,000.00 loan (the "Loan") to Woodbran Realty Corporation, an Ohio corporation (the "Borrower") pursuant to the terms and conditions of a Loan and Security Agreement dated on or about of even date herewith (the "Loan Agreement"). The Loan Agreement and all other documents executed by Borrower in favor of or for the benefit of Secured Party, in connection with the Loan are hereinafter collectively referred to as the "Loan Documents"; and

WHEREAS, Pledgor has agreed to secure the repayment of all liabilities, obligations, covenants, and indebtedness of Borrower as evidenced by the Note by executing this pledge agreement to pledge to Secured Party as collateral for such liabilities, obligations, covenants and indebtedness, Pledgor's shares held in Borrower. All capitalized terms not defined herein shall have the meanings ascribed to them in the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Pledgor and Secured Party hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement as if fully rewritten herein.

2. Definitions. "Obligation(s)" means all loans, advances, indebtedness, liabilities, covenants and obligations of Borrower owed to Secured Party and/or the affiliates of Secured Party of every kind and description whether now existing or hereafter arising including, without limitation, those owed by Borrower or Pledgor to others and acquired by Secured Party or any affiliate of Secured Party, by purchase, assignment or otherwise, and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, whether or not secured by additional collateral, whether or not presently contemplated by the parties on the date hereof, and whether evidenced or created by promissory note, guaranty, agreement or otherwise, and including without limitation all liabilities, obligations and indebtedness arising under this Agreement, the Loan Agreement, Note and the other Loan Documents and any documents executed by Borrower in connection with the Loan Agreement, Note and other Loan Documents, all obligations to perform or forbear from performing acts, all amounts represented by letters of credit now or hereafter issued by Secured Party for the benefit of or at the request of Pledgor, and all expenses and attorneys' fees incurred by Secured Party and/or any affiliate of Secured Party under this Agreement or any other document or instrument related to any of the foregoing.

3. Pledge and Security Interest. (a) Pledgor hereby pledges, mortgages, transfers, delivers, deposits, sets over, confirms, grants and assigns as a continuing, first priority security interest to Secured Party and its successors and assigns, all of Pledgor's right, title and interest, in and to Pledgor's shares of common stock in Borrower as follows:

Pledgor Name	Type of Shares	# of Shares	Certificate #
D.A. Visconsi, Trustee of the D.A. Visconsi Trust under the D.A. Visconsi Trust Agreement dated January 4, 1993 (for shares showing in the name of D.A. Visconsi, Trustee of the D.A. Visconsi Trust u/t/a January 4, 1993)	Class A	5	1A
Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Trustees of the Alex Kertesz Irrevocable Trust dated 12/30/98 (for shares showing in the name of Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Trustees UTA dated 12/30/98)	Class A	5	5A
Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Co-Trustees of the Alex Kertesz Revocable Trust dated June 28, 1993 (for shares showing in the name of Alex Kertesz, Trustee of the Alex Kertesz Revocable Trust dated June 28, 1993)	Class B	495	6B
Anthoni Visconsi II, Trustee of the Anthoni Visconsi II Revocable Trust dated September 23, 1999, as amended	Class B	165	3B
Dominic A. Visconsi, Jr., Trustee of the Dominic A. Visconsi, Jr. Trust under Restatement of Trust dated October 8, 2001	Class B	165	4B
Nicole V. Mawby, Trustee of the Nicole V. Mawby Trust under Declaration of Trust dated October 25, 1989	Class B	165	5B

issued by Borrower to Pledgor, together with all income, dividends, earnings and other distributions thereon and the proceeds thereof (collectively, the "Interest") as collateral security for payment and performance by Borrower of the Obligations. The Interest represents 100% of the shares in the Borrower and no Pledgor shall consent to or cause any additional shares or interests to be issued in the Borrower without Secured Party's prior written consent. Any additional interest of any kind or nature in any securities, notes, bonds, mutual funds and cash equivalents acquired by Pledgor shall automatically become subject to the pledge and security interest of this Agreement at the time Pledgor obtains such interest, without any further action by any person. Upon acquisition of any such additional Interest, Pledgor agrees to deliver to Secured Party, all documents evidencing the Interest and any additional documentation requested by Secured Party to perfect and protect Secured Party's interest therein.

(b) All dividends and distributions (in the form of cash, property, stock or other securities) arising out of the Interest (collectively "Distributions") shall immediately become subject to the lien and security interest of this Agreement and upon acquisition of any such additional Interest, Pledgor agrees to deliver to Secured Party, all documents evidencing the Interest and any additional documentation requested by Secured Party to perfect and protect Secured Party's interest therein.



(c) All certificates evidencing the Interest are herewith delivered to the Secured Party accompanied by assignments separate from the certificates executed in blank.

4. Representations and Warranties. Pledgor represents and warrants to Secured Party that:

(a) Pledgor is not under any legal disability and has full legal capacity to execute and deliver this Agreement;

(b) Pledgor is the sole holder of record and sole beneficial owner of the Interest, free and clear of any security interest, pledge, or other lien or encumbrance (collectively, "Lien");

(c) Pledgor's exact legal name is as set forth in the first paragraph on Page 1 of this Agreement;

(d) Pledgor has the right and requisite authority to pledge, mortgage, assign, transfer, deliver, deposit, set over and confirm the Interest to Secured Party as provided herein, and this Agreement has been duly authorized by all necessary action on the part of Pledgor;

(e) Pledgor has obtained all necessary consents, approvals, authorizations or orders of any person, corporation, partnership, trust, governmental entity, or other entity required for the execution and delivery of this Agreement or the delivery of the Interest to Secured Party as provided herein; and

(f) The provisions of this Agreement are sufficient to create in favor of Secured Party a valid and continuing lien on, and first security interest in, the Interest and the delivery by Pledgor to Secured Party of the stock certificates evidencing the Interest shall be sufficient to perfect such security interest.

(g) There are no restrictions on the transfer of the Interest except as set forth on the face of any certificate evidencing the Interest.

(h) That Pledgor has a direct economic investment or interest in Borrower, as a partner, shareholder, member, trust beneficiary, or otherwise, and has received sufficient consideration for this Agreement.

The representations and warranties set forth in this Section 4 shall survive the execution and delivery of this Agreement.

5. Distributions. Pledgor and Secured Party hereby agree as follows:

(a) Distributions shall be subject to the lien and security interest of this Agreement.

(b) Secured Party shall be entitled to all Distributions. Until paid, all rights to such Distributions shall remain subject to the lien and security interest of this Agreement. Pledgor may receive Distributions made in accordance with the terms of the Loan Agreement and the Guaranty. In the event that Pledgor receives any distribution not permitted under the Loan Agreement or the Guaranty or in the event Pledgor receives a Distribution after the occurrence of an Event of Default, Pledgor shall notify Secured Party thereof, hold such Distribution in trust for the benefit of Secured Party and, if requested by Pledgee, shall immediately deliver such Distribution in the form received by Pledgor. In the event that the Distribution is in the form of a check or other instrument, Pledgor shall provide Pledgee with all necessary

endorsements thereon.

6. Covenants. Pledgor covenants and agrees that until payment in full of all of the Obligations:

(a) Without the prior written consent of Secured Party, Pledgor will not attempt to or further sell, assign, transfer, mortgage, pledge or otherwise further encumber any of Pledgor's right in or to the Interest or any unpaid Distributions or grant a Lien therein to any other party; and

(b) Pledgor will, at Pledgor's expense, obtain, execute, acknowledge and deliver all such instruments and take all such action necessary (or as Secured Party may from time to time request) in order to ensure Secured Party shall have and retain the benefits of the first priority lien and security interest in the Interest.

(c) Pledgor shall pay all costs of filing any financing, continuation or termination statements with respect to the security interest created hereby;

(d) Pledgor shall take any other and further action necessary or desirable as requested by Secured Party to grant Secured Party control over the Collateral, as "control" is defined in the Uniform Commercial Code (as hereinafter defined), including without limitation (i) executing and/or authenticating any assignments or third party agreements; and (ii) delivering, or causing the delivery of, any of the Interest to the possession of Secured Party.

Pledgor consents to and hereby authorizes any third party in an authenticated record or agreement between Pledgor, Secured Party, and the third party, including but not limited to depository institutions, securities intermediaries, and issuers of letters of credit or other support obligations, to accept direction from Secured Party regarding the maintenance and disposition of the Interest, Distributions, and the products and proceeds thereof consistent with the terms and conditions of this Agreement, and to enter into agreements with Secured Party regarding same, without further consent of Pledgor.

7. Remedies.

(a) Upon the occurrence of an Event of Default under the Obligations, this Agreement, the Loan Agreement, the Note or under any of the Loan Documents, and subject to any applicable grace periods with respect thereto, if any, Secured Party is hereby authorized and empowered, at its election, to transfer and register in its name or in the name of its nominee the whole or any part of the Interest, to exercise the voting rights with respect thereto, to collect and receive all Distributions made thereon, to sell in one or more sales after 7 days' notice (which notice Pledgor hereby agrees is commercially reasonable) but without any previous notice or advertisement, the whole or any part of the Interest and to otherwise act with respect to the Interest as though Secured Party was the outright owner thereof; provided, however, the Secured Party shall not have any duty to exercise any such right or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so. Any sale may be either for cash or upon credit or for future delivery at such price as Secured Party may deem fair, and Secured Party may be the purchaser of the whole or any part of the Interest so sold and hold the same thereafter in its own right free from any claim of Pledgor or any right of redemption. Each sale shall be made to the highest bidder, but Secured Party may reject any bid at such sale which, in its sole discretion, it shall deem inadequate. Demands of performance, except as otherwise herein specifically provided for, notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or by any

officer or agent of Secured Party. Pledgor hereby irrevocably appoints and constitutes Secured Party as its attorney-in-fact with full authority and power to and for the purposes of enabling Secured Party, upon the occurrence of an Event of Default under the Obligations, this Agreement or under any of the Loan Documents, and subject to any applicable grace periods, if any, to take any and all action and execute any and all instruments which Secured Party in its reasonable discretion deems necessary or advisable to accomplish the purposes of this Agreement, which power of attorney shall include full power of substitution and delegation, including, but not limited to, executing, authenticating and/or filing on its behalf: (i) UCC Financing Statements reflecting the lien of Secured Party upon the Collateral and any other documents necessary or desirable to perfect or otherwise continue the security interest granted herein; and (ii) any third party agreements or assignments to grant Secured Party control over the Collateral, including, but not limited to, third party agreements between Pledgor, Secured Party and depository institutions, securities intermediaries, and issuers of letters of credit or other support obligations, which third party agreements direct the third party to accept direction from Secured Party regarding the maintenance and disposition of the Collateral and the products and proceeds thereof. Such authority and power being coupled with an interest, shall be (a) irrevocable until the Loan is paid, performed and observed in full, (b) exercisable by Secured Party at any time and without any request upon Pledgor to take any action or execute any instrument, and (c) exercisable in Secured Party's name or in the name of Pledgor. Pledgor hereby ratifies and approved all acts of Secured Party as such attorney-in-fact.

(b) If, at the original time or times appointed for the sale of the whole or any part of the Interest, the highest bid, if there be but one sale, shall be inadequate to discharge in full all the Obligations, or if the Interest be offered for sale in lots, if at any of such sales, the highest bid for the lot offered for sale would indicate to Secured Party, in its discretion, the likelihood that the proceeds of the sales of all of the Interest will be insufficient to discharge all the Obligations, the Secured Party may, on one or more occasions, postpone any of said sales by public announcement at the time of sale or the time of previous postponement of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived; provided, however, that any sale or sales made after such postponement shall be after 7 days notice to Pledgor.

(c) In the event of any sale(s) hereunder, Secured Party shall, after deducting all costs or expenses of every kind (including, to the full extent permitted by law, reasonable attorney's fees and disbursements) for care, safekeeping, collection, sale, delivery or otherwise, apply the residue of the proceeds of the sale(s) to the payment or reduction, either in whole or in part, of the Obligations returning the surplus, if any, to Pledgor.

(d) Pledgor agrees that Pledgor will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Agreement, or the absolute sale or transfer to Secured Party of the whole or any part of the Interest or the possession thereof by any purchaser at any sale hereunder, and Pledgor waives the benefit of all such laws. Pledgor agrees that Pledgor will not interfere with any right, power and remedy of Secured Party provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by Secured Party of any one or more of such rights, powers or remedies. No failure or delay on the part of Secured Party to exercise any such rights, power or remedy and no notice or demand which may be given to or made upon Pledgor by Secured Party with respect to any such remedies shall operate as a waiver hereof, or limit or impair Secured Party's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against Pledgor in any respect.

8. Waiver. No delay on Secured Party's part in exercising any power of sale, lien, option or other right hereunder, and no notice or demand which may be given to or made upon Pledgor by Secured Party with respect to any power of sale, lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair Secured Party's right to take any action or to exercise any power of sale, lien option, or any other right hereunder without notice or demand, or prejudice Secured Party's rights as against Pledgor in any respect. In addition, no action taken by Secured Party hereunder shall in any way impair or limit Secured Party's right to exercise any or all rights or remedies Secured Party may otherwise have against Pledgor with respect to any Obligations. This Agreement shall not, in any manner, be construed as a compromise of any Obligations except to the extent that a Distribution is applied to reduce the Obligations and then only to the extent and in the amount of such Distribution actually received by Secured Party. This is an absolute, unconditional and continuing pledge and security agreement and will remain in full force and effect until the Obligations have been fully paid to the Secured Party. This Agreement will extend to and cover renewals of the Obligations and any number of extensions of time for payment thereof and will not be affected by any surrender, exchange, acceptance or release by the Secured Party of any other pledge or any security held by it for any of the Obligations. Notice of acceptance of this Agreement, notice of extensions of credit to the Pledgor from time to time, notice of default, diligence, presentment, protest, demand for payment, notice of demand or protest, and any defense based upon a failure of Secured Party to comply with the notice requirements of the applicable version of Uniform Commercial Code, as now or hereafter in effect, are hereby waived. Secured Party, at any time and from time to time, without the consent of Pledgor, may change the manner, place or terms of payment of or interest rates on, or change or extend the time of payment of, or renew or alter, any of the Obligations, without impairing or releasing the liabilities of Pledgor hereunder. Secured Party in its sole discretion may determine the reasonableness of the period which may elapse prior to the making of demand for any payment upon Pledgor, and it need not pursue any of its remedies against any other party before having recourse against Pledgor under this Agreement. Nothing contained in this Agreement and no act done or omitted by Secured Party pursuant to the powers and rights granted to it hereunder shall be deemed to be a waiver by Secured Party of any of its rights or remedies under any instrument or document evidencing or securing the Obligations or by or pursuant to law or equity, by statute or otherwise, and this Agreement is made and accepted without prejudice to any of the rights and remedies of Secured Party. No remedy set forth herein is exclusive of any other available remedy or remedies, but each is cumulative and in addition to every other remedy given under this Agreement and the Loan Documents, or now or hereafter existing at law or in equity or by statute.

9. Indemnification. Pledgor agrees to indemnify and hold Secured Party harmless from and against any taxes, liabilities, claims and damages, including reasonable attorney's fees and disbursements, and other expenses incurred or arising by reason of the taking or the failure to take action by Secured Party, in good faith, under this Agreement and in respect of any transactions effected in connection with this Agreement and the enforcement thereof, including without limitation, any taxes payable in connection with the delivery or registration of the Interest as provided herein. The obligations of Pledgor under this Section shall survive the termination of this Agreement.

10. Cancellation. Upon the irrevocable and indefeasible payment in full and termination of the Obligations, Secured Party shall cancel its rights in the Interest under this Agreement and agrees to execute any documentation necessary to that end. No such cancellation shall be effective unless in writing.

11. Miscellaneous. Any capitalized term not specifically defined herein shall have the same meaning attributed to it in the applicable version of the Uniform Commercial Code adopted and in effect from time to time in the jurisdiction in which Pledgor's principal residence is located or in the state in which Pledgor is domiciled, or where appropriate, as the case may be, the jurisdiction in which the collateral is located, as such definitions may be enlarged or expanded from time to time by legislative

amendment thereto or judicial decision (the "Uniform Commercial Code"). In this Agreement the singular includes the plural and the masculine includes the feminine, neuter and plural, and this Agreement shall be binding on Pledgor, and its successors and assigns, and shall inure to the benefit of Secured Party, and its successors and assigns. If there is more than one pledgor hereunder, the obligations of the pledgors shall be joint and several obligations of all such pledgors, and Secured Party shall not be required to commence, proceed or exhaust its remedies against any one or more of the pledgors or against any other collateral or security before exercising its remedies against any other pledgor or pledgors. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except in writing duly assigned for and on behalf of the Secured Party and Pledgor. Pledgor agrees promptly to execute and deliver such additional documents, agreements and instruments and promptly to take such additional action as Secured Party may at any time and from time to time reasonably request, in order for Secured Party to obtain the full benefits and rights granted or purported to be granted by this Agreement. Pledgor acknowledges and agrees that, in addition to the security interests granted herein, Secured Party has a banker's lien and common law right of set-off in and to Pledgor's deposits, accounts and credits held by Secured Party and Secured Party may apply or set-off such deposits or other sums against the Guaranty upon the occurrence of an Event of Default under the Obligations, this Agreement or under any of the Loan Documents, subject to any applicable grace periods, if any. This Agreement contains the entire agreement of the parties and no oral Agreement whatsoever, whether made contemporaneously herewith or hereafter shall amend, modify or otherwise affect the terms of this Agreement. Any provision herein which may prove limited or unenforceable under any law or judicial ruling shall not affect the validity or enforceability of the remainder of this Agreement. Pledgor hereby authorizes Secured Party to file a copy of this Agreement as a Financing Statement with appropriate county and state government authorities necessary to perfect Secured Party's security interest in the Collateral as set forth herein. Pledgor hereby further authorizes Secured Party to file UCC Financing Statements on behalf of Pledgor and Secured Party with respect to the Interest and Distributions.

12. Notices. Any notices under or pursuant to this Agreement shall be deemed duly sent when delivered by hand or when mailed by registered or certified mail, return receipt requested, addressed as follows:

(a) If to Secured Party, at:

The Huntington National Bank  
200 Public Square (CM 17)  
Cleveland, Ohio 44114  
Attention: Will Dalman

(b) If to Pledgor, at:

D.A. Visconsi, Trustee of the D.A. Visconsi  
Trust u/t/a January 4, 1993

\*\*\* REDACTED

REDACTED \*\*\*

Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson, Co-Trustees  
of the Alex Kertesz Revocable Trust dated June 28, 1993

\*\*\* REDACTED

REDACTED \*\*\*

Randy S. Kertesz, Ronnie M. Kertesz and Stacy E. Maxson,  
Trustees of the Alex Kertesz Irrevocable Trust dated 12/30/98

\*\*\* REDACTED

REDACTED \*\*\*

Dominic A. Visconsi, Jr., Trustee of the Dominic A. Visconsi, Jr. Trust  
under Restatement of Trust dated October 8, 2001

\*\*\* REDACTED

REDACTED \*\*\*

Anthony Visconsi II, Trustee of the Anthony Visconsi II Revocable  
Trust dated September 23, 1999, as amended

\*\*\* REDACTED

REDACTED \*\*\*

Nicole V. Mawby, Trustee of the Nicole V. Mawby Trust under  
Declaration of Trust dated October 25, 1989

\*\*\* REDACTED

REDACTED \*\*\*

with a copy to:

Jordan Berns, Esq.  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122  
Facsimile: (216) 464-4489

and:

Bruce K. Karberg, Esq.  
Karberg & Associates Co., LPA  
Suite 306, Executive Commons I  
29425 Chagrin Boulevard  
Cleveland, Ohio 44122-4637

Any party may change such address by sending notice of the change to the other parties.

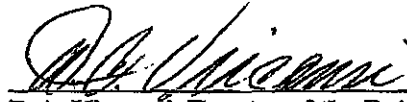
13. Counterparts. This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

14. Governing Law; Jurisdiction. All acts and transactions hereunder and the rights and obligations of the parties hereto shall be governed construed and interpreted in accordance with the domestic laws of the State of Ohio. Pledgor agrees that the state and federal courts in Cuyahoga County, Ohio or any other court in which Secured Party initiates proceedings have exclusive jurisdiction over all matters arising out of this Agreement, and that service of process in any such proceeding shall be effective if mailed to Pledgor at his address described in the Notices section of this Agreement. **SECURED PARTY AND PLEDGOR HEREBY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY MATTERS ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

PLEDGOR:



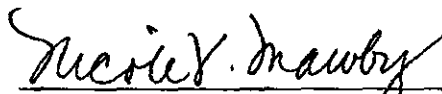
D.A. Visconsi, Trustee of the D.A. Visconsi Trust  
under the D.A. Visconsi Trust Agreement dated  
January 4, 1993



Anthony Visconsi II, Trustee of the  
Anthony Visconsi II Revocable Trust dated  
September 23, 1999, as amended




Dominic A. Visconsi, Jr., Trustee of the  
Dominic A. Visconsi, Jr. Trust under  
Restatement of Trust dated October 8, 2001



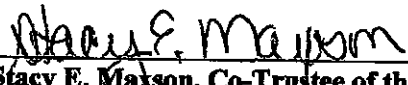
Nicole V. Mawby, Trustee of the  
Nicole V. Mawby Trust under Declaration of Trust  
dated October 25, 1989


[Signature Page continues]




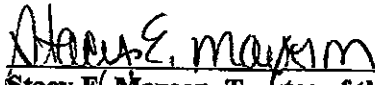
  
\_\_\_\_\_  
Randy S. Kertesz, Co-Trustee of the Alex Kertesz  
Revocable Trust dated June 28, 1993

  
\_\_\_\_\_  
Ronnie M. Kertesz, Co-Trustee of the Alex  
Kertesz Revocable Trust dated June 28, 1993

  
\_\_\_\_\_  
Stacy E. Maxson, Co-Trustee of the Alex Kertesz  
Revocable Trust dated June 28, 1993

  
\_\_\_\_\_  
Randy S. Kertesz, Trustee of the Alex Kertesz  
Irrevocable Trust dated 12/30/98

  
\_\_\_\_\_  
Ronnie M. Kertesz, Trustee of the Alex Kertesz  
Irrevocable Trust dated 12/30/98

  
\_\_\_\_\_  
Stacy E. Maxson, Trustee of the Alex Kertesz  
Irrevocable Trust dated 12/30/98

[Signature Page continues]

**SECURED PARTY:**

**THE HUNTINGTON NATIONAL BANK**

By: *Stephen Weiss*  
Name: *Stephen Weiss*  
Title: *Authorized Signer*

WOODBРАН REALTY CORPORATION  
Case No. 12-2578-ST-AIS

EXHIBIT F  
(Public, Redacted Version)

## GUARANTY OF PAYMENT

X\* K  
REDACTED  
THIS GUARANTY OF PAYMENT ("Guaranty") made as of the 24<sup>th</sup> day of April, 2014, by [REDACTED], each an individual (each a "Guarantor" and, collectively, the "Guarantors"), jointly and severally, to and for the benefit of The Huntington National Bank, a national banking association, whose address is 200 Public Square, Cleveland, Ohio, 44114, its successors and assigns ("Lender").

REDACTED \*\*

### RECITALS

WHEREAS, Woodbran Realty Corporation, an Ohio corporation ("Borrower"), and Lender entered into a Loan and Security Agreement dated on or about the date above ("Loan Agreement") whereby Lender agreed to make a loan (the "Loan") to Borrower in the principal amount of up to One Million One Hundred Thousand and No/100 Dollars (\$1,100,000.00). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

WHEREAS, in connection with the Loan, Borrower has executed and delivered to Lender a Promissory Note (the "Note") dated of even date herewith in the amount of the Loan, which Note is secured by, among other things: (i) an Open-End Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") given on or about the date hereof by Borrower in favor of Lender on the Project; (ii) a Security Agreement executed on or about the date hereof, naming Borrower as Debtor and Lender as Secured Party (the "Security Agreement"); and (iii) the other Loan Documents, as defined in the Loan Agreement, executed on or about the date hereof.

WHEREAS, Guarantors will derive an economic benefit from the Loan evidenced and secured by the Note, the Mortgage, the Security Agreement, and the other Loan Documents.

WHEREAS, Lender has relied on the statements and agreements contained herein in agreeing to make the Loan, and the execution and delivery of this Guaranty by Guarantors is a condition precedent to the making of the Loan by Lender.

### AGREEMENTS

NOW, THEREFORE, intending to be legally bound, Guarantors, in consideration of the matters described in the foregoing Recitals, which Recitals are incorporated herein and made a part hereof, and for other good and valuable consideration the receipt and sufficiency of which are acknowledged, hereby covenant and agree for the benefit of Lender and its respective successors, indorsees, transferees, participants and assigns as follows:

1. Guaranteed Obligations. Guarantors absolutely, unconditionally, irrevocably, and jointly and severally guarantee:

(a) the full and prompt payment of the principal of and interest on the Note when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, and the full and prompt payment of all sums which may now be or may hereafter become due and owing under the Note, any Hedging Contracts, the Loan Agreement and the other Loan Documents;

(b) the prompt, full and complete performance of all of Borrower's obligations under each and every covenant contained in the Loan Documents; and

(c) the full and prompt payment of any Enforcement Costs (as hereinafter defined in Section 8 hereof).

All amounts due, debts, liabilities and payment obligations described in subsections (a) and (b) of this Section 1 shall be hereinafter collectively referred to as the "Guaranteed Obligations." Notwithstanding the foregoing, the total of all Guarantors' liability hereunder shall be limited to the Guarantors' Share of the Indebtedness. "Guarantors' Share of the Indebtedness" as used in this Guaranty shall mean, jointly and severally, twenty-five percent (25%) of the outstanding Guaranteed Obligations (at time of initial demand by Lender).

2. Exceptions to Limitation of Liability (Losses). Notwithstanding the limitation contained in Section 1, in addition to, and not in lieu of, any other liability of Guarantors under this Guaranty or the other Loan Documents, Guarantors guarantee and promise to pay to the fullest extent allowed at law to Lender, or order, on demand, in lawful money of the United States of America, in immediately available funds (and to defend, indemnify and hold harmless Lender, its directors, officers, employees, successors and assigns from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities and any impairment of Lender's security for the Loan), actions, or proceedings), any obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, court costs, and legal or other expenses (including, without limitation, attorneys' fees and expenses and amounts paid in settlement of whatever kind or nature), which Lender may incur as a direct or indirect consequence of:

(1) Borrower, any Guarantor, any Affiliate of any of the foregoing, or any of their respective agents or representatives, engaging in any action constituting fraud, material misrepresentation, willful misrepresentation, gross negligence or willful misconduct in connection with the Loan or the Collateral;

(2) Borrower, any Guarantor, or any Affiliate of Borrower or Guarantor, or any of their respective agents or representatives, misappropriates or misapplies any (A) insurance proceeds received in connection with all or a portion of any Collateral, or (B) awards or other amounts received in connection with the condemnation of all or a portion of any Collateral;

(3) criminal acts of Borrower, any Guarantor, any Affiliate of Borrower or any Guarantor, or any of their respective agents or representatives resulting in the seizure, forfeiture or loss of the Collateral;

(4) Borrower's failure to pay taxes and assessments when the same become due and payable, in accordance with the terms of the Loan Agreement or the Mortgage

(5) Borrower's failure to (A) obtain and maintain the insurance policies required under the Loan Agreement, (B) pay insurance premiums when the same become due and payable, in accordance with the terms of the Loan Agreement or (C) pay the deductible amount of any insurance policy;

(6) Borrower's failure to pay charges for labor or materials or other charges that result in the creation of liens on the Collateral, which are not released in accordance with the terms of the Loan Agreement;

(7) the removal or disposal of any material portion of the personal property of Borrower by Borrower or any Guarantor without replacing such personal property with personal property of the same utility and of the same or greater value;

(8) any act of physical waste or arson by Borrower, any Guarantor, any Affiliate of any of the foregoing or any of their respective agents or representatives;

(9) any fees or commissions being paid by Borrower to any Guarantor or any Affiliate of Borrower or any Guarantor in violation of the terms of the Loan Agreement, the Note, the Mortgage or the other Loan Documents;

(10) the breach of any representation, warranty, covenant or indemnification provision in the Loan Agreement concerning Environmental Laws and Hazardous Substances and any indemnification of the Lender with respect thereto in the Loan Agreement; or

(11) Borrower's failure to pay all transfer and recording taxes due to any governmental authority in the event of a foreclosure of the Collateral, deed in lieu or other transfer of the Collateral to the Lender or the Lender's designee.

3. Exceptions to Limitation of Liability (Full Recourse). Notwithstanding anything to the contrary contained in this Guaranty or the other Loan Documents, the limitation on liability set forth in Section 1 shall be null and void and completely inapplicable, and Guarantors shall be fully and personally liable for the payment and performance of all obligations set forth in the Loan Agreement and the other Loan Documents, including the payment of all principal, interest and other amounts under the Note, in immediately available funds, in the event of any of the following events, except for such events that are initiated by, or consented to by Lender:

(1) Borrower fails to obtain the Lender's prior consent to any transfer of the Collateral or any transfer of any direct or indirect interest in Borrower, in either case to the extent required by the Loan Agreement, Security Agreement or the Mortgage;

(2) Borrower fails to obtain the Lender's prior consent to any subordinate financing or other voluntary lien encumbering the Collateral;

(3) Borrower fails to permit on-site inspections of the Property;

(4) Borrower, any Guarantor, or any Affiliate of Borrower or any Guarantor, or any of their respective agents or representatives, misappropriates or misapplies any rents;

(5) (A) Borrower files a voluntary petition under the Bankruptcy Code or any other creditors rights laws, (B) an Affiliate, officer, director, or representative which controls Borrower directly or indirectly, files, or joins in the filing of, an involuntary petition against Borrower under the Bankruptcy Code or any other creditors rights laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition against Borrower from any Person, (C) Borrower files an answer consenting to, or otherwise acquiescing in, or joining in, any involuntary petition filed against it, by any other Person under the Bankruptcy Code or any other creditors rights laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person, (D) any Affiliate, officer, director, or representative which controls Borrower consents to, or acquiesces in, or joins in, an application for the appointment of a custodian, receiver, trustee, or examiner for Borrower or the Property, (E) Borrower makes an assignment for the benefit of creditors, or admits, in writing or in any legal proceeding, its insolvency or inability to pay its debts as they become due, (F) Borrower or any Guarantor contests or opposes any motion made by the Lender to obtain relief from the automatic stay or seeking to reinstate the automatic stay in the event of any proceeding under the Bankruptcy Code or any other creditors rights laws involving any Guarantor or its subsidiaries, and (G) in the event the Lender receives less than the full value of its claim in any proceeding under the Bankruptcy Code or any other creditors rights laws, any Guarantor or any of its Affiliates receives an equity interest or other financial benefit of any kind as a result of a "new value" plan or equity contribution; or

(6) Borrower, any Guarantor, or any Affiliate of Borrower or any Guarantor contests, delays, interferes with or frustrates, or fails to cooperate with, the Lender's exercise of remedies provided under the Loan Documents after the occurrence of an Event of Default (except to the extent that a court of competent jurisdiction makes a final determination that Borrower, any Guarantor or any Affiliate of Borrower or any Guarantor had a valid legal basis for any such action).

The obligations of Guarantor under Section 2 and Section 3 of this Guaranty, together with the Guaranteed Obligations are collectively, the "Obligations."

4. Independent Obligations. Subject to the limitation contained in Section 1, as may be modified by the provisions of Sections 2 and 3, in the event Borrower shall fail to pay in full, when due, any of the Obligations, Guarantors agree, on demand by Lender or the holder of the Note, to pay the Obligations regardless of any defense, right of set-off or claims which Borrower or Guarantors may have against Lender or the holder of the Note. All of the remedies set forth herein and/or provided for in any of the Loan Documents or at law or equity shall be equally available to Lender, and the choice by Lender of one such remedy over another shall not be subject to question or challenge by Guarantors or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by Lender to recover or seeking any other remedy under this Guaranty, nor shall

such choice preclude Lender from subsequently electing to exercise a different remedy. Without limitation to the generality of the foregoing, it is expressly hereby acknowledged and agreed that the obligations of Guarantors hereunder are independent of the obligations of Borrower, Guarantors or any other guarantor or indemnitor under any of the other Loan Documents to which they may be a party, and a separate action or actions may be brought and prosecuted against Guarantors whether or not any action is brought against Borrower, any other guarantor or indemnitor and whether or not Borrower is joined in any such action or actions.

5. Waivers. Guarantors do hereby: (a) waive notice of acceptance of this Guaranty by Lender and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) agree to refrain from asserting, until after repayment in full of the Loan, any defense, right of set-off or other claim which Guarantors may have against Borrower (c) waive any defense, right of set-off or other claim which Guarantors or Borrower may have against Lender, or the holder of the Note, (d) waive any and all rights Guarantors may have under any anti-deficiency statute or other similar protections, (e) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (f) waive any failure by Lender to inform Guarantors of any facts Lender may now or hereafter know about Borrower, the Property, the Loan, or the transactions contemplated by the Loan Agreement, it being understood and agreed that Lender has no duty so to inform and that Guarantors are fully responsible for being and remaining informed by Borrower of all circumstances bearing on the risk of nonperformance of Borrower's obligations. In addition to, and without limitation to, the foregoing waivers, Guarantors hereby also waive (a) any right to require Lender, as a condition of payment or performance or completion by any Guarantor, to (i) proceed against Borrower, any other guarantor, or any other person, (ii) proceed against or exhaust any security held from Borrower, any other guarantor, or any other person, (iii) proceed against or have resort to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other person, or (iv) pursue any other remedy in the power of Lender whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Borrower, including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Obligations or any agreement or instrument related thereto or by reason of the cessation of the liability of Borrower from any cause other than payment, performance and completion in full of the Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d)(i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Guaranty and any legal or equitable discharge of any Guarantor's obligations hereunder (other than indefeasible payment, performance and completion of the Obligations or the Loan in full), (ii) the benefit of any statute of limitations affecting any Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims and (iv) promptness, diligence and any requirement that Lender protect, secure, perfect or insure any security interest or lien or any property subject thereto; (e) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender, whether consented to by Lender, consensual or arising by operation of law or any proceedings in bankruptcy or reorganization, or from any other cause, other than payment in full of the Loan; (f) any defense based on any rejection or disaffirmance of the Obligations, or any part thereof, or any security



held therefor, in any such proceedings in bankruptcy or reorganization; (g) any defense based on any action taken or omitted by Lender in any proceedings in bankruptcy or insolvency involving Borrower, including any election to have their claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any proceedings in bankruptcy or insolvency, and taking and holding by Lender of any security for any such extension of credit. The obligations of the undersigned Guarantors under this Guaranty extend to all amendments, supplements, modifications, renewals, replacements or extensions of the Loan Documents and all Hedging Contracts at any rate or rates of interest. The liability of Guarantors and the rights of the Lender under this Guaranty will not be impaired or affected in any manner by, and each Guarantor hereby consents in advance to, and waives any requirement of notice for, any (1) disposition, impairment, release, surrender, substitution, or modification of any collateral securing the Obligations or the obligations created by this Guaranty or failure to perfect a security interest in any collateral; (2) release (including adjudication or discharge in bankruptcy) or settlement with Borrower or any other party which may be or become liable for the Obligations (including, without limitation, any maker, indorser, guarantor or surety); (3) delay in enforcement of payment of the Obligations or delay in enforcement of this Guaranty; (4) delay, omission, waiver, or forbearance in exercising any right or power with respect to the Obligations or this Guaranty; (5) defense arising from the enforceability, validity or genuineness of any of the Loan Documents; (6) defenses or counterclaims that the Borrower may assert under or in respect of any of the Loan Documents, including, but not limited to, failure of consideration, fraud, payment, statute of frauds, bankruptcy, statute of limitations, lender liability, accord and satisfaction and usury; or (7) other act or omission which might otherwise constitute a legal or equitable discharge of the undersigned. Guarantors acknowledge that no representations of any kind whatsoever have been made by Lender. No modification or waiver of any of the provisions of this Guaranty shall be binding upon Lender except as expressly set forth in a writing duly signed and delivered by Lender.

Further, and without limitation to the foregoing Lender, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of the Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment or performance under the Loan Documents, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Obligations and/or the Loan Documents, and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guaranties of any of Borrower's obligations under the Loan Documents and take and hold security for the payment or performance of this Guaranty or the Loan Documents; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment or performance of Borrower's obligations under the Loan Documents, any other guaranties of the Loan, or any other obligation of any person (including any other guarantor) with respect to the Loan; (v) enforce and apply any security now or hereafter held by or for the benefit of Lender in respect of this Guaranty or the Loan and direct the order or manner of sale thereof, and to bid at any such sale, or exercise any other right or remedy that Lender may have against any such security, in each case as in its discretion it may determine, including foreclosure on any such security pursuant to one or more judicial or non-judicial sales, even though such action operates

to impair or extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against Borrower or any security for the Obligations; (vi) apply any payments or recoveries from Borrower, Guarantors or any other source, and any proceeds of any security, to the Guaranteed Obligation in such manner, order and priority as Lender may elect (whether or not those obligations are guaranteed by this Guaranty or secured at the time of the application); and (vii) exercise any other rights available to it under the Loan Documents.

Lender may take any of the foregoing actions upon any terms and conditions as Lender may elect, without giving notice to, or obtaining consent from, Guarantors and without affecting the liability of any Guarantor to Lender and this Guaranty and the obligations of each Guarantor hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason.

6. Authorization of Amendments to Loan Documents; Waiver of Right to Notice of Amendment. Guarantors further agree that their liability as guarantors shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of any Guarantor of the time for payment of interest or principal under the Note, it being the intent hereof that, subject to Lender's compliance with the terms of this Guaranty, Guarantors shall remain liable for the payment of the Obligations, until the Obligations have been paid in full, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Guarantors further understand and agree that Lender may at any time enter into agreements with Borrower to amend and modify the Note, Loan Agreement, Mortgage or other Loan Documents, and may waive or release any provision or provisions of the Note, Loan Agreement, Mortgage and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Guarantor's obligations hereunder.

7. Guaranty of Payment and Not of Collection. This is an absolute, present and continuing guaranty of payment and not of collection. Guarantors agree that this Guaranty may be enforced by Lender without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Note, Loan Agreement, Mortgage or any of the other Loan Documents through foreclosure or sale proceedings, as the case may be, under the Mortgage or otherwise, or resorting to any other guaranties, and Guarantors hereby waive any right to require Lender to join Borrower in any action brought hereunder or to commence any action against or obtain any judgment against Borrower or to pursue any other remedy or enforce any other right. Guarantors further agree that nothing contained herein or otherwise shall prevent Lender from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity or under the Note, Loan Agreement, Mortgage or any other Loan Documents, and the exercise of any of its rights or the completion of any of its remedies shall not constitute a discharge of Guarantor's obligations hereunder, it being the purpose and intent of each Guarantor that their obligations hereunder shall be absolute, independent and unconditional under any and all circumstances whatsoever and that each Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations until the Guaranteed Obligations have been indefeasibly paid and performed in full. None of Guarantor's obligations under this Guaranty or any remedy for the enforcement thereof shall be

impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of Borrower under the Note, Loan Agreement, Mortgage or other Loan Documents or by reason of the bankruptcy of Borrower or by reason of any creditor or bankruptcy proceeding instituted by or against Borrower. In the event of the foreclosure of the Mortgage and of a deficiency, Guarantors hereby promise and agree forthwith to pay the amount of such deficiency (up to the Guaranteed Obligations) notwithstanding the fact that recovery of said deficiency against Borrower would not be allowed by applicable law; however, the foregoing shall not be deemed to require that Lender institute foreclosure proceedings or otherwise resort to or exhaust any other collateral or security prior to or concurrently with enforcing this Guaranty. As used in this Guaranty, an "indefeasible" payment shall mean and refer to a payment that is no longer subject to potential disaffirmance, impairment, set aside, offset, recoupment, defeasance, recovery, disallowance, or recapture pursuant to the provisions of any federal or state law, regulation or order applicable to or governing creditors' rights, including, without limitation, Title 11 of the United States Code, as amended, either by reason of the passage of time following such payment or the final judgment of a court of competent jurisdiction establishing the unassailable right of the party receiving such payment to retain such payment without reduction, offset, or other impairment. Notwithstanding any provisions to the contrary in this Guaranty or in any other Loan Document, Lender shall have no right under this Guaranty or otherwise to proceed or levy against, garnish, attach or recover any assets in (a) any account owned by any person or entity who is not the Borrower or a Guarantor, regardless of whether a Guarantor is an authorized signatory for such account, (b) any account owned by the Guarantor as a trustee or co-trustee, or (c) any account for which Guarantor is co-owner with any person or entity who is not the Borrower or a Guarantor.

8. Reinstatement. If and to the extent that, for any reason, any payment (or portion thereof) by or on behalf of Borrower or any Guarantor in respect of the Obligations is rescinded or must be otherwise restored by Lender or any holder of the Obligations, whether as a result of any proceedings in bankruptcy or insolvency, the appointment of a receiver, intervenor, conservator, trustee or similar officer for Borrower, or otherwise, then the obligations of each Guarantor shall be automatically reinstated and will continue to be effective as though such payment had not been made regardless of whether Lender contested the order requiring return of such payment. Guarantors agree that they will indemnify Lender on demand for all costs and expenses (including, without limitation, reasonable out-of-pocket fees and expenses of counsel) incurred by Lender in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

9. Lender's Right to Assign Loan Documents and Guaranty. In the event Lender or any holder of the Note shall assign the Note and this Guaranty, Guarantors will accord full recognition thereto and agree that all rights and remedies of Lender or such holder hereunder shall be enforceable against each Guarantor by such assignee with the same force and effect and to the same extent as would have been enforceable by Lender or such holder but for such assignment; provided, however, that unless Lender shall otherwise consent in writing, Lender shall have an unimpaired right, prior and superior to that of its assignee or transferee, to enforce this Guaranty for Lender's benefit to the extent any portion of the Obligations or any interest therein is not assigned or transferred.

10. Liability for Enforcement Costs. If: (a) the Lender or holder of this Guaranty retains an attorney for collection of this Guaranty or this Guaranty is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty, then Guarantors shall pay to Lender upon demand all reasonable out-of-pocket attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

11. Severability; Partial Invalidity. The parties hereto intend and believe that each provision in this Guaranty comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Guaranty is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such portion, provision or provisions of this Guaranty to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Guaranty shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Lender or the holder of the Note under the remainder of this Guaranty shall continue in full force and effect.

12. Waiver of Marshaling; Jurisdiction. **TO THE GREATEST EXTENT PERMITTED BY LAW, EACH GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS TO REQUIRE MARSHALLING OF ASSETS BY LENDER. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS GUARANTY (EACH, A "PROCEEDING"), LENDER AND EACH GUARANTOR IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF CLEVELAND AND STATE OF OHIO, AND (B) WAIVES ANY OBJECTION WHICH HE OR SHE MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS GUARANTY SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. LENDER AND GUARANTOR FURTHER AGREE AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY OHIO STATE COURT OR**

UNITED STATES COURT SITTING IN THE CITY OF CLEVELAND, OHIO, AND MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO THE APPLICABLE PARTY AT THE ADDRESS INDICATED BELOW, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF SUCH PARTY SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

13. Subordination of Indebtedness. ANY INDEBTEDNESS OF BORROWER TO ANY GUARANTOR NOW OR HEREAFTER EXISTING IS HEREBY SUBORDINATED TO THE PAYMENT AND PERFORMANCE OF THE OBLIGATIONS. UNTIL SUCH TIME AS ONE HUNDRED PERCENT (100%) OF THE OBLIGATIONS SHALL HAVE BEEN SATISFIED OR DISCHARGED, REGARDLESS OF THE AMOUNT OF ANY GUARANTOR'S OBLIGATION TO LENDER HEREUNDER, EACH GUARANTOR IRREVOCABLY WAIVES ANY AND ALL RIGHTS SUCH GUARANTOR MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW OR CONTRACT) TO ASSERT ANY CLAIM AGAINST THE BORROWER ON ACCOUNT OF PAYMENTS MADE BY SUCH GUARANTOR UNDER THIS GUARANTY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL RIGHTS OF SUBROGATION, REIMBURSEMENT, EXONERATION, CONTRIBUTION OR INDEMNITY. UNTIL SUCH TIME AS ONE HUNDRED PERCENT (100%) OF THE OBLIGATIONS SHALL HAVE BEEN SATISFIED OR DISCHARGED, REGARDLESS OF THE AMOUNT OF GUARANTOR'S OBLIGATION TO LENDER HEREUNDER, EACH GUARANTOR IRREVOCABLY SUBORDINATES ANY AND ALL OBLIGATIONS OF THE BORROWER TO SUCH GUARANTOR, PRESENT AND FUTURE, HOWEVER EVIDENCED, TO THE PRIOR PAYMENT OF THE OBLIGATIONS TO LENDER

14. Priority of Payments Received. Any amounts received by Lender from any source on account of the Loan may be utilized by Lender for the payment of the Obligations and any other obligations of Borrower to Lender in such order or priority as Lender may from time to time elect.

15. WAIVER OF RIGHT TO JURY TRIAL. EACH GUARANTOR ACKNOWLEDGES AND AGREES THAT THERE MAY BE A CONSTITUTIONAL RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY CLAIM, DISPUTE OR LAWSUIT ARISING WITH RESPECT TO THIS GUARANTY, BUT THAT SUCH RIGHT MAY BE WAIVED. ACCORDINGLY, GUARANTORS AGREE THAT, NOTWITHSTANDING SUCH CONSTITUTIONAL RIGHT, IN THIS COMMERCIAL MATTER, GUARANTORS BELIEVE AND AGREE THAT IT SHALL BE IN GUARANTORS' BEST INTERESTS TO WAIVE SUCH RIGHT, AND, ACCORDINGLY, HEREBY WAIVES SUCH RIGHT TO A JURY TRIAL, AND FURTHER AGREES THAT THE BEST FORUM FOR HEARING ANY CLAIM, DISPUTE, OR LAWSUIT, IF ANY, ARISING IN CONNECTION WITH THIS GUARANTY OR THE RELATIONSHIP AMONG BORROWER, LENDER, AND GUARANTORS, WHETHER NOW EXISTING OR HEREAFTER ARISING, OR WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE, SHALL BE A COURT OF COMPETENT JURISDICTION SITTING WITHOUT A JURY.

16. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given: (i) if hand delivered or if sent by telecopy, effective upon receipt, or (ii) if delivered by overnight courier service, effective on the next Business Day following delivery to such courier service, or (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) Business Days after deposit in the United States mails; addressed in each case as follows:

Guarantors:

\* \* \*

REDACTED

\* \* \*

with a copy to:

Jordan Berns, Esq.  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200  
Beachwood, Ohio 44122  
Facsimile: (216) 464-4489

and

Bruce K. Karberg, Esq.  
Karberg & Associates Co., LPA  
Suite 306, Executive Commons I  
29425 Chagrin Boulevard  
Cleveland, Ohio 44122-4637

Lender: The Huntington National Bank  
200 Public Square (CM17)  
Cleveland, Ohio 44114  
Attention: Jennifer Hearn

With a copy to: Porter Wright Morris & Arthur  
Attn: William Weir  
925 Euclid Ave., Suite 1700  
Cleveland, Ohio 44115  
wweir@porterwright.com  
Facsimile: (216) 443-9011

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

17. Representations and Warranties. In order to induce Lender to make the Loan, Guarantors make the following representations and warranties to Lender set forth in this Section. Guarantors acknowledge that but for the truth and accuracy of the matters covered by the following representations and warranties, Lender would not have agreed to make the Loan.

(a) Guarantors are individual persons who are: (i) citizens of the United States of America; (ii) residents of the State of Ohio; (iii) of legal age; (iv) under no legal disability; and (v) are competent to execute, deliver, and perform this Guaranty.

(b) Any and all balance sheets, net worth statements, and other financial data with respect to each Guarantor which have heretofore been given to Lender by or on behalf of Guarantors fairly and accurately present the financial condition of Guarantors as of the respective dates thereof.

(c) This Guaranty creates legal, valid, and binding obligations of each Guarantor enforceable in accordance with its terms.

(d) Except as disclosed in writing to Lender, there is no action, proceeding, or investigation pending or, to the knowledge of any Guarantor, threatened or affecting any Guarantor, which may adversely affect that respective Guarantor's ability to fulfill his or her obligations under this Guaranty. To the best of each Guarantor's knowledge, there are no judgments or orders for the payment of money rendered against such Guarantor. To the best of each Guarantor's knowledge, such Guarantor is not in default under any agreements which may adversely affect that Guarantor's ability to fulfill his or her obligations under this Guaranty.

All of the foregoing representations and warranties shall be deemed remade upon any extension of the Loan pursuant to the Loan Agreement. Guarantors hereby agree to indemnify and hold Lender free and harmless from and against all loss, cost, liability, damage, and expense, including reasonable out-of-pocket attorney's fees and costs, which Lender may sustain by reason of the inaccuracy or breach of any of the foregoing representations and warranties as of the date the foregoing representations and warranties are made and are remade.

18. Successors and Assigns. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of each Guarantor and shall not be discharged in whole or in part by the death of any Guarantor. All parties to this Guaranty are jointly and severally liable.

19. Delivery of Financial Information. Each Guarantor shall deliver or cause to be delivered to Lender all of the Guarantor's financial statements to be delivered in accordance with the terms of the Loan Agreement. In addition, upon and during the occurrence of an Event of Default, each Guarantor will, promptly after the Lender's written request therefor, provide the Lender with such other financial information as the Lender may request. Each Guarantor represents and warrants to the Lender that all financial statements furnished or to be furnished to the Lender with respect to such Guarantor will accurately reflect, in all material respects, such Guarantor's financial condition at the times and for the periods therein stated.

20. Prohibition on Disposal of Assets. Each of the undersigned Guarantors hereby agrees, covenants, represents and warrants that so long as any portion of the Obligations remains outstanding, such Guarantor will not give or otherwise transfer or dispose of any material portion of such Guarantor's assets to any other person or entity for less than the reasonably equivalent value of such assets, provided, however, that nothing herein shall prohibit or limit any Guarantor from making any gift of any assets or from transferring assets for estate planning purposes so long as such gift or transfer does not result in such Guarantor having Liquid Assets of less than \$250,000.00. Any transfer of a material portion of a Guarantor's assets shall be disclosed in writing to Lender and if such transfer is made to a trust for estate planning purposes, such transfer shall be appropriately reflected on the financial statements delivered by such Guarantor to Lender as required under the Loan Agreement. Any transfer that would result in a Guarantor having Liquid Assets of less than \$250,000.00 shall be disclosed to Lender in advance of the transfer and shall be subject to the review and approval of Lender. "Liquid Assets" shall mean such Guarantor's unpledged and unrestricted cash and cash equivalents and marketable securities less any margin debt and any outstanding unsecured debt and provided, further, that the following assets shall not be included for purposes of calculating the a Guarantor's Liquid Assets: (i) assets held in retirement accounts, such as IRA's, Keogh plans, SEP, SIMPLE, 401(k) plans and the like and (ii) any assets which are not solely owned by and titled solely in the name of such Guarantor, or any assets which are subject to any interest, right or claim of any nature by any party other than such Guarantor. Such specifically excluded assets referenced in clause (ii) immediately above include, without limitation, any assets owned by any trust in which a Guarantor is a testator, beneficiary or trustee as well as any assets which are excluded from Lender's right to set off in Section 7 of this Guaranty.



21. Governing Law. THIS GUARANTY SHALL BE GOVERNED BY, AND EXCEPT TO THE EXTENT PRE-EMPTED BY FEDERAL LAW, CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF OHIO.

22. Borrower's Use of Loan Proceeds. Lender shall be entitled to honor any request for Loan Proceeds made by Borrower and shall have no obligation to see to the proper disposition of such advances. Guarantors agree that their obligations hereunder shall not be released or affected by reason of any improper disposition by Borrower of such Loan Proceeds.

23. Counterpart Execution. This Guaranty may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

24. Patriot Act. IMPORTANT INFORMATION ABOUT PROCEDURES REQUIRED BY THE USA PATRIOT ACT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each entity or person who opens an account or establishes a relationship with Lender.

*What this means:* When an entity or person opens an account or establishes a relationship with Lender, Lender may ask for the name, address, date of birth, and other information that will allow the Lender to identify the entity or person who opens an account or establishes a relationship with Lender. Lender may also ask to see identifying documents for the entity or person.

25. Amendment Must Be in Writing. The terms of this Guaranty may be waived, modified or amended only by an instrument in writing duly executed by Guarantors and Lender.

26. Delay Does Not Operate as Waiver; Time of the Essence. Neither failure to exercise, nor any delay in exercising, on the part of Lender, any right or remedy under this Guaranty or any of the Loan Documents shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. This Guaranty is subject to enforcement at law or in equity, including actions for damages or specific performance. Time is of the essence hereof with respect to Guarantors' performance hereunder.

27. Payments Made Free and Clear. All payments under this Guaranty shall be made free and clear of, and without deduction for, any and all present and future taxes, levies or other fees or payments to public authorities of similar nature.

28. Warrant of Attorney. Each of the undersigned Guarantors authorizes any attorney at law to appear in any court of record in the State of Ohio or in any other state or territory of the United States of America after the loan evidenced by this Guaranty becomes due, whether by acceleration or otherwise, to waive the issuing and service of process, and to confess judgment against Guarantor in favor of Lender for the amount then appearing due on this Guaranty, together with costs of suit, and thereupon to waive all errors and all rights of appeal

and stays of execution. Each of the undersigned Guarantors waives any conflict of interest that an attorney hired by Lender may have in acting on that Guarantor's behalf in confessing judgment against Guarantor while such attorney is retained by Lender. Each of the undersigned Guarantors expressly consents to such attorney acting for that Guarantor in confessing judgment and to such attorney's fee being paid by Lender or deducted from the proceeds of collection of this Guaranty or collateral security therefor.

29. Headings. The headings or captions of the Articles and Sections in this Guaranty are for convenience only, are not a part of this Guaranty, and are not to be considered when interpreting this Agreement.

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IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty in Cuyahoga County, the State of Ohio as of the date first written above.

GUARANTOR:

\*\*\* REDACTED

[REDACTED]

REDACTED \*\*\*

, an individual

**WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

\*\*\* REDACTED

[REDACTED]

REDACTED \*\*\*

, an individual

**WARNING – BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

[SIGNATURE PAGE CONTINUES]

\*\*\* REDACTED [REDACTED] REDACTED \*\*\*  
an individual

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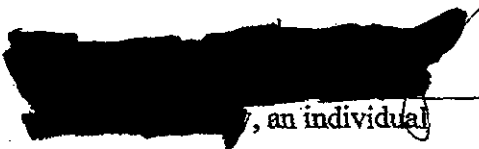
K \*\* REDACTED [REDACTED] REDACTED \*\*\*  
an individual

**WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

**WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

, an individual

**WARNING -- BY SIGNING THIS PAPER YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT PAY ON TIME A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

, an individual

WOODBРАН REALTY CORPORATION  
Case No. 12-2594-ST-AIS

EXHIBIT G

# UCC FINANCING STATEMENT

## FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) William R. Weir (216-443-2540)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) William R. Weir Porter Wright Morris & Arthur LLP 925 Euclid Avenue, Suite 1700 Cleveland, Ohio 44115

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Woodbran Realty Corporation				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
3439 Brainard Rd., Suite 260	Woodmere	OH	44122	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME The Huntington National Bank				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
200 Public Square (CM17)	Cleveland	OH	44114	USA

4. COLLATERAL: This financing statement covers the following collateral:

SEE EXHIBIT A ATTACHED HERETO.

5. Check <u>only</u> if applicable and check <u>only</u> one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1Ad, item 17 and instructions) <input type="checkbox"/> being administered by a Decedent's Personal Representative	
6a. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Public-Finance Transaction <input type="checkbox"/> Manufactured-Home Transaction <input type="checkbox"/> A Debtor is a Transmitting Utility	
6b. Check <u>only</u> if applicable and check <u>only</u> one box: <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION (if applicable): <input type="checkbox"/> Lessee/Lessor <input type="checkbox"/> Consignee/Consignor <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licenser	
8. OPTIONAL FILER REFERENCE DATA: Ohio Secretary of State	

## **EXHIBIT A**

---

Debtor: Woodbran Realty Corporation

Secured Party: The Huntington National Bank

---

### **Description of Property**

All personal property of Debtor, whether now owned or hereafter acquired or received, and all Proceeds, products, profits and rents thereof, including, without limitation:

- (a) all of Debtor's Accounts Receivable or Deposit Accounts;
- (b) all of Debtor's Inventory;
- (c) all of Debtor's Equipment;
- (d) all funds on deposit in the Cash Collateral Account;
- (e) all of Debtor's Cash Security;
- (f) all of Debtor's General Intangibles and Payment Intangibles;
- (g) all of Debtor's Investment Property;
- (h) all of Debtor's Letter-of-Credit Rights; and
- (i) all of Debtor's rights in Commercial Tort Claims.

All of the foregoing hereinafter sometimes referred to as the "Collateral."

For purposes of this Exhibit A,

"Account" shall have the meaning ascribed to such term in the Uniform Commercial Code, as enacted in the State of Ohio from time to time (the "UCC"), including, without limitation: (a) any account, (b) any right to payment for Goods sold or leased or for services rendered which is not evidenced by an Instrument or Chattel Paper, whether or not it has been earned by performance, (c) any right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State, or (d) any health-care-insurance receivables (as defined in the UCC).



"Accounts Receivable" means:

- (a) any account receivable, Account, Chattel Paper, Contract Right, General Intangible, Payment Intangible, Document, or Instrument owned, acquired, or received by a Person;
- (b) any other indebtedness owed to or receivable owned, acquired, or received by any Person of whatever kind and however evidenced; and
- (c) any right, title, and interest in a Person's Goods which were sold, leased, or furnished by that Person and gave rise to either (a) or (b) above, or both of them. This includes, without limitation:
  - (i) any rights of stoppage in transit of a Person's sold, leased, or furnished Goods;
  - (ii) any rights to reclaim a Person's sold, leased, or furnished Goods; and
  - (iii) any rights a Person has in such sold, leased, or furnished Goods that have been returned to or repossessed by that Person.

"Agreement" means that certain Loan Agreement dated on or about of even date herewith between Debtor and Lender.

"Chattel Paper" means (a) any chattel paper, and (b) any writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific Goods. If a transaction is evidenced both by such an agreement for security or a lease and by an Instrument or a series of Instruments, the group of writings taken together constitutes Chattel Paper.

"Commercial Tort Claim" shall have the meaning ascribed to such term in the UCC, including, without limitation, a claim arising in tort with respect to which:

- (a) The claimant is an organization; or
- (b) The claimant is an individual, and the claim:
  - (i) Arose in the course of the claimant's business or profession; and
  - (ii) Does not include damages arising out of personal injury to or the death of an individual.

"Contract Right" shall have the meaning set forth in the UCC, including, without limitation: (a) any contract right (including, without limitation, any right of Debtor to be indemnified by any other Person); and (b) any right to payment under a contract not yet earned by performance and not evidenced by an Instrument or Chattel Paper.

"Document" shall have the meaning set forth in the UCC, including, without limitation: (a) any document, (b) any document of title, including a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of Goods, and any other document which in the regular course of business or financing is treated as adequately evidencing that the Person in possession of it

is entitled to receive, hold, and dispose of the document and the Goods it covers and (c) any receipt covering Goods stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts even though issued by a Person who is the owner of the Goods and is not a warehouseman.

"Deposit Account" means (a) any deposit account, and (b) any demand, time, savings, passbook, or a similar account maintained with a bank, savings and loan association, credit union, or similar organization, other than an account evidenced by a certificate of deposit.

"Instrument" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any instrument;
- (b) any negotiable or nonnegotiable instrument (including, without limitation, drafts, checks, acceptances, certificates of deposit, and notes);
- (c) any security; and
- (d) any other writing which:
  - (i) evidences a right to the payment of money,
  - (ii) is not itself a security agreement or lease, and
  - (iii) is of a type which in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

"Inventory" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any inventory;
- (b) all Goods that are raw materials;
- (c) all Goods that are work in process;
- (d) all Goods that are materials used or consumed in the ordinary course of a Person's business;
- (e) all Goods that are, in the ordinary course of a Person's business, held for sale or lease or furnished or to be furnished under contracts of service; and
- (f) all substitutes and replacements for, and parts, accessories, additions, attachments, or accessions to (a) to (e) above.

"Equipment" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any equipment, including without limitation, machinery, office furniture and furnishings, tools, dies, jigs, and molds;
- (b) all Goods that are used or bought for use primarily in a Person's business;
- (c) all Goods that are not consumer goods, farm products, or inventory;
- (d) all titled vehicles; and
- (e) all substitutes or replacements for, and all parts, accessories, additional attachments, or accessions to (a) to (d) above.

"Cash Security" means all cash, Instruments, Deposit Accounts, and other cash equivalents, whether matured or unmatured, whether collected or in the process of collection upon which Debtor presently has or may hereafter have any claim, that are presently or may hereafter be existing or maintained with, issued by, drawn upon, or in the possession of Lender.

"Cash Collateral Account" means a commercial Deposit Account designated "cash collateral account" and maintained by Debtor with Lender, without liability by Lender to pay interest thereon, from which account Lender shall have the exclusive right to withdraw funds until all Obligations are paid, performed, satisfied, enforced, and observed in full, and with respect to which account Lender shall have a first priority security interest.

"General Intangible" means (a) any general intangible, including without limitation, any patent, trademark, service mark, goodwill, copyright, license and any applications or rights with respect to the foregoing; and (b) any personal property (including things in action) other than Goods, Accounts, Contract Rights, Chattel Paper, Documents, Instruments, and money.

"Goods" shall have the meaning set forth in the UCC and shall include, without limitation: (a) any goods, and (b) all things which are movable at the time the security interest granted Lender under the Agreement attaches or which are fixtures but does not include money, Instruments, Documents, Accounts, Chattel Paper, General Intangibles, and Contract Rights.

"Investment Property" shall have the meaning set forth in the UCC.

"Lender" or "a Lender" or "any Lender" or "each Lender" means The Huntington National Lender and any other financial institution which from time to time becomes a party to the Agreement.

"Letter-of-Credit Right" shall have the meaning ascribed to such term in the UCC, including without limitation, a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

"Obligations" means any of the following obligations, whether direct or indirect, absolute or contingent, secured or unsecured, matured or unmatured, originally contracted with Lender or any other Person and now owing to or hereafter acquired in any manner partially or totally by Lender pursuant to or in connection with the Agreement or the related Loan Documents or in which Lender may have acquired a participation, contracted by Debtor alone or jointly or severally with another Person:

- (a) any and all indebtedness, obligations, liabilities, contracts, indentures, agreements, warranties, covenants, guarantees, representations, provisions, terms, and conditions

of whatever kind, now existing or hereafter arising, and however evidenced, that are now or hereafter owed, incurred, or executed by Debtor to, in favor of, or with Lender (including, without limitation, those as are set forth or contained in, referred to, evidenced by, or executed with reference to the Agreement, the Loan Account, any promissory notes, letter of credit agreements, advance agreements, Rate Management Transactions, indemnity agreements, guaranties, lines of credit, mortgage deeds, security agreements, assignments, pledge agreements, hypothecation agreements, Instruments, and acceptance financing agreements), and including any partial or total extension, restatement, renewal, amendment, and substitution thereof or therefor;

- (b) any and all claims of whatever kind of Lender against Debtor, now existing or hereafter arising including, without limitation, any arising out of or in any way connected with warranties made by Debtor to Lender in connection with any Instrument deposited with or purchased by Lender;
- (c) any and all of Debtor's Reimbursement Obligations; and
- (d) any and all of Lender's Related Expenses.

"Organization" means a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more Persons having a joint or common interest, and any other legal or commercial entity.

"Payment Intangible" shall have the meaning ascribed to such term in the UCC, including, without limitation, any General Intangible under which the account debtor's principal obligation is a monetary obligation.

"Person" means an individual or an Organization.

"Proceeds" means (a) any proceeds, and (b) whatever is received upon the sale, exchange, collection, or other disposition of Collateral or Proceeds, whether cash or non-cash. Cash Proceeds includes, without limitation, moneys, checks, and Deposit Accounts. Proceeds includes, without limitation, any Account arising when the right to payment is earned under a Contract Right, any insurance payable by reason of loss or damage to the Collateral, and any return or unearned premium upon any cancellation of insurance. Except as expressly authorized in the Agreement, Lender's right to Proceeds specifically set forth herein or indicated in any financing statement shall never constitute an express or implied authorization on the part of Lender to Debtor's sale, exchange, collection, or other disposition of any or all of the Collateral.

Any capitalized term used but not defined in this Exhibit A shall have the same meaning as ascribed to such term in the Agreement.

WOODBРАН REALTY CORPORATION  
Case No. 12-2594-ST-AIS

EXHIBIT H

**UCC FINANCING STATEMENT**  
FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) William R. Weir (216-443-2540)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) <div style="border: 1px solid black; padding: 5px; margin: 5px 0;">William R. Weir Porter Wright Morris &amp; Arthur LLP 925 Euclid Avenue, Suite 1700 Cleveland, Ohio 44115</div>

CUYAHOGA COUNTY  
OFFICE OF FISCAL OFFICER - 5  
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**201404309004**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME Woodbran Realty Corporation				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
3439 W. Brainard Rd., Suite 260	Woodmere	OH	44122	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); If any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME The Huntington National Bank				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY
200 Public Square (CM17)	Cleveland	OH	44114	USA

4. COLLATERAL: This financing statement covers the following collateral

SEE SCHEDULE A ATTACHED HERETO.

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, Item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Cuyahoga County Recorder

# UCC FINANCING STATEMENT ADDENDUM

## FOLLOW INSTRUCTIONS

9. NAME OF FIRST DEBTOR: Same as line 1a or 1b on Financing Statement; if line 1b was left blank because individual Debtor name did not fit, check here ☐

9a. ORGANIZATION'S NAME

Woodbran Realty Corporation

OR 9b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

10. DEBTOR'S NAME: Provide (10a or 10b) only one additional Debtor name or Debtor name that did not fit in line 1b or 2b of the Financing Statement (Form UCC1) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name) and enter the mailing address in line 10c

10a. ORGANIZATION'S NAME

OR 10b. INDIVIDUAL'S SURNAME

INDIVIDUAL'S FIRST PERSONAL NAME

INDIVIDUAL'S ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

10c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11. ☐ ADDITIONAL SECURED PARTY'S NAME or ☐ ASSIGNOR SECURED PARTY'S NAME: Provide only one name (11a or 11b)

11a. ORGANIZATION'S NAME

OR 11b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME

ADDITIONAL NAME(S)/INITIAL(S)

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

12. ADDITIONAL SPACE FOR ITEM 4 (Collateral)

13. ☒ This FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS (if applicable)

14. This FINANCING STATEMENT

☐ covers timber to be cut

☐ covers as-extracted collateral

☒ is filed as a fixture filing

15. Name and address of a RECORD OWNER of real estate described in item 16 (if Debtor does not have a record interest):

16. Description of real estate:

Covers goods that are, or are to become fixtures on the real property described on EXHIBIT A attached hereto.

17. MISCELLANEOUS:

## SCHEDULE A

(a) All of the land located in the County of Cuyahoga, State of Ohio, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Premises");

(b) All the improvements now or hereafter erected on the Premises (the "Improvements"), and all easements, rights of way, appurtenances, uses, servitudes, licenses, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, waters, water rights, and water stock, and any and all fixtures, goods, chattels, equipment and articles of personal property of every kind and character, including any replacements, additions, substitutions therefore, now or at any time in the future owned by Debtor and affixed to or placed upon or used in connection with the occupancy, enjoyment and operation of the Premises all of which are hereby declared and shall be deemed to be a portion of the security for the Indebtedness herein described and to be subject to the lien of the Mortgage, including but not limiting the generality of the foregoing, all heating, lighting, incinerating, power and total energy equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, ventilating, and communications apparatus, air cooling and air-conditioning apparatus, elevators, escalators, wall-to-wall carpeting, shades, awnings, screens, storm doors and windows, attached cabinets, partitions, ducts and compressors, and such other goods, chattels, and equipment as are adapted to the complete and comfortable use, enjoyment and occupancy of the Property, excluding any of the aforesaid which is owned by any tenant of any individual space leased to such tenant and which according to the terms of any applicable lease may be removed by such tenants at the expiration or termination of said lease;

(c) All existing and future appurtenances, privileges, easements, franchises and tenements of the Premises, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Premises, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any Premises lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Premises and Improvements;

(d) All existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions ("Leases") relating to the use and enjoyment of all or any part of the Premises and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

(e) All goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Premises and Improvements, whether stored on the Premises or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of the Mortgage; and any manufacturer's



warranties with respect thereto;

(f) All building materials, equipment, work in process or other personal property of any kind, whether stored on the Premises or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Premises or Improvements;

(g) All rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Debtor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit, which arise from or relate to construction on the Premises or to any business now or later to be conducted on it, or to the Premises and Improvements generally; and any builder's or manufacturer's warranties with respect thereto;

(h) All insurance policies pertaining to the Premises or Property and all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Premises, Improvements or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Premises, Property, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

(i) All "Equipment" as that term is defined in the Uniform Commercial Code;

(j) All "Goods" as that term is defined in the Uniform Commercial Code;

(k) All "Accounts" as that term is defined in the Uniform Commercial Code.

(l) All books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

(m) All proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above;

**EXHIBIT "A"**  
**Legal Description**  
**For File: 1223335**

**Parcel No. 1:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being all of Sublots Nos. 387, 388, 389, 390 and 391 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.  
PPN 891-08-048, 049, 050, 051 & 052

**Parcel No. 2:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 270 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 8 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.  
PPN 891-08-046

**Parcel No. 3:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 323 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.  
PPN 891-08-045

**Parcel No. 4:**

Situated in the Village of Woodmere, County of Cuyahoga and State of Ohio and known as being Sublot No. 392 in The S.H. Kleinman Realty Company's Resubdivision Woodmere Subdivision of part of Original Orange Township Lot No. 10, Tract No. 2 as shown by the recorded plat in Volume 49 of Maps, Page 23 of Cuyahoga County Records, as appears by said plat, be the same more or less, but subject to all legal highways.  
PPN 891-08-047

Also that part of Belmont Avenue as vacated in Plat Volume 238 of Maps, Page 45 of Cuyahoga County Map Records.

WOODBРАН REALTY CORPORATION  
Case No. 12-2594-ST-AIS

EXHIBIT I

Filed at Ohio Secretary of State 05/15/2014 09:00 AM FILE# OH00176272490

RECEIVED  
SECRETARY OF STATE

2814 MAY 15 PM 2:22

CLIENT SERVICE CENTER

UCC FINANCING STATEMENT  
FOLLOWING INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional) William R. Weir (216-443-2540)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address) William R. Weir Porter Wright Morris & Arthur LLP 925 Euclid Avenue, Suite 1700 Cleveland, Ohio 44115

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only ONE Debtor name (2a or 2b) (use each, but not both, modify, or abbreviate any part of the Debtor's name; if any part of the individual Debtor's name will not fit in line 2b, leave all of line 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Attachment (Form UCC1A4)

1a. ORGANIZATION'S NAME Woodbran Realty Corporation				
OR	1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
1c. MAILING ADDRESS 3438 Brainard Rd., Suite 260	CITY Woodmere	STATE OH	POSTAL CODE 44122	COUNTRY USA

2. DEBTOR'S NAME: Provide only ONE Debtor name (2a or 2b) (use each, but not both, modify, or abbreviate any part of the Debtor's name; if any part of the individual Debtor's name will not fit in line 2b, leave all of line 2 blank, check here ☐ and provide the individual Debtor information in item 10 of the Financing Statement Attachment (Form UCC1A4)

2a. ORGANIZATION'S NAME				
OR	2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY

3. SECURED PARTY'S NAME (or NAME OF ASSIGNEE OF ASSIGNOR SECURED PARTY): Provide only ONE Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME The Huntington National Bank				
OR	3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
3c. MAILING ADDRESS 200 Public Square (CM17)	CITY Cleveland	STATE OH	POSTAL CODE 44114	COUNTRY USA

4. COLLATERAL: This financing statement covers the following collateral:

SEE EXHIBIT A ATTACHED HERETO.

5. Check only if applicable and check only one box: Collateral is <input type="checkbox"/> held in a Trust (see UCC1A4, item 17 and instructions) <input type="checkbox"/> being administered by a Debtor's Personal Representative	
6a. Check only if applicable and check only one box: <input type="checkbox"/> Photo/Facsimile Translation <input type="checkbox"/> International Name Translation <input type="checkbox"/> A Debtor is a Transacting Utility <input type="checkbox"/> Agricultural Lien <input type="checkbox"/> Non-UCC Filing	
7. ALTERNATIVE DESIGNATION OF SECURED PARTY: <input type="checkbox"/> Lessor/Lessor <input type="checkbox"/> Consignor/Consignee <input type="checkbox"/> Seller/Buyer <input type="checkbox"/> Bailee/Bailor <input type="checkbox"/> Licensee/Licensee	
8. OPTIONAL FILER REFERENCE DATA: Ohio Secretary of State	

FILING OFFICE COPY — UCC FINANCING STATEMENT (Form UCC1) (Rev. 04/2011)

International Association of Commercial Administrators (IACA)

EXHIBIT A

Debtor: Woodbran Realty Corporation

Secured Party: The Huntington National Bank

Description of Property

All personal property of Debtor, whether now owned or hereafter acquired or received, and all Proceeds, products, profits and rents thereof, including, without limitation:

- (a) all of Debtor's Accounts Receivable or Deposit Accounts;
- (b) all of Debtor's Inventory;
- (c) all of Debtor's Equipment;
- (d) all funds on deposit in the Cash Collateral Account;
- (e) all of Debtor's Cash Security;
- (f) all of Debtor's General Intangibles and Payment Intangibles;
- (g) all of Debtor's Investment Property;
- (h) all of Debtor's Letter-of-Credit Rights; and
- (i) all of Debtor's rights in Commercial Tort Claims.

All of the foregoing hereinafter sometimes referred to as the "Collateral."

For purposes of this Exhibit A,

"Account" shall have the meaning ascribed to such term in the Uniform Commercial Code, as enacted in the State of Ohio from time to time (the "UCC"), including, without limitation: (a) any account, (b) any right to payment for Goods sold or leased or for services rendered which is not evidenced by an Instrument or Chattel Paper, whether or not it has been earned by performance, (c) any right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, (viii) as winnings in a lottery or other game of chance operated or sponsored by a State, governmental unit of a State, or person licensed or authorized to operate the game by a State or governmental unit of a State, or (d) any health-care-insurance receivables (as defined in the UCC).

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"Accounts Receivable" means:

- (a) any account receivable, Account, Chattel Paper, Contract Right, General Intangible, Payment Intangible, Document, or Instrument owned, acquired, or received by a Person;
- (b) any other indebtedness owed to or receivable owned, acquired, or received by any Person of whatever kind and however evidenced; and
- (c) any right, title, and interest in a Person's Goods which were sold, leased, or furnished by that Person and gave rise to either (a) or (b) above, or both of them. This includes, without limitation:
  - (i) any rights of stoppage in transit of a Person's sold, leased, or furnished Goods;
  - (ii) any rights to reclaim a Person's sold, leased, or furnished Goods; and
  - (iii) any rights a Person has in such sold, leased, or furnished Goods that have been returned to or repossessed by that Person.

"Agreement" means that certain Loan Agreement dated on or about of even date herewith between Debtor and Lender.

"Chattel Paper" means (a) any chattel paper, and (b) any writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific Goods. If a transaction is evidenced both by such an agreement for security or a lease and by an Instrument or a series of Instruments, the group of writings taken together constitutes Chattel Paper.

"Commercial Tort Claim" shall have the meaning ascribed to such term in the UCC, including, without limitation, a claim arising in tort with respect to which:

- (a) The claimant is an organization; or
- (b) The claimant is an individual, and the claim:
  - (i) Arose in the course of the claimant's business or profession; and
  - (ii) Does not include damages arising out of personal injury to or the death of an individual.

"Contract Right" shall have the meaning set forth in the UCC, including, without limitation: (a) any contract right (including, without limitation, any right of Debtor to be indemnified by any other Person); and (b) any right to payment under a contract not yet earned by performance and not evidenced by an Instrument or Chattel Paper.

"Document" shall have the meaning set forth in the UCC, including, without limitation: (a) any document, (b) any document of title, including a bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of Goods, and any other document which in the regular course of business or financing is treated as adequately evidencing that the Person in possession of it

is entitled to receive, hold, and dispose of the document and the Goods it covers and (c) any receipt covering Goods stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts even though issued by a Person who is the owner of the Goods and is not a warehouseman.

"Deposit Account" means (a) any deposit account, and (b) any demand, time, savings, passbook, or a similar account maintained with a bank, savings and loan association, credit union, or similar organization, other than an account evidenced by a certificate of deposit.

"Instrument" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any instrument;
- (b) any negotiable or nonnegotiable instrument (including, without limitation, drafts, checks, acceptances, certificates of deposit, and notes);
- (c) any security; and
- (d) any other writing which:
  - (i) evidences a right to the payment of money,
  - (ii) is not itself a security agreement or lease, and
  - (iii) is of a type which in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment.

"Inventory" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any inventory;
- (b) all Goods that are raw materials;
- (c) all Goods that are work in process;
- (d) all Goods that are materials used or consumed in the ordinary course of a Person's business;
- (e) all Goods that are, in the ordinary course of a Person's business, held for sale or lease or furnished or to be furnished under contracts of service; and
- (f) all substitutes and replacements for, and parts, accessories, additions, attachments, or accessions to (a) to (e) above.

"Equipment" shall have the meaning set forth in the UCC, including, without limitation:

- (a) any equipment, including without limitation, machinery, office furniture and furnishings, tools, dies, jigs, and molds;
- (b) all Goods that are used or bought for use primarily in a Person's business;
- (c) all Goods that are not consumer goods, farm products, or inventory;
- (d) all titled vehicles; and
- (e) all substitutes or replacements for, and all parts, accessories, additional attachments, or accessions to (a) to (d) above.

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"Cash Security" means all cash, Instruments, Deposit Accounts, and other cash equivalents, whether matured or unmatured, whether collected or in the process of collection upon which Debtor presently has or may hereafter have any claim, that are presently or may hereafter be existing or maintained with, issued by, drawn upon, or in the possession of Lender.

"Cash Collateral Account" means a commercial Deposit Account designated "cash collateral account" and maintained by Debtor with Lender, without liability by Lender to pay interest thereon, from which account Lender shall have the exclusive right to withdraw funds until all Obligations are paid, performed, satisfied, enforced, and observed in full, and with respect to which account Lender shall have a first priority security interest.

"General Intangible" means (a) any general intangible, including without limitation, any patent, trademark, service mark, goodwill, copyright, license and any applications or rights with respect to the foregoing; and (b) any personal property (including things in action) other than Goods, Accounts, Contract Rights, Chattel Paper, Documents, Instruments, and money.

"Goods" shall have the meaning set forth in the UCC and shall include, without limitation: (a) any goods, and (b) all things which are movable at the time the security interest granted Lender under the Agreement attaches or which are fixtures but does not include money, Instruments, Documents, Accounts, Chattel Paper, General Intangibles, and Contract Rights.

"Investment Property" shall have the meaning set forth in the UCC.

"Lender" or "a Lender" or "any Lender" or "each Lender" means The Huntington National Lender and any other financial institution which from time to time becomes a party to the Agreement.

"Letter-of-Credit Right" shall have the meaning ascribed to such term in the UCC, including without limitation, a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

"Obligations" means any of the following obligations, whether direct or indirect, absolute or contingent, secured or unsecured, matured or unmatured, originally contracted with Lender or any other Person and now owing to or hereafter acquired in any manner partially or totally by Lender pursuant to or in connection with the Agreement or the related Loan Documents or in which Lender may have acquired a participation, contracted by Debtor alone or jointly or severally with another Person:

- (a) any and all indebtedness, obligations, liabilities, contracts, indentures, agreements, warranties, covenants, guarantees, representations, provisions, terms, and conditions

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of whatever kind, now existing or hereafter arising, and however evidenced, that are now or hereafter owed, incurred, or executed by Debtor to, in favor of, or with Lender (including, without limitation, those as are set forth or contained in, referred to, evidenced by, or executed with reference to the Agreement, the Loan Account, any promissory notes, letter of credit agreements, advance agreements, Rate Management Transactions, indemnity agreements, guaranties, lines of credit, mortgage deeds, security agreements, assignments, pledge agreements, hypothecation agreements, Instruments, and acceptance financing agreements), and including any partial or total extension, restatement, renewal, amendment, and substitution thereof or therefor;

- (b) any and all claims of whatever kind of Lender against Debtor, now existing or hereafter arising including, without limitation, any arising out of or in any way connected with warranties made by Debtor to Lender in connection with any Instrument deposited with or purchased by Lender;
- (c) any and all of Debtor's Reimbursement Obligations; and
- (d) any and all of Lender's Related Expenses.

"Organization" means a corporation, government or government subdivision or agency, business trust, estate, trust, partnership, limited liability company, association, two or more Persons having a joint or common interest, and any other legal or commercial entity.

"Payment Intangible" shall have the meaning ascribed to such term in the UCC, including, without limitation, any General Intangible under which the account debtor's principal obligation is a monetary obligation.

"Person" means an individual or an Organization.

"Proceeds" means (a) any proceeds, and (b) whatever is received upon the sale, exchange, collection, or other disposition of Collateral or Proceeds, whether cash or non-cash. Cash Proceeds includes, without limitation, moneys, checks, and Deposit Accounts. Proceeds includes, without limitation, any Account arising when the right to payment is earned under a Contract Right, any insurance payable by reason of loss or damage to the Collateral, and any return or unearned premium upon any cancellation of insurance. Except as expressly authorized in the Agreement, Lender's right to Proceeds specifically set forth herein or indicated in any financing statement shall never constitute an express or implied authorization on the part of Lender to Debtor's sale, exchange, collection, or other disposition of any or all of the Collateral.

Any capitalized term used but not defined in this Exhibit A shall have the same meaning as ascribed to such term in the Agreement.

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