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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**Form 10-Q**

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

FOR THE QUARTERLY PERIOD ENDED August 31, 2017

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

FOR THE TRANSITION PERIOD FROM                      TO

Commission File No. 1-12879

**GRIFFIN INDUSTRIAL REALTY, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**06-0868496**

(IRS Employer Identification Number)

**641 Lexington Avenue, New York, New York**

(Address of principal executive offices)

**10022**

(Zip Code)

Registrant's Telephone Number including Area Code **(212) 218-7910**

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(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☒

Non-accelerated filer ☐

Smaller reporting company ☐

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

Number of shares of Common Stock outstanding at September 29, 2017: 5,000,535

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GRIFFIN INDUSTRIAL REALTY, INC.

FORM 10-Q

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**PART I FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS**

GRIFFIN INDUSTRIAL REALTY, INC.  
Consolidated Balance Sheets  
(dollars in thousands, except per share data)  
(unaudited)

|  | Aug. 31, 2017     | Nov. 30, 2016     |
|--|-------------------|-------------------|
| <b>ASSETS</b>  |                   |                   |
| Real estate assets at cost, net  | \$ 193,523        | \$ 172,260        |
| Real estate held for sale  | 2,684             | 2,992             |
| Cash and cash equivalents  | 34,988            | 24,689            |
| Deferred income taxes  | 2,560             | 4,984             |
| Proceeds held in escrow  | 91                | 3,535             |
| Other assets   | 18,596            | 15,163            |
| <b>Total assets</b>  | <u>\$ 252,442</u> | <u>\$ 223,623</u> |
| <b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>  |                   |                   |
| Mortgage loans, net of debt issuance costs   | \$ 131,564        | \$ 109,697        |
| Deferred revenue   | 12,302            | 9,526             |
| Accounts payable and accrued liabilities   | 5,097             | 4,140             |
| Dividend payable   | —                 | 1,514             |
| Other liabilities  | 9,472             | 7,943             |
| <b>Total liabilities</b>   | <u>158,435</u>    | <u>132,820</u>    |
| <b>Commitments and Contingencies (Note 8)</b>  |                   |                   |
| <b>Stockholders' Equity</b>  |                   |                   |
| Common stock, par value \$0.01 per share, 10,000,000 shares authorized, 5,541,029 shares issued and 5,000,535 and 5,047,708 shares outstanding, respectively | 55                | 55                |
| Additional paid-in capital   | 108,698           | 108,438           |
| Retained earnings  | 5,296             | 179               |
| Accumulated other comprehensive loss, net of tax   | (1,748)           | (1,049)           |
| Treasury stock, at cost, 540,494 and 493,321 shares, respectively  | (18,294)          | (16,820)          |
| <b>Total stockholders' equity</b>  | <u>94,007</u>     | <u>90,803</u>     |
| <b>Total liabilities and stockholders' equity</b>  | <u>\$ 252,442</u> | <u>\$ 223,623</u> |

See Notes to Consolidated Financial Statements.

GRIFFIN INDUSTRIAL REALTY, INC.  
Consolidated Statements of Operations  
(dollars in thousands, except per share data)  
(unaudited)

|   | <b>For the Three Months Ended</b> |                      | <b>For the Nine Months Ended</b> |                      |
|---|-----------------------------------|----------------------|----------------------------------|----------------------|
|   | <b>Aug. 31, 2017</b>              | <b>Aug. 31, 2016</b> | <b>Aug. 31, 2017</b>             | <b>Aug. 31, 2016</b> |
| Rental revenue                                      | \$ 7,759                          | \$ 6,514             | \$ 22,070                        | \$ 19,998            |
| Revenue from property sales                         | 2,195                             | 751                  | 12,950                           | 473                  |
| Total revenue                                       | <u>9,954</u>                      | <u>7,265</u>         | <u>35,020</u>                    | <u>20,471</u>        |
| Operating expenses of rental properties             | 2,133                             | 1,982                | 6,822                            | 6,140                |
| Depreciation and amortization expense               | 2,637                             | 2,226                | 7,373                            | 6,540                |
| Costs related to property sales                     | 255                               | 193                  | 2,915                            | 193                  |
| General and administrative expenses                 | 1,735                             | 1,775                | 6,131                            | 5,435                |
| Total expenses                                      | <u>6,760</u>                      | <u>6,176</u>         | <u>23,241</u>                    | <u>18,308</u>        |
| Operating income                                    | 3,194                             | 1,089                | 11,779                           | 2,163                |
| Interest expense                                    | (1,443)                           | (1,162)              | (4,200)                          | (3,315)              |
| Gain on sale of common stock of Centaur Media plc   | 275                               | —                    | 275                              | —                    |
| Gain on sale of assets                              | —                                 | —                    | —                                | 122                  |
| Investment income                                   | 7                                 | —                    | 69                               | 62                   |
| Income (loss) before income tax (provision) benefit | 2,033                             | (73)                 | 7,923                            | (968)                |
| Income tax (provision) benefit                      | (704)                             | 24                   | (2,806)                          | 205                  |
| Net income (loss)                                   | <u>\$ 1,329</u>                   | <u>\$ (49)</u>       | <u>\$ 5,117</u>                  | <u>\$ (763)</u>      |
|   |                                   |                      |                                  |                      |
| Basic net income (loss) per common share            | <u>\$ 0.27</u>                    | <u>\$ (0.01)</u>     | <u>\$ 1.02</u>                   | <u>\$ (0.15)</u>     |
| Diluted net income (loss) per common share          | <u>\$ 0.26</u>                    | <u>\$ (0.01)</u>     | <u>\$ 1.02</u>                   | <u>\$ (0.15)</u>     |

See Notes to Consolidated Financial Statements.

GRIFFIN INDUSTRIAL REALTY, INC.  
Consolidated Statements of Comprehensive Income (Loss)  
(dollars in thousands)  
(unaudited)

|  | <u>For the Three Months Ended</u> |                      | <u>For the Nine Months Ended</u> |                      |
|--|-----------------------------------|----------------------|----------------------------------|----------------------|
|  | <u>Aug. 31, 2017</u>              | <u>Aug. 31, 2016</u> | <u>Aug. 31, 2017</u>             | <u>Aug. 31, 2016</u> |
| Net income (loss)                                      | \$ 1,329                          | \$ (49)              | \$ 5,117                         | \$ (763)             |
| Other comprehensive loss, net of tax:                  |                                   |                      |                                  |                      |
| Reclassifications included in net income (loss)        | 37                                | 219                  | 464                              | 646                  |
| (Decrease) increase in fair value of Centaur Media plc | (33)                              | (254)                | 159                              | (593)                |
| Unrealized loss on cash flow hedges                    | (697)                             | (710)                | (1,322)                          | (1,825)              |
| Total other comprehensive loss, net of tax             | (693)                             | (745)                | (699)                            | (1,772)              |
| Total comprehensive income (loss)                      | \$ 636                            | \$ (794)             | \$ 4,418                         | \$ (2,535)           |

See Notes to Consolidated Financial Statements.

GRIFFIN INDUSTRIAL REALTY, INC.  
Consolidated Statements of Changes in Stockholders' Equity  
For the Nine Months Ended August 31, 2017 and August 31, 2016  
(dollars in thousands)  
(unaudited)

|  | Shares of<br>Common Stock<br>Issued | Common<br>Stock | Additional<br>Paid-in<br>Capital | Retained<br>Earnings | Accumulated Other<br>Comprehensive<br>Loss | Treasury<br>Stock | Total     |
|--|-------------------------------------|-----------------|----------------------------------|----------------------|--|-------------------|-----------|
| Balance at November 30, 2015               | 5,541,029                           | \$ 55           | \$ 108,188                       | \$ 1,117             | \$ (1,085)                                 | \$ (13,466)       | \$ 94,809 |
| Stock-based compensation                   | —                                   | —               | 185                              | —                    | —  | —                 | 185       |
| Repurchase of common stock                 | —                                   | —               | —                                | —                    | —  | (1,951)           | (1,951)   |
| Net loss                                   | —                                   | —               | —                                | (763)                | —  | —                 | (763)     |
| Total other comprehensive loss, net of tax | —                                   | —               | —                                | —                    | (1,772)                                    | —                 | (1,772)   |
| Balance at August 31, 2016                 | 5,541,029                           | \$ 55           | \$ 108,373                       | \$ 354               | \$ (2,857)                                 | \$ (15,417)       | \$ 90,508 |
| Balance at November 30, 2016               | 5,541,029                           | \$ 55           | \$ 108,438                       | \$ 179               | \$ (1,049)                                 | \$ (16,820)       | \$ 90,803 |
| Stock-based compensation                   | —                                   | —               | 260                              | —                    | —  | —                 | 260       |
| Repurchase of common stock                 | —                                   | —               | —                                | —                    | —  | (1,474)           | (1,474)   |
| Net income                                 | —                                   | —               | —                                | 5,117                | —  | —                 | 5,117     |
| Total other comprehensive loss, net of tax | —                                   | —               | —                                | —                    | (699)                                      | —                 | (699)     |
| Balance at August 31, 2017                 | 5,541,029                           | \$ 55           | \$ 108,698                       | \$ 5,296             | \$ (1,748)                                 | \$ (18,294)       | \$ 94,007 |

See Notes to Consolidated Financial Statements.

GRIFFIN INDUSTRIAL REALTY, INC.  
Consolidated Statements of Cash Flows  
(dollars in thousands)  
(unaudited)

|  | <b>For the Nine Months Ended</b> |                      |
|--|----------------------------------|----------------------|
|  | <b>Aug. 31, 2017</b>             | <b>Aug. 31, 2016</b> |
| <b>Operating activities:</b>   |                                  |                      |
| Net income (loss)  | \$ 5,117                         | \$ (763)             |
| Adjustments to reconcile net income (loss) to net cash provided by operating activities: |                                  |                      |
| Gain on sales of properties  | (10,035)                         | (280)                |
| Depreciation and amortization  | 7,373                            | 6,540                |
| Deferred income taxes  | 2,806                            | (154)                |
| Gain on sales of common stock of Centaur Media plc                                       | (275)                            | —                    |
| Amortization of debt issuance costs  | 262                              | 222                  |
| Stock-based compensation expense   | 260                              | 185                  |
| Amortization of terminated swap agreement  | 40                               | —                    |
| Gain on sale of assets   | —                                | (122)                |
| Changes in assets and liabilities:   |                                  |                      |
| Other assets   | (3,235)                          | (3,065)              |
| Accounts payable and accrued liabilities   | (462)                            | 346                  |
| Deferred revenue   | 2,880                            | 301                  |
| Other liabilities  | 974                              | 337                  |
| Net cash provided by operating activities  | <u>5,705</u>                     | <u>3,547</u>         |
| <b>Investing activities:</b>   |                                  |                      |
| Acquisition of building  | (18,440)                         | —                    |
| Proceeds from sales of properties, net of expenses                                       | 12,119                           | —                    |
| Additions to real estate assets  | (10,964)                         | (13,365)             |
| Proceeds from property sales returned from escrow, net                                   | 3,444                            | —                    |
| Proceeds from sales of common stock of Centaur Media plc                                 | 1,216                            | —                    |
| Deferred leasing costs and other   | (1,110)                          | (564)                |
| Net cash used in investing activities  | <u>(13,735)</u>                  | <u>(13,929)</u>      |
| <b>Financing activities:</b>   |                                  |                      |
| Proceeds from mortgage loans   | 34,750                           | 18,800               |
| Payments on mortgage loans   | (12,559)                         | (9,398)              |
| Dividends paid to stockholders   | (1,514)                          | (1,546)              |
| Repurchase of common stock   | (1,474)                          | (1,951)              |
| Payment of debt issuance costs   | (533)                            | (434)                |
| Payment for termination of interest rate swap agreement                                  | (341)                            | —                    |
| Mortgage proceeds returned from escrow   | —                                | 600                  |
| Net cash provided by financing activities  | <u>18,329</u>                    | <u>6,071</u>         |
| Net increase (decrease) in cash and cash equivalents                                     | <u>10,299</u>                    | <u>(4,311)</u>       |
| Cash and cash equivalents at beginning of period   | 24,689                           | 18,271               |
| Cash and cash equivalents at end of period   | <u>\$ 34,988</u>                 | <u>\$ 13,960</u>     |

See Notes to Consolidated Financial Statements.

GRIFFIN INDUSTRIAL REALTY, INC.  
Notes to Consolidated Financial Statements  
(dollars in thousands unless otherwise noted, except per share data)  
(unaudited)

1. Summary of Significant Accounting Policies

*Basis of Presentation*

Griffin Industrial Realty, Inc. ("Griffin") is a real estate business principally engaged in developing, managing and leasing industrial/warehouse properties and, to a lesser extent, office/flex properties. Griffin also seeks to add to its property portfolio through the acquisition and development of land or purchase of buildings. Periodically, Griffin may sell certain portions of its undeveloped land that it has owned for an extended time period and the use of which is not consistent with Griffin's core development and leasing strategy. These financial statements have been prepared in conformity with the standards of accounting measurement set forth by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 270, "Interim Reporting" and in accordance with the accounting policies stated in Griffin's audited consolidated financial statements for the fiscal year ended November 30, 2016 ("fiscal 2016") included in Griffin's Annual Report on Form 10-K as filed with the Securities and Exchange Commission ("SEC") on February 10, 2017. These financial statements should be read in conjunction with the Notes to Consolidated Financial Statements appearing in that report. All adjustments, comprising only normal recurring adjustments, which are, in the opinion of management, necessary for a fair presentation of results for the interim periods, have been reflected and all intercompany transactions have been eliminated. The consolidated balance sheet data as of November 30, 2016 was derived from Griffin's audited financial statements but does not include all disclosures required by accounting principles generally accepted in the United States of America ("U.S. GAAP").

The preparation of financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses in the reporting period. Griffin regularly evaluates estimates and assumptions related to the useful life and recoverability of long-lived assets, stock-based compensation expense, deferred income tax asset valuations, valuation of derivative instruments and the estimated costs to complete required offsite improvements related to land sold. Griffin bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by Griffin may differ materially and adversely from Griffin's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected.

As of August 31, 2017, Griffin was a party to several interest rate swap agreements to hedge its interest rate exposure. Griffin does not use derivatives for speculative purposes. Griffin applies FASB ASC 815-10, "Derivatives and Hedging," ("ASC 815-10") as amended, which establishes accounting and reporting standards for derivative instruments and hedging activities. ASC 815-10 requires Griffin to recognize all derivatives as either assets or liabilities on its consolidated balance sheet and measure those instruments at fair value. The changes in the fair values of the interest rate swap agreements are measured in accordance with ASC 815-10 and reflected in the carrying values of the interest rate swap agreements on Griffin's consolidated balance sheet. The estimated fair values are based primarily on projected future swap rates.

Griffin applies cash flow hedge accounting to its interest rate swap agreements that are designated as hedges of the variability of future cash flows from floating rate liabilities based on the benchmark interest rates. Changes in the fair values of Griffin's interest rate swap agreements are recorded as components of accumulated other comprehensive income (loss) in stockholders' equity to the extent they are effective. Any ineffective portions of the changes in fair values of these instruments would be recorded as interest expense or interest income.

The results of operations for the three months ended August 31, 2017 (the "2017 third quarter") and the nine months ended August 31, 2017 (the "2017 nine month period") are not necessarily indicative of the results to be expected for the full year. The three months and nine months ended August 31, 2016 are referred to herein as the "2016 third quarter" and "2016 nine month period," respectively.



*Recent Accounting Pronouncements*

In May 2017, the FASB issued Accounting Standards Update (“ASU”) No. 2017-09, “Compensation – Stock Compensation: Scope of Modification Accounting,” which clarifies when to account for a change to the terms or conditions of a share-based payment award as a modification. This Update requires modification only if the fair value, vesting conditions or the classification of the award changes as a result of the change in terms or conditions. This Update will become effective for Griffin in fiscal 2018 and the Update is required to be applied on a prospective basis. The adoption of ASU No. 2017-09 is not expected to have a material impact on Griffin’s consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, “Business Combinations (Topic 805) – Clarifying the Definition of a Business,” which provides a more robust framework to use in determining when a set of assets and activities is a business. This Update also provides greater consistency in applying the guidance by making the definition of a business more operable. This Update will become effective for Griffin in fiscal 2019. Early adoption is allowed for acquisition or deconsolidation transactions occurring before the issuance date or effective date and only when the transactions have not been reported in financial statements that have been issued or made available for issuance. Griffin is evaluating the impact that the application of this Update will have on its consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, “Compensation – Stock Compensation: Improvements to Employee Share-Based Payment Accounting,” which relates to the accounting for employee share-based payments. This Update addresses several aspects of the accounting for share-based payment award transactions, including: (a) income tax consequences; (b) classification of awards as either equity or liabilities; and (c) classification on the statement of cash flows. This Update will become effective for Griffin in fiscal 2018. Early adoption is allowed, but all of the guidance must be adopted in the same period. Griffin is evaluating the impact that the application of this Update will have on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, “Leases,” which establishes a right-of-use (“ROU”) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than twelve months. The accounting applied by lessors under this Update is largely unchanged from that applied under current U.S. GAAP. Leases will be either classified as finance or operating, with classification affecting the pattern of expense recognition in the income statement. This Update also requires significant additional disclosures about the amount, timing and uncertainty of cash flows from leases. This Update will become effective for Griffin in fiscal 2020 using a modified restatement approach for leases in effect as of and after the date of adoption. Early adoption and practical expedients to measure the effect of adoption will also be allowed. Griffin is evaluating the impact that the application of this Update will have on its consolidated financial statements.

In April 2015, the FASB issued ASU No. 2015-03, “Interest-Imputation of Interest,” (“ASU 2015-03”) which requires that debt issuance costs related to a recognized liability be presented on the balance sheet as a direct reduction from the carrying amount of the associated debt liability, consistent with debt discounts. This Update must be applied on a retrospective basis and was adopted by Griffin in the fiscal 2016 fourth quarter. The adoption of this guidance required Griffin to reclassify its debt issuance costs on nonrecourse mortgage loans from other assets to mortgage debt on its statement of financial position but did not have an impact on Griffin’s results of operations. The effect of the reclassification on Griffin’s statement of financial position is quantified in Note 4.

In May 2014, the FASB issued ASU No. 2014-09, “Revenue from Contracts with Customers.” This Update outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with customers. This Update is not applicable to revenue from leases. This Update supersedes most current revenue recognition guidance, including industry specific guidance, and requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. Additionally, the Update requires improved disclosures to help users of financial statements better understand the nature, amount, timing and uncertainty of revenue that is recognized. The Update permits the use of either the retrospective or cumulative effect transition method. This Update will be effective for Griffin in fiscal 2019 and early adoption is not permitted. Certain aspects of this new standard may affect revenue recognition of Griffin, however, Griffin does not anticipate a significant impact on its consolidated financial statements from the application of this Update because the majority of Griffin’s revenues are from leases, which are not subject to this Update.

## 2. Fair Value

Griffin applies the provisions of FASB ASC 820, “Fair Value Measurement” (“ASC 820”), which establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. Categorization of an asset or a liability within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. ASC 820 establishes three levels of inputs that may be used to measure fair value, as follows:

Level 1 applies to assets or liabilities for which there are quoted market prices in active markets for identical assets or liabilities. Griffin’s available-for-sale securities were considered Level 1 within the fair value hierarchy. Griffin sold its available-for-sale securities in the 2017 third quarter (see Note 7).

Level 2 applies to assets or liabilities for which there are inputs other than quoted prices included within Level 1 that are observable for the asset or liability, such as quoted prices for similar assets or liabilities in active markets; quoted prices for assets or liabilities in markets with insufficient volume or infrequent transactions (less active markets); or model-derived valuations in which significant inputs are observable or can be derived principally from, or corroborated by, observable market data. Level 2 assets and liabilities include Griffin’s interest rate swap agreements (see Note 4). These inputs are readily available in public markets or can be derived from information available in publicly quoted markets; therefore, Griffin has categorized these derivative instruments as Level 2 within the fair value hierarchy.

On June 9, 2017, Griffin closed on the acquisition of 215 International Drive (“215 International”) (see Note 3). The acquisition was accounted for in accordance with FASB ASC 805-10, “Business Combinations,” whereby the assets acquired were recorded at their fair values. The fair value of the real estate assets acquired was based upon publicly available data for similar properties. Therefore, Griffin has categorized the real estate assets acquired as Level 2 within the fair value hierarchy.

Level 3 applies to assets or liabilities for which there are unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities. As of August 31, 2017, Griffin’s consolidated balance sheet includes acquired intangible assets related to the acquisition of 215 International. These intangible assets are comprised of the value of the in-place leases and the associated tenant relationships. Griffin derived these values based on a discounted cash flow analysis using assumptions that included the rental rate of the in-place leases, the commission percentage expected to be paid on the subsequent leasing of the vacant space and the likelihood that tenants will renew their leases. Therefore, Griffin recognized the acquired intangible assets related to this transaction as Level 3 within the fair value hierarchy. As of November 30, 2016, Griffin’s consolidated financial statements did not include any Level 3 assets or liabilities that were measured on either a recurring or nonrecurring basis.

During the 2017 nine month period, Griffin did not transfer any assets or liabilities into or out of Levels 1 or 2. The following are Griffin's financial assets and liabilities carried at fair value and measured at fair value on a recurring basis:

|                                | August 31, 2017  |   |   |
|--------------------------------|--|---|---|
|                                | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
| Interest rate swap assets      | \$ —   | \$ 18                                   | \$ —                                      |
| Interest rate swap liabilities | \$ —   | \$ 2,447                                | \$ —                                      |

  

|                                | November 30, 2016  |   |   |
|--------------------------------|--|---|---|
|                                | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
| Marketable equity securities   | \$ 977   | \$ —                                    | \$ —                                      |
| Interest rate swap asset       | \$ —   | \$ 207                                  | \$ —                                      |
| Interest rate swap liabilities | \$ —   | \$ 1,892                                | \$ —                                      |

The carrying and estimated fair values of Griffin's financial instruments are as follows:

|  | Fair Value Hierarchy Level | August 31, 2017 |                      | November 30, 2016 |                      |
|--|----------------------------|-----------------|----------------------|-------------------|----------------------|
|  |                            | Carrying Value  | Estimated Fair Value | Carrying Value    | Estimated Fair Value |
| Financial assets:                          |                            |                 |                      |                   |                      |
| Cash and cash equivalents                  | 1                          | \$ 34,988       | \$ 34,988            | \$ 24,689         | \$ 24,689            |
| Proceeds held in escrow                    | 1                          | \$ 91           | \$ 91                | \$ 3,535          | \$ 3,535             |
| Marketable equity securities               | 1                          | \$ —            | \$ —                 | \$ 977            | \$ 977               |
| Interest rate swaps                        | 2                          | \$ 18           | \$ 18                | \$ 207            | \$ 207               |
| Financial liabilities:                     |                            |                 |                      |                   |                      |
| Mortgage loans, net of debt issuance costs | 2                          | \$ 131,564      | \$ 132,897           | \$ 109,697        | \$ 111,103           |
| Interest rate swaps                        | 2                          | \$ 2,447        | \$ 2,447             | \$ 1,892          | \$ 1,892             |

The amounts included in the consolidated financial statements for cash and cash equivalents, proceeds held in escrow, leasing receivables from tenants and accounts payable and accrued liabilities approximate their fair values because of the short-term maturity of these instruments. The fair values of the available-for-sale securities were based on quoted market prices. The fair values of the mortgage loans are estimated based on current rates offered to Griffin for similar debt of the same remaining maturities and, additionally, Griffin considers its credit worthiness in determining the fair value of its mortgage loans. The fair values of the interest rate swaps (used for purposes other than trading) are determined based on discounted cash flow models that incorporate the cash flows of the derivatives as well as the current Overnight Index Swap rate and swap curve along with other market data, taking into account current interest rates and the credit worthiness of the counterparty for assets and the credit worthiness of Griffin for liabilities.

The fair values of Griffin's nonfinancial assets related to the acquisition of 215 International are listed below. There were no liabilities assumed in connection with this acquisition. These assets were initially recorded at fair value but will not be re-measured at fair value on a recurring basis.

|                    | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|--------------------|--|---|---|
| Real estate assets | \$ —   | \$ 16,789                               | \$ —                                      |
| Intangible assets  | \$ —   | \$ —                                    | \$ 1,651                                  |

## 3. Real Estate Assets

On June 9, 2017, Griffin closed on the purchase of 215 International, an approximately 277,000 square foot industrial/warehouse building in Concord, North Carolina, for a purchase price of \$18,440. The purchase price was paid in cash at closing using the proceeds held in escrow from the 2017 Phoenix Crossing Land Sale (see below) of \$9,711 with the balance paid from Griffin's cash on hand. Griffin incurred approximately \$71 of acquisition costs on the purchase of 215 International which are included in general and administrative expenses on Griffin's consolidated statements of operations for the 2017 nine month period. 215 International was constructed in 2015 and was 74% leased at the time it was acquired. Subsequent to the closing, one of the tenants in 215 International leased an additional approximately 73,000 square feet, which resulted in 215 International being fully leased. 215 International is Griffin's first property in the Charlotte area. Griffin determined that the fair value of the assets acquired approximated the purchase price. Of the \$18,440 purchase price, \$16,789 represented the fair value of the real estate assets and \$1,651 represented the fair value of the acquired intangible assets, comprised of the value of the in-place leases at the time of purchase and tenant relationship intangible assets (see Note 2). The intangible assets are included in other assets on Griffin's consolidated balance sheet.

Real estate assets consist of:

|                            | <b>Estimated<br/>Useful Lives</b>                      | <b>Aug. 31, 2017</b> | <b>Nov. 30, 2016</b> |
|----------------------------|--|----------------------|----------------------|
| Land                       |  | \$ 20,403            | \$ 17,895            |
| Land improvements          | 10 to 30 years   | 28,539               | 27,592               |
| Buildings and improvements | 10 to 40 years   | 179,788              | 164,353              |
| Tenant improvements        | Shorter of useful<br>life or terms of<br>related lease | 26,590               | 21,925               |
| Machinery and equipment    | 3 to 20 years  | 11,022               | 11,022               |
| Construction in progress   |  | 5,266                | 1,659                |
| Development costs          |  | 14,779               | 14,615               |
|                            |  | 286,387              | 259,061              |
| Accumulated depreciation   |  | (92,864)             | (86,801)             |
|                            |  | <u>\$ 193,523</u>    | <u>\$ 172,260</u>    |

Total depreciation expense and capitalized interest related to real estate assets were as follows:

|                      | <b>For the Three Months Ended</b> |                      | <b>For the Nine Months Ended</b> |                      |
|----------------------|-----------------------------------|----------------------|----------------------------------|----------------------|
|                      | <b>Aug. 31, 2017</b>              | <b>Aug. 31, 2016</b> | <b>Aug. 31, 2017</b>             | <b>Aug. 31, 2016</b> |
| Depreciation expense | \$ 2,283                          | \$ 1,974             | \$ 6,490                         | \$ 5,756             |
| Capitalized interest | \$ 26                             | \$ 57                | \$ 26                            | \$ 274               |

On August 24, 2017, Griffin closed on the previously contracted purchase of approximately 14 acres of undeveloped land in Upper Macungie Township, Lehigh County, Pennsylvania (the "Macungie Purchase"). The purchase price of \$1,800 (excluding costs related to the purchase) was paid in cash at closing using the proceeds from the Southwick Land Sale that had been held in escrow (see below). The land acquired has all governmental approvals in place for Griffin's planned development, on speculation, of an approximately 134,000 square foot industrial/warehouse building.

On August 4, 2017, Griffin completed the sale of approximately 76 acres (the "Southwick Land Sale") of undeveloped land in Southwick, Massachusetts. Griffin received cash proceeds of \$2,100 before transaction costs and recorded a pretax gain of \$1,890 on the Southwick Land Sale. The net cash proceeds of \$1,943 from the Southwick Land Sale were placed in escrow for the acquisition of a replacement property as part of a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (a "1031 Like-Kind Exchange") (see above).

On April 28, 2017, Griffin closed on the previously contracted sale of approximately 67 acres (the "2017 Phoenix Crossing Land Sale") of undeveloped land in Phoenix Crossing, the approximately 268 acre business park master planned by Griffin that straddles the town line between Windsor and Bloomfield, Connecticut. Griffin received cash proceeds of \$10,250 before transaction costs and recorded a pretax gain of \$7,975 on the 2017 Phoenix Crossing

Land Sale. The net cash proceeds of \$9,711 from the 2017 Phoenix Crossing Land Sale were placed in escrow and subsequently used for the acquisition of 215 International as part of a 1031 Like-Kind Exchange (see above).

In fiscal 2013, Griffin completed the sale of approximately 90 acres of undeveloped land in Phoenix Crossing for \$8,968 in cash, before transaction costs (the “2013 Phoenix Crossing Land Sale”). Under the terms of the 2013 Phoenix Crossing Land Sale, Griffin was required to complete certain offsite improvements, primarily roadwork. As a result of Griffin's continued involvement with the land sold, the 2013 Phoenix Crossing Land Sale was accounted for under the percentage of completion method. Accordingly, the revenue and pretax gain on the sale were recognized on a pro rata basis in a ratio equal to the percentage of the total costs incurred to the total anticipated costs of sale, including costs of the required roadwork. Costs included in determining the percentage of completion included the cost of the land sold, allocated master planning costs and the cost of road construction. As of August 31, 2017, Griffin had substantially completed the required improvements related to the 2013 Phoenix Crossing Land Sale; accordingly, all of the remaining revenue and pretax gain on the sale have been recognized in Griffin's consolidated statements of operations. Griffin's consolidated statements of operations for the 2017 nine month period include revenue of \$104 and a pretax gain of \$66 from the 2013 Phoenix Crossing Land Sale. The consolidated statements of operations for the 2016 second quarter reflected a reduction of \$278 of previously recognized revenue on the 2013 Phoenix Crossing Land Sale that resulted from an increase in the estimated costs to complete the required road improvements made at that time. Therefore, the 2016 third quarter and 2016 nine month period reflected revenue of \$751 and \$473, respectively, and pretax gains of \$558 and \$280, respectively. From the closing of the 2013 Phoenix Crossing Land Sale in fiscal 2013 through August 31, 2017, Griffin's consolidated statements of operations have reflected total revenue of \$8,968 and a total pretax gain of \$6,674 from the 2013 Phoenix Crossing Land Sale.

On March 29, 2017, the full building tenant in an approximately 100,000 square foot industrial/warehouse building in New England Tradeport (“NE Tradeport”), Griffin's industrial park located in Windsor and East Granby, Connecticut, filed for protection under Chapter 11 of the U.S. Bankruptcy Code. In the 2017 third quarter, Griffin entered into an Amendment to Lease (the “Amendment”) with this tenant. Under the terms of the Amendment, the tenant's premises will be reduced to approximately 52,000 square feet prior to June 1, 2018, however, the per square foot rental rates and lease expiration date of March 31, 2024 under the existing lease remain the same. The tenant has also agreed to pay a termination fee of \$200 in monthly installments over the balance of the lease term. The Amendment was approved by the U.S. Bankruptcy Court subsequent to the end of the 2017 third quarter (see Note 9). Rental revenue from this tenant was \$279 in the 2017 third quarter.

Real estate assets held for sale consist of:

|                   | Aug. 31, 2017   | Nov. 30, 2016   |
|-------------------|-----------------|-----------------|
| Land              | \$ 1,256        | \$ 264          |
| Land improvements | 354             | —               |
| Development costs | 1,074           | 2,728           |
|                   | <u>\$ 2,684</u> | <u>\$ 2,992</u> |

In the 2017 nine month period, \$1,757 was reclassified from real estate assets to real estate assets held for sale related to sales agreements currently under contract (see Note 8). Real estate assets held for sale were reduced in the 2017 nine month period by \$2,065 related to property sales that closed.

## 4. Mortgage Loans

Griffin's mortgage loans, which are nonrecourse, consist of:

|   | Aug. 31, 2017     | Nov. 30, 2016     |
|---|-------------------|-------------------|
| Variable rate, due October 2, 2017 *                    | \$ 5,892          | \$ 6,034          |
| Variable rate, due February 1, 2019 *                   | —                 | 10,313            |
| Variable rate, due January 27, 2020 *                   | 3,510             | 3,606             |
| Variable rate, due January 2, 2025 *                    | 20,353            | 20,744            |
| Variable rate, due May 1, 2026 *                        | 13,930            | 14,187            |
| Variable rate, due November 17, 2026 *                  | 26,241            | 26,725            |
| Variable rate, due March 1, 2027 *                      | 11,891            | —                 |
| Variable rate, due August 1, 2027 *                     | 10,581            | —                 |
| 3.97%, due September 1, 2027                            | 12,150            | —                 |
| 5.09%, due July 1, 2029                                 | 6,700             | 7,001             |
| 5.09%, due July 1, 2029                                 | 4,694             | 4,905             |
| 4.33%, due August 1, 2030                               | 17,388            | 17,624            |
| Nonrecourse mortgage loans prior to debt issuance costs | 133,330           | 111,139           |
| Debt issuance costs, net                                | (1,766)           | (1,442)           |
| Nonrecourse mortgage loans, net                         | <u>\$ 131,564</u> | <u>\$ 109,697</u> |

\*Griffin entered into interest rate swap agreements to effectively fix the interest rates on these loans (see below).

As of November 30, 2016, Griffin retrospectively applied the provisions of ASU 2015-03, regarding the reclassification of debt issuance costs (see Note 1). As a result of the adoption of ASU 2015-03, Griffin reclassified \$1,442 as of November 30, 2016 from other assets to mortgage loans, as reflected in the table above.

On August 30, 2017, a subsidiary of Griffin closed on a \$12,150 nonrecourse mortgage loan (the "2017 40|86 Mortgage") with 40|86 Mortgage Capital, Inc. The 2017 40|86 Mortgage is collateralized by 215 International which Griffin acquired on June 9, 2017 (see Note 3) and has a ten year term with monthly principal payments based on a thirty year amortization schedule. The interest rate for the 2017 40|86 Mortgage is 3.97%.

On July 14, 2017, a subsidiary of Griffin closed on a \$10,600 nonrecourse mortgage loan (the "2017 Berkshire Mortgage") with Berkshire Bank ("Berkshire"). The 2017 Berkshire Mortgage refinanced an existing mortgage loan (the "2009 Berkshire Mortgage") with Berkshire that was due on February 1, 2019 and was collateralized by 100 International Drive ("100 International"), an approximately 304,000 square foot industrial/warehouse building in NE Tradeport. The 2009 Berkshire Mortgage had a balance of \$10,120 at the time of the refinancing and a variable interest rate of the one month LIBOR rate plus 2.75%. At the time Griffin completed the 2009 Berkshire Mortgage, Griffin entered into an interest rate swap agreement with Berkshire (the "2009 Berkshire Swap") to effectively fix the interest rate on the 2009 Berkshire Mortgage at 6.35% for the term of that loan. The 2017 Berkshire Mortgage is collateralized by the same property that collateralized the 2009 Berkshire Mortgage. The 2017 Berkshire Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2017 Berkshire Mortgage is a variable rate consisting of the one month LIBOR rate plus 2.05%. At the time the 2017 Berkshire Mortgage closed, Griffin terminated the 2009 Berkshire Swap and entered into a new interest rate swap agreement with Berkshire that effectively fixes the interest rate of the 2017 Berkshire Mortgage at 4.39% over the loan term. Griffin paid \$341 in connection with the termination of the 2009 Berkshire Swap. The terms of the 2017 Berkshire Mortgage require that if the full building tenant at 100 International does not extend its lease when it expires in fiscal 2025, Griffin will enter into a master lease of the vacated space that would then be in effect until the due date of the 2017 Berkshire Mortgage.

On March 15, 2017, a subsidiary of Griffin closed on a \$12,000 nonrecourse mortgage loan (the "2017 PUB Mortgage") with People's United Bank, N.A. ("PUB"). The 2017 PUB Mortgage is collateralized by two industrial/warehouse buildings in NE Tradeport aggregating approximately 275,000 square feet. The 2017 PUB Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2017 PUB Mortgage is a variable rate consisting of the one month LIBOR rate plus 1.95%. At the time the 2017 PUB Mortgage closed, Griffin also entered into an interest rate swap agreement with PUB for a notional



principal amount of \$12,000 at inception to effectively fix the interest rate at 4.45% for its full term. Under the terms of the 2017 PUB Mortgage, Griffin entered into a master lease for 759 Rainbow Road (“759 Rainbow”), one of two buildings that collateralize the 2017 PUB Mortgage. The master lease would only become effective if the full building tenant in 759 Rainbow does not renew its lease when it is scheduled to expire in fiscal 2019. The master lease would be in effect until either the space is re-leased to a new tenant or the due date of the 2017 PUB Mortgage.

On April 26, 2016, Griffin closed on a \$14,350 nonrecourse mortgage loan (the “2016 PUB Mortgage”) with PUB. The 2016 PUB Mortgage refinanced an existing mortgage loan (the “2009 PUB Mortgage”) with PUB that was due on August 1, 2019 and was collateralized by four industrial/warehouse buildings totaling approximately 240,000 square feet (14, 15, 16 and 40 International Drive) in NE Tradeport. The 2009 PUB Mortgage had a balance of \$7,418 at the time of the refinancing and a variable interest rate consisting of the one month LIBOR rate plus 3.08%. At the time Griffin completed the 2009 PUB Mortgage, Griffin entered into an interest rate swap agreement with PUB to effectively fix the rate on the 2009 PUB Mortgage at 6.58% for the term of that loan. The 2016 PUB Mortgage is collateralized by the same four properties that collateralized the 2009 PUB Mortgage along with another approximately 98,000 square foot industrial/warehouse building (35 International Drive) in NE Tradeport. At the closing of the 2016 PUB Mortgage, Griffin received net mortgage proceeds of \$6,932 (before transaction costs), which was net of the \$7,418 used to repay the 2009 PUB Mortgage. The 2016 PUB Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2016 PUB Mortgage is a variable rate consisting of the one month LIBOR rate plus 2.00%. At the time the 2016 PUB Mortgage closed, Griffin entered into another interest rate swap agreement with PUB that, combined with the existing interest rate swap agreement with PUB, effectively fixes the interest rate of the 2016 PUB Mortgage at 4.17% over the loan term. The terms of the 2016 PUB Mortgage require that if either the tenant that leases approximately 58,000 square feet in 40 International Drive or the tenant that leases approximately 40,000 square feet in 14 International Drive does not extend its respective lease when it expires in fiscal 2021, a subsidiary of Griffin will enter into a master lease of the vacated space. The master lease would be guaranteed by Griffin and be in effect until either the space is re-leased to a new tenant or the due date of the 2016 PUB Mortgage Loan, whichever occurs first.

On December 10, 2015, Griffin received additional mortgage proceeds of \$2,600 (the “Webster Earn-Out”) on the mortgage loan (the “2015 Webster Mortgage”) obtained by one of its subsidiaries with Webster Bank, N.A. (“Webster”) on an approximately 280,000 square foot industrial/warehouse building at 5220 Jandl Boulevard (“5220 Jandl”) in the Lehigh Valley of Pennsylvania. The 2015 Webster Mortgage closed on September 1, 2015, at which time initial proceeds of \$11,500 (before transaction costs) were received. At the time the 2015 Webster Mortgage closed, Griffin had leased approximately 196,000 square feet of 5220 Jandl. Griffin received the Webster Earn-Out when the tenant that leased that space exercised its option to lease the balance of the building. Subsequently, on November 17, 2016, Griffin closed on a new nonrecourse mortgage loan (the “2016 Webster Mortgage”) for \$26,725. The 2016 Webster Mortgage refinanced the amount then outstanding under the 2015 Webster Mortgage and is now collateralized by 5220 Jandl along with an adjacent approximately 252,000 square foot industrial/warehouse building. Griffin received mortgage proceeds of \$13,000 (before transaction costs), net of \$13,725 used to refinance the 2015 Webster Mortgage. The 2016 Webster Mortgage has a variable interest rate consisting of the one month LIBOR rate plus 1.70% and is due on November 17, 2026. At the time the 2016 Webster Mortgage closed, Griffin entered into an interest rate swap agreement with Webster that, combined with two existing swap agreements with Webster, effectively fixes the interest rate of the 2016 Webster Mortgage at 3.79% over the mortgage loan’s ten year term.

On December 11, 2015, Griffin received additional mortgage proceeds of \$1,850 (the “KeyBank Earn-Out”) on the mortgage loan (the “KeyBank Mortgage”) obtained by two of its subsidiaries with KeyBank, N.A. (“KeyBank”), formerly First Niagara Bank, on its properties at 4270 Fritch Drive (“4270 Fritch”) and 4275 Fritch Drive (“4275 Fritch”) in the Lehigh Valley of Pennsylvania. The KeyBank Mortgage closed on December 31, 2014, at which time initial proceeds of \$10,891 (before transaction costs) were received, in addition to \$8,859 used to refinance the existing mortgage on 4275 Fritch with KeyBank. The KeyBank Mortgage is collateralized by 4270 Fritch, an approximately 303,000 square foot industrial/warehouse building, and 4275 Fritch, an adjacent approximately 228,000 square foot industrial/warehouse building. When the KeyBank Mortgage closed, approximately 201,000 square feet of 4270 Fritch was leased. The KeyBank Earn-Out was subsequently received by Griffin when the remaining vacant space of approximately 102,000 square feet was leased. The KeyBank Mortgage has a variable interest rate consisting of the one month LIBOR rate plus 1.95% and is due on January 2, 2025. At the time the KeyBank Earn-Out was received, Griffin entered into an interest rate swap agreement with KeyBank that, when combined with two existing swap agreements with KeyBank, effectively fixes the interest rate on the KeyBank Mortgage at 4.39% over the remainder of the mortgage loan’s ten year term.

As of August 31, 2017, Griffin was a party to several interest rate swap agreements related to its variable rate nonrecourse mortgage loans on certain of its real estate assets. Griffin accounts for its interest rate swap agreements as effective cash flow hedges (see Note 2). No ineffectiveness on the cash flow hedges was recognized as of August 31, 2017 and none is anticipated over the term of the agreements. Amounts in accumulated other comprehensive loss will be reclassified into interest expense over the term of the swap agreements to achieve fixed interest rates on each mortgage. None of the interest rate swap agreements contain any credit risk related contingent features. In the 2017 and 2016 nine month periods, Griffin recognized losses, included in accumulated other comprehensive loss, before taxes of \$1,045 and \$2,898 on its interest rate swap agreements. As of August 31, 2017, \$1,101 was expected to be reclassified over the next twelve months from accumulated other comprehensive loss to interest expense. As of August 31, 2017, the net fair value of Griffin's interest rate swap agreements was \$2,429, with \$18 included in other assets and \$2,447 included in other liabilities on Griffin's consolidated balance sheet.

On September 22, 2017, two subsidiaries of Griffin closed on the refinancing of a nonrecourse mortgage loan (the "2012 Webster Loan") with Webster that was collateralized by 5 and 7 Waterside Crossing, two multi-story office buildings aggregating approximately 161,000 square feet in Griffin Center in Windsor, Connecticut. Immediately prior to the refinancing, the 2012 Webster Loan had a balance of \$5,876 with a maturity date of October 2, 2017. The refinanced nonrecourse mortgage loan (the "2017 Webster Loan") is for \$4,375, has a five year term with monthly principal payments based on a twenty-five year amortization schedule and is collateralized by the same properties that collateralized the 2012 Webster Loan. The 2017 Webster Loan has a variable interest rate consisting of the one-month LIBOR rate plus 2.75%, but Griffin entered into an interest rate swap agreement with Webster that effectively fixes the interest rate on the 2017 Webster Loan at 4.72% over the term of the 2017 Webster Loan. The 2012 Webster Loan had a variable interest rate that was effectively fixed at 3.86% through an interest rate swap agreement with Webster. Griffin used cash on hand of \$1,000 and \$501 that had been held in escrow by Webster to repay a portion of the 2012 Webster Loan in connection with the refinancing.

## 5. Revolving Credit Agreement

Griffin has a \$15,000 revolving credit line with Webster (the "Webster Credit Line") that expires July 31, 2018. Griffin has the option to further extend the term of the Webster Credit Line for an additional year, provided there is no default at the time such extension is requested. Interest on borrowings under the Webster Credit Line is at the one month LIBOR rate plus 2.75%.

The Webster Credit Line is collateralized by Griffin's properties in Griffin Center South, aggregating approximately 235,000 square feet, and an approximately 48,000 square foot single-story office building in Griffin Center. There have been no borrowings under the Webster Credit Line since its inception in fiscal 2013. As of August 31, 2017, the Webster Credit Line secured certain unused standby letters of credit aggregating \$1,723 that are related to Griffin's development activities.



## 6. Stockholders' Equity

*Per Share Results*

Basic and diluted per share results were based on the following:

|  | For the Three Months Ended |               | For the Nine Months Ended |               |
|--|----------------------------|---------------|---------------------------|---------------|
|  | Aug. 31, 2017              | Aug. 31, 2016 | Aug. 31, 2017             | Aug. 31, 2016 |
| Net income (loss)  | \$ 1,329                   | \$ (49)       | \$ 5,117                  | \$ (763)      |
| Weighted average shares outstanding for computation of basic per share results | 5,001,000                  | 5,093,000     | 5,013,000                 | 5,132,000     |
| Incremental shares from assumed exercise of Griffin stock options (a)          | 27,000                     | —             | 24,000                    | —             |
| Adjusted weighted average shares for computation of diluted per share results  | 5,028,000                  | 5,093,000     | 5,037,000                 | 5,132,000     |

- (a) Incremental shares from the assumed exercise of Griffin stock options are not included in periods where the inclusion of such shares would be anti-dilutive. The incremental shares from the assumed exercise of stock options for the 2016 third quarter and 2016 nine month period would have been 23,000 and 2,000, respectively.

*Griffin Stock Option Plan*

Stock options are granted by Griffin under the Griffin Industrial Realty, Inc. 2009 Stock Option Plan (the "2009 Stock Option Plan"). Options granted under the 2009 Stock Option Plan may be either incentive stock options or non-qualified stock options issued at an exercise price not less than fair market value on the date approved by Griffin's Compensation Committee. Vesting of all of Griffin's stock options is solely based upon service requirements and does not contain market or performance conditions.

Stock options issued will expire ten years from the grant date. In accordance with the 2009 Stock Option Plan, stock options issued to non-employee directors upon their initial election to the board of directors are fully exercisable immediately upon the date of the option grant. Stock options issued to non-employee directors upon their re-election to the board of directors vest on the second anniversary from the date of grant. Stock options issued to employees vest in equal installments on the third, fourth and fifth anniversaries from the date of grant. None of the stock options outstanding at August 31, 2017 may be exercised as stock appreciation rights.

The following options were granted by Griffin under the 2009 Stock Option Plan to Griffin employees:

|                        | For the Nine Months Ended |                                     |                  |                                     |
|------------------------|---------------------------|-------------------------------------|------------------|-------------------------------------|
|                        | Aug. 31, 2017             |                                     | Aug. 31, 2016    |                                     |
|                        | Number of Shares          | Fair Value per Option at Grant Date | Number of Shares | Fair Value per Option at Grant Date |
| Employees              | 5,000                     | \$ 11.13                            | 101,450          | \$ 7.51 - 11.65                     |
| Non-employee directors | 6,570                     | \$ 13.49                            | 8,409            | \$ 11.30                            |
|                        | 11,570                    |                                     | 109,859          |                                     |

The fair values of all options granted were estimated as of the grant date using the Black-Scholes option-pricing model. Assumptions used in determining the fair value of the stock options granted in the 2017 and 2016 nine month periods were as follows:

|                                 | For the Nine Months Ended |                |
|---------------------------------|---------------------------|----------------|
|                                 | Aug. 31, 2017             | Aug. 31, 2016  |
| Expected volatility             | 32.7 to 39.6 %            | 32.9 to 41.1 % |
| Risk free interest rates        | 2.1 to 2.2 %              | 1.2 to 1.5 %   |
| Expected option term (in years) | 7.5 to 8.5                | 5 to 8.5       |
| Annual dividend yield           | 0.8 to 0.9 %              | 0.9 %          |

|   |           |
|---|-----------|
| Number of option holders at August 31, 2017 | <u>31</u> |
|---|-----------|

Compensation expense and related tax benefits for stock options were as follows:

|                      | <u>For the Three Months Ended</u> |                      | <u>For the Nine Months Ended</u> |                      |
|----------------------|-----------------------------------|----------------------|----------------------------------|----------------------|
|                      | <u>Aug. 31, 2017</u>              | <u>Aug. 31, 2016</u> | <u>Aug. 31, 2017</u>             | <u>Aug. 31, 2016</u> |
| Compensation expense | \$ 90                             | \$ 71                | \$ 260                           | \$ 185               |
| Related tax benefit  | \$ 19                             | \$ 17                | \$ 59                            | \$ 41                |

For all periods presented, the forfeiture rate for directors was 0%, forfeiture rates for executives ranged from 17.9% to 22.6% and forfeiture rates for employees ranged from 38.3% to 41.1%. These rates were utilized based on the historical activity of the grantees.

As of August 31, 2017, the unrecognized compensation expense related to nonvested stock options that will be recognized during future periods is as follows:

|                        |        |
|------------------------|--------|
| Balance of Fiscal 2017 | \$ 90  |
| Fiscal 2018            | \$ 340 |
| Fiscal 2019            | \$ 234 |
| Fiscal 2020            | \$ 112 |
| Fiscal 2021            | \$ 34  |

A summary of the activity under the 2009 Griffin Stock Option Plan is as follows:

|                                    | <u>For the Nine Months Ended</u> |                                     |                         |                                     |
|------------------------------------|----------------------------------|-------------------------------------|-------------------------|-------------------------------------|
|                                    | <u>August 31, 2017</u>           |                                     | <u>August 31, 2016</u>  |                                     |
|                                    | <u>Number of Shares</u>          | <u>Weighted Avg. Exercise Price</u> | <u>Number of Shares</u> | <u>Weighted Avg. Exercise Price</u> |
| Outstanding at beginning of period | 324,546                          | \$ 29.23                            | 225,727                 | \$ 30.47                            |
| Granted                            | 11,570                           | \$ 30.59                            | 109,859                 | \$ 26.83                            |
| Forfeited                          | (2,354)                          | \$ 36.82                            | (11,040)                | \$ 30.73                            |
| Outstanding at end of period       | <u>333,762</u>                   | \$ 29.22                            | <u>324,546</u>          | \$ 29.23                            |

  

| <u>Range of Exercise Prices for Vested and Nonvested Options</u> | <u>Outstanding at August 31, 2017</u> | <u>Weighted Avg. Exercise Price</u> | <u>Weighted Avg. Remaining Contractual Life (in years)</u> | <u>Total Intrinsic Value</u> |
|--|---------------------------------------|-------------------------------------|--|------------------------------|
| \$23.00 - \$28.00  | 124,543                               | \$ 26.67                            | 8.2  | \$ 957                       |
| \$28.00 - \$32.00  | 128,248                               | \$ 29.07                            | 4.3  | 677                          |
| \$32.00 - \$39.00  | 80,971                                | \$ 33.40                            | 1.1  | 77                           |
|  | <u>333,762</u>                        | \$ 29.22                            | 5.0  | <u>\$ 1,711</u>              |

*Accumulated Other Comprehensive Loss*

Accumulated other comprehensive loss, net of tax, is comprised of the following:

|  | For the Nine Months Ended Aug. 31, 2017 |  |                   |
|--|---|--|-------------------|
|  | Unrealized loss on cash flow hedges     | Unrealized gain on investment in Centaur Media | Total             |
| Balance November 30, 2016                                  | \$ (1,062)                              | \$ 13  | \$ (1,049)        |
| Other comprehensive (loss) income before reclassifications | (1,322)                                 | 159  | (1,163)           |
| Amounts reclassified                                       | 636                                     | (172)  | 464               |
| Net activity for other comprehensive loss                  | (686)                                   | (13)   | (699)             |
| Balance August 31, 2017                                    | <u>\$ (1,748)</u>                       | <u>\$ —</u>                                    | <u>\$ (1,748)</u> |

|   | For the Nine Months Ended Aug. 31, 2016 |  |                   |
|---|---|--|-------------------|
|   | Unrealized loss on cash flow hedges     | Unrealized gain on investment in Centaur Media | Total             |
| Balance November 30, 2015                         | \$ (1,744)                              | \$ 659   | \$ (1,085)        |
| Other comprehensive loss before reclassifications | (1,825)                                 | (593)  | (2,418)           |
| Amounts reclassified                              | 646                                     | —  | 646               |
| Net activity for other comprehensive loss         | (1,179)                                 | (593)  | (1,772)           |
| Balance August 31, 2016                           | <u>\$ (2,923)</u>                       | <u>\$ 66</u>                                   | <u>\$ (2,857)</u> |

The components of other comprehensive loss are as follows:

|   | For the Three Months Ended |                       |                 |                   |                       |                 |
|---|----------------------------|-----------------------|-----------------|-------------------|-----------------------|-----------------|
|   | August 31, 2017            |                       |                 | August 31, 2016   |                       |                 |
|   | Pre-Tax                    | Tax (Expense) Benefit | Net-of Tax      | Pre-Tax           | Tax (Expense) Benefit | Net-of Tax      |
| Reclassifications included in net income (loss):  |                            |                       |                 |                   |                       |                 |
| Loss on cash flow hedges (interest expense)   | \$ 326                     | \$ (117)              | \$ 209          | \$ 348            | \$ (129)              | \$ 219          |
| Realized gain on sale of Centaur Media (gain on sale)   | (281)                      | 109                   | (172)           | —                 | —                     | —               |
| Total reclassifications included in net income (loss)   | <u>45</u>                  | <u>(8)</u>            | <u>37</u>       | <u>348</u>        | <u>(129)</u>          | <u>219</u>      |
| Mark to market adjustment on Centaur Media for a decrease in the foreign currency exchange rate | (11)                       | 3                     | (8)             | (108)             | 37                    | (71)            |
| Mark to market adjustment on Centaur Media for a decrease in fair value                         | (39)                       | 14                    | (25)            | (283)             | 100                   | (183)           |
| Decrease in fair value adjustments on Griffin's cash flow hedges                                | <u>(1,087)</u>             | <u>390</u>            | <u>(697)</u>    | <u>(1,129)</u>    | <u>419</u>            | <u>(710)</u>    |
| Total change in other comprehensive loss  | <u>(1,137)</u>             | <u>407</u>            | <u>(730)</u>    | <u>(1,520)</u>    | <u>556</u>            | <u>(964)</u>    |
| Other comprehensive loss  | <u>\$ (1,092)</u>          | <u>\$ 399</u>         | <u>\$ (693)</u> | <u>\$ (1,172)</u> | <u>\$ 427</u>         | <u>\$ (745)</u> |

|   | For the Nine Months Ended |                             |                 |                   |                             |                   |
|---|---------------------------|-----------------------------|-----------------|-------------------|-----------------------------|-------------------|
|   | August 31, 2017           |                             |                 | August 31, 2016   |                             |                   |
|   | Pre-Tax                   | Tax<br>(Expense)<br>Benefit | Net-of<br>Tax   | Pre-Tax           | Tax<br>(Expense)<br>Benefit | Net-of<br>Tax     |
| Reclassifications included in net income (loss):  |                           |                             |                 |                   |                             |                   |
| Loss on cash flow hedges (interest expense)   | \$ 1,007                  | \$ (371)                    | \$ 636          | \$ 1,025          | \$ (379)                    | \$ 646            |
| Realized gain on sale of Centaur Media (gain on sale)   | (281)                     | 109                         | (172)           | —                 | —                           | —                 |
| Total reclassifications included in net income (loss)   | 726                       | (262)                       | 464             | 1,025             | (379)                       | 646               |
| Mark to market adjustment on Centaur Media for an increase (decrease) in the foreign currency exchange rate | 25                        | (9)                         | 16              | (181)             | 63                          | (118)             |
| Mark to market adjustment on Centaur Media for an increase (decrease) in fair value                         | 220                       | (77)                        | 143             | (731)             | 256                         | (475)             |
| Decrease in fair value adjustments on Griffin's cash flow hedges  | (2,052)                   | 730                         | (1,322)         | (2,898)           | 1,073                       | (1,825)           |
| Total change in other comprehensive loss  | (1,807)                   | 644                         | (1,163)         | (3,810)           | 1,392                       | (2,418)           |
| Other comprehensive loss  | <u>\$ (1,081)</u>         | <u>\$ 382</u>               | <u>\$ (699)</u> | <u>\$ (2,785)</u> | <u>\$ 1,013</u>             | <u>\$ (1,772)</u> |

#### *Stock Repurchases*

In fiscal 2016, Griffin's Board of Directors authorized a stock repurchase program whereby, starting on May 11, 2016, Griffin could repurchase up to \$5,000 of its outstanding common stock over a twelve month period in privately negotiated transactions. The stock repurchase program expired on May 10, 2017. In fiscal 2017, prior to the expiration of the stock repurchase program, Griffin repurchased 47,173 shares of its outstanding common stock for \$1,474. Including the stock repurchased in fiscal 2016, Griffin repurchased a total of 152,173 shares for \$4,828 under the stock repurchase program.

#### *Cash Dividend*

Griffin did not declare a cash dividend in the 2017 or 2016 nine month periods. During the 2017 first quarter, Griffin paid \$1,514 for the cash dividend declared in the 2016 fourth quarter. During the 2016 first quarter, Griffin paid \$1,546 for the cash dividend declared in the 2015 fourth quarter.

### 7. Supplemental Financial Statement Information

#### *Available-for-Sale Securities*

In the 2017 third quarter, Griffin sold its 1,952,462 shares in Centaur Media plc ("Centaur Media") for cash proceeds of \$1,216, after transaction costs, which resulted in a pretax gain of \$275. Accordingly, Griffin no longer owned any shares of common stock in Centaur Media as of August 31, 2017.

Griffin's investment in the common stock of Centaur Media was accounted for as an available-for-sale security under ASC 320, "Investments – Debt and Equity Securities." Accordingly, changes in the fair value of Centaur Media, reflecting both changes in the stock price and changes in the foreign currency exchange rate, were included, net of income taxes, in accumulated other comprehensive loss (see Note 6). Griffin did not sell any Centaur Media common stock in the 2016 nine month period.

Griffin's investment in Centaur Media was included in other assets on Griffin's consolidated balance sheet. The fair value, cost and unrealized loss of Griffin's investment in Centaur Media were as follows:

|                 | Nov. 30, 2016  |
|-----------------|----------------|
| Fair value      | \$ 977         |
| Cost            | 1,014          |
| Unrealized loss | <u>\$ (37)</u> |

*Other Assets*

Griffin's other assets are comprised of the following:

|   | Aug. 31, 2017    | Nov. 30, 2016    |
|---|------------------|------------------|
| Deferred rent receivable  | \$ 5,190         | \$ 4,474         |
| Deferred leasing costs  | 4,682            | 4,746            |
| Prepaid expenses  | 4,369            | 2,333            |
| Intangible assets, net  | 1,790            | 247              |
| Lease receivables from tenants  | 1,242            | 369              |
| Mortgage escrows  | 751              | 717              |
| Property and equipment, net   | 290              | 280              |
| Deposits and other expenditures related to potential real estate acquisitions | 68               | 497              |
| Deferred financing costs related to the Webster Credit Line                   | 64               | 117              |
| Interest rate swap assets   | 18               | 207              |
| Available-for-sale securities   | —                | 977              |
| Other   | 132              | 199              |
| Total other assets  | <u>\$ 18,596</u> | <u>\$ 15,163</u> |

*Accounts Payable and Accrued Liabilities*

Griffin's accounts payable and accrued liabilities are comprised of the following:

|  | Aug. 31, 2017   | Nov. 30, 2016   |
|--|-----------------|-----------------|
| Accrued construction costs and retainage       | \$ 3,009        | \$ 1,252        |
| Accrued interest payable                       | 454             | 390             |
| Accrued salaries, wages and other compensation | 430             | 725             |
| Trade payables                                 | 353             | 573             |
| Accrued lease commissions                      | 149             | 487             |
| Other  | 702             | 713             |
| Total accounts payable and accrued liabilities | <u>\$ 5,097</u> | <u>\$ 4,140</u> |

*Other Liabilities*

Griffin's other liabilities are comprised of the following:

|  | Aug. 31, 2017   | Nov. 30, 2016   |
|--|-----------------|-----------------|
| Deferred compensation plan               | \$ 4,846        | \$ 4,334        |
| Interest rate swap liabilities           | 2,447           | 1,892           |
| Prepaid rent from tenants                | 1,078           | 938             |
| Security deposits of tenants             | 583             | 413             |
| Conditional asset retirement obligations | 288             | 288             |
| Land sale deposit                        | 155             | —               |
| Other                                    | 75              | 78              |
| Total other liabilities                  | <u>\$ 9,472</u> | <u>\$ 7,943</u> |

*Supplemental Cash Flow Information*

In the 2017 nine month period, Griffin received \$3,535 of cash, after transaction costs, from the fiscal 2016 sale of approximately 29 acres of undeveloped land in Griffin Center (the “Griffin Center Land Sale”). The proceeds from the Griffin Center Land Sale were deposited into escrow at the time the sale closed for the potential purchase of a

replacement property in a 1031 Like-Kind Exchange. As a replacement property was not acquired in the time period required under the applicable tax code, the sale proceeds were returned to Griffin.

An increase of \$245 in fiscal 2017 prior to the sale of the remaining shares and a decrease of \$912 in the 2016 nine month period in Griffin's investment in Centaur Media reflect the mark to market adjustments of this investment and did not affect Griffin's cash.

Accounts payable and accrued liabilities related to additions to real estate assets increased by \$1,757 and \$293 in the 2017 nine month period and 2016 nine month period, respectively.

Interest payments were as follows:

| For the Three Months Ended |               | For the Nine Months Ended |               |
|----------------------------|---------------|---------------------------|---------------|
| Aug. 31, 2017              | Aug. 31, 2016 | Aug. 31, 2017             | Aug. 31, 2016 |
| \$ 1,309                   | \$ 1,098      | \$ 3,861                  | \$ 3,334      |

#### *Income Taxes*

Griffin's effective income tax provision rate was 35.4% for the 2017 nine month period as compared to an income tax benefit rate of 21.2% for the 2016 nine month period. The effective tax provision rate for the 2017 nine month period reflects the federal statutory income tax rate adjusted for the effects of permanent differences and state income taxes. The effective tax rate in the 2017 nine month period is based on management's projections of pretax results for the balance of the year. To the extent that actual results differ from current projections, the effective income tax rate may change. The income tax benefit for the 2016 nine month period reflected the effect of a change in Connecticut tax law, effective for Griffin in fiscal 2016, whereby the future usage of state net operating loss carryforwards is limited to 50% of taxable income. Therefore, in the 2016 nine month period, Griffin decreased its expected realization of the tax benefit related to its Connecticut state net operating loss carryforwards.

#### 8. Commitments and Contingencies

As of August 31, 2017, Griffin had committed purchase obligations of approximately \$3,712, principally related to the construction of an approximately 137,000 square foot industrial/warehouse building in NE Tradeport and the development of other Griffin properties.

On January 25, 2016, Griffin entered into an Option Purchase Agreement (the "Simsbury Option Agreement") whereby Griffin granted the buyer an exclusive three month option, in exchange for a nominal fee, to purchase approximately 280 acres of land in Simsbury, Connecticut for approximately \$7,700. The buyer may extend the option period for up to three years upon payment of additional option fees. In the 2017 first quarter, the buyer paid \$80 of additional option fees to extend its option period through January 2018. The land subject to the Simsbury Option Agreement is undeveloped and does not have any of the approvals that would be required for the buyer's planned use of the land, which is to generate solar electricity. A closing on the land sale contemplated by the Simsbury Option Agreement is subject to obtaining governmental approvals for the planned use of the land. There is no guarantee that the sale of land as contemplated under the Simsbury Option Agreement will be completed under its current terms, or at all.

On May 5, 2017, Griffin entered into an Option Purchase Agreement (the "EGW Option Agreement") whereby Griffin granted the buyer an exclusive three month option, in exchange for a nominal fee, to purchase approximately 288 acres of land in East Granby and Windsor, Connecticut for approximately \$7,800. The buyer may extend the option period for up to three years upon payment of additional option fees. The land subject to the EGW Option Agreement is undeveloped and does not have any of the approvals that would be required for the buyer's planned use of the land, which is to generate solar electricity. A closing on the land sale contemplated by the EGW Option Agreement is subject to several significant contingencies, including the buyer procuring electrical utility supply contracts, approval by the state public utility regulatory authorities and governmental approvals for the planned use of the land. There is no guarantee that the sale of land as contemplated under the EGW Option Agreement will be completed under its current terms, or at all.

Griffin is involved, as a defendant, in various litigation matters arising in the ordinary course of business. In the opinion of management, based on the advice of legal counsel, the ultimate liability, if any, with respect to these matters is not expected to be material, individually or in the aggregate, to Griffin's consolidated financial position, results of operations or cash flows.

#### 9. Subsequent Events

In accordance with FASB ASC 855, "Subsequent Events," Griffin has evaluated all events or transactions occurring after August 31, 2017, the balance sheet date, and noted that there have been no such events or transactions that would require recognition or disclosure in the consolidated financial statements as of and for the quarter ended August 31, 2017, other than the disclosures herein.

On March 29, 2017, the full building tenant in an approximately 100,000 square foot industrial/warehouse building in NE Tradeport filed for protection under Chapter 11 of the U.S. Bankruptcy Code. In the 2017 third quarter, Griffin entered into an Amendment to Lease (the "Amendment") with this tenant. Under the terms of the Amendment, the tenant's premises will be reduced to approximately 52,000 square feet prior to June 1, 2018, however, the per square foot rental rates and lease expiration date of March 31, 2024 under the existing lease remain the same. The Amendment was approved by the U.S. Bankruptcy Court on September 5, 2017 (see Note 3).

Subsequent to August 31, 2017, Griffin entered into an agreement to purchase an approximately 22 acre parcel of undeveloped land in Concord, North Carolina (the "Concord Land") for \$2,600 in cash. If the transaction closes, Griffin plans to construct an industrial/warehouse development on the Concord Land, which is located near 215 International. The amount of industrial/warehouse space to be developed there will be based upon findings during due diligence. Closing of this purchase, anticipated to take place in fiscal 2018, is subject to several conditions, including the satisfactory outcome of due diligence and obtaining all governmental approvals for Griffin's development plans for the Concord Land. There is no guarantee that this transaction will be completed under its current terms, or at all.

See Note 4 for disclosure of the subsequent event related to the closing of a nonrecourse mortgage loan on September 22, 2017.

## ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

### Overview

Griffin Industrial Realty, Inc. ("Griffin") is a real estate business principally engaged in developing, managing and leasing industrial/warehouse properties, and to a lesser extent, office/flex properties. Griffin seeks to add to its property portfolio through the acquisition and development of land or the purchase of buildings. Periodically, Griffin may sell certain portions of its undeveloped land that it has owned for an extended time period and the use of which is not consistent with Griffin's core development and leasing strategy. The significant accounting policies and methods used in the preparation of Griffin's unaudited consolidated financial statements included in Item 1 of this Quarterly Report on Form 10-Q are consistent with those used in the preparation of Griffin's audited consolidated financial statements for its fiscal year ended November 30, 2016 ("fiscal 2016") included in Griffin's Annual Report on Form 10-K as filed with the Securities and Exchange Commission on February 10, 2017.

The preparation of financial statements in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses in the reporting period. Griffin regularly evaluates estimates and assumptions related to the useful life and recoverability of long-lived assets, stock-based compensation expense, deferred income tax asset valuations, valuation of derivative instruments and the estimated costs to complete required offsite improvements related to land sold. Griffin bases its estimates and assumptions on current facts, historical experience and various other factors that it believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities and the accrual of costs and expenses that are not readily apparent from other sources. The actual results experienced by Griffin may differ materially and adversely from Griffin's estimates. To the extent there are material differences between the estimates and the actual results, future results of operations will be affected. The significant accounting estimates used by Griffin in the preparation of its financial statements for the three months and nine months ended August 31, 2017 are consistent with those used by Griffin to prepare its consolidated financial statements for fiscal 2016.

### Summary

For the three months ended August 31, 2017 (the "2017 third quarter"), Griffin had net income of approximately \$1.3 million as compared to a net loss of less than \$0.1 million for the three months ended August 31, 2016 (the "2016 third quarter"). The net income in the 2017 third quarter, as compared to a net loss in the 2016 third quarter, principally reflected an increase in operating income to approximately \$3.2 million in the 2017 third quarter from approximately \$1.1 million in the 2016 third quarter and a gain from the sale of Griffin's holdings of the common stock of Centaur Media plc ("Centaur") of approximately \$0.3 million in the 2017 third quarter. The approximately \$2.1 million increase in operating income in the 2017 third quarter over the 2016 third quarter and the gain on the sale of Centaur common stock were partially offset by an approximately \$0.3 million increase in interest expense in the 2017 third quarter as compared to the 2016 third quarter and an income tax provision of approximately \$0.7 million in the 2017 third quarter as compared to an income tax benefit of less than \$0.1 million in the 2016 third quarter.

The approximately \$2.1 million increase in operating income in the 2017 third quarter over the 2016 third quarter reflected: (a) an increase of approximately \$1.1 million in profit from leasing activities<sup>1</sup> (which Griffin defines as rental revenue less operating expenses of rental properties); and (b) an increase of approximately \$1.4 million of gain from property sales (revenue from property sales less costs related to property sales); partially offset by (c) an increase of approximately \$0.4 million in depreciation and amortization expense. General and administrative expenses were essentially unchanged in the 2017 third quarter as compared to the 2016 third quarter.

The increase in profit from leasing activities in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected higher rental revenue in the 2017 third quarter as a result of more space under lease in the 2017 third quarter than the 2016 third quarter. The increase in gain from property sales in the 2017 third quarter, as compared

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<sup>1</sup> Profit from leasing activities is not a financial measure in conformity with U.S. GAAP. It is presented because Griffin believes it is a useful financial indicator for measuring results of its real estate leasing activities. However, it should not be considered as an alternative to operating income as a measure of operating results in accordance with U.S. GAAP.



to the 2016 third quarter, was driven by the sale in the 2017 third quarter of approximately 76 acres of undeveloped land in Southwick, Massachusetts (the “Southwick Land Sale”). The higher depreciation and amortization expense in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected depreciation and amortization expense on 215 International Drive (“215 International”) and 5210 Jaendl Boulevard (“5210 Jaendl”). 215 International is an approximately 277,000 square foot industrial/warehouse building in the Charlotte, North Carolina area that was acquired on June 9, 2017. 5210 Jaendl is an approximately 252,000 square foot industrial/warehouse building in the Lehigh Valley of Pennsylvania that was completed and placed in service in the 2016 third quarter. The higher interest expense in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected an increase in the amount outstanding under Griffin’s mortgage loans in the 2017 third quarter as compared to the 2016 third quarter. The income tax provision in the 2017 third quarter, as compared to an income tax benefit in the 2016 third quarter, reflected having pretax income in the 2017 third quarter as compared to incurring a pretax loss in the 2016 third quarter.

For the nine months ended August 31, 2017 (the “2017 nine month period”), Griffin had net income of approximately \$5.1 million as compared to a net loss of approximately \$0.8 million for the nine months ended August 31, 2016 (the “2016 nine month period”). The net income in the 2017 nine month period, as compared to a net loss in the 2016 nine month period, principally reflected an increase in operating income to approximately \$11.8 million in the 2017 nine month period from approximately \$2.2 million in the 2016 nine month period and a gain from the sale of Griffin’s investment in Centaur of approximately \$0.3 million in the 2017 nine month period. The approximately \$9.6 million increase in operating income and the gain on the sale of Centaur common stock were partially offset by an approximately \$0.9 million increase in interest expense in the 2017 nine month period, as compared to the 2016 nine month period, a gain of approximately \$0.1 million on the sale of assets in the 2016 nine month period and an income tax provision of approximately \$2.8 million in the 2017 nine month period as compared to an income tax benefit of approximately \$0.2 million in the 2016 nine month period.

The approximately \$9.6 million increase in operating income in the 2017 nine month period over the 2016 nine month period reflected: (a) an increase of approximately \$9.8 million of gain from property sales; and (b) an increase of approximately \$1.4 million in profit from leasing activities; partially offset by (c) an increase of approximately \$0.8 million in depreciation and amortization expense; and (d) an increase of approximately \$0.7 million in general and administrative expenses. The increase in the gain from property sales was driven by a gain of approximately \$8.0 million from the sale of approximately 67 acres of undeveloped land in Phoenix Crossing (the “2017 Phoenix Crossing Land Sale”), an approximately 268 acre business park master planned by Griffin that straddles the town line between Windsor and Bloomfield, Connecticut and a gain of approximately \$1.9 million from the Southwick Land Sale during the 2017 nine month period. The increase in profit from leasing activities in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected higher rental revenue in the 2017 nine month period as a result of more space under lease in the 2017 nine month period than the 2016 nine month period. The higher depreciation and amortization expense in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected depreciation and amortization expense related to 5210 Jaendl and 215 International. The increase in general and administrative expenses in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected the write-off of costs incurred for a potential purchase of undeveloped land that was not completed and higher expenses related to Griffin’s non-qualified deferred compensation plan. The higher interest expense in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected less capitalized interest in the 2017 nine month period than the 2016 nine month period and an increase in the amount outstanding under Griffin’s mortgage loans in the 2017 nine month period as compared to the 2016 nine month period. The income tax provision in the 2017 nine month period, as compared to an income tax benefit in the 2016 nine month period, reflected having pretax income in the 2017 nine month period as compared to incurring a pretax loss in the 2016 nine month period.

## **Results of Operations**

### **2017 Third Quarter Compared to 2016 Third Quarter**

Total revenue increased to approximately \$10.0 million in the 2017 third quarter from approximately \$7.3 million in the 2016 third quarter, reflecting increases in revenue from property sales and rental revenue of approximately \$1.4 million and \$1.3 million, respectively.

Rental revenue increased to approximately \$7.8 million in the 2017 third quarter from approximately \$6.5 million in the 2016 third quarter. The approximately \$1.3 million increase in rental revenue in the 2017 third quarter over the 2016 third quarter was principally due to: (a) an increase of approximately \$0.6 million from leasing

previously vacant space; (b) an increase of approximately \$0.5 million from 5210 Jandl Boulevard (“5210 Jandl”), which was placed in service in the fiscal 2016 third quarter and fully leased in fiscal 2016, with tenants taking occupancy and rental revenue starting in the fiscal 2017 first quarter; (c) approximately \$0.3 million of rental revenue from 215 International, the industrial/warehouse building acquired on June 9, 2017; and (d) an increase of approximately \$0.1 million from all other rental revenue; partially offset by a decrease of approximately \$0.2 million from leases that expired.

A summary of the total square footage and leased square footage of the buildings in Griffin’s real estate portfolio is as follows:

|                         | <b>Total<br/>Square<br/>Footage</b> | <b>Square<br/>Footage<br/>Leased</b> | <b>Percentage<br/>Leased</b> |
|-------------------------|-------------------------------------|--------------------------------------|------------------------------|
| As of August 31, 2016   | 3,297,000                           | 2,893,000                            | 88%                          |
| As of November 30, 2016 | 3,297,000                           | 3,066,000                            | 93%                          |
| As of August 31, 2017   | 3,574,000                           | 3,436,000                            | 96%                          |

The increase of approximately 277,000 square feet in Griffin’s total square footage as of August 31, 2017, as compared to November 30, 2016 and August 31, 2016, reflected the 2017 third quarter acquisition of 215 International, an industrial/warehouse building in Concord, North Carolina, Griffin’s first property in the greater Charlotte area. 215 International was 74% leased when acquired, and Griffin subsequently leased the balance of the building in the 2017 third quarter. The net increase of approximately 369,000 square feet in space leased as of August 31, 2017, as compared to November 30, 2016, reflected the acquisition of the approximately 277,000 square feet in 215 International and two new leases of industrial/warehouse space aggregating approximately 104,000 square feet in New England Tradeport (“NE Tradeport”), Griffin’s industrial park in Windsor and East Granby, Connecticut, partially offset by the expiration of an approximately 12,000 square foot lease of office/flex space in Griffin Center South in Bloomfield, Connecticut.

As of August 31, 2017, Griffin’s approximately 3,141,000 square feet of industrial/warehouse space, which comprised approximately 88% of Griffin’s total square footage, was essentially fully leased. In the 2017 third quarter, Griffin started construction on an approximately 137,000 square foot industrial/warehouse building in NE Tradeport (see Liquidity and Capital Resources section below). Griffin’s office/flex buildings, which aggregate approximately 433,000 square feet, were approximately 71% leased as of August 31, 2017. In the 2017 third quarter, Griffin entered into a lease amendment (the “Lease Amendment”) with the full building tenant that is leasing an approximately 100,000 square foot industrial/warehouse building in NE Tradeport. The tenant filed for protection under Chapter 11 of the U.S. Bankruptcy Code in the 2017 second quarter. Under the terms of the Lease Amendment, the tenant’s premises will be reduced to approximately 52,000 square feet prior to June 1, 2018, however the per square foot rental rates and lease expiration date of March 31, 2024 under the existing lease remain the same. The tenant has also agreed to pay a termination fee of \$0.2 million in monthly installments over the balance of the lease term. Subsequent to the end of the 2017 third quarter, the Lease Amendment became effective upon approval by the U.S. Bankruptcy Court. Rental revenue from this tenant was approximately \$0.3 million in the 2017 third quarter.

All of Griffin’s Connecticut properties are in the north submarket of Hartford. Through the end of the 2017 nine month period, the industrial/warehouse real estate market where Griffin’s Connecticut industrial/warehouse properties are located remained strong. The Marketview Report of CBRE Group, Inc. (“CBRE”), a national real estate services company, stated that for the first six months of 2017, absorption of industrial space in Hartford’s north submarket was approximately 500,000 square feet, with a vacancy rate under 6%. The real estate market for office/flex space where Griffin’s Connecticut office/flex properties are located remained weak during the 2017 nine month period. The Lehigh Valley industrial real estate market was strong during the 2017 nine month period, as the vacancy rate as of June 30, 2017, reported by CBRE, remained below 5% there. The Charlotte, North Carolina industrial real estate market is strong. CBRE’s Marketview Report for Charlotte stated that high absorption has resulted in a June 30, 2017 vacancy rate under 5% there. There is no guarantee that an active or strong real estate market will result in leasing space that was vacant as of August 31, 2017 or space that becomes vacant subsequent to August 31, 2017.

Revenue from property sales increased to approximately \$2.2 million in the 2017 third quarter from approximately \$0.8 million in the 2016 third quarter. Property sales revenue in the 2017 third quarter reflected \$2.1 million from the Southwick Land Sale and approximately \$0.1 million from the sale of an undeveloped residential lot in Suffield, Connecticut. The costs related to the Southwick Land Sale and the residential lot that was sold were approximately \$0.2 million and less than \$0.1 million, respectively, resulting in pretax gains of approximately \$1.9 million and less than \$0.1 million, respectively. Griffin did not complete any property sales in the 2016 third

quarter. Revenue from property sales of approximately \$0.8 million in the 2016 third quarter reflected the recognition of revenue from the sale of approximately 90 acres of undeveloped land in Phoenix Crossing (the “2013 Phoenix Crossing Land Sale”) that closed in the fiscal year ended November 30, 2013 (“fiscal 2013”) and was accounted for under the percentage of completion method whereby revenue and gain was recognized as costs related to the 2013 Phoenix Crossing Land Sale (initial land costs and required offsite improvements) were incurred. Under the terms of the 2013 Phoenix Crossing Land Sale, Griffin constructed roads to connect the land sold to existing town roads. Accordingly, because of Griffin’s continued involvement with the land that was sold, the 2013 Phoenix Crossing Land Sale was accounted for under the percentage of completion method. In the 2016 third quarter, costs related to the 2013 Phoenix Crossing Land Sale were approximately \$0.2 million, resulting in approximately \$0.6 million of gain from the 2013 Phoenix Crossing Land Sale recognized in the 2016 third quarter. Griffin substantially completed the required offsite improvements under the terms of the 2013 Phoenix Crossing Land Sale in the fiscal 2017 second quarter (the “2017 second quarter”). From the closing of the 2013 Phoenix Crossing Land Sale through the end of the 2017 second quarter, Griffin recognized total revenue of approximately \$9.0 million and a total pretax gain of approximately \$6.7 million from the 2013 Phoenix Crossing Land Sale. Property sales occur periodically and changes in revenue from year to year from property sales may not be indicative of any trends in Griffin’s real estate business.

Operating expenses of rental properties increased to approximately \$2.1 million in the 2017 third quarter from approximately \$2.0 million in the 2016 third quarter. The approximately \$0.1 million increase in operating expenses of rental properties in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected approximately \$0.1 million of expenses at 5210 Jandl, which was placed in service in the fiscal 2016 third quarter and 215 International.

Depreciation and amortization expense increased to approximately \$2.6 million in the 2017 third quarter from approximately \$2.2 million in the 2016 third quarter. The approximately \$0.4 million increase in depreciation and amortization expense in the 2017 third quarter, as compared to the 2016 third quarter, reflected depreciation and amortization expense of approximately \$0.2 million related to 215 International, approximately \$0.1 million related to 5210 Jandl and approximately \$0.1 million across all other properties.

Griffin’s general and administrative expenses decreased to approximately \$1.7 million in the 2017 third quarter from approximately \$1.8 million in the 2016 third quarter. The approximately \$0.1 million decrease in general and administrative expenses in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected a decrease of approximately \$0.1 million related to Griffin’s non-qualified deferred compensation plan. The lower expense related to Griffin’s non-qualified deferred compensation plan reflected a smaller increase in the non-qualified deferred compensation plan liability in the 2017 third quarter, as compared to the 2016 third quarter, as a result of the effect of lower returns on participant balances in the 2017 third quarter than in the 2016 third quarter.

Griffin’s interest expense increased to approximately \$1.4 million in the 2017 third quarter from approximately \$1.2 million in the 2016 third quarter. The approximately \$0.2 million increase in interest expense in the 2017 third quarter, as compared to the 2016 third quarter, principally reflected interest expense of approximately \$0.2 million on two nonrecourse mortgage loans outstanding in the 2017 third quarter that were entered into subsequent to the end of the 2016 third quarter.

In the 2017 third quarter, Griffin sold its holdings of the common stock of Centaur for cash proceeds of approximately \$1.2 million and a pretax gain of approximately \$0.3 million. The approximately \$0.1 million gain on the sale of assets in the 2016 third quarter was from the disposition of certain fully depreciated equipment.

Griffin’s income tax provision was approximately \$0.7 million in the 2017 third quarter as compared to an income tax benefit of less than \$0.1 million in the 2016 third quarter. The income tax provision in the 2017 third quarter reflects an effective tax rate of 34.6% on pretax income of approximately \$2.0 million. The income tax benefit in the 2016 third quarter reflects an effective tax rate of 32.9% on the pretax loss of less than \$0.1 million incurred in the 2016 third quarter.

#### **2017 Nine Month Period Compared to 2016 Nine Month Period**

Total revenue increased to approximately \$35.0 million in the 2017 nine month period from approximately \$20.5 million in the 2016 nine month period, reflecting increases in property sales revenue and rental revenue of

approximately \$12.5 million and \$2.1 million, respectively. Revenue from property sales increased to approximately \$13.0 million in the 2017 nine month period as compared to approximately \$0.5 million in the 2016 nine month period.

Rental revenue increased to approximately \$22.1 million in the 2017 nine month period from approximately \$20.0 million in the 2016 nine month period. The approximately \$2.1 million increase in rental revenue in the 2017 nine month period over the 2016 nine month period was principally due to: (a) an increase of approximately \$1.4 million from leasing previously vacant space; (b) an increase of approximately \$1.3 million from 5210 Jaendl, which was placed in service in the fiscal 2016 third quarter and fully leased in fiscal 2016, with tenants taking occupancy and rental revenue starting in the fiscal 2017 first quarter; (c) approximately \$0.3 million of rental revenue from 215 International, the industrial/warehouse building acquired on June 9, 2017; and (d) approximately \$0.1 million from all other changes in rental revenue; partially offset by a decrease of approximately \$0.9 million from leases that expired.

Revenue from property sales increased to approximately \$13.0 million in the 2017 nine month period as compared to approximately \$0.5 million in the 2016 nine month period. Property sales revenue in the 2017 nine month period reflected approximately \$10.3 million from the 2017 Phoenix Crossing Land Sale, \$2.1 million from the Southwick Land Sale, approximately \$0.5 million from two smaller land sales and approximately \$0.1 million from the 2013 Phoenix Crossing Land Sale. The costs related to the 2017 Phoenix Crossing Land Sale, the Southwick Land Sale and the two smaller land sales were approximately \$2.3 million, \$0.2 million and \$0.4 million, respectively, resulting in pretax gains of approximately \$8.0 million, \$1.9 million and \$0.1 million, respectively. Griffin did not complete any property sales in the 2016 nine month period. Revenue from property sales of approximately \$0.5 million in the 2016 nine month period reflected the recognition of revenue from the 2013 Phoenix Crossing Land Sale. In the 2016 nine month period, costs related to the 2013 Phoenix Crossing Land Sale were approximately \$0.2 million, resulting in an approximately \$0.3 million gain from the 2013 Phoenix Crossing Land Sale recognized in the 2016 nine month period. Property sales occur periodically and changes in revenue from year to year from property sales may not be indicative of any trends in Griffin's real estate business.

Operating expenses of rental properties increased to approximately \$6.8 million in the 2017 nine month period from approximately \$6.1 million in the 2016 nine month period. The approximately \$0.7 million increase in operating expenses of rental properties in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected approximately \$0.3 million of expenses at 5210 Jaendl, which was placed in service in the fiscal 2016 third quarter, approximately \$0.1 million of expenses at 215 International, which was acquired on June 9, 2017, and an increase of approximately \$0.3 million across all other properties, due principally to higher snow removal expenses in the 2017 nine month period as a result of more severe winter weather in the 2017 nine month period than the 2016 nine month period.

Depreciation and amortization expense increased to approximately \$7.4 million in the 2017 nine month period from approximately \$6.5 million in the 2016 nine month period. The approximately \$0.9 million increase in depreciation and amortization expense in the 2017 nine month period, as compared to the 2016 nine month period, reflected depreciation and amortization expense of approximately \$0.5 million related to 5210 Jaendl, approximately \$0.2 million related to 215 International and an increase in depreciation and amortization expense of approximately \$0.2 million across all other buildings.

Griffin's general and administrative expenses increased to approximately \$6.1 million in the 2017 nine month period from approximately \$5.4 million in the 2016 nine month period. The approximately \$0.7 million increase in general and administrative expenses in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected the write-off of approximately \$0.3 million of costs incurred for a potential purchase of a 31 acre parcel of undeveloped land in the Lehigh Valley that was not completed, approximately \$0.2 million in higher expenses related to Griffin's non-qualified deferred compensation plan, approximately \$0.1 million of expenses related to the acquisition of 215 International and an increase of approximately \$0.1 million in all other general and administrative expenses. The higher expense related to Griffin's non-qualified deferred compensation plan reflected a greater increase in the non-qualified deferred compensation plan liability in the 2017 nine month period as compared to the 2016 nine month period as a result of the effect of higher returns on participant balances in the 2017 nine month period as compared to the 2016 nine month period.

Griffin's interest expense increased to approximately \$4.2 million in the 2017 nine month period from approximately \$3.3 million in the 2016 nine month period. The approximately \$0.9 million increase in interest expense in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected interest expense of



approximately \$0.5 million on two nonrecourse mortgage loans outstanding in the 2017 nine month period that closed subsequent to the end of the 2016 nine month period and approximately \$0.3 million less interest capitalized in the 2017 nine month period as compared to the 2016 nine month period.

In the 2017 third quarter, Griffin sold its holdings of the common stock of Centaur for cash proceeds of approximately \$1.2 million and a pretax gain of approximately \$0.3 million. The gain on sale of assets in the 2016 nine month period was from the disposition of certain fully depreciated equipment.

Griffin's income tax provision was approximately \$2.8 million in the 2017 nine month period as compared to an income tax benefit of approximately \$0.2 million in the 2016 nine month period. The income tax provision in the 2017 nine month period reflected an effective tax rate of 35.4% on pretax income of approximately \$7.9 million. The income tax benefit in the 2016 nine month period reflected an effective tax rate of 21.2% on the pretax loss of approximately \$1.0 million incurred in the 2016 nine month period. The effective income tax benefit rate in the 2016 nine month period included a charge of approximately \$0.2 million for the reduction of the expected realization rate of tax benefits from Connecticut state net operating loss carryforwards as a result of a change in Connecticut tax law, effective for Griffin in fiscal 2016, that limits the future usage of loss carryforwards to 50% of taxable income. The charge for the reduction of the expected realization rate of tax benefits from Connecticut state net operating loss carryforwards reduced the effective tax benefit rate for the 2016 nine month period by approximately 17%. The effective tax rate for the 2017 nine month period is based on management's projection of operating results for the fiscal 2017 full year. To the extent that actual results differ from current projections, the effective tax rate may change.

### **Off Balance Sheet Arrangements**

Griffin does not have any material off balance sheet arrangements.

### **Liquidity and Capital Resources**

Net cash provided by operating activities was approximately \$5.7 million in the 2017 nine month period as compared to approximately \$3.5 million in the 2016 nine month period. The approximately \$2.2 million increase in net cash provided by operating activities in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected an increase in cash provided by changes in assets and liabilities in the 2017 nine month period as compared to the 2016 nine month period. Cash provided by Griffin's net income/(loss) as adjusted for gains on property sales and noncash expenses and credits was essentially unchanged in the 2017 nine month period as compared to the 2016 nine month period. The increase in profit from leasing activities<sup>2</sup> (which Griffin defines as rental revenue less operating expenses of rental properties) in the 2017 nine month period of approximately \$1.4 million was partially offset by the approximately \$0.9 million increase in interest expense and an approximately \$0.7 million increase in general and administrative expenses, a portion of which were noncash and reflected in the favorable changes in assets and liabilities.

The approximately \$2.2 million increase in cash from changes in assets and liabilities in the 2017 nine month period, as compared to the 2016 nine month period, principally reflected favorable changes in both deferred revenue and other liabilities of approximately \$2.6 million and \$0.6 million, respectively, partially offset by unfavorable changes in both accounts payable and accrued liabilities and other assets of approximately \$0.8 million and \$0.2 million, respectively, in the 2017 nine month period as compared to the 2016 nine month period. The increase in deferred revenue in the 2017 nine month period principally reflected cash received from tenants for tenant and building improvements that will be recognized as rental revenue over the tenants' respective lease terms. The favorable change in other liabilities in the 2017 nine month period principally reflected the increase of Griffin's non-qualified deferred compensation plan liability, reflected in general and administrative expenses, as a result of the increase in participant balances in the 2017 nine month period. The unfavorable change in accounts payable and accrued liabilities in the 2017 nine month period reflected the reduction of accounts payable and accrued liabilities and was due to the timing of payments.

Net cash used in investing activities was approximately \$13.7 million in the 2017 nine month period as compared to approximately \$13.9 million in the 2016 nine month period. The net cash used in investing activities in the 2017 nine month period reflected: (a) approximately \$18.4 million for the acquisition of 215 International; (b) cash

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<sup>2</sup> Profit from leasing activities is not a financial measure in conformity with U.S. GAAP. It is presented because Griffin believes it is a useful financial indicator for measuring results of its real estate leasing activities. However, it should not be considered as an alternative to operating income as a measure of operating results in accordance with U.S. GAAP.

payments of approximately \$11.0 million for additions to real estate assets; and (c) cash payments of approximately \$1.1 million for deferred leasing costs and other uses; partially offset by (d) cash proceeds of approximately \$12.1 million from property sales; (e) approximately \$3.4 million of cash proceeds from property sales returned from escrow; and (f) approximately \$1.2 million of cash received from the sale of Centaur common stock. The approximately \$12.1 million of cash proceeds from property sales reflected approximately \$9.7 million from the 2017 Phoenix Crossing Land Sale, approximately \$1.9 million from the Southwick Land Sale and approximately \$0.5 million from two smaller land sales. The approximately \$3.4 million of net cash proceeds from property sales returned from escrow was from a land sale in fiscal 2016 whereby the cash proceeds were deposited into escrow at closing for the potential purchase of a replacement property in a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended (a “1031 Like-Kind Exchange”). The net cash proceeds were returned to Griffin in the 2017 nine month period because a replacement property was not acquired in the time period required under a 1031 Like-Kind Exchange.

On June 9, 2017, Griffin paid cash of approximately \$18.4 million (net of allowances) for the acquisition of 215 International, using the approximately \$9.7 million of proceeds from the 2017 Phoenix Crossing Land Sale that were held in escrow for a 1031 Like-Kind Exchange, with the balance of approximately \$8.7 million paid from cash on hand. Subsequent to the acquisition, Griffin closed on a nonrecourse mortgage loan of \$12.15 million collateralized by 215 International (see below).

Cash payments of approximately \$11.0 million for additions to real estate assets in the 2017 nine month period reflected the following:

|   |                |
|---|----------------|
| Tenant and building improvements related to leasing | \$ 6.1 million |
| Purchase of undeveloped land                        | \$ 2.4 million |
| New building construction (including site work)     | \$ 2.2 million |
| Development costs and infrastructure improvements   | \$ 0.3 million |

Cash payments for tenant and building improvements in the 2017 nine month period related to new leases signed in the latter part of fiscal 2016 and the 2017 nine month period. Cash of approximately \$2.4 million paid for the purchase of undeveloped land in the 2017 nine month period reflected the purchase of an approximately 14 acre site in Upper Macungie Township, Lehigh County, Pennsylvania that had been under agreement. The closing on this purchase took place upon Griffin obtaining all governmental approvals for its planned development, on speculation, of an approximately 134,000 square foot industrial/warehouse building on the land acquired. Griffin expects to begin site work in the fiscal 2017 fourth quarter with building construction anticipated to begin in the fiscal 2018 first quarter. Griffin expects to spend approximately \$6.8 million for site work and construction of the building shell. Cash payments for the start of new building construction in the 2017 nine month period were for an approximately 137,000 square foot industrial/warehouse building at 330 Stone Road (“330 Stone”) in NE Tradeport being built on speculation. Griffin expects to spend a total of approximately \$7.4 million for the building shell and related site work on construction of 330 Stone, and expects to complete construction of the building in the fiscal 2017 fourth quarter. Griffin has completed a lease for approximately 74,000 square feet of 330 Stone with a tenant that currently leases approximately 39,000 square feet in one of Griffin’s other NE Tradeport industrial/warehouse buildings. Cash payments of approximately \$1.1 million in the 2017 nine month period for deferred leasing costs and other uses reflected approximately \$1.0 million for lease commissions and other costs related to new and renewed leases and approximately \$0.1 million for purchases of property and equipment.

The net cash of approximately \$13.9 million used in investing activities in the 2016 nine month period reflected cash payments of approximately \$13.4 million for additions to real estate assets and approximately \$0.5 million for deferred leasing costs and other uses.

Cash payments for additions to real estate assets in the 2016 nine month period reflected the following:

|   |                |
|---|----------------|
| New building construction (including site work)     | \$ 8.6 million |
| Tenant and building improvements related to leasing | \$ 4.3 million |
| Development costs and infrastructure improvements   | \$ 0.5 million |

Cash payments in the 2016 nine month period for new building construction reflected the construction, on speculation, of 5210 Jaendl, which was started in the fiscal 2015 fourth quarter and completed in the fiscal 2016 third quarter. Through August 31, 2016, Griffin had made total cash payments of approximately \$11.4 million for the direct site work and building shell for 5210 Jaendl. Cash payments in the 2016 nine month period for tenant and building improvements principally reflect tenant improvement work related to leases signed in the latter part of fiscal 2015 and the 2016 nine month period. The cash spent on development costs and infrastructure improvements in the 2016 nine month period principally reflected road improvements related to the 2013 Phoenix Crossing Land Sale. The cash spent on deferred leasing costs and other in the 2016 nine month period principally reflected lease commissions paid to real estate brokers for new leases.

Net cash provided by financing activities was approximately \$18.3 million in the 2017 nine month period as compared to approximately \$6.1 million in the 2016 nine month period. The net cash provided by financing activities in the 2017 nine month period reflected proceeds of \$34.75 million from new mortgage loans (see below); partially offset by: (a) approximately \$12.6 million of principal payments on mortgage loans; (b) a payment of approximately \$1.5 million for a dividend on Griffin's common stock that was declared in the fiscal 2016 fourth quarter and paid in the 2017 nine month period; (c) approximately \$1.5 million paid for the repurchase of common stock; (d) approximately \$0.5 million of payments for debt issuance costs; and (e) a payment of approximately \$0.3 million for the termination of an interest rate swap agreement. The net cash provided by financing activities in the 2016 nine month period reflected \$18.8 million of proceeds from new mortgage loans and \$0.6 million of mortgage proceeds released from escrow, partially offset by: (w) approximately \$9.4 million of principal payments on mortgage loans; (x) approximately \$1.9 million paid for the repurchase of common stock; (y) a payment of approximately \$1.5 million for a dividend on Griffin's common stock that was declared in the fiscal 2015 fourth quarter and paid in the 2016 nine month period; and (z) approximately \$0.4 million of payments for debt issuance costs. The principal payments on mortgage loans in the 2017 and 2016 nine month periods included approximately \$10.1 million and approximately \$7.4 million, respectively, for repayment of mortgage loans that were refinanced and approximately \$2.4 million and approximately \$2.0 million, respectively, of recurring principal payments.

On August 30, 2017, a subsidiary of Griffin closed on a \$12.15 million nonrecourse mortgage (the "2017 40|86 Mortgage") with 40|86 Mortgage Capital, Inc. The 2017 40|86 Mortgage is collateralized by 215 International, which Griffin acquired on June 9, 2017. The 2017 40|86 mortgage has an interest rate of 3.97% and a ten year term with monthly principal payments based on a thirty year amortization schedule.

On July 14, 2017, a subsidiary of Griffin closed on a \$10.6 million nonrecourse mortgage loan (the "2017 Berkshire Mortgage") with Berkshire Bank ("Berkshire"). The 2017 Berkshire Mortgage refinanced an existing mortgage loan (the "2009 Berkshire Mortgage") with Berkshire that was due on February 1, 2019 and was collateralized by 100 International Drive ("100 International"), an approximately 304,000 square foot industrial/warehouse building in NE Tradeport. The 2009 Berkshire Mortgage had a balance of approximately \$10.1 million at the time of the refinancing and a variable interest rate consisting of the one month LIBOR rate plus 2.75%. At the time Griffin completed the 2009 Berkshire Mortgage, Griffin entered into an interest rate swap agreement with Berkshire (the "2009 Berkshire Swap") to effectively fix the interest rate on the 2009 Berkshire Mortgage at 6.35% for the term of the loan. The 2017 Berkshire Mortgage is collateralized by the same property that collateralized the 2009 Berkshire Mortgage. Just prior to the closing on the 2017 Berkshire Mortgage, Griffin completed a lease amendment with the full building tenant in 100 International to extend the lease from its scheduled expiration date of July 31, 2019 to July 31, 2025. Under the terms of the 2017 Berkshire Mortgage, Griffin entered into a master lease of 100 International that would become effective if the tenant in 100 International does not renew its lease when it expires. The 2017 Berkshire Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2017 Berkshire Loan is a variable rate consisting of the one month LIBOR rate plus 2.05%. At the time the 2017 Berkshire Mortgage closed, Griffin terminated the 2009 Berkshire Swap and entered into a new interest rate swap agreement with Berkshire that effectively fixes the interest rate of the 2017 Berkshire Mortgage at 4.39% over the loan term. Griffin paid approximately \$0.3 million in connection with the termination of the 2009 Berkshire Swap.

On March 15, 2017, a subsidiary of Griffin closed on a \$12.0 million nonrecourse mortgage loan (the “2017 PUB Mortgage”) with People’s United Bank, N.A. (“PUB”). The 2017 PUB Mortgage is collateralized by two industrial/warehouse buildings (755 and 759 Rainbow Road) in NE Tradeport aggregating approximately 275,000 square feet. The 2017 PUB Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2017 PUB Mortgage is a variable rate consisting of the one month LIBOR rate plus 1.95%. At the time the 2017 PUB Mortgage closed, Griffin also entered into an interest rate swap agreement with PUB to effectively fix the interest rate at 4.45% for the full loan term. In accordance with the terms of the 2017 PUB Mortgage, Griffin entered into a master lease for 759 Rainbow Road that would only become effective if the full building tenant in that building does not renew its lease, which is scheduled to expire in 2019. The master lease would be in effect until either the space is re-leased to a new tenant or the due date of the 2017 PUB Mortgage.

The \$18.8 million of mortgage proceeds in the 2016 nine month period reflected: (a) \$14.35 million from a nonrecourse mortgage with PUB (“the 2016 PUB Mortgage”); (b) \$2.6 million (the “Webster Earn-Out”) of additional proceeds on a mortgage (the “2015 Webster Mortgage”) entered into in fiscal 2015 with Webster Bank, N.A. (“Webster”); and (c) \$1.85 million (the “KeyBank Earn-Out”) of additional proceeds on a mortgage (the “KeyBank Mortgage”) also entered into in fiscal 2015. The 2016 PUB Mortgage is collateralized by five NE Tradeport industrial/warehouse buildings (14, 15, 16, 35 and 40 International Drive) aggregating approximately 338,000 square feet and refinanced an existing mortgage with PUB that had a balance of approximately \$7.4 million at the time of the refinancing. The 2016 PUB Mortgage has a ten year term with monthly principal payments based on a twenty-five year amortization schedule. The interest rate for the 2016 PUB Mortgage is a variable rate consisting of the one month LIBOR rate plus 2.0%. At the time the 2016 PUB Mortgage closed, Griffin entered into a second interest rate swap agreement with PUB that, combined with an existing interest rate swap agreement with PUB, effectively fixed the interest rate of the 2016 PUB Mortgage at 4.17% over the loan term. The terms of the 2016 PUB Mortgage require that if either the tenant that leases approximately 58,000 square feet in 40 International Drive or the tenant that leases approximately 40,000 square feet in 14 International Drive does not extend its respective lease when it expires in fiscal 2021, a subsidiary of Griffin will enter into a master lease of the vacated space. The master lease would be guaranteed by Griffin and be in effect until either the space is re-leased to a new tenant or the due date of the 2016 PUB Mortgage Loan, whichever occurs first.

The Webster Earn-Out was received when the tenant that was leasing approximately 196,000 square feet in 5220 Jandl Boulevard (the approximately 280,000 square foot industrial/warehouse building that collateralizes the 2015 Webster Mortgage) exercised its option to lease the balance of the building. The KeyBank Earn-Out was received when the remaining space in 4270 Fritch Drive (one of the two industrial/warehouse buildings aggregating approximately 531,000 square feet that collateralize the KeyBank Mortgage), which was vacant when the KeyBank Mortgage closed in fiscal 2015, was leased.

In fiscal 2016, Griffin’s Board of Directors authorized a stock repurchase program whereby, effective May 11, 2016, Griffin could repurchase up to \$5.0 million of its outstanding common stock over a twelve month period in privately negotiated transactions. The stock repurchase program did not obligate Griffin to repurchase any specific amount of stock. In the 2017 nine month period, Griffin repurchased 47,173 shares of its outstanding common stock for approximately \$1.5 million before the repurchase program expired on May 10, 2017. In the 2016 nine month period, Griffin repurchased 60,000 shares of its outstanding common stock for approximately \$1.95 million. Under the stock repurchase program, Griffin repurchased a total of 152,173 shares of its outstanding common stock for approximately \$4.8 million.

Griffin’s payments (including principal and interest) under contractual obligations as of August 31, 2017 are as follows:

|                             | <u>Total</u>    | <u>Due Within<br/>One Year</u> | <u>Due From<br/>1 - 3 Years<br/>(in millions)</u> | <u>Due From<br/>3 - 5 Years</u> | <u>Due in More<br/>Than 5 Years</u> |
|-----------------------------|-----------------|--------------------------------|---|---------------------------------|-------------------------------------|
| Mortgage Loans              | \$ 177.6        | \$ 14.9                        | \$ 20.8   | \$ 17.1                         | \$ 124.8                            |
| Revolving Line of Credit    | —               | —                              | —   | —                               | —                                   |
| Operating Lease Obligations | 1.2             | 0.1                            | 0.2   | 0.3                             | 0.6                                 |
| Purchase Obligations (1)    | 3.7             | 3.7                            | —   | —                               | —                                   |
| Other (2)                   | 4.8             | —                              | —   | —                               | 4.8                                 |
|                             | <u>\$ 187.3</u> | <u>\$ 18.7</u>                 | <u>\$ 21.0</u>                                    | <u>\$ 17.4</u>                  | <u>\$ 130.2</u>                     |



- (1) Includes obligations related to the development of Griffin's real estate assets, principally the construction of 330 Stone.
- (2) Reflects the liability for Griffin's non-qualified deferred compensation plan. The timing on the payment of participant balances in the non-qualified deferred compensation plan is not determinable.

On January 25, 2016, Griffin entered into an Option Purchase Agreement (the "Simsbury Option Agreement") whereby Griffin granted the buyer an exclusive three month option, in exchange for a nominal fee, to purchase approximately 280 acres of land in Simsbury, Connecticut for approximately \$7.7 million. The buyer may extend the option period for up to three years upon payment of additional option fees. Through August 31, 2017, the buyer paid approximately \$0.1 million of additional option fees to extend its option period through January 2018. The land subject to the Simsbury Option Agreement is undeveloped and does not have any of the approvals that would be required for the buyer's planned use of the land, which is to generate solar electricity. A closing on the land sale contemplated by the Simsbury Option Agreement is subject to several significant contingencies, including approvals by the state public utility regulatory authorities and governmental approvals for the planned use of the land. There is no guarantee that the sale of land as contemplated under the Simsbury Option Agreement will be completed under its current terms, or at all.

On May 5, 2017, Griffin entered into an Option Purchase Agreement (the "EGW Option Agreement") whereby Griffin granted the buyer an exclusive three month option, in exchange for a nominal fee, to purchase approximately 288 acres of undeveloped land in East Granby and Windsor, Connecticut for approximately \$7.8 million. The buyer may extend the option period for up to three years upon payment of additional option fees. The land subject to the EGW Option Agreement does not have any of the approvals that would be required for the buyer's planned use of the land, which is to generate solar electricity. A closing on the land sale contemplated by the EGW Option Agreement is subject to several significant contingencies, including the buyer procuring electrical utility supply contracts, approval by the state public utility regulatory authorities and governmental approvals for the planned use of the land. There is no guarantee that the sale of land as contemplated under the EGW Sale Agreement will be completed under its current terms, or at all.

Subsequent to August 31, 2017, Griffin entered into an agreement to purchase an approximately 22 acre parcel of undeveloped land in Concord, North Carolina (the "Concord Land") for \$2.6 million in cash. If the transaction closes, Griffin plans to construct an industrial/warehouse development on the Concord Land, which is located near 215 International. The amount of industrial/warehouse space to be developed there will be based upon findings during due diligence. Closing of this purchase, anticipated to take place in fiscal 2018, is subject to several conditions, including the satisfactory outcome of due diligence and obtaining all governmental approvals for Griffin's development plans for the Concord Land. There is no guarantee that this transaction will be completed under its current terms, or at all.

In the near-term, Griffin plans to continue to invest in its real estate business, including the construction of additional buildings on its undeveloped land, expenditures for tenant improvements as new leases are signed, infrastructure improvements required for future development of its real estate holdings and the potential acquisition of additional properties and/or undeveloped land parcels in the Middle Atlantic, Northeast and Southeast regions to expand the industrial/warehouse portion of its real estate portfolio. Real estate acquisitions may or may not occur based on many factors, including real estate pricing.

As of August 31, 2017, Griffin had cash and cash equivalents of approximately \$35.0 million. Management believes that its cash and cash equivalents as of August 31, 2017, cash generated from leasing operations and property sales, and borrowing capacity under Griffin's \$15.0 million credit line with Webster will be sufficient to meet its working capital requirements, to fund the construction of 330 Stone, to make other investments in real estate assets, and to pay dividends on its common stock, when and if declared by the Board of Directors, for at least the next twelve months.

### **Forward-Looking Information**

The above information in Management's Discussion and Analysis of Financial Condition and Results of Operations includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Exchange Act of 1934, as amended. These forward-looking statements include, but are not limited to, Griffin's expectations regarding the leasing of currently vacant space, the cost of construction and expected completion date of 330 Stone, the construction of an industrial/warehouse building on the land parcel in Upper Macungie Township purchased in the 2017 third quarter, completion of the land sales under the Simsbury Option

Agreement and the EGW Option Agreement, the purchase of an approximately 22 acre parcel of undeveloped land in Concord, North Carolina that is under agreement, the acquisition and development of additional properties and/or undeveloped land parcels; construction of additional facilities; Griffin's anticipated future liquidity and capital expenditures; and other statements with the words "believes," "anticipates," "plans," "expects" or similar expressions. Although Griffin believes that its plans, intentions and expectations reflected in such forward-looking statements are reasonable, it can give no assurance that such plans, intentions or expectations will be achieved. The forward-looking statements made herein are based on assumptions and estimates that, while considered reasonable by Griffin as of the date hereof, are inherently subject to significant business, economic, competitive and regulatory uncertainties and contingencies and other important factors, many of which are beyond the control of Griffin. Griffin's actual results could differ materially from those anticipated in these forward-looking statements as a result of various important factors, including those set forth under the heading Item 1A "Risk Factors" of Griffin's Annual Report on Form 10-K for the fiscal year ended November 30, 2016 filed with the Securities and Exchange Commission on February 10, 2017.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk represents the risk of changes in value of a financial instrument, derivative or non-derivative, caused by fluctuations in interest rates. Changes in these factors could cause fluctuations in earnings and cash flows.

For fixed rate mortgage debt, changes in interest rates generally affect the fair market value of the debt instrument, but not earnings or cash flows. Griffin does not have an obligation to prepay any fixed rate debt prior to maturity and, therefore, interest rate risk and changes in the fair market value of fixed rate debt should not have a significant impact on earnings or cash flows until such debt is refinanced, if necessary. Griffin's mortgage interest rates are described in Note 4 to the unaudited consolidated financial statements included in Item 1.

For variable rate debt, changes in interest rates generally do not impact the fair market value of the debt instrument, but do affect future earnings and cash flows. As of August 31, 2017, Griffin had several nonrecourse mortgage loans aggregating approximately \$92.4 million that have variable interest rates, for which Griffin has entered into interest rate swap agreements to effectively fix the interest rates on all of these mortgage loans. There were no other variable rate borrowings outstanding as of August 31, 2017.

Griffin is exposed to market risks from fluctuations in interest rates and the effects of those fluctuations on the market values of Griffin's cash equivalents. These investments generally consist of money market securities that are not significantly exposed to interest rate risk.

### ITEM 4. CONTROLS AND PROCEDURES

#### Evaluation of Disclosure Controls and Procedures

Griffin maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in its Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms, and that such information is accumulated and communicated to Griffin's management, including its Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Rule 13a-15(b), Griffin carried out an evaluation, under the supervision and with the participation of Griffin's management, including Griffin's Chief Executive Officer and Griffin's Chief Financial Officer, of the effectiveness of Griffin's disclosure controls and procedures as of the end of the fiscal period covered by this report. Based on the foregoing, Griffin's Chief Executive Officer and Chief Financial Officer concluded that its disclosure controls and procedures were effective at the reasonable assurance level.

#### Changes in Internal Control over Financial Reporting

There has been no change in Griffin's internal control over financial reporting during Griffin's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, Griffin's internal control over financial reporting.

**PART II OTHER INFORMATION****ITEM 1A. RISK FACTORS**

There have been no material changes to the risk factors previously disclosed in Item 1A of Griffin's Annual Report on Form 10-K for the fiscal year ended November 30, 2016.

**ITEM 6. EXHIBITS****EXHIBIT INDEX**

| <b>Exhibit<br/>Number</b> | <b>Exhibit Description</b>   | <b>Incorporated by Reference</b> |                 |                |                        | <b>Filed/<br/>Furnished<br/>Herewith</b> |
|---------------------------|--|----------------------------------|-----------------|----------------|------------------------|--|
|                           |  | <b>Form</b>                      | <b>File No.</b> | <b>Exhibit</b> | <b>Filing<br/>Date</b> |  |
| 3.1                       | Amended and Restated Certificate of Incorporation of Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.)  | 10-Q                             | 001-12879       | 3.1            | 10/10/13               |  |
| 3.2                       | Certificate of Amendment of Amended and Restated Certificate of Incorporation of Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.)  | 8-K                              | 001-12879       | 3.1            | 5/13/15                |  |
| 3.3                       | Amended and Restated By-laws of Griffin Industrial Realty, Inc.  | 8-K                              | 001-12879       | 3.2            | 5/13/15                |  |
| 10.2†                     | Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) 2009 Stock Option Plan  | 10-K                             | 001-12879       | 10.2           | 2/13/14                |  |
| 10.3†                     | Form of Stock Option Agreement under Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) 2009 Stock Option Plan   | 10-K                             | 001-12879       | 10.3           | 2/13/14                |  |
| 10.4                      | Mortgage Deed, Security Agreement, Financing Statement and Fixture Filing with Absolute Assignment of Rents and Leases dated September 17, 2002 between Tradeport Development I, LLC and Farm Bureau Life Insurance Company                            | 10-Q                             | 001-12879       | 10.21          | 10/11/02               |  |
| 10.5                      | Open-End Mortgage Deed and Security Agreement dated December 17, 2002 between Griffin Center Development IV, LLC and Webster Bank, N.A.  | 10-K                             | 001-12879       | 10.24          | 2/28/03                |  |
| 10.6                      | Secured Installment Note and First Amendment of Mortgage and Loan Documents dated April 16, 2004 among Tradeport Development I, LLC, and Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) and Farm Bureau Life Insurance Company | 10-Q                             | 001-12879       | 10.28          | 7/13/04                |  |
| 10.7                      | Mortgage Deed, Security Agreement, Fixture Filing, Financing Statement and Assignment of Leases and Rents dated July 6, 2005 by Tradeport Development II, LLC in favor of First Sunamerica Life Insurance Company                                      | 10-Q                             | 001-12879       | 10.29          | 11/2/05                |  |
| 10.8                      | Promissory Note dated July 6, 2005   | 10-Q                             | 001-12879       | 10.30          | 11/2/05                |  |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |           |         |             | Filed/<br>Furnished<br>Herewith |
|----------------|---|---------------------------|-----------|---------|-------------|---------------------------------|
|                |   | Form                      | File No.  | Exhibit | Filing Date |                                 |
| 10.9           | Guaranty Agreement as of July 6, 2005 by Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) in favor of First Sunamerica Life Insurance Company   | 10-Q                      | 001-12879 | 10.31   | 11/2/05     |                                 |
| 10.10          | Amended and Restated Mortgage Deed, Security Agreement, Fixture Filing, Financing Statement and Assignment of Leases and Rents dated November 15, 2006 by Tradeport Development II, LLC in favor of First Sunamerica Life Insurance Company | 10-K                      | 001-12879 | 10.32   | 2/15/07     |                                 |
| 10.11          | Amended and Restated Promissory Note dated November 15, 2006  | 10-K                      | 001-12879 | 10.33   | 2/15/07     |                                 |
| 10.12          | Guaranty Agreement as of November 15, 2006 by Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) in favor of First Sunamerica Life Insurance Company  | 10-K                      | 001-12879 | 10.34   | 2/15/07     |                                 |
| 10.13          | Construction Loan and Security Agreement dated February 6, 2009 by and between Tradeport Development III, LLC, Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.), and Berkshire Bank                                   | 10-Q                      | 001-12879 | 10.36   | 10/6/10     |                                 |
| 10.14          | \$12,000,000 Construction Note dated February 6, 2009   | 10-Q                      | 001-12879 | 10.37   | 4/9/09      |                                 |
| 10.15          | Loan and Security Agreement dated July 9, 2009 between Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) and People's United Bank, N.A.  | 10-Q                      | 001-12879 | 10.40   | 10/8/09     |                                 |
| 10.16          | \$10,500,000 Promissory Note dated July 9, 2009   | 10-Q                      | 001-12879 | 10.41   | 10/8/09     |                                 |
| 10.17          | Mortgage and Security Agreement dated January 27, 2010 between Riverbend Crossings III Holdings, LLC and NewAlliance Bank   | 10-Q                      | 001-12879 | 10.42   | 10/6/10     |                                 |
| 10.18          | \$4,300,000 Promissory Note dated January 27, 2010  | 10-Q                      | 001-12879 | 10.43   | 4/8/10      |                                 |
| 10.19          | First Modification of Promissory Note, Mortgage Deed and Security Agreement and Other Loan Documents between Riverbend Crossings III Holdings, LLC and NewAlliance Bank dated October 27, 2010  | 10-K                      | 001-12879 | 10.44   | 2/10/11     |                                 |
| 10.23          | Third Modification Agreement between Griffin Center Development IV, LLC, Griffin Center Development V, LLC, Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.) and Webster Bank, N.A. dated June 15, 2012               | 8-K                       | 001-12879 | 10.48   | 6/20/12     |                                 |
| 10.24          | Second Amendment to Mortgage Deed and Security Agreement and other Loan Documents between Riverbend Crossings III Holdings, LLC and First Niagara Bank, N.A. dated April 1, 2013  | 10-Q                      | 001-12879 | 10.49   | 7/11/13     |                                 |
| 10.25          | Amended and Restated Term Note dated April 1, 2013  | 10-Q                      | 001-12879 | 10.50   | 7/11/13     |                                 |
| 10.26          | Revolving Line of Credit Loan Agreement with Webster Bank, N.A. dated April 24, 2013  | 10-Q                      | 001-12879 | 10.51   | 7/11/13     |                                 |
| 10.28          | Mortgage and Security Agreement between Riverbend Bethlehem Holdings I, LLC and First Niagara Bank, N.A. effective August 28, 2013  | 10-Q                      | 001-12879 | 10.53   | 10/10/13    |                                 |
| 10.29          | \$9,100,000 Term Note effective August 28, 2013   | 10-Q                      | 001-12879 | 10.54   | 10/10/13    |                                 |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |           |         |             | Filed/<br>Furnished<br>Herewith |
|----------------|---|---------------------------|-----------|---------|-------------|---------------------------------|
|                |   | Form                      | File No.  | Exhibit | Filing Date |                                 |
| 10.31          | First Modification of Mortgage and Loan Documents between Griffin Center Development I, LLC, Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.), Tradeport Development I, LLC and Farm Bureau Life Insurance Company, dated June 6, 2014  | 8-K                       | 001-12879 | 10.1    | 6/9/14      |                                 |
| 10.32          | Amended and Restated Secured Installment Note of Griffin Center Development I, LLC to Farm Bureau Life Insurance Company, dated June 6, 2014  | 8-K                       | 001-12879 | 10.2    | 6/9/14      |                                 |
| 10.33          | Second Modification of Mortgage and Loan Documents between Tradeport Development I, LLC, Griffin Industrial Realty, Inc. (f/k/a Griffin Land & Nurseries, Inc.), Griffin Center Development I, LLC and Farm Bureau Life Insurance Company, dated June 6, 2014 | 8-K                       | 001-12879 | 10.3    | 6/9/14      |                                 |
| 10.34          | Amended and Restated Secured Installment Note of Tradeport Development I, LLC to Farm Bureau Life Insurance Company, dated June 6, 2014   | 8-K                       | 001-12879 | 10.4    | 6/9/14      |                                 |
| 10.35          | Mortgage and Security Agreement between Riverbend Bethlehem Holdings I, LLC and First Niagara Bank, N.A. effective December 31, 2014  | 10-K                      | 001-12879 | 10.35   | 2/13/15     |                                 |
| 10.36          | Mortgage and Security Agreement between Riverbend Bethlehem Holdings II, LLC and First Niagara Bank, N.A. effective December 31, 2014   | 10-K                      | 001-12879 | 10.36   | 2/13/15     |                                 |
| 10.37          | \$21,600,000 Term Note effective December 31, 2014  | 10-K                      | 001-12879 | 10.37   | 2/13/15     |                                 |
| 10.38          | Mortgage, Assignment of Rents and Security Agreement dated July 29, 2015 between Tradeport Development II, LLC and 40 86 Mortgage Capital, Inc.   | 10-Q                      | 001-12879 | 10.38   | 10/9/15     |                                 |
| 10.39          | \$18,000,000 Promissory Note dated July 29, 2015  | 10-Q                      | 001-12879 | 10.39   | 10/9/15     |                                 |
| 10.40          | Open-End Mortgage, Assignment of Leases and Rents and Security Agreement by Riverbend Hanover Properties II, LLC as Mortgagor to and for the benefit of Webster Bank, N.A. as Mortgagee dated August 28, 2015 and effective as of September 1, 2015           | 10-Q                      | 001-12879 | 10.40   | 10/9/15     |                                 |
| 10.41          | \$14,100,000 Promissory Note dated September 1, 2015  | 10-Q                      | 001-12879 | 10.41   | 10/9/15     |                                 |
| 10.42†         | Letter Agreement by and between Griffin Industrial Realty, Inc. and John J. Kirby, Jr. dated July 22, 2015  | 10-K                      | 001-12879 | 10.41   | 2/12/16     |                                 |
| 10.43†         | Letter Agreement by and between Griffin Industrial Realty, Inc. and David M. Danziger dated March 8, 2016   | 10-Q                      | 001-12879 | 10.42   | 4/8/16      |                                 |
| 10.44†         | Letter Agreement by and between Griffin Industrial Realty, Inc. and Winston J. Churchill, Jr. dated May 16, 2016  | 10-Q                      | 001-12879 | 10.43   | 7/8/16      |                                 |
| 10.45          | \$14,350,000 Promissory Note dated April 26, 2016   | 10-Q                      | 001-12879 | 10.44   | 7/8/16      |                                 |
| 10.46          | Loan and Security Agreement between Griffin Industrial Realty, Inc. and People's United Bank, N.A. dated April 26, 2016   | 10-Q                      | 001-12879 | 10.45   | 7/8/16      |                                 |

| Exhibit Number | Exhibit Description   | Incorporated by Reference |           |         |             | Filed/<br>Furnished<br>Herewith |
|----------------|---|---------------------------|-----------|---------|-------------|---------------------------------|
|                |   | Form                      | File No.  | Exhibit | Filing Date |                                 |
| 10.47          | First Amendment to Revolving Line of Credit Loan Agreement by and between Griffin Industrial Realty, Inc. and Webster Bank, N.A. dated April 26, 2016   | 10-Q                      | 001-12879 | 10.46   | 7/8/16      |                                 |
| 10.48          | Second Amendment to Revolving Line of Credit Loan Agreement by and between Griffin Industrial Realty, Inc. and Webster Bank, N.A. dated July 22, 2016   | 10-Q                      | 001-12879 | 10.47   | 10/7/16     |                                 |
| 10.49          | Amended and Restated Revolving Line of Credit Note with Webster Bank, N.A. dated July 22, 2016  | 10-Q                      | 001-12879 | 10.48   | 10/7/16     |                                 |
| 10.50          | \$26,724,948.03 Promissory Note dated November 17, 2016   | 10-K                      | 001-12879 | 10.49   | 2/10/17     |                                 |
| 10.51          | Open-End Mortgage, Assignment of Leases and Rents and Security Agreement by Riverbend Hanover Properties I, LLC as Mortgagor to and for the benefit of Webster Bank, N.A. as Mortgagee dated November 14, 2016 and effective as of November 17, 2016  | 10-K                      | 001-12879 | 10.50   | 2/10/17     |                                 |
| 10.52          | Open-End Mortgage, Assignment of Leases and Rents and Security Agreement by Riverbend Hanover Properties II, LLC as Mortgagor to and for the benefit of Webster Bank, N.A. as Mortgagee dated November 14, 2016 and effective as of November 17, 2016 | 10-K                      | 001-12879 | 10.51   | 2/10/17     |                                 |
| 10.53†         | Griffin Industrial Realty, Inc. Deferred Compensation and Supplemental Retirement Plan as amended and restated effective January 1, 2017  | 10-Q                      | 001-12879 | 10.52   | 4/7/17      |                                 |
| 10.54          | Loan and Security Agreement between Tradeport Development V, LLC and People's United Bank N.A. dated March 15, 2017   | 10-Q                      | 001-12879 | 10.53   | 4/7/17      |                                 |
| 10.55          | \$12,000,000 Promissory Note dated March 15, 2017   | 10-Q                      | 001-12879 | 10.54   | 4/7/17      |                                 |
| 10.56          | \$10,600,000 Term Note dated July 14, 2017  |                           |           |         |             | *                               |
| 10.57          | Amended and Restated Loan and Security Agreement dated July 14, 2017 between Tradeport Development III, LLC and Berkshire Bank  |                           |           |         |             | *                               |
| 10.58          | \$12,150,000 Promissory Note dated August 30, 2017  |                           |           |         |             | *                               |
| 10.59          | Deed of Trust, Assignment of Rents and Security Agreement dated August 30, 2017 from Riverbend Concord Properties, LLC for the benefit of 40 86 Mortgage Capital, Inc.  |                           |           |         |             | *                               |
| 31.1           | Certifications of Chief Executive Officer Pursuant to Rules 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended  |                           |           |         |             | *                               |
| 31.2           | Certifications of Chief Financial Officer Pursuant to Rules 13a-14(a) or 15d-14(a) under the Securities Exchange Act of 1934, as amended  |                           |           |         |             | *                               |
| 32.1           | Certifications of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350  |                           |           |         |             | **                              |
| 32.2           | Certifications of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350  |                           |           |         |             | **                              |

| Exhibit<br>Number | Exhibit Description                                  | Incorporated by Reference |          |         | Filing<br>Date | Filed/<br>Furnished<br>Herewith |
|-------------------|--|---------------------------|----------|---------|----------------|---------------------------------|
|                   |  | Form                      | File No. | Exhibit |                |                                 |
| 101.INS           | XBRL Instance Document                               |                           |          |         |                | *                               |
| 101.SCH           | XBRL Taxonomy Extension Schema Document              |                           |          |         |                | *                               |
| 101.CAL           | XBRL Taxonomy Calculation Linkbase Document          |                           |          |         |                | *                               |
| 101.LAB           | XBRL Taxonomy Label Linkbase Document                |                           |          |         |                | *                               |
| 101.PRE           | XBRL Taxonomy Presentation Linkbase Document         |                           |          |         |                | *                               |
| 101.DEF           | XBRL Taxonomy Extension Definition Linkbase Document |                           |          |         |                | *                               |

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† A management contract or compensatory plan or arrangement required to be filed as an exhibit pursuant to Item 6 of Form 10-Q.

\* Filed herewith.

\*\* Furnished herewith.

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

GRIFFIN INDUSTRIAL REALTY, INC.

DATE: October 10, 2017

BY: /s/ MICHAEL S. GAMZON  
Michael S. Gamzon  
President and Chief Executive Officer

DATE: October 10, 2017

BY: /s/ ANTHONY J. GALICI  
Anthony J. Galici  
Vice President, Chief Financial Officer and Secretary,  
Chief Accounting Officer



**TERM NOTE**

\$10,600,000

July 14, 2017

FOR VALUE RECEIVED, Tradeport Development III, LLC (the "Borrower"), a Connecticut limited liability company, having a chief executive principal place of business at 204 West Newberry Road, Bloomfield, Connecticut, promises to pay to the order of Berkshire Bank (the "Lender"), a Massachusetts banking corporation, at Lender's office located at 19 Harrison Avenue, Springfield, Massachusetts 01103, or at such other place as Lender may designate in writing, the principal sum of Ten Million Six Hundred Thousand and 00/100 Dollars (\$10,600,000), plus interest from the date hereof, all as hereinafter set forth. This Note replaces a certain Construction Note dated February 6, 2009, given by Borrower to Lender. This Note is the Term Note described in an Amended and Restated Loan and Security Agreement of even date herewith between the Borrower and the Lender (the "Loan Agreement"). The terms defined in the Loan Agreement shall have their defined meanings apply herein. This Note is subject to, and governed by the Loan Agreement in all respects.

**INTEREST**

For the entire term of the Loan, the Loan shall bear interest at an adjustable annual rate equal to the one (1) month LIBOR Rate, plus two hundred five (205) basis points. Such adjustments shall become effective on the 1<sup>st</sup> day of each month (the "Reset Date"). Lender shall not be required to notify Borrower of adjustments in said interest rate.

**REPAYMENT**

Principal and interest due Lender hereunder shall be repaid as follows:

A. Commencing on August 1, 2017 and thereafter on the same day of each succeeding month ("Interest Period") for a period of one hundred twenty (120) months (excepting the final payment) and based on an amortization period of twenty-five (25) years, monthly payments of principal plus interest, in arrears, calculated at the above rate of interest on the outstanding principal balance. A repayment schedule based on the payments under this Note is attached hereto as Exhibit A.

B. Any remaining unpaid principal, and all accrued interest thereon, shall be due and payable IN FULL on August 1, 2027 (the "Maturity Date").

Any payments received by Lender with respect to this Note prior to demand, acceleration

or maturity shall be applied first to any costs, expenses or charges due Lender from Borrower, second to any unpaid accrued interest hereunder, and third to the unpaid principal hereunder. Any payments received after demand, acceleration or maturity shall be applied in such a manner as Lender shall determine.

If any payment required hereunder is more than ten (10) days past due, (in addition to interest accruing hereunder) a late charge of five (5.00%) percent of the overdue payment shall be charged to Borrower and be immediately due and payable to Lender. Any payment having a due date falling upon a Saturday, Sunday, or legal holiday shall be due and payable on the next business day for which Lender is open for business, and interest shall continue to accrue during the extended period.

If any payment received by Lender with respect to this Note shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under federal or state law, or otherwise due any party other than Lender, then the obligation for which the payment was made shall not be discharged by the payment and shall survive as an obligation due hereunder, notwithstanding Lender's return to Borrower or any other party of the original of this Note or other instrument evidencing the obligation for which payment was made.

In the event the Borrower prepays all or any portion of this Note, whether as a result of acceleration or otherwise, the Borrower will pay to the Lender on the same date that any such payment is made any breakage fee, yield maintenance charge, termination fee or similar fee or charge as may be required pursuant to the Hedging Contract (as defined in the Loan Agreement) to cover loss, cost and expense attributable to such prepayment. All prepayments (with prepayment defined herein as any payment of principal in advance of its due date) shall be applied against the principal payments due hereunder in the inverse order of their maturity.

The following described property from Borrower, in addition to all other collateral now or hereafter provided by Borrower to Lender, shall secure this Note and all other present and future obligations of Borrower to Lender: Mortgage and Security Agreement and Collateral Assignment of Rents and Leases with respect to all of Borrower's property and chose-in-action, including, without limitation, real estate located at 100 International Drive, Windsor, Connecticut.

Any and all deposits or other sums at any time credited by, or due to Borrower hereof from Lender or any of its banking or lending affiliates or any loan participant under any loan arrangement between Lender and Borrower, and any cash, instruments, securities or other property of Borrower, now or hereafter in the possession of Lender, or any of its banking or lending affiliates or any loan participant under any loan arrangement between Lender and Borrower, whether for safekeeping or otherwise, shall at all times constitute security (and hereby remain subject to a pledge and grant of a security interest by Borrower) for the payment of this Note and all other obligations, whether now existing or hereafter arising, of Borrower to Lender and may be applied or set off against such Note or other obligations at any time, whether or not then due.

This Note shall be in default, and all unpaid principal, interest, and other amounts due hereunder, shall, at Lender's option, be immediately due and payable, without prior notice, protest,

or demand, upon the occurrence of any Event of Default. Default upon this Note shall also operate as a default upon all other obligations of Borrower to Lender.

Upon the occurrence of an Event of Default hereunder, interest upon the principal balance hereof, and to the extent permitted by law, on any accrued but unpaid interest hereon, shall, at Lender's option, accrue at the Default Rate.

Borrower hereby waives presentment, demand, notice and protest and also waives any delay on the part of the holder hereof. Each also assents to (i) any extension, or other indulgence (including, without limitation, any release or substitution of collateral or of any direct or indirect obligor) permitted by Lender with respect to this Note and/or any collateral given to secure this Note and (ii) any extension or other indulgence, as described above, with respect to any other obligation or any collateral given to secure such other obligation of Borrower to Lender. A discharge or release of any party directly or indirectly liable hereon shall not discharge or otherwise affect the liability of any other party directly or indirectly liable hereon.

No indulgence, delay, or omission by Lender in exercising or enforcing any of its rights or remedies hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any default hereunder shall operate as a waiver of any other default hereunder, nor as a continuing waiver. No waiver of a default or of any other right or remedy hereunder, nor any modification of any provision of this Note, shall be enforceable unless it is in writing signed by the party against whom the waiver or modification is to be enforced. All of Lender's rights and remedies hereunder and under any other related loan documents shall be cumulative and may be exercised singularly or concurrently, at Lender's sole and exclusive discretion.

It is not intended under this Note to charge interest at a rate exceeding the maximum rate of interest permitted to be charged under applicable law, but if interest exceeding said maximum rate should be paid hereunder, the excess shall, at Lender's option, be (a) deemed a voluntary prepayment of principal not subject to the prepayment premium (if any) set forth herein or (b) refunded to Borrower.

Borrower agrees to pay on demand all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by Lender in connection with the protection and/or enforcement of any of Lender's rights or remedies against Borrower (whether or not any suit has been instituted by or against Lender).

This Note shall be binding upon Borrower hereof and upon its respective heirs, successors, and representatives, and shall inure to the benefit of Lender and its successors, endorsees and assigns.

No party obligated on account of this Note may seek contribution from any other party also obligated unless and until all obligations to Lender of the party to whom contribution is sought have been satisfied in full. Each reference to Lender herein is to the named payee hereto or any subsequent holder hereof, and their respective successors, endorsees and assigns.

Borrower represents to Lender that the proceeds of this Note will not be used for personal, family or household purposes and that this loan is strictly a commercial transaction.

Except as provided below, notwithstanding anything else to the contrary contained in this Term Note or in any other document or instrument, the indebtedness evidenced by this Term Note or evidence or secured thereunder shall be non-recourse to the Borrower and Borrower shall be liable upon the indebtedness evidence hereby or evidenced or secured thereby to the full extent (but only to the extent) of the security therefore, the same being the Mortgaged Premises and all rights, estates and interests therein or related thereto securing the payment of this Term Note. If an Event of Default occurs hereunder or under any of the Obligations, or in the timely and proper performance of any Obligations of Borrower thereunder, any judicial proceedings brought by Lender, or the holder hereof, against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security, title, estates, rights and security interests now or at any time hereafter securing the payment of this Term Note or the other Obligations of Borrower to Lender, and no attachment, execution or other writ of process shall be sought, issued, or levied upon any assets, properties or funds of Borrower other than the Mortgaged Premises (except as provided hereafter), and in the event of foreclosure of such liens, security, title, estates, rights or security interests, securing the payment of the Term Note, and/or other Obligations of Borrower, no judgment for any deficiency upon the indebtedness evidenced hereby or evidenced or secured thereby shall be sought or obtained by Lender, or the holder hereof, against Borrower, except on account of the occurrence of (i) any of the conditions specified in an Amended and Restated Environmental Indemnity Agreement of even date herewith, or (ii) any of the following A-I, in which case the Borrower shall be personally liable to Lender for all of Lender's loss, cost and damages (including without limitation, reasonable attorneys' fees) due to Lender by reason of, or in connection with the occurrence of any of the following events:

- A. The misapplication by Borrower of any insurance proceeds or condemnation awards, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
- B. The failure of the Borrower to pay any real estate taxes and assessments or insurance premiums with respect to the Mortgaged Premises or any charges for labor or materials which may result in the creation of liens on the Mortgaged Premises to the extent of Rents actually received;
- C. Following the occurrence of an Event of Default, the misapplication of any tenant rents or security deposits or any other refundable deposits, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
- D. Waste committed on the Mortgaged Premises or damage to the Mortgaged Premises as a result of the intentional misconduct or gross negligence of Borrower or the wrongful removal or destruction of any portion of the Mortgaged Premises; or

E. Any fraud or the material breach of any material representation or warranty made in connection with the Loan known by Borrower or any member of Borrower to have been false when made or deemed made, including any material misrepresentation or inaccuracy contained in any financial statement or other document provided to the Lender pursuant to this Term Note known by Borrower or any member of Borrower known to have been false or inaccurate when provided; or

F. Any filing by Borrower of a petition or application for relief, extension, moratorium or reorganization under any bankruptcy, insolvency or debtor's relief law, or the making of an assignment for the benefit of creditors, or the appointment of a receiver of any property of Borrower in any action initiated by, colluded in, or consented to, by Borrower; or

G. The contesting or opposition by Borrower of any motion for relief from the automatic stay filed by Lender in any involuntary bankruptcy proceeding of Borrower; or

H. Any acts of Borrower that are judicially determined to have been taken in bad faith with the intent to hinder, delay or interfere with the exercise by Lender of its rights and remedies under the Loan Documents after the occurrence of an Event of Default; or

I. The transfer of any ownership interest in or to creation of any voluntary lien on the Mortgaged Premises not permitted by the Loan Documents.

THIS NOTE SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, AND THE BORROWER SUBMITS TO THE JURISDICTION OF ITS COURTS WITH RESPECT TO ALL CLAIMS CONCERNING THIS NOTE OR ANY COLLATERAL SECURING IT.

ALL PARTIES TO THIS NOTE, INCLUDING LENDER, AND AS A NEGOTIATED PART OF THIS TRANSACTION, HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY, AS TO ALL ISSUES, INCLUDING ANY COUNTERCLAIMS, WITHOUT EXCEPTION, IN ANY ACTION OR PROCEEDING RELATING, DIRECTLY OR INDIRECTLY, TO THIS NOTE AND/OR OTHER INSTRUMENTS OR LOAN DOCUMENTS (IF ANY) EXECUTED IN CONNECTION HERewith.

BORROWER HEREBY WAIVES ANY AND ALL RIGHTS THAT THE BORROWER MAY HAVE UNDER SECTION 52-278(a) THROUGH 52-278(g) OF THE CONNECTICUT GENERAL STATUTES (AS AMENDED), INTENDING THEREBY THAT IN THE EVENT OF ANY LEGAL ACTION BETWEEN THE BORROWER AND THE LENDER ARISING OUT OF THIS AGREEMENT, THE LENDER MAY INVOKE ANY PRE-JUDGMENT REMEDY, INCLUDING BUT NOT BEING LIMITED TO, GARNISHMENT, ATTACHMENT,

FOREIGN ATTACHMENT AND REPLEVIN, WITHOUT GIVING BORROWER ANY NOTICE OR OPPORTUNITY FOR A HEARING. THIS WAIVER IS MADE BY THE BORROWER ON BEHALF OF THE BORROWER, ITS HEIRS, SUCCESSORS, AND ASSIGNS, AND SHALL APPLY TO ANY AND ALL ACTIONS AGAINST SUCH HEIRS, SUCCESSORS AND ASSIGNS.

This Note constitutes a final written expression of all of its terms and is a complete and exclusive statement of those terms. Any modification or waiver of any of these terms must be in writing signed by the party against whom the modification or waiver is to be enforced.

The Borrower agrees to be bound by the terms of this Note and acknowledge receipt of a signed copy hereof.

This Note shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws, and shall take effect as a sealed instrument.

*{SIGNATURE PAGE FOLLOWS}*



Signed under seal as of the day and year first above written.

TRADEPORT DEVELOPMENT III, LLC

By: River Bend Holdings, LLC  
Its Sole Member  
By: Griffin Industrial, LLC  
Its Sole Member

/s/ THOMAS M. DANIELLS  
Witness Thomas M. Daniels  
/s/ MATTHEW J. HOBERMAN  
Witness Matthew J. Hoberman

By: /s/ ANTHONY GALICI  
Name: Anthony J. Galici  
Title: Vice President

*{Signature Page to Term Note}*



| Start Date  | End Date    | Beginning Balance (USD) | Principal Payment (USD) |
|-------------|-------------|-------------------------|-------------------------|
| 14-Jul-2017 | 01-Aug-2017 | 10,600,000.00           | 19,224.65               |
| 01-Aug-2017 | 01-Sep-2017 | 10,580,775.35           | 19,296.41               |
| 01-Sep-2017 | 01-Oct-2017 | 10,561,478.94           | 19,368.46               |
| 01-Oct-2017 | 01-Nov-2017 | 10,542,110.48           | 19,440.76               |
| 01-Nov-2017 | 01-Dec-2017 | 10,522,669.72           | 19,513.34               |
| 01-Dec-2017 | 01-Jan-2018 | 10,503,156.38           | 19,586.19               |
| 01-Jan-2018 | 01-Feb-2018 | 10,483,570.19           | 19,659.32               |
| 01-Feb-2018 | 01-Mar-2018 | 10,463,910.87           | 19,732.70               |
| 01-Mar-2018 | 01-Apr-2018 | 10,444,178.17           | 19,806.38               |
| 01-Apr-2018 | 01-May-2018 | 10,424,371.79           | 19,880.32               |
| 01-May-2018 | 01-Jun-2018 | 10,404,491.47           | 19,954.54               |
| 01-Jun-2018 | 01-Jul-2018 | 10,384,536.93           | 20,029.04               |
| 01-Jul-2018 | 01-Aug-2018 | 10,364,507.89           | 20,103.81               |
| 01-Aug-2018 | 01-Sep-2018 | 10,344,404.08           | 20,178.87               |
| 01-Sep-2018 | 01-Oct-2018 | 10,324,225.21           | 20,254.20               |
| 01-Oct-2018 | 01-Nov-2018 | 10,303,971.01           | 20,329.82               |
| 01-Nov-2018 | 01-Dec-2018 | 10,283,641.19           | 20,405.71               |
| 01-Dec-2018 | 01-Jan-2019 | 10,263,235.48           | 20,481.90               |
| 01-Jan-2019 | 01-Feb-2019 | 10,242,753.58           | 20,558.36               |
| 01-Feb-2019 | 01-Mar-2019 | 10,222,195.22           | 20,635.11               |
| 01-Mar-2019 | 01-Apr-2019 | 10,201,560.11           | 20,712.16               |
| 01-Apr-2019 | 01-May-2019 | 10,180,847.95           | 20,789.47               |
| 01-May-2019 | 01-Jun-2019 | 10,160,058.48           | 20,867.09               |
| 01-Jun-2019 | 01-Jul-2019 | 10,139,191.39           | 20,945.00               |
| 01-Jul-2019 | 01-Aug-2019 | 10,118,246.39           | 21,023.19               |
| 01-Aug-2019 | 01-Sep-2019 | 10,097,223.20           | 21,101.67               |
| 01-Sep-2019 | 01-Oct-2019 | 10,076,121.53           | 21,180.46               |
| 01-Oct-2019 | 01-Nov-2019 | 10,054,941.07           | 21,259.52               |
| 01-Nov-2019 | 01-Dec-2019 | 10,033,681.55           | 21,338.90               |
| 01-Dec-2019 | 01-Jan-2020 | 10,012,342.65           | 21,418.57               |
| 01-Jan-2020 | 01-Feb-2020 | 9,990,924.08            | 21,498.52               |
| 01-Feb-2020 | 01-Mar-2020 | 9,969,425.56            | 21,578.79               |
| 01-Mar-2020 | 01-Apr-2020 | 9,947,846.77            | 21,659.35               |
| 01-Apr-2020 | 01-May-2020 | 9,926,187.42            | 21,740.20               |
| 01-May-2020 | 01-Jun-2020 | 9,904,447.22            | 21,821.38               |
| 01-Jun-2020 | 01-Jul-2020 | 9,882,625.84            | 21,902.84               |
| 01-Jul-2020 | 01-Aug-2020 | 9,860,723.00            | 21,984.61               |
| 01-Aug-2020 | 01-Sep-2020 | 9,838,738.39            | 22,066.68               |
| 01-Sep-2020 | 01-Oct-2020 | 9,816,671.71            | 22,149.07               |
| 01-Oct-2020 | 01-Nov-2020 | 9,794,522.64            | 22,231.76               |
| 01-Nov-2020 | 01-Dec-2020 | 9,772,290.88            | 22,314.75               |
| 01-Dec-2020 | 01-Jan-2021 | 9,749,976.13            | 22,398.07               |

|             |             |              |           |
|-------------|-------------|--------------|-----------|
| 01-Jan-2021 | 01-Feb-2021 | 9,727,578.06 | 22,481.68 |
| 01-Feb-2021 | 01-Mar-2021 | 9,705,096.38 | 22,565.62 |
| 01-Mar-2021 | 01-Apr-2021 | 9,682,530.76 | 22,649.86 |
| 01-Apr-2021 | 01-May-2021 | 9,659,880.90 | 22,734.42 |
| 01-May-2021 | 01-Jun-2021 | 9,637,146.48 | 22,819.29 |
| 01-Jun-2021 | 01-Jul-2021 | 9,614,327.19 | 22,904.49 |
| 01-Jul-2021 | 01-Aug-2021 | 9,591,422.70 | 22,990.00 |
| 01-Aug-2021 | 01-Sep-2021 | 9,568,432.70 | 23,075.82 |
| 01-Sep-2021 | 01-Oct-2021 | 9,545,356.88 | 23,161.98 |
| 01-Oct-2021 | 01-Nov-2021 | 9,522,194.90 | 23,248.45 |
| 01-Nov-2021 | 01-Dec-2021 | 9,498,946.45 | 23,335.24 |
| 01-Dec-2021 | 01-Jan-2022 | 9,475,611.21 | 23,422.36 |
| 01-Jan-2022 | 01-Feb-2022 | 9,452,188.85 | 23,509.80 |
| 01-Feb-2022 | 01-Mar-2022 | 9,428,679.05 | 23,597.58 |
| 01-Mar-2022 | 01-Apr-2022 | 9,405,081.47 | 23,685.67 |
| 01-Apr-2022 | 01-May-2022 | 9,381,395.80 | 23,774.10 |
| 01-May-2022 | 01-Jun-2022 | 9,357,621.70 | 23,862.85 |
| 01-Jun-2022 | 01-Jul-2022 | 9,333,758.85 | 23,951.94 |
| 01-Jul-2022 | 01-Aug-2022 | 9,309,806.91 | 24,041.37 |
| 01-Aug-2022 | 01-Sep-2022 | 9,285,765.54 | 24,131.11 |
| 01-Sep-2022 | 01-Oct-2022 | 9,261,634.43 | 24,221.21 |
| 01-Oct-2022 | 01-Nov-2022 | 9,237,413.22 | 24,311.63 |
| 01-Nov-2022 | 01-Dec-2022 | 9,213,101.59 | 24,402.40 |
| 01-Dec-2022 | 01-Jan-2023 | 9,188,699.19 | 24,493.50 |
| 01-Jan-2023 | 01-Feb-2023 | 9,164,205.69 | 24,584.94 |
| 01-Feb-2023 | 01-Mar-2023 | 9,139,620.75 | 24,676.72 |
| 01-Mar-2023 | 01-Apr-2023 | 9,114,944.03 | 24,768.86 |
| 01-Apr-2023 | 01-May-2023 | 9,090,175.17 | 24,861.32 |
| 01-May-2023 | 01-Jun-2023 | 9,065,313.85 | 24,954.13 |
| 01-Jun-2023 | 01-Jul-2023 | 9,040,359.72 | 25,047.30 |
| 01-Jul-2023 | 01-Aug-2023 | 9,015,312.42 | 25,140.81 |
| 01-Aug-2023 | 01-Sep-2023 | 8,990,171.61 | 25,234.67 |
| 01-Sep-2023 | 01-Oct-2023 | 8,964,936.94 | 25,328.88 |
| 01-Oct-2023 | 01-Nov-2023 | 8,939,608.06 | 25,423.44 |
| 01-Nov-2023 | 01-Dec-2023 | 8,914,184.62 | 25,518.35 |
| 01-Dec-2023 | 01-Jan-2024 | 8,888,666.27 | 25,613.62 |
| 01-Jan-2024 | 01-Feb-2024 | 8,863,052.65 | 25,709.25 |
| 01-Feb-2024 | 01-Mar-2024 | 8,837,343.40 | 25,805.22 |
| 01-Mar-2024 | 01-Apr-2024 | 8,811,538.18 | 25,901.57 |
| 01-Apr-2024 | 01-May-2024 | 8,785,636.61 | 25,998.27 |
| 01-May-2024 | 01-Jun-2024 | 8,759,638.34 | 26,095.32 |
| 01-Jun-2024 | 01-Jul-2024 | 8,733,543.02 | 26,192.75 |
| 01-Jul-2024 | 01-Aug-2024 | 8,707,350.27 | 26,290.53 |
| 01-Aug-2024 | 01-Sep-2024 | 8,681,059.74 | 26,388.69 |
| 01-Sep-2024 | 01-Oct-2024 | 8,654,671.05 | 26,487.20 |

|             |             |              |              |
|-------------|-------------|--------------|--------------|
| 01-Oct-2024 | 01-Nov-2024 | 8,628,183.85 | 26,586.09    |
| 01-Nov-2024 | 01-Dec-2024 | 8,601,597.76 | 26,685.35    |
| 01-Dec-2024 | 01-Jan-2025 | 8,574,912.41 | 26,784.97    |
| 01-Jan-2025 | 01-Feb-2025 | 8,548,127.44 | 26,884.96    |
| 01-Feb-2025 | 01-Mar-2025 | 8,521,242.48 | 26,985.34    |
| 01-Mar-2025 | 01-Apr-2025 | 8,494,257.14 | 27,086.08    |
| 01-Apr-2025 | 01-May-2025 | 8,467,171.06 | 27,187.20    |
| 01-May-2025 | 01-Jun-2025 | 8,439,983.86 | 27,288.71    |
| 01-Jun-2025 | 01-Jul-2025 | 8,412,695.15 | 27,390.58    |
| 01-Jul-2025 | 01-Aug-2025 | 8,385,304.57 | 27,492.83    |
| 01-Aug-2025 | 01-Sep-2025 | 8,357,811.74 | 27,595.48    |
| 01-Sep-2025 | 01-Oct-2025 | 8,330,216.26 | 27,698.50    |
| 01-Oct-2025 | 01-Nov-2025 | 8,302,517.76 | 27,801.91    |
| 01-Nov-2025 | 01-Dec-2025 | 8,274,715.85 | 27,905.71    |
| 01-Dec-2025 | 01-Jan-2026 | 8,246,810.14 | 28,009.88    |
| 01-Jan-2026 | 01-Feb-2026 | 8,218,800.26 | 28,114.46    |
| 01-Feb-2026 | 01-Mar-2026 | 8,190,685.80 | 28,219.41    |
| 01-Mar-2026 | 01-Apr-2026 | 8,162,466.39 | 28,324.77    |
| 01-Apr-2026 | 01-May-2026 | 8,134,141.62 | 28,430.51    |
| 01-May-2026 | 01-Jun-2026 | 8,105,711.11 | 28,536.66    |
| 01-Jun-2026 | 01-Jul-2026 | 8,077,174.45 | 28,643.19    |
| 01-Jul-2026 | 01-Aug-2026 | 8,048,531.26 | 28,750.12    |
| 01-Aug-2026 | 01-Sep-2026 | 8,019,781.14 | 28,857.46    |
| 01-Sep-2026 | 01-Oct-2026 | 7,990,923.68 | 28,965.19    |
| 01-Oct-2026 | 01-Nov-2026 | 7,961,958.49 | 29,073.34    |
| 01-Nov-2026 | 01-Dec-2026 | 7,932,885.15 | 29,181.87    |
| 01-Dec-2026 | 01-Jan-2027 | 7,903,703.28 | 29,290.81    |
| 01-Jan-2027 | 01-Feb-2027 | 7,874,412.47 | 29,400.17    |
| 01-Feb-2027 | 01-Mar-2027 | 7,845,012.30 | 29,509.93    |
| 01-Mar-2027 | 01-Apr-2027 | 7,815,502.37 | 29,620.10    |
| 01-Apr-2027 | 01-May-2027 | 7,785,882.27 | 29,730.68    |
| 01-May-2027 | 01-Jun-2027 | 7,756,151.59 | 29,841.68    |
| 01-Jun-2027 | 01-Jul-2027 | 7,726,309.91 | 29,953.08    |
| 01-Jul-2027 | 01-Aug-2027 | 7,696,356.83 | 7,696,356.83 |

**AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This Amended and Restated Loan and Security Agreement dated July 14, 2017, amends and restates a certain Construction Loan and Security Agreement dated February 6, 2009, by and between Tradeport Development III, LLC, a Connecticut limited liability company, with a usual place of business at 204 West Newberry Road, Bloomfield, Connecticut (the “Borrower”), Griffin Industrial Realty, Inc. f/k/a Griffin Land & Nurseries, Inc., a Delaware corporation with a usual place of business at 204 West Newberry Road, Bloomfield, Connecticut (the “Guarantor”) and Berkshire Bank, a Massachusetts banking corporation, with a usual place of business at 19 Harrison Avenue, Springfield, Massachusetts.

**1.00 DEFINITIONS AND RULES OF INTERPRETATION.**

**1.01 DEFINITIONS**

The following terms shall have the meanings set forth in this Section 1.01 or elsewhere in the provisions of this Agreement or other Loan Documents referred to below:

“Advance” shall mean, any disbursement of the proceeds of the Loan made or to be made by the Lender pursuant to this Agreement.

“Agreement” shall mean, this Agreement, including the Schedules and Exhibits hereto, all of which are incorporated herein by reference.

“Appraisal” shall mean, an appraisal of the value of the Mortgaged Premises, determined on an “AS IS” basis, performed by a qualified independent appraiser approved by the Lender.

“Assignee”. See Section 23.01.

“Assignment of Leases” shall mean, the Assignment of Leases and Rents, dated or to be dated on or prior to the Closing Date, made by the Borrower in favor of the Lender, pursuant to which the Borrower assigns its right, title and interest as landlord in and to the Leases and the rents, issues and profits of the Mortgaged Premises, such Assignment of Leases and Rents to be in form and substance satisfactory to the Lender.

“Borrower” shall have the meaning as defined in the preamble hereto.

“Business Day” shall mean, any day on which the Lender is open for the transaction of banking business in Springfield, Massachusetts.

“CERCLA”. See Section 7.16 (a).

“Closing Date” shall mean, the first date on which the conditions set forth in Section 10.00 have been satisfied and the Advance is made.

“Code” shall mean, the Internal Revenue Code of 1986.

“Collateral” shall mean, all of (a) the property, rights and interests of the Borrower that are or are intended to be subject to the security interests, assignments, and mortgage liens created by the Security Documents, including, without limitation, that which is defined in Section 12.00 hereof.

“Commitment” shall mean, the terms letter for the Term Loan issued by the Lender to the Borrower, dated May 11, 2017.

"Debt" means, as applied to any Person, as of any date of determination (without duplication):

- (a) all obligations of such Person for borrowed money (whether or not represented by bonds, debentures, notes, drafts or other similar instruments) or evidenced by bonds, debentures, notes, drafts or similar instruments;
- (b) all obligations of such Person for all, or any part of, the deferred purchase price of property or services, or for the cost of property constructed or of improvements thereon, other than trade accounts payable incurred, in respect of property purchased, in the ordinary course of business, which are not overdue or which are being contested in good faith by appropriate proceedings and are not required to be classified on such Person's balance sheet, in accordance with GAAP, as debt;
- (c) all obligations secured by any Lien on or payable out of the proceeds of production from property owned or held by such Person even though such Person has not assumed or become liable for the payment of such obligation;
- (d) all capital lease obligations of such Person;
- (e) all obligations of such Person, contingent or otherwise, in respect of any letter of credit facilities, bankers' acceptance facilities or other similar credit facilities other than any such obligation which relate to an underlying obligation which otherwise constitutes Debt of such Person hereunder or a current account payable of such Person incurred in the ordinary course of business;
- (f) all obligations of such Person upon which interest payments are customarily made; and



- (g) all Guaranties by such Person of or with respect to obligations of the character referred to in the foregoing clauses (a) through (f) of another Person;

provided, however, that in determining the Debt of any Person, (i) all liabilities for which such Person is jointly and severally liable with one or more other Persons (including, without limitation, all liabilities of any partnership or joint venture of which such Person is a general partner or co-venturer) shall be included at the full amount thereof without regard to any right such Person may have against any such other Persons for contribution or indemnity, and (ii) no effect shall be given to deposits, trust arrangements or similar arrangements which, in accordance with GAAP, extinguish Debt for which such Person remains legally liable.

“Debt Service Coverage Calculation Period” means beginning with the period December 1, 2016 to November 30, 2017, twelve (12) calendar months commencing on December 1<sup>st</sup> and ending on November 30<sup>th</sup>, and it shall be conducted annually thereafter.”

“Debt Service Coverage Ratio” means on each calculation date for the applicable Debt Service Coverage Ratio Calculation Period, by calculating the ratio of (x) the Net Operating Income from the Mortgaged Premises for the immediately preceding Debt Service Coverage Ratio Calculation Period, to (y) the sum of the monthly payments of principal and interest which were due and payable under the Note for the immediately preceding Debt Service Coverage Ratio Calculation Period.

“Default” shall mean, a condition or event which would, with the giving of notice or lapse of time or both, constitute an Event of Default.

“Default Rate” shall mean, the rate of interest (then) in effect at the time of an occurrence of an Event of Default plus five percent (5.00%).

“Distribution” shall mean, the declaration or payment of any distribution of cash or cash flow to the members of the Borrower, or other distribution on or in respect to any membership interests of the Borrower.

“Employee Benefit Plan” shall mean, any employee benefit plan within the meaning of Section 3(3) of ERISA maintained or contributed to by the Borrower or any ERISA Affiliate, other than a Multi- employer Plan.

Environmental Laws. See Section 9.15.(a).

“ERISA” shall mean, the Employee Retirement Income Security Act of 1974, as amended and in effect from time to time.

“ERISA Affiliate” shall mean, any Person which is treated as a single employer with the Borrower under Section 414 of the Code.

“Event of Default”. See Section 13.01

“Financing Statements” shall mean, Uniform Commercial Code Form 1 Financing Statement(s) from the Borrower in favor of the Lender giving notice of a security interest in the Collateral, such financing statements to be in form and substance satisfactory to the Lender.

“Generally Accepted Accounting Principles” shall mean, principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors, as in effect from time to time; provided that a certified public accountant would, insofar as the use of such accounting principles is pertinent, be in a position to deliver an unqualified opinion (other than a qualification regarding changes in generally accepted accounting principles) as to financial statements in which such principles have been properly applied.

“Governmental Authority” shall mean, the United States of America, the State of Connecticut, any political subdivision thereof, the City/Town of Windsor, and any agency, authority, department, commission, board, bureau, or instrumentality of any of them.

“Gross Revenues” means for each Loan Month, all rents, revenues and other payments received by, or for the benefit of Borrower in cash or current funds or other consideration from any source whatsoever in connection with its ownership, operation and management of the Mortgaged Premises, including all payments received by Borrower from all tenants or other occupants of the Mortgaged Premises; provided, however, secured deposits paid to Borrower by tenants under leases at the Mortgaged Premises and insurance proceeds following a casualty or damage by fire or other cause at the Mortgaged Premises, shall not be included in Gross Revenues.

“Guarantor” shall mean, Griffin Industrial Realty, Inc.

“Guaranty” shall mean the Limited Guaranty dated or to be dated on or prior to the Closing Date, made by the Guarantor in favor of the Lender, pursuant to which the Guarantor guarantees to the Lender the payment and performance of the Guaranteed Obligations, as defined in such Limited Guaranty.

“Hazardous Materials”. See, Section 7.16.

“Head Office” shall mean 19 Harrison Avenue, Springfield, MA 01103.

“Hedging Contract” (sometimes referred to as “SWAP Agreement”) means each ISDA Master Agreement and schedules and related confirmations, transactions executed or delivered in connection therewith with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more interest rates, currencies, commodities, equity or debt instruments or securities or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or similar transaction or any combination of these transactions as the same may be hereafter amended, restated, renewed, replaced, supplemented or otherwise modified from time to time.

“Impositions” means with respect to Borrower relating to the Mortgaged Premises, all taxes of every kind and nature, sewer rents, charges for water, for setting or repairing meters and

for all other utilities serving the Mortgaged Premises, and assessments, levies, inspection and license fees and all other charges imposed or assessed against the Mortgaged Premises or any portion thereof, including the income derived from the Mortgaged Premises and any stamp or other taxes which might be required to be paid with respect to the Loan Documents, any of which might, if unpaid, result in a lien on the Mortgaged Premises or any portion thereof, regardless of whom assessed.

“Improvements” shall mean, an industrial warehouse containing 304,200 square feet leased by the Primary Tenant on the Land.

“Incipient Default” means any event or condition which, with the giving of notice or the lapse of time, or both, would become an Event of Default.

“Indebtedness” shall mean, all obligations, contingent and otherwise, that in accordance with generally accepted accounting principles should be classified upon the Borrower’s balance sheet as liabilities, or to which reference should be made by footnotes thereto, including in any event and whether or not so classified: (a) all debt and similar monetary obligations, whether direct or indirect; (b) all liabilities secured by any mortgage, pledge, security interest, lien, charge, or other encumbrance existing on property owned or acquired subject thereto, whether or not the liability secured thereby shall have been assumed; and (c) all guarantees, endorsements and other contingent obligations whether direct or indirect in respect of indebtedness of others, including any obligation to supply funds to or in any manner to invest in, directly or indirectly, the Borrower, to purchase indebtedness, or to assure the owner of indebtedness against loss, through an agreement to purchase goods, supplies, or services for the purpose of enabling Borrower to make payment of the indebtedness held by such owner or otherwise, and the obligations to reimburse the issuer in respect of any letters of credit.

“Indemnity Agreement” shall mean, the Amended and Restated Environmental Compliance and Indemnity Agreement Regarding Hazardous Materials, dated or to be dated on or prior to the Closing Date, made by the Borrower and the Guarantor in favor of the Lender, pursuant to which the Borrower and the Guarantor agree to indemnify the Lender with respect to Hazardous Materials and Environmental Laws, such Indemnity Agreement to be in form and substance satisfactory to the Lender.

"Interest Charges" for any period shall mean all interest (including the imputed interest factor in respect of Capitalized Leases) and all amortization of debt discount and expense on any particular Indebtedness for which such calculations are being made. Computations of Interest Charges on a proforma basis for indebtedness having a variable interest rate shall be calculated at the rate in effect on the day of any determination.

"Interest Expense" means for any period, the sum of the following amounts for the Borrower: (a) the aggregate amount of all interest accrued (whether or not actually paid) during such period in respect of Debt (including, without limitation, imputed interest on Capital Leases), plus (b) amortization of debt discount and expense.

“Investments” shall mean, all expenditures made and all liabilities incurred (contingently or otherwise) for the acquisition of stock or Indebtedness of, or for loans, advances, capital contributions or transfers of property to, or in respect of any guaranties (or other commitments as described under Indebtedness), or obligations of, any Person. In determining the aggregate amount of Investments outstanding at any particular time: (a) the amount of any Investment represented by a guaranty shall be taken at not less than the principal amount of the obligations guaranteed and still outstanding; (b) there shall be included as an Investment all interest accrued with respect to Indebtedness constituting an Investment unless and until such interest is paid; (c) there shall be deducted in respect of each such Investment any amount received as a return of capital (but only by repurchase, redemption, retirement, repayment, liquidating dividend or liquidating distribution); (d) there shall not be deducted in respect of any Investment any amounts received as earnings on such Investment, whether as dividends, interest or otherwise, except that accrued interest included as provided in the foregoing clause (b) may be deducted when paid; and (e) there shall not be deducted from the aggregate amount of Investments any decrease in the value thereof.

“Land” shall mean, the real property located at 100 International Drive, Windsor, Connecticut, and described in Exhibit “A” to this Agreement.

“Lease(s)” shall mean, leases, licenses and agreements, whether written or oral, relating to the use or occupation of space in the Improvements or on the Land by Persons other than the Borrower, and as of the date hereof, it shall mean that certain Indenture of Lease between the Borrower and the Primary Tenant dated January 9, 2009 as amended by First Amendment to Lease dated December 8, 2009, further amended by the Second Amendment to Indenture of Lease dated June 22, 2017, concerning the Mortgaged Premises.

“Lender” shall mean, Berkshire Bank, its successors and assigns.

“Lender Hedging Obligations” means all obligations of Borrower to Lender, any Affiliate of Lender or Berkshire Bank (if, any time after the Closing Date, Berkshire Bank has assigned its interest as “Lender” hereunder to a third party, with respect to such Lender Hedging Obligations arising under a Hedging Contract entered into prior to the date of such assignment) under any other agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act and shall include without limitation, any interest rate swap transactions, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, forward transactions, currency swap transactions, cross-currency rate swap transactions, currency options or similar agreements including, without limitation, the Hedging Contract.

“LIBOR Interest Rate” means one (1) month LIBOR Rate.

“LIBOR Loan” means any Loan when and to the extent that the interest rate therefore is determined by reference to the LIBOR Interest Rate.

“LIBOR Rate” shall mean the rate of interest set, determined or announced on a periodic basis by the British Bankers Association as the average of the Interbank offered one (1) month rate

for U.S. Dollar deposit in the London Interbank market, published two (2) business days before each change date in the "Money Rate" section of "The Wall Street Journal" (or if such publication shall cease to publish such rate, then the rate published in such other nationally recognized publication as the Bank may from time to time specify). If the British Bankers Association, or its successors, shall no longer publish the "LIBOR Rate" for one (1) month, then "LIBOR Rate" hereunder shall mean the highest one (1) month LIBOR Rate set, determined or announced on a periodic basis by the largest London bank (the "Index"). If the Index becomes unavailable during the term of this loan, Bank may designate a substitute index after notifying Borrower.

"Loan" shall mean, the loan which is the subject of this Agreement.

"Loan Amount" means Ten Million Six Hundred Thousand and 00/100 Dollars (\$10,600,000).

"Loan Documents" shall mean, this Agreement, the Term Note, the Indemnity Agreement and the Security Documents and all other agreements, documents and instruments now or hereafter evidencing, securing or otherwise relating to the Term Loan, excluding Hedging Contracts.

"London Banking Day" shall mean any Business Day on which commercial banks are open for international business (including dealing in U.S. dollar (\$) deposits) in London, England and Boston, Massachusetts.

"Master Lease Agreement" means that certain Debt Service Master Lease of even date herewith between Borrower, as Landlord and Guarantor, as Tenant, an executed copy of which has been provided to Lender.

"Maturity Date" shall mean, ten (10) years from the Closing Date.

"Mortgage" shall mean, the Open-End Construction Mortgage, dated February 6, 2009, as modified by First Amendment to Open-End Construction Mortgage and Collateral Assignment of Rents and Leases of even date herewith made by Borrower in favor of the Lender, pursuant to which the Borrower granted a first mortgage lien and first security interest in and to the Mortgaged Premises.

"Mortgaged Premises" shall mean the Land, Improvements and other property secured by the Mortgage.

"Net Cash Flow" for each Loan Month shall mean, Net Operating Income, reduced by all monthly payments of principal and interest under the Term Note.

"Net Operating Income" for each Loan Month shall be calculated by Lender based upon Lender's review of Borrower's financial statements provided to Lender, together with such other financial information as Lender may request, and shall mean the Gross Revenues for the Loan Month less all Operating Expenses for the Loan Month. For the purposes of testing Debt Service Coverage Ratio for the initial test, annual Net Operating Income shall mean all in-place Gross Revenues evidenced by a current rent roll (annualized) less budgeted Operating Expenses (budget

subject to review and approval by Lender) for the upcoming twelve (12) month period, adjusted for interest and non-cash expenses.

“Obligations” shall mean, all indebtedness, obligations and liabilities of the Borrower to the Lender existing on the date of this Agreement or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, including, without limitation, those arising or incurred under this Agreement, any of the other Loan Documents, any Hedging Contract between Borrower and Lender, any Lender Hedging Obligations or any indebtedness, obligations and liabilities of Borrower to Lender in respect of any of the Advances or the Note or other instruments at any time evidencing any thereof.

“Outstanding” shall mean, that with respect to the Loan, the aggregate unpaid principal thereof, together with any unpaid and accrued interest thereon as of any date of determination.

“Permitted Liens” shall mean, liens, security interests and other encumbrances, as described in Exhibit “B”.

“Person” shall mean, any individual, corporation, partnership, trust, unincorporated association, business, or other legal entity, and any government or any governmental agency or political subdivision thereof.

“Personal Property” shall mean, all materials, furnishings, fixtures, furniture, machinery, equipment and all items of tangible personal property now or hereafter owned or acquired by the Borrower, wherever located, and either (i) to be located on or incorporated into the Land or the Improvements, (ii) used in connection with the construction of the Improvements or (iii) to be used in connection with the operation or maintenance of the Land or the Improvements or both.

“Primary Tenant” means The Tire Rack, Inc.

“Real Estate” shall mean, all real property at any time owned, leased (as lessee or sublessee) or operated by the Borrower., including without limitation, the Land.

“Release”. See Section 9.07.

“Requirements” shall mean, any law, ordinance, code, order, rule or regulation of any Governmental Authority relating in any way to the acquisition and ownership of the Mortgaged Premises, the construction of the Improvements, or the use, occupancy and operation of the Mortgaged Premises following the completion of construction of the Improvements, including those relating to subdivision control, zoning, building, use and occupancy, fire prevention, health, safety, sanitation, handicapped access, historic preservation and protection, tidelands, wetlands, flood control, access and earth removal, and all Environmental Laws.

“Security Documents” shall mean, the Mortgage, the Assignment of Leases, the Financing Statements and the Guaranty, and any other agreement, document or instrument now or hereafter securing the Obligations as amended.

“Survey” shall mean, an instrument survey of the Land and the Improvements prepared in accordance with the Lender's survey requirements, such survey to be satisfactory to the Lender in form and substance.

“Taking” shall mean, any condemnation for public use of, or damage by reason of, the action of any Governmental Authority, or any transfer by private sale in lieu thereof, either temporarily or permanently.

"Tangible Net Worth" means as of any date of determination, the net value of the Borrower's Member's Equity, as defined according to GAAP less the book value as of such date of Intangible Assets.

“Term Note” shall mean, the Term Note in the principal face amount of the Loan Amount dated or to be dated on or prior to the Closing Date, made by the Borrower to the order of the Lender, such Term Note to be in form and substance satisfactory to the Lender.

“Termination Date” shall mean, the Maturity Date.

“Title Insurance Company” shall mean, that certain Title Policy #288822195 from First American Title Insurance Company as endorsed as of the Closing Date.

## **1.02 RULES OF INTERPRETATION.**

(a) A reference to any agreement, budget, document or schedule shall include such agreement, budget, document or schedule as revised, amended, modified or supplemented from time to time in accordance with its terms and the terms of this Agreement.

(b) The singular includes the plural and the plural includes the singular.

(c) A reference to any law includes any amendment or modification to such law.

(d) A reference to any Person includes its permitted successors and permitted assigns.

(e) Accounting terms not otherwise defined herein have the meaning assigned to them by generally accepted accounting principles applied on a consistent basis by the accounting entity to which they refer.

(f) The words "include", "includes" and "including" are not limiting.

(g) The words "approval" and "approved", as the context so determines, means an approval in writing given to the party seeking approval after full and fair disclosure to the party giving approval of all material facts necessary in order to determine whether approval should be granted.



(h) Reference to a particular Section refers to that section of this Agreement unless otherwise indicated.

(i) The words "herein", "hereof", "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.

## **2.00 THE \$10,600,000 TERM LOAN FACILITY**

### **2.01 THE \$10,600,000 TERM LOAN**

A Ten Million Six Hundred Thousand and 00/100 Dollar (\$10,600,000) Term Loan will be made available to Borrower. The \$10,600,000 Term Loan shall be repaid over a ten (10) year term based upon a twenty-five (25) year amortization schedule.

### **2.02 CALCULATION AND PAYMENT OF INTEREST**

Interest on the Term Loan shall be calculated on the basis of a year of 360 days for the actual number of days elapsed for each Interest Period. Interest on the Loan shall be paid in immediately available funds at the Lending Office of the Lender. Interest shall accrue at the applicable rates specified in the Term Note. Any principal amount not paid when due (at maturity, by acceleration or otherwise) shall bear interest thereafter until paid in full, payable on demand, at the Default Rate.

### **2.03 THE TERM LOAN PROMISSORY NOTE**

The Term Loan made by the Lender under this Agreement shall be evidenced by, and repaid with interest in accordance with the Term Note substantially in the form of Exhibit "C".

### **2.04 USE OF PROCEEDS**

The Term Loan shall be used by the Borrowers to refinance a certain Construction Note of Borrower to Lender.

### **2.05 SWAP AGREEMENT**

Borrower shall hedge the floating interest expense arising under the Term Loan by maintaining at all times a Hedging Contract that satisfies the following conditions: (i) any ISDA Master Agreement must utilize the ISDA 1992 Master Agreement and related Schedule and Confirmation; the counterparty to any ISDA Master Agreement must be either Lender or another financial institution reasonably acceptable to Lender; provided, that if the counterparty is not Lender, the counterparty must have a long term, unsecured and unsubordinated debt rating of at least "A" by Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc. and "A2" by Moody's Investors Service, Inc.; (ii) the initial ISDA Master Agreement must have (a) with respect to any initial Hedging Contract, a term commencing on the Closing Date and ending on the Maturity Date, or (b) with respect to any Replacement Hedging Contract, a term commencing on the effective date of such replacement swap transaction and ending on the

Maturity Date; (iii) any Hedging Contract must have at all times a notional amount not less than the then outstanding principal amount of the Term Loan; and (iv) any Hedging Contract must swap the LIBOR Rate under the Term Loan for a fixed rate of interest acceptable to Borrower and Lender. Notwithstanding the foregoing, if for any reason, such Hedging Contract shall terminate or otherwise leave any principal under the Term Loan uncovered thereby, or if for any other reason any principal portion of the Term Loan is otherwise no longer hedged by such Hedging Contract, such uncovered amount shall be immediately due and payable by Borrower; provided however, such uncovered amount shall not be immediately due and payable by Borrower if the Borrower executes and delivers a replacement Hedging Contract (the "Replacement Hedging Contract") meeting the conditions set forth above for such uncovered amount within four (4) business days of the effective date of such termination of the Hedging Contract or the failure of any principal portion of the Term Loan to continue to be hedged thereby. Any Hedging Contract entered into by Borrower is subject to events of default and termination events pursuant to the terms and conditions thereof, including, without limitation, any payment of principal of the Term Loan prior to the due date of such payment.

## **2.06 MATURITY**

The Borrower promises to pay the Lender on the Maturity Date, and there shall become absolutely due and payable on the Maturity Date, all of the unpaid principal on the Loan outstanding on such date together with any and all accrued and unpaid interest thereon.

## **2.07 FUNDING LOSS INDEMNIFICATION**

The Borrower shall also pay to the Lender, upon the request of the Lender, such amount or amounts as shall be sufficient (in the reasonable opinion of the Lender) to compensate it for any loss, cost, or expense (including the then present value of any lost interest earnings as a result of any re-deployment of prepaid funds) incurred as a result of any payment of a LIBOR Loan on a date other than a scheduled principal payment day or the last day of the interest period for such Loan including, but not limited to, acceleration of the Loan by the Lender pursuant to Section 13.00

Upon request, Lender will provide Borrower with reasonable documentation of the calculation of compensation requested and relating hereto.

## **2.08 PREPAYMENT PREMIUM**

In the event the Borrower prepays all or any portion of the Note, whether as a result of acceleration or otherwise, the Borrower will pay to the Lender on the same date that any such payment is made any breakage fee, yield maintenance charge, close out amount, termination fee or similar fee or charge as may be required pursuant to any Hedging Contract between Borrower and Lender to cover loss, cost and expense attributable to such prepayment.

## **3.00 THE GUARANTY**

**3.01** The Guarantor shall execute the Limited Guaranty on or before the Closing Date. The form of the Limited Guaranty is attached hereto as Exhibit "D."

### **3.02 MASTER LEASE OBLIGATIONS ABSOLUTE AND UNCONDITIONAL.**

Subject to the Primary Tenant extending its lease at the end of the current term, the Guarantor hereby agrees that its obligations under the Master Lease Agreement shall become absolute and unconditional and are subject to no limitations except those expressly set forth in this Loan Agreement. Notwithstanding any limitation contained in any Loan Document or any other agreement, the Guarantor shall at all times be liable to Lender following demand on Guarantor for the prompt and full payment (and not merely of the collectability), performance and observance of one hundred percent (100%) of all amounts due to Borrower under the Master Lease Agreement. The Guarantors obligations under the Master Lease Agreement are not conditioned or contingent upon the genuineness, validity or enforceability of any of the Loan Documents between the Borrower, the Guarantor and/or the Lender or other instruments relating to the creation or performance of any Obligations of the Borrower or the pursuit by the Lender of any remedies which the Lender has now or may hereafter have with respect thereto under any of the Loan Documents at law, in equity, or otherwise. Notwithstanding anything to the contrary contained in the Master Lease Agreement or any of the Loan Documents, the Guarantor shall forthwith pay all sums due to the Borrower (or the Lender if it exercises its rights under its Collateral Assignment of Rents and Leases) without regard to any counterclaim, setoff, deduction or defense of any kind which any party obligated under the Loan Documents or Master Lease may have or assert, and without abatement, suspension, deferment, or reduction on account of any occurrence whatsoever.

### **3.03 NO AMENDMENTS, TERMINATIONS OR WAIVERS.**

(a) The Guarantor will not amend, supplement or otherwise modify, any of the terms and conditions of the Master Lease Agreement without in each case, the prior written approval of the Lender; and

(b) The Guarantor will not, directly or indirectly, terminate or cancel, or cause or permit to exist any condition which would result in the termination or cancellation of, or which would relieve the performance of any obligations of any other party under the Master Lease Agreement.

(c) The Guarantor will not, directly or indirectly, waive or agree or consent to the waiver of, or performance of any Obligations of the Borrower under the Master Lease Agreement.

### **4.00 LOAN FEES; PAYMENTS AND COMPUTATIONS; CAPITAL ADEQUACY, ETC.**

#### **4.01 LOAN FEE**

The Borrower agrees to pay to the Lender on or before the Closing Date of the Loan a loan underwriting fee of 25 basis points, or Twenty-Six Thousand Five Hundred and 00/100 Dollars (\$26,500).

#### **4.02 FUNDS FOR PAYMENT**

(a) All payments of principal, interest, fees and any other amounts due under the Note or under any of the other Loan Document shall be made to the Lender at its Head Office or at such other location that the Lender may from time to time designate, in each case not later than 2:00 p.m. (Boston time) on the date when due in immediately available funds in lawful money of the United States.

(b) All payments by the Borrower under the Note and under any of the other Loan Documents shall be made without setoff or counterclaim and free and clear of and without deduction for any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or taxing or other authority therein unless the Borrower is compelled by law to make such deduction or withholding. If any such obligation to deduct or withhold is imposed upon the Borrower with respect to any amount payable by it under the Note or under any of the other Loan Documents, the Borrower will pay to the Lender, on the date on which such amount is due and payable under the Note or under such other Loan Document, such additional amount as shall be necessary to enable the Lender to receive the same amount which the Lender would have received on such due date had no such obligation been imposed upon the Borrower. The Borrower will deliver promptly to the Lender certificates or other valid vouchers for all taxes or other charges deducted from or paid with respect to payments made by the Borrower under the Note or under such other Loan Document.

#### **4.03 COMPUTATIONS**

Except as otherwise provided in this Agreement, the Note, whenever a payment thereunder or under any of the other Loan Documents becomes due on a day that is not a Business Day, the due date for such payment shall be extended to the next succeeding Business Day, and interest shall accrue during such extension. The outstanding amount of the Loan as reflected on the Record from time to time shall be considered correct and binding on the Borrower unless within ten (10) Business Days after receipt of any notice by the Borrower of such outstanding amount, the Borrower shall notify the Lender to the contrary.

#### **4.04 ILLEGALITY**

Notwithstanding any other provision in this Agreement, if the Lender determines that any applicable law, rule, or regulation, or any change therein, or any change in the interpretation or administration thereof by any governmental authority, central bank, or comparable agency charged with the interpretation or administration thereof, or compliance by the Lender (or its Lending Office) with any request or directive (whether or not having the force of law) of any such authority, central bank, or comparable agency shall make it unlawful or impossible for the Lender (or its Lending Office) to (1) maintain the Loan, then upon notice to the Borrower by the Lender the Loan shall terminate; or (2) maintain or fund LIBOR Loans, then upon notice to the Borrower by the Lender the outstanding principal amount of the LIBOR Loans, together with interest accrued thereon, and any other amounts payable to the Lender under this Agreement shall be repaid or converted to a prime Loan at the option of the Borrower (a) immediately upon demand of the

Lender if such change or compliance with such request, in the judgment of the Lender, requires immediate repayment; or (b) at the expiration of the last Interest Period to expire before the effective date of any such change or request.

#### **4.05 DISASTER**

Notwithstanding anything to the contrary herein, if the Lender determines (which determination shall be conclusive) that quotations of interest rates for the relevant deposits referred to in the definition of LIBOR is not being provided in the relevant amounts or for the relative maturities for purposes of determining the rate of interest on LIBOR Loan as provided in this Agreement then the Lender shall forthwith give notice thereof to the Borrower, whereupon (a) the obligation of the Lender to make LIBOR Loans shall be suspended until the Lender notifies the Borrower that the circumstances giving rise to such suspension no longer exist; and (b) the Borrower shall repay in full, or convert to a Loan with a comparable rate of interest, in full, the then outstanding principal amount of the Loan, together with accrued interest thereon.

#### **4.06 ADDITIONAL PAYMENTS**

If after the date of this Agreement the Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any governmental authority charged with the administration thereof, or (ii) as a result from any change after the date of this Agreement in United States, Federal, State, Municipal or Foreign Laws or Regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof which changes the basis of taxation of any amounts payable to the Lender under this Agreement, including the Loan, (other than taxes imposed on the overall net income of the Lender for any of such loans by the jurisdiction where the principal office of the Lender is located), then the Lender shall notify the Borrower thereof. The Borrower agrees to pay to the Lender the amount of such reduction in the return on capital as and when such reduction is determined, upon presentation by the Lender of a statement in the amount and setting forth the Lender's calculation thereof, which statement shall be deemed true and correct absent manifest error. In determining such amount, the Lender may use reasonable averaging and attribution methods.

#### **5.00 COLLATERAL SECURITY AND GUARANTY**

##### **5.01 MORTGAGE LIEN**

The Obligations shall be secured by, inter alia, (i) a perfected first priority mortgage lien on the Mortgaged Premises, (ii) a perfected first absolute assignment of rentals and leases concerning the Mortgaged Premises, and (iii) a first perfected priority security interest in all Collateral, whether now owned or hereafter acquired, pursuant to the terms of Section 12.00 of this Agreement and the Security Documents to which the Borrower is a party. This security interest is in addition to, and not in substitution of, a security interest of even date granted from Borrower to Lender in the Mortgage and the definition of "Collateral" therein shall be incorporated herein by reference as if originally stated herein. Any conflict between this Agreement and the

Mortgage and Security Agreement shall be resolved in each instance, in the sole discretion of the Lender.

## **5.02 CONTROL**

Borrower will cooperate with Lender, and execute agreements required by Lender, in obtaining control with respect to Collateral consisting of:

- (i) deposit accounts;
- (ii) investment property;
- (iii) letter of credit rights; and
- (iv) electronic and chattel paper.

The Borrower grants Lender a limited power of attorney to enter into a Control Agreement on behalf of the Borrower to effectuate the forgoing.

Borrower will not create any chattel paper without placing a legend on the chattel paper acceptable to Lender, indicating that Lender has a security interest in the chattel paper.

## **5.03 CROSS DEFAULT**

A default of any of the terms and conditions of any Obligation, of the Borrower and/or Guarantor to the Lender (including, without limitation any reimbursement obligations arising out of any Letters of Credit which the Lender may later issue on behalf of the Borrower and/or Guarantor) or any document or instrument evidencing such an obligation, shall constitute a default of the Note, this Agreement, and all Obligations of the Borrower and/or Guarantor to the Lender whether evidenced by notes or otherwise.

## **6.00 CERTAIN RIGHTS OF LENDER**

### **6.01 APPRAISAL**

At any time during the term of the Loan, Borrower shall cooperate with Lender and use reasonable efforts to assist Lender in obtaining an appraisal of the Mortgaged Premises. Such cooperation and assistance from Borrower shall include but not be limited to the obligation to provide Lender or Lender's appraiser with the following: (i) reasonable access to the Mortgaged Premises, (ii) a current certified rent roll for the Mortgaged Premises in form and substance satisfactory to Lender, including current asking rents and a history of change in asking rents and historical vacancy for the past three years, (iii) current and budgeted income and expense statements for the prior three years, (iv) a site plan and survey of Mortgaged Premises and the Building, (v) the building plans and specifications, including typical elevation and floor plans, (vi) a photocopy of the transfer documents conveying the beneficial interest in the Mortgaged Premises to Borrower, together with the legal description of the Mortgaged Premises, (vii) the current and prior year real estate tax bills, (viii) a detailed list of past and scheduled capital improvements and

the costs thereof, (ix) a summary of the then current ownership entity, (x) all environmental reports and other applicable information relating to the Mortgaged Premises and the Building, and (xi) copies of all recent appraisals/property description information or brochures, including descriptions of amenities and services relating to the Mortgaged Premises and the Building. The appraiser performing any such appraisal shall be engaged by Lender, and if an Event of Default has occurred then Borrower shall be responsible for any fees payable to said appraiser in connection with an appraisal of the Mortgaged Premises.

#### **7.00A REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Lender as follows:

#### **7.01A ORGANIZATION, AUTHORITY, ETC.**

(a) Organization; Good Standing. The Borrower is a limited liability company duly organized pursuant to the Articles of Organization dated October 20, 2008 and filed with the Connecticut Secretary of State on October 20, 2008, and is validly existing and in good standing under the laws of the State of Connecticut. The Borrower, (i) has all requisite power to own its property and conduct its business as now conducted and as presently contemplated, and (ii) is in good standing and is duly authorized to do business in the jurisdiction where the Land is located and in each other jurisdiction where such qualification is necessary.

(b) Authorization. The execution, delivery and performance of this Agreement and the other Loan Documents to which the Borrower is or is to become a party and the transaction contemplated hereby and thereby (i) are within the authority of such Person, (ii) have been duly authorized by all necessary proceedings on the part of such Person, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which such Person is subject or any judgment, order, writ, injunction, license or permit applicable to such Person, (iv) do not conflict with any provision of any operating agreement and articles of organization, or any agreement or other instrument binding upon, such Person, and (v) do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained and the filing of the Mortgage, the Assignment of Leases and the Financing Statements in the appropriate public records with respect thereto.

(c) Enforceability. The execution and delivery of this Agreement and the other Loan Documents to which the Borrower is or is to become a party will result in valid and legally binding obligations of such Person enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought.

#### **7.02A TITLE TO MORTGAGED PREMISES AND OTHER PROPERTIES**

Excluding the Permitted Liens:



(a) The Borrower holds good clear record and marketable fee simple absolute title to the Land and the Improvements, and owns the Personal Property, subject to no rights of others, including any mortgages, leases, conditional sale agreements, title retention agreements, liens or other encumbrances.

(b) The Borrower owns all of the assets reflected in any financial statements provided to Lender as at the Balance Sheet Date or acquired since that date (except property and assets sold or otherwise disposed of in the ordinary course of business since that date), subject to no rights of others, including any mortgages, leases, conditional sales agreements, title retention agreements, liens or other encumbrances except Permitted Liens.

#### **7.03A FINANCIAL STATEMENTS**

There has been furnished to the Lender financial information of the Borrower in connection with the application for the Loan (the “Financial Information”). Such Financial Information, to the best of Borrower’s knowledge, has been prepared in accordance with generally accepted accounting principles and fairly present the financial condition of the Borrower as at the close of business on the date thereof and the results of operations for the fiscal year then ended.

#### **7.04A NO MATERIAL CHANGES, ETC.**

Since the date of the Financial Information, there has occurred no material adverse change in the financial condition or business of the Borrower other than changes in the ordinary course of business that have not had any material adverse effect either individually or in the aggregate on the business or financial condition of the Borrower.

#### **7.05A INTELLECTUAL PROPERTY**

Borrower owns or has a valid right to use all patents, copyrights, trademarks, licenses, trade names or franchises now being used or necessary to conduct its business, all of which are listed on Exhibit “E”, hereto and the conduct of its business as now operated does not conflict with valid patents, copyrights, trademarks, licenses, trade names or franchises of others in any manner that could materially adversely affect in any manner the business or assets or condition, financial or otherwise, of Borrower. True and complete copies of each license and franchise agreement, and evidence of all patents, copyrights, trademarks and trade names, have previously been delivered to the Lender.

#### **7.06A LITIGATION**

There are no actions, suits, proceedings or investigations of any kind pending or threatened against the Borrower before any court, tribunal or administrative agency or board that, if adversely determined, might, either in any case or in the aggregate, adversely affect the properties, assets, financial condition or business of such Person or materially impair the right of such Person to carry on business substantially as now conducted by it, or result in any liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of such Person, or which question the validity of this Agreement or any of the other Loan Documents, any action taken or to be taken pursuant hereto or thereto, or any lien or security interest created or

intended to be created pursuant hereto or thereto, or which will adversely affect the ability of the Borrower to construct, use and occupy the Improvements or to pay and perform the Obligations in the manner contemplated by this Agreement and the other Loan Documents.

#### **7.07A NO MATERIALLY ADVERSE CONTRACTS, ETC.**

The Borrower is not subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business, assets or financial condition of the Borrower. The Borrower is not a party to any contract or agreement that has or is expected, in the judgment of the Borrower's officers, to have any materially adverse effect on the business of the Borrower.

#### **7.08A COMPLIANCE WITH OTHER INSTRUMENTS**

The Borrower is not in violation of any provision of its Certificate of Organization or Operating Agreement or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of penalties or materially and adversely affect the financial condition, properties or business of the Borrower.

#### **7.09A TAX STATUS**

The Borrower (a) has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (b) has paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Borrower knows of no basis for any such claim.

#### **7.10A NO EVENT OF DEFAULT**

No Default or Event of Default has occurred and is continuing.

#### **7.11A INVESTMENT COMPANY ACT**

The Borrower is not an "investment company", or an "affiliated company" or a "principal underwriter" of an "investment company", as such terms are defined in the Investment Company Act of 1940.

#### **7.12A ABSENCE OF FINANCING STATEMENTS, ETC.**

There is no financing statement, security agreement, chattel mortgage, real estate mortgage or other document filed or recorded with any filing records, registry, or other public office, that purports to cover, affect or give notice of any present or possible future lien on, or security interest in, (a) any Collateral or (b) any other assets or property of the Borrower or any rights relating thereto, except with respect to Permitted Liens.

### **7.13A SETOFF, ETC.**

The Collateral and the Lender's rights with respect to the Collateral are not subject to any setoff, claims, withholdings or other defenses. The Borrower is the owner of the Collateral free from any lien, security interest, encumbrance and any other claim or demand.

### **7.14A CERTAIN TRANSACTIONS**

Except as set forth on Exhibit "F" hereto, none of the officers, trustees, directors, partners, members or employees of the Borrower are presently a party to any transaction with the Borrower (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer, trustee, director, partner or such employee or, to the knowledge of the Borrower, any corporation, partnership, trust or other entity in which any officer, trustee, director, partner, member or any such employee has a substantial interest or is an officer, director, trustee, member or partner.

### **7.15A EMPLOYEE BENEFIT PLANS MULTI-EMPLOYER PLANS GUARANTEED PENSION PLANS**

Neither the Borrower nor any ERISA Affiliate other than the Guarantor, maintains or contributes to any Employee Benefit Plan, Multi- employer Plan or Guaranteed Pension Plan.

### **7.16A ENVIRONMENTAL COMPLIANCE**

The Borrower has taken all necessary action to investigate the past and present condition and usage of the Real Estate and the operations conducted thereon and, based upon such diligent investigation, makes the following representations and warranties to its knowledge.

(a) None of the Borrower, or any operator of the Real Estate, or any operations thereon, is in violation, or alleged violation, of any judgment, decree, order, law, license, rule or regulation pertaining to environmental matters, including without limitation, those arising under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act or any state or local statute, regulation, ordinance, order or decree relating to health, safety or the environment (hereinafter "Environmental Laws"), which violation involves the Land or would have a material adverse effect on the environment or the business, assets or financial condition of the Borrower.

(b) The Borrower has not received notice from any third party including, without limitation any federal, state or local governmental authority, (i) that it has been identified by the United States Environmental Protection Agency ("EPA") as a potentially responsible party under CERCLA with respect to a site listed on the National Priorities List, 40 C.F.R. Part 300 Appendix B (1986); (ii) that any hazardous waste, as defined by 42 U.S.C. § 9601(5), any hazardous

substances as defined by 42 U.S.C. § 9601(14), any pollutant or contaminant as defined by 42 U.S.C. § 9601(33) or any toxic substances, oil or hazardous materials as defined by M.G.L. c. 21E, or other chemicals or substances regulated by any Environmental Laws ("Hazardous Materials") which it has generated, transported or disposed of have been found at any site at which a federal, state or local agency or other third party has conducted or has ordered that the Borrower or the Guarantor conduct a remedial investigation, removal or other response action pursuant to any Environmental Laws; or (iii) that it is or shall be a named party to any claim, action, cause of action, complaint, or legal or administrative proceeding (in each case, contingent or otherwise) arising out of any third party's incurrence of costs, expenses, losses or damages of any kind whatsoever in connection with the release of Hazardous Materials.

(c) Except as set forth on Exhibit "G" attached hereto: (i) no portion of the Real Estate has been used for the handling, processing, storage or disposal of Hazardous Materials except in accordance with applicable Environmental Laws; and no underground tank or other underground storage receptacle for Hazardous Materials is located on any portion of the Real Estate; (ii) in the course of any activities conducted by the Borrower, or the operators of their properties, no Hazardous Materials have been generated or are being used on the Real Estate except in accordance with applicable Environmental Laws; (iii) there has been no past or present releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, disposing or dumping (a "Release") or threatened Release of Hazardous Materials on, upon, into or from the Real Estate, which Release would have a material adverse effect on the value of any of the Real Estate or adjacent properties or the environment; (iv) to the best of the Borrower's knowledge, there have been no Releases on, upon, from or into any real property in the vicinity of any of the Real Estate which, through soil or groundwater contamination, may have come to be located on, and which would have a material adverse effect on the value of, the Real Estate; and (v) any Hazardous Materials that have been generated on any of the Real Estate have been transported off-site only by carriers having an identification number issued by the EPA, treated or disposed of only by treatment or disposal facilities maintaining valid permits as required under applicable Environmental Laws, which transporters and facilities have been and are, to the best of the Borrower's knowledge, operating in compliance with such permits and applicable Environmental Laws.

(d) Except as set forth in Exhibit "G", none of the Real Estate is or shall be subject to any applicable environmental clean-up responsibility law or environmental restrictive transfer law or regulation, by virtue of the transactions set forth herein and contemplated hereby.

#### **7.17A MEMBERS AND MANAGERS**

The members of the Borrower are identified on the organizational chart attached as Exhibit "H".

#### **7.18A CONDITION OF MORTGAGED PREMISES**

None of the Mortgaged Premises nor any part thereof is now damaged or injured as result of any fire, explosion, accident, flood or other casualty or has been the subject of any Taking, and to the knowledge of the Borrower, no Taking is pending or contemplated.

### **7.19A RESERVED**

### **7.20A REAL PROPERTY TAXES; SPECIAL ASSESSMENTS**

There are no unpaid or outstanding real estate or other taxes or assessments on or against the Mortgaged Premises or any part thereof which are payable by the Borrower (except only real estate taxes not yet due and payable). The Borrower has delivered to the Lender true and correct copies of real estate tax bills for the Mortgaged Premises for the past fiscal tax year. No abatement proceedings are pending with reference to any real estate taxes assessed against the Mortgaged Premises. There are no betterment assessments or other special assessments presently pending with respect to any part of the Mortgaged Premises, and the Borrower has received no notice of any such special assessment being contemplated.

### **7.21A VIOLATIONS**

The Borrower has received no notices of, or has any knowledge of, any violations of any applicable law.

### **7.22A PRINCIPAL DEPOSITORY**

The Borrower further agrees that it shall conduct its principal (majority) banking business with the Lender, including, without limitation, retaining the Lender as its principal depository savings accounts, checking accounts, general demand depository accounts, and such other accounts as are utilized by the Borrower from time-to-time.

### **7.23A FINANCIAL STATEMENTS**

The balance sheet of the Borrower and the related statements of income and retained earnings and cash flow of the Borrower for the fiscal year then ended, and the accompanying footnotes, together with any interim financial statements of the Borrower, copies of which have been furnished to the Lender, are complete and correct and fairly present the financial condition of the Borrower as at such dates and the results of the operations of the Borrower for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to year-end adjustments in the case of the interim financial statements), and there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Borrower since the presentation to the Lender of the most recently dated financial statements, nor are there any liabilities of the Borrower, fixed or contingent, which are material but are not reflected in such financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business. No information, exhibit or report furnished by the Borrower to the Lender in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statement contained therein not materially misleading.

#### **7.24A LABOR DISPUTES AND ACTS OF GOD**

Neither the business nor the properties of the Borrower are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), materially and adversely affecting such business or properties or the operation of the Borrower.

#### **7.25A OTHER AGREEMENTS**

The Borrower is not a party to any indenture, loan or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or limited liability company restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Borrower, or the ability of the Borrower to carry out its obligations under the Loan Documents to which it is a party. The Borrower is not in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

#### **7.26A LITIGATION**

There is no pending or threatened action or proceeding against or affecting the Borrower before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of the Borrower, or the ability of the Borrower to perform their obligations under the Loan Documents to which it is a party.

#### **7.27A NO JUDGMENTS**

The Borrower has satisfied all judgments, and the Borrower is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator, or Federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

#### **7.28A ERISA**

The Borrower is to the best of its knowledge in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan; no notice of intent to terminate a Plan has been filed, nor has any Plan been terminated; no circumstances exist which constitute grounds entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; the Borrower, nor any Commonly Controlled Entity has completely or partially withdrawn from a Multiemployer Plan; the Borrower and each Commonly Controlled Entity have met their minimum funding requirements under ERISA with respect to all of their Plans and the present value of all vested benefits under each Plan does not exceed the fair market value of all Plan assets allocable to such benefits, as determined on the most recent valuation date of the Plan and in accordance with the provisions of ERISA; and neither the

Borrower, nor any Commonly Controlled Entity has incurred any liability to the PBGC under ERISA.

### **7.29A DEBT**

Set forth in the financial statements referred to in this Agreement, to the extent required by GAAP, is a complete and correct list of all Debt in respect of which the Borrower is in any manner directly or contingently obligated; and the maximum principal or face amounts of the credit in question, which are outstanding and which can be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefore are correctly described or indicated in such financial statements. Exhibit "I" correctly lists all secured and unsecured Debt of the Borrower outstanding as of the date of this Agreement, and shows, as to each item of Debt listed thereon, the obligor and obligee, the aggregate principal amount outstanding on the date hereof.

### **7.30A EXECUTIVE AGREEMENTS**

None of the executive officers of the Borrower is subject to any agreement in favor of anyone, other than Borrower, which limits or restricts that person's right to engage in the type of business activity conducted or proposed to be conducted by such Borrower or to use therein any property or confidential information or which grants to anyone other than the Borrower any rights in any inventions or other ideas susceptible to legal protection developed or conceived by any such officer.

### **7.31A FOREIGN ASSET CONTROL REGULATIONS**

Neither the execution of this Agreement nor the use of the proceeds thereof violates the Trading with the Enemy Act of 1917, as amended, nor any of the Foreign Assets Control Regulations promulgated thereunder or under the International Emergency Economic Powers Act or the U.N. Participation Act of 1945.

### **7.00B REPRESENTATIONS AND WARRANTIES**

The Guarantor represents and warrants to the Lender as follows:

#### **7.01B ORGANIZATION, AUTHORITY, ETC.**

(a) Organization; Good Standing. The Guarantor is a corporation duly organized pursuant to the Articles of Organization dated March 10, 1970 and filed with the Delaware Secretary of State on March 10, 1970 and is validly existing and in good standing under the laws of the State of Delaware. The Guarantor, (i) has all requisite power to own its property and conduct its business as now conducted and as presently contemplated, and (ii) is in good standing and is duly authorized to do business in the jurisdiction where the Land is located and in each other jurisdiction where such qualification is necessary.

(b) Authorization. The execution, delivery and performance of this Agreement and the other Loan Documents to which the Guarantor is or is to become a party and the transaction



contemplated hereby and thereby (i) are within the authority of such Person, (ii) have been duly authorized by all necessary proceedings on the part of such Person, (iii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which such Person is subject or any judgment, order, writ, injunction, license or permit applicable to such Person, (iv) do not conflict with any provision of any operating agreement and articles of organization, or any agreement or other instrument binding upon, such Person, and (v) do not require the approval or consent of, or filing with, any governmental agency or authority other than those already obtained and the filing of the Mortgage, the Assignment of Leases and the Financing Statements in the appropriate public records with respect thereto.

(c) Enforceability. The execution and delivery of this Agreement and the other Loan Documents to which the Guarantor is or is to become a party will result in valid and legally binding obligations of such Person enforceable against it in accordance with the respective terms and provisions hereof and thereof, except as enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought.

#### **7.02B FINANCIAL STATEMENTS**

There has been furnished to the Lender financial information of the Guarantor in connection with the application for the Loan (the "Financial Information"). Such Financial Information, to the best of Guarantor's knowledge, has been prepared in accordance with generally accepted accounting principles and fairly present the financial condition of the Guarantor as at the close of business on the date thereof and the results of operations for the fiscal year then ended.

#### **7.03B NO MATERIAL CHANGES, ETC.**

Since the date of the Financial Information, there has occurred no material adverse change in the financial condition or business of the Guarantor other than changes in the ordinary course of business that have not had any material adverse effect either individually or in the aggregate on the business or financial condition of the Guarantor.

#### **7.04B LITIGATION**

There are no actions, suits, proceedings or investigations of any kind pending or threatened against the Guarantor before any court, tribunal or administrative agency or board that, if adversely determined, might, either in any case or in the aggregate, adversely affect the properties, assets, financial condition or business of such Person or materially impair the right of such Person to carry on business substantially as now conducted by it, or result in any liability not adequately covered by insurance, or for which adequate reserves are not maintained on the balance sheet of such Person, or which question the validity of this Agreement or any of the other Loan Documents, any action taken or to be taken pursuant hereto or thereto, or any lien or security interest created or intended to be created pursuant hereto or thereto, or which will adversely affect the ability of the

Guarantor to construct, use and occupy the Improvements or to pay and perform the Obligations in the manner contemplated by this Agreement and the other Loan Documents.

#### **7.05B NO MATERIALLY ADVERSE CONTRACTS, ETC.**

The Guarantor is not subject to any charter, corporate or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business, assets or financial condition of the Guarantor. The Guarantor is not a party to any contract or agreement that has or is expected, in the judgment of the Guarantor's officers, to have any materially adverse effect on the business of the Guarantor.

#### **7.06B COMPLIANCE WITH OTHER INSTRUMENTS**

The Guarantor is not in violation of any provision of its Certificate of Organization or Operating Agreement or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of penalties or materially and adversely affect the financial condition, properties or business of the Guarantor.

#### **7.07B TAX STATUS**

The Guarantor (a) has made or filed all federal and state income and all other tax returns, reports and declarations required by any jurisdiction to which it is subject, (b) has paid all taxes and other governmental assessments and charges shown or determined to be due on such returns, reports and declarations, except those being contested in good faith and by appropriate proceedings. There are no unpaid taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the officers of the Guarantor knows of no basis for any such claim.

#### **7.08B FINANCIAL STATEMENTS**

The balance sheet of the Guarantor and the related statements of income and retained earnings and cash flow of the Guarantor for the fiscal year then ended, and the accompanying footnotes, together with any interim financial statements of the Guarantor, copies of which have been furnished to the Lender, are complete and correct and fairly present the financial condition of the Guarantor as at such dates and the results of the operations of the Guarantor for the periods covered by such statements, all in accordance with GAAP consistently applied (subject to year-end adjustments in the case of the interim financial statements), and there has been no material adverse change in the condition (financial or otherwise), business, or operations of the Guarantor since the presentation to the Lender of the most recently dated financial statements, nor are there any liabilities of the Guarantor, fixed or contingent, which are material but are not reflected in such financial statements or in the notes thereto, other than liabilities arising in the ordinary course of business. No information, exhibit or report furnished by the Guarantor to the Lender in connection with the negotiation of this Agreement contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statement contained therein not materially misleading.

#### **7.08B LABOR DISPUTES AND ACTS OF GOD**

Neither the business nor the properties of the Guarantor are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), materially and adversely affecting such business or properties or the operation of the Guarantor.

#### **7.09B OTHER AGREEMENTS**

The Guarantor is not a party to any indenture, loan or credit agreement, or to any lease or other agreement or instrument, or subject to any charter or limited liability company restriction which could have a material adverse effect on the business, properties, assets, operations, or conditions, financial or otherwise, of the Guarantor, or the ability of the Guarantor to carry out its obligations under the Loan Documents to which it is a party. The Guarantor is not in default in any material respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

#### **7.10B LITIGATION**

There is no pending or threatened action or proceeding against or affecting the Guarantor before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or business of the Guarantor, or the ability of the Guarantor to perform their obligations under the Loan Documents to which it is a party.

#### **7.11B NO JUDGMENTS**

The Guarantor has satisfied all judgments, and the Guarantor is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator, or Federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

#### **7.12B ERISA**

The Guarantor is to the best of its knowledge in compliance in all material respects with all applicable provisions of ERISA. Neither a Reportable Event nor a Prohibited Transaction has occurred and is continuing with respect to any Plan; no notice of intent to terminate a Plan has been filed, nor has any Plan been terminated; no circumstances exist which constitute grounds entitling the PBGC to institute proceedings to terminate, or appoint a trustee to administer, a Plan, nor has the PBGC instituted any such proceedings; the Guarantor, nor any Commonly Controlled Entity has completely or partially withdrawn from a Multiemployer Plan; the Guarantor and each Commonly Controlled Entity have met their minimum funding requirements under ERISA with respect to all of their Plans and the present value of all vested benefits under each Plan does not exceed the fair market value of all Plan assets allocable to such benefits, as determined on the most

recent valuation date of the Plan and in accordance with the provisions of ERISA; and neither the Guarantor, nor any Commonly Controlled Entity has incurred any liability to the PBGC under ERISA.

### **7.13B DEBT**

Set forth in the financial statements referred to in this Agreement, to the extent required by GAAP, is a complete and correct list of all Debt in respect of which the Guarantor is in any manner directly or contingently obligated; and the maximum principal or face amounts of the credit in question, which are outstanding and which can be outstanding, are correctly stated, and all Liens of any nature given or agreed to be given as security therefore are correctly described or indicated in such financial statements. Exhibit "T" correctly lists all secured and unsecured Debt of the Guarantor outstanding as of the date of this Agreement, and shows, as to each item of Debt listed thereon, the obligor and obligee, the aggregate principal amount outstanding on the date hereof.

### **7.14B EXECUTIVE AGREEMENTS**

None of the executive officers of the Guarantor is subject to any agreement in favor of anyone, other than Guarantor, which limits or restricts that person's right to engage in the type of business activity conducted or proposed to be conducted by such Guarantor or to use therein any property or confidential information or which grants to anyone other than the Guarantor any rights in any inventions or other ideas susceptible to legal protection developed or conceived by any such officer.

### **7.15B FOREIGN ASSET CONTROL REGULATIONS**

Neither the execution of this Agreement nor the use of the proceeds thereof violates the Trading with the Enemy Act of 1917, as amended, nor any of the Foreign Assets Control Regulations promulgated thereunder or under the International Emergency Economic Powers Act or the U.N. Participation Act of 1945.

## **8.00 AFFIRMATIVE COVENANTS OF THE BORROWER**

The Borrower covenants and agrees that, so long as the Loan is outstanding or the Lender has any obligation to make any Advances:

### **8.01 PUNCTUAL PAYMENT**

The Borrower will duly and punctually pay or cause to be paid the principal and interest on the Loan and all other amounts provided for in the Note, this Agreement and the other Loan Documents to which the Borrower is a party, all in accordance with the terms of the Note, this Agreement and such other Loan Documents.

## **8.02 MAINTENANCE OF OFFICE**

The Borrower will maintain an office in Bloomfield, Connecticut or at such other place in the United States of America as the Borrower shall designate upon written notice to the Lender, where notices, presentations and demands to or upon the Borrower in respect of the Loan Documents may be given or made.

## **8.03 RECORDS AND ACCOUNTS**

The Borrower will (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with generally accepted accounting principles and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves.

## **8.04 FINANCIAL STATEMENTS, CERTIFICATES AND INFORMATION**

The Borrower (as indicated), at its sole expense, will deliver to the Lender:

(a) within one hundred twenty (120) days of fiscal year end, the internal statement of operations, statement of cash flow and balance sheets of Borrower;

(b) within thirty (30) days after the receipt of the Primary Tenant's audited financial statements, the Borrower shall provide them to Lender; and

(c) from time to time such other reasonable financial data and information as the Lender may request.

## **8.05 NOTICES**

(a) Defaults. The Borrower will promptly notify the Lender in writing of the occurrence of any Default or Event of Default, specifying the nature and existence of such Default or Event of Default and what action the Borrower is taking or proposes to take with respect thereto. If any Person shall give any notice or take any other action in respect of a claimed default (whether or not constituting an Event of Default) under this Agreement or under any note, evidence of indebtedness, indenture or other obligation to which or with respect to which the Borrower is a party or obligor, whether as principal or surety, and such default would permit the holder of such note or obligation or other evidence of indebtedness to accelerate the maturity thereof, the Borrower shall forthwith give written notice thereof to the Lender, describing the notice or action and the nature of the claimed default.

(b) Environmental Events. The Borrower will promptly give notice to the Lender (i) of any violation of any Environmental Law that the Borrower reports in writing or is reportable by such Person in writing (or for which any written report supplemental to any oral report is made) to any federal, state or local environmental agency and (ii) upon becoming aware thereof, of any inquiry, proceeding, investigation, or other action, including a notice from any agency of potential environmental liability, or any federal, state or local environmental agency or board, that in either

case involves the Mortgaged Premises or has the potential to materially affect the assets, liabilities, financial conditions or operations of the Borrower or such general partner or the Lender's liens or security interests pursuant to the Security Documents.

(c) Notification of Claims against Collateral. The Borrower will, immediately upon becoming aware thereof, notify the Lender in writing of any material setoff, claims, withholdings or other defenses to which any of the Collateral, or the Lender's rights with respect to the Collateral, are subject.

(d) Notice of Nonpayment. The Borrower will immediately notify the Lender in writing if the Borrower receives any notice, whether oral or written, from any laborer, subcontractor or materialman to the effect that such laborer, subcontractor or materialman has not been paid when due for any labor or materials furnished in connection with the construction of the Improvements

(e) Notice of Litigation and Judgments. The Borrower will give notice to the Lender in writing within fifteen (15) days of becoming aware of any litigation or proceeding threatened in writing or any pending litigation and proceedings affecting the Mortgaged Premises or affecting the Borrower or to which the Borrower is or is to become a party involving an uninsured claim against the Borrower that could reasonably be expected to have a materially adverse effect on the Borrower or any of its general partners and stating the nature and status of such litigation or proceedings. The Borrower will give notice to the Lender, in writing, in form and detail satisfactory to the Lender, within ten (10) days of any judgment not covered by insurance, final or otherwise, against the Borrower in an amount in excess of \$10,000.00.

(f) Notice of Occupancy by Tenants. Excluding the Primary Tenant, the Borrower will give written notice to the Lender at least ten (10) days prior to the commencement of, and again on the date of, occupancy of the Improvements by any tenant under a Lease, stating the name of the tenant, the date of occupancy, and the area so occupied.

## **8.06 EXISTENCE**

The Borrower will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a Connecticut limited liability company. The Borrower will do or cause to be done all things necessary to preserve and keep in full force all of its rights and franchises. The Borrower (a) will cause all of its properties used or useful in the conduct of its business to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment, (b) will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Borrower may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times, and (c) will continue to engage primarily in the businesses now conducted by it and in related businesses.

## **8.07 INSURANCE**

**8.07.1 INSURANCE.** Borrower shall, at its sole cost and expense, or shall cause the Primary Tenant to insure and keep insured the Mortgaged Premises, against such perils and hazards, and in such amounts and with such limits, as Lender may from time to time reasonably require. Borrower shall also carry such other insurance, and in such amounts, as Lender may from time to time reasonably require, against insurable risks which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the availability of insurance and to the type of construction, location, utilities, use and occupancy of the Mortgaged Premises or any replacements or substitutions therefor ("Additional Insurance"). Such Additional Insurance may include flood, earthquake, business interruption and demolition and shall be obtained within 30 days after demand by Lender. Otherwise, Borrower shall not obtain any separate or additional insurance which is contributing in the event of loss, unless it is properly endorsed and otherwise reasonably satisfactory to Lender in all respects. Except as otherwise required under the existing Lease with the Primary Tenant, any proceeds of insurance in excess of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) paid on account of any damage to or destruction of the Mortgaged Premises or any portion thereof shall be paid over to the Lender and shall be applied and distributed as provided for herein and in the Mortgage.

**8.07.2(a) EVIDENCE OF COVERAGE.** The insurance shall be evidenced by the original policy or a true and certified copy of the original policy, or in the case of liability insurance, by certificates of insurance. Certificates evidencing such insurance shall be delivered to Lender at or prior to Closing and certified copies or original policies shall be delivered to Lender within thirty (30) days following Closing. On or before the stated due date, Borrower or the Primary Tenant shall pay all premiums and fees for the insurance policies required hereunder. Borrower shall deliver certified copies of all policies and renewals (or certificates evidencing the same) to Lender at least thirty (30) days before the expiration of existing policies. Each such policy shall provide that such policy may not be canceled or materially changed except upon 30 days prior written notice of intention of non-renewal, cancellation or material change to Lender, and that no act or thing done by Borrower shall invalidate the policy as against Lender. Lender shall be named as Mortgagee, loss payee and additional insured on all such policies. Notwithstanding anything to the contrary contained herein or in any provision of law, the proceeds of insurance policies coming into the possession of Lender and which are not to be used for the Work (as hereinafter defined) shall not be deemed trust funds and Lender shall be entitled to dispose of such proceeds as hereinafter provided and as set forth in the Mortgage. If Lender has not received satisfactory evidence of such renewal or substitute insurance in the time frame herein specified, Lender shall have the right, but not the obligation, to purchase such insurance for Lender's interest only. Any amounts so disbursed by Lender pursuant to this Section 8.07 shall be deemed to be a part of the Loan and shall bear interest at the Default Rate. Nothing contained in this Section 8.07 shall require Lender to incur any expense or take any action hereunder, and inaction by Lender shall never be deemed a waiver of any rights accruing to Lender on account of this Section 8.07.

**8.07.2(b) SEPARATE INSURANCE.** Borrower shall not carry any separate insurance on the Mortgaged Premises concurrent in kind or form with any insurance required hereunder or contributing in the event of loss without Lender's prior written consent, and any such policy shall

have attached a standard non-contributing mortgagee clause, with loss payable to Lender, and shall meet all other requirements set forth herein.

**8.07.2(c) DAMAGE TO OR DESTRUCTION OF MORTGAGED PREMISES.** In the event of any damage to or destruction of the Mortgaged Premises, Borrower shall give prompt written notice to Lender and provided that no Event of Default has occurred hereunder, Lender shall release any insurance proceeds received by it to the Borrower provided that the Borrower uses it strictly in compliance with its obligations under the Lease with the Primary Tenant, Borrower shall promptly commence and diligently continue to complete the repair, restoration and rebuilding of the Mortgaged Premises so damaged or destroyed in full compliance with all legal requirements and with the provisions of the Lease and as set forth in Section 8.07.2(d) below, and free and clear from any and all liens and claims. Such repair, restoration and rebuilding of the Mortgaged Premises are sometimes hereinafter collectively referred to as the "Work." Borrower shall not adjust compromise or settle any claim for insurance proceeds without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

**8.07.2(d) RESTORATION.** Borrower warrants, covenants and represents that:

(i) During the period following a casualty until the Work has been completed, Borrower shall cause the insurance proceeds, together with any additional sums deposited by Borrower with the Lender in respect of the applicable casualty to equal or exceed such estimated cost of effecting such repair and restoration, or such portion thereof as then remains to be completed and paid for;

(ii) Upon completion of the Work, the monthly rents from all Leases remaining in full force and effect shall, in Lender's reasonable judgment, be sufficient to pay all Operating Expenses of the Mortgaged Premises and all regularly scheduled principal, interest and other sums due and payable under the Note, this Agreement and the other Loan Documents.

(iii) At all times, there shall be in force and effect for the benefit of Borrower and Lender rental interruption insurance sufficient to provide coverage for one hundred percent (100%) of all rental income lost as a consequence of such casualty for a total of at least twelve (12) months;

(iv) The Work will be effected pursuant to plans and specifications reasonably approved in writing by Lender, and by a general contractor and major subcontractors, and pursuant to contracts, approved in writing by Lender; and

(v) The Work can be effected in compliance with all applicable laws and Borrower shall have obtained all licenses, permits, consents and approvals from all applicable governmental authorities or private parties required to permit Borrower to effect such restoration and repair and to use, operate and occupy the repaired and restored premises upon completion thereof (other than those which will issue in the ordinary course upon completion) and that the same shall be in full force and effect.



**8.07.2(e) DISTRIBUTION OF PROCEEDS.** If any insurance Proceeds are used for the Work, Borrower warrants, covenants and represents:

(i) If the Work is structural or if the cost of the Work is reasonably estimated by Lender to exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), the Work shall be conducted under the supervision of a certified and registered architect or engineer. Before Borrower commences any Work, other than temporary work to protect property or prevent interference with business, Lender shall have approved in writing the plans and specifications for the Work, which approval shall not be unreasonably withheld or delayed, it being nevertheless understood that such plans and specifications shall provide for Work so that, upon completion thereof, the Mortgaged Premises shall be at least equal in value and general utility to the Mortgaged Premises prior to the damage or destruction.

(ii) Borrower shall deliver to Lender a certificate of the architect or engineer in (i) above (or a certificate given by Borrower if no architect or engineer is so required) stating (A) that all of the Work completed has been done in compliance with the approved plans and specifications, if required under (i) above, (B) that the proceeds to be distributed are justly required to reimburse the Borrower for payments made by Borrower, or are justly due to the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums previously paid out by the Lender does not exceed the value of the Work done to the date of such certificate, (C) if the sum to be distributed is to cover payment relating to repair and restoration of personal property required or relating to the Mortgaged Premises, that title to the personal property items covered by the requested payment is vested in Borrower, and (D) that the amount of such proceeds remaining in the hands of the Lender will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Lender may require an estimate of the cost of such completion). Additionally, Borrower shall deliver to Lender a statement signed by Borrower approving both the Work done to date and the Work covered by the payment in question.

(iii) Borrower shall deliver waivers of lien satisfactory to Lender covering that part of the Work for which payment or reimbursement is being requested and, if required by Lender, a search prepared by a title company, or by other evidence satisfactory to Lender that there has not been filed with respect to the Mortgaged Premises any mechanics' or other lien or instrument for the retention of title relating to any part of the Work not discharged of record. Additionally, as to any personal property covered by the request for payment, Lender shall be furnished with evidence of payment therefor and such further evidence satisfactory to assure Lender of its valid first lien on the personal property.

(iv) Lender or its designee shall have the right to inspect the Work at all reasonable times. The reasonable cost of any such inspection of the Work shall be paid by Borrower upon demand. Neither the approval by Lender of the plans and specifications for the Work nor the inspection by Lender of the Work shall make Lender responsible for the preparation of such plans and specifications or the compliance of such plans and specifications, or of the Work, with any applicable law, regulation, ordinance, covenant or agreement.

(v) Borrower shall deliver a copy or copies of any certificate or certificates required by law to render occupancy and full operation of the Mortgaged Premises legal.

#### **8.07.2(f) MISCELLANEOUS INSURANCE PROVISIONS.**

(i) The insurance requirements contained in this Section 8.07.2(f) are in addition to, and supplement the insurance requirements contained in the Mortgage.

(ii) In the event of the foreclosure of the Mortgage or other transfer of title to or assignment of the Mortgaged Premises in extinguishment of the debt due Lender in whole or in part, all right, title and interest of Borrower in and to all policies of insurance required by this Agreement and any insurance proceeds shall inure to the benefit of and pass to Lender or any purchaser or transferee of the Mortgaged Premises.

(iii) Borrower hereby authorizes Lender, during all periods in which an Event of Default has occurred and remains uncured, to settle any insurance claims, to obtain insurance proceeds, and to endorse any checks, drafts or other instruments representing any insurance proceeds whether payable by reason of loss thereunder or otherwise.

#### **8.08 TAXES**

(a) The Borrower will pay, or cause to be paid and discharged, all taxes, assessments and other governmental charges imposed upon it with respect to the Mortgaged Premises or imposed upon the Mortgaged Premises at the time and in the manner required by the Mortgage, before the same shall become overdue. The Borrower will promptly pay and discharge (by bonding or otherwise) all claims for labor, material or supplies that if unpaid might by law become a lien or charge against the Mortgaged Premises or any part thereof or might affect the priority of the lien created by the Mortgage with respect to any Advance made or to be made by the Lender under this Agreement.

(b) The Borrower will duly pay and discharge, or cause to be paid and discharged, before the same shall become overdue, all taxes, assessments and other governmental charges imposed upon it and its other real properties, sales and activities, or any part thereof, or upon the income or profits therefrom, as well as all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon any of its property; provided that any such tax, assessment, charge, levy or claim with respect to properties other than the Mortgaged Premises need not be paid if the validity or amount thereof shall currently be contested in good faith by appropriate proceedings and if the Borrower shall have set aside on its books adequate reserves with respect thereto; and provided further that the Borrower will pay all such taxes, assessments, charges, levies or claims forthwith upon the commencement of proceedings to foreclose any lien that may have attached as security therefore.

## **8.09 INSPECTION OF MORTGAGED PREMISES, OTHER PROPERTIES AND BOOKS**

(a) The Borrower shall permit the Lender and its agents, at the Borrower's expense, to visit and inspect the Mortgaged Premises and will cooperate with the Lender during such inspections.

(b) The Borrower shall permit the Lender at the Borrower's expense to visit and inspect any of the other properties of the Borrower to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom) and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

## **8.10 COMPLIANCE WITH LAWS, CONTRACTS, LICENSES AND PERMITS**

The Borrower will comply with, (a) the applicable laws and regulations wherever its business is conducted, including all Environmental Laws and, in the case of the Borrower, all Requirements, (b) the provisions of its operating agreement and other charter documents, (c) all agreements and instruments by which it or any of its properties may be bound, and all restrictions, covenants and easements affecting the Mortgaged Premises, (d) all applicable decrees, orders and judgments, and (e) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including, in the case of the Borrower.

## **8.11 LEASES**

The Borrower will take or cause to be taken all steps within the power of the Borrower to market and lease the leasable area of the Improvements to such tenants and upon such terms and conditions as may be approved by the Lender. Any proposed standard form of lease to be used by the Borrower in connection with the Improvements shall be submitted to and approved by the Lender prior to its submission to any proposed tenant, and the Borrower will make such amendments, modifications or additions thereto as may be required by the Lender. The leases to any tenant who will lease or occupy thirty percent (30%) or more of the net leasable area of the Improvements (other than the Primary Tenant) will require that such tenant prepare and deliver to the Borrower and the Lender annual financial statements certified by an independent certified public accountant within 120 days following the end of each fiscal year of such tenant. The Borrower will require, and each Lease will require, each tenant to enter into a Nondisturbance, Attornment and Subordination Agreement upon the request of the Lender. The Lender shall have the right, and the Borrower hereby authorizes the Lender, to communicate directly with any tenant under a Lease to verify any information delivered to the Lender by the Borrower concerning such tenant or such tenant's Lease.

## **8.12 FURTHER ASSURANCES**

(a) Regarding Preservation of Collateral. The Borrower will execute and deliver to the Lender such further documents, instruments, assignments and other writings, and will do such

other acts necessary or desirable, to preserve and protect the Collateral at any time securing or intended to secure the Obligations, as the Lender may require.

(b) Regarding this Agreement. The Borrower will cooperate with, and will do such further acts and execute such further instruments and documents as the Lender shall reasonably request to carry out to its satisfaction the transactions contemplated by this Agreement and the other Loan Documents.

### **8.13 NO MERGER OR ACQUISITION**

Borrower will not merge or consolidate or be merged or consolidated with or into any other corporation or business entity, nor acquire substantially all of the assets and/or stock of another corporation or other business entity, unless specifically authorized by Lender, in writing, in advance.

### **8.14 NO SUBSTITUTION**

This Agreement may but need not be supplemented by separate assignments and pledges and, if such assignments and pledges are given, the rights and security interests given thereby shall be in addition to and not in limitation of the rights and security interests given by this Agreement. This Agreement shall not act to terminate, cancel, revoke, nor otherwise cause a novation, estoppel, or waiver of any or all prior security interests granted by Borrower to Lender in and to any collateral contemplated by these presents, or other, wholly or in part, and without exception; and any and all such security interests shall continue to remain properly perfected by Borrower to Lender in their terms and without interruption.

### **8.15 PROTECTION OF COLLATERAL**

Borrower will maintain all Collateral in a condition which is comparable to that which exists on the date of the issuance of the final Certificate of Occupancy, and make any necessary repairs thereto, or replacements thereof; ordinary wear and tear and obsolescence excepted.

Borrower will at the request of Lender, promptly furnish Lender the receipted bills for all payments required by this Agreement. At its option, but without liability so to do, Lender may discharge taxes, assessments, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Borrower agrees to reimburse Lender on demand for any payments made by Borrower, or any expenses including attorneys' fees incurred by Lender pursuant to the foregoing authorization, and upon failure of Borrower so to reimburse Lender, any such sums paid or advanced by Lender shall be deemed secured by the Collateral and constitute part of the Loans.

### **8.16 COMPLIANCE WITH ERISA**

Each of the Borrower and Guarantor will not:

(A) engage in any prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code), or commit any other breach of its fiduciary responsibility under Part 4 of Title I of ERISA, which could subject the Borrower or any Borrower Group Member to any material liability under Section 406, 409, 502(i) or 502(d) of ERISA or Section 4975 of the Code, or under any agreement or other instrument pursuant to which the Borrower or such Borrower Group Member could be required to indemnify any Person against any such liability or which could otherwise have a Material Adverse Effect on the Borrower or any Plan; or

(B) fail to make any contribution required to be made by it to any Plan or Multiemployer Plan or permit to exist with respect to any Plan any "accumulated funding deficiency" (as such term is defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; or

(C) (i) commence proceedings to terminate any Plan, other than in a "standard termination" within the meaning of Section 4041 of ERISA, or (ii) permit to exist any proceedings instituted by the PBGC to terminate or to have a trustee appointed to administer any Plan, or (iii) withdraw from any Multiemployer Plan in a manner which could result in the imposition of a withdrawal liability under Part 1 of Subtitle E of Title IV of ERISA.

## **8.17 FINANCING STATEMENTS**

Prior to any loan being made from Lender to Borrower, the Borrower hereby agrees that Lender may file and record at Borrower's cost, any financing statement, or other notices appropriate under applicable law, in respect of any security interest created pursuant to this Agreement or at any other time which may at any time be required by the Lender. The Borrower authorizes the Lender to file any and all financing statements on behalf of the Borrower describing the Collateral, as well as any agricultural liens or other statutory liens held by Lender. In the event that any re-recording or re-filing thereof (or the filing of any statements of continuation or assignment of any financing statement) is required to protect and preserve such lien or security interest, the Borrower shall, at its cost and expense, cause the same to be re-recorded and/or re-filed at the time and in the manner requested by the Lender. The Borrower hereby irrevocably designates the Lender, its agents, representatives and designees as agents and attorneys-in-fact for the Borrower to sign such financing statements, or other instruments in connection herewith, on behalf of the Borrower and file the same, as required.

## **8.18 TAXES AND IMPOSITIONS**

(A) Borrower shall (i) pay and discharge all Impositions prior to delinquency, and (ii) provide Lender following an Event of Default, validated receipts or such other evidence satisfactory to Lender showing the payment of such Impositions within thirty (30) days after the same would have otherwise become delinquent. Borrower's obligation to pay the Impositions pursuant to this Agreement shall include, to the extent permitted by applicable law, taxes resulting from future changes in law which impose upon Lender an obligation to pay any property taxes or

other Impositions. Should Borrower default on any payment of any Impositions, Lender may (but shall not be obligated to) pay such Impositions or any portion thereof and Borrower shall reimburse Lender on demand for all such payment(s).

(B) Borrower shall not be required to pay, discharge or remove any Imposition so long as Borrower contests in good faith such Impositions or the validity, applicability or amount thereof by an appropriate legal proceeding which operates to prevent the collection of such amounts and the sale of the Mortgaged Premises, or any portion thereof; provided, however, that prior to the date on which such Imposition would otherwise have become delinquent, Borrower shall have (i) given Lender prior written notice of such contest and (ii) set aside on its books adequate reserves with respect thereto. Any such contest shall be prosecuted with due diligence, and Borrower shall promptly pay the amount of such Imposition as finally determined, together with all interest and penalties payable in connection therewith. Lender shall have full power and authority to apply any amount to the payment of any unpaid Imposition to prevent the sale or forfeiture of the Mortgaged Premises or any portion thereof for non-payment thereof. Lender shall have no liability, however, for failure to so apply any amount deposited. Notwithstanding any provisions of this clause to the contrary, Borrower shall pay any Imposition which it might otherwise be entitled to contest if, in the sole and absolute discretion of Lender, the Mortgaged Premises, or any portion thereof or any Collateral, is in jeopardy or in danger of being forfeited or foreclosed. If Borrower refuses to pay any such Imposition, Lender may (but shall not be obligated to) make such payment and Borrower shall reimburse Lender on demand for all such advances.

#### **8.19 MAINTENANCE OF RECORDS**

Keep adequate records and books of account, in which complete entries will be made accurately reflecting all financial transactions of the Borrower.

#### **8.20 MAINTENANCE OF PROPERTIES**

Maintain, preserve and keep, its properties which are used or useful in the conduct of its business (whether owned in fee or a leasehold interest) in good repair and working order and from time-to-time will make all necessary repairs, replacements, renewals and additions so that at all times the efficiency thereof shall be maintained. Borrower agrees that it will maintain and repair the Collateral and the Mortgaged Premises and keep all of the same in good and serviceable condition and in at least as good condition and repair as same were on the date hereof or in such better condition and repair as same may have been put thereafter. Borrower will not waste or destroy or suffer the waste or destruction of the Collateral or the Mortgaged Premises or any part thereof. Borrower will not use any of the Collateral or the Mortgaged Premises in violation of any insurance thereon. Except as otherwise required under the lease for the Primary Tenant, in the event of damage to or destruction of all or any part of the Collateral or the Mortgaged Premises from any cause, the Borrower shall repair, replace, restore and reconstruct the Collateral and the Mortgaged Premises to the extent necessary to restore each portion of same to its condition immediately prior to such damage or destruction and this obligation shall not be limited by the amount of any insurance proceeds available.

## **8.21 COMPLIANCE WITH LAWS**

Promptly pay and discharge all lawful taxes, assessments and governmental charges or levies imposed upon the Borrower, or upon, or in respect of, all or any part of the property or business of the Borrower, all trade accounts payable in accordance with usual and customary business terms, and all claims for work, labor or materials, which if unpaid might become a lien or charge upon any property of the Borrower; provided the Borrower shall not be required to pay any such tax, assessment, charge, levy, account payable or claim if (i) the validity, applicability or amount thereof is being contested in good faith by appropriate actions or proceedings which will prevent the forfeiture or sale of any property of the Borrower or any material interference with the use thereof by the Borrower, and (ii) the Borrower shall set aside on its books, reserves deemed by it to be adequate with respect thereto. The Borrower will promptly comply with all laws, ordinances or governmental rules and regulations to which it is subject, including without limitation, the Occupational Safety and Health Act of 1970, ERISA, the Americans with Disabilities Act and all Environmental Laws in all applicable jurisdictions, the violation of which would materially and adversely affect the properties, business, prospects, profits or condition of the Borrower or would result in any lien or charge upon any property of the Borrower.

## **8.22 ENVIRONMENT**

Notify the Lender immediately of any notice of a hazardous discharge or environmental complaint received from any governmental agency or any other party; notify the Lender immediately of any hazardous discharge from or affecting its premises; immediately contain and remove the same, in compliance with all applicable laws; promptly pay any fine or penalty assessed in connection therewith, except such assessments as are being contested in good faith, against which adequate reserves have been established; upon receipt of such notification, permit the Lender to inspect the premises, and to inspect all books, correspondence, and records pertaining thereto; and at the Lender's request, and at the Borrower's expense, provide a report of a qualified environmental engineer, satisfactory in scope, form, and content to the Lender, and such other and further assurances reasonably satisfactory to the Lender that the condition has been corrected.

## **8.23 PAYMENT OF LOAN**

The Borrower will duly and punctually pay the Principal of, and interest on the Loan in accordance with the terms of the Loan and this Agreement.

## **8.24 [RESERVED]**

## **8.25 MORTGAGE TAXES**

Borrower shall pay all taxes, charges, filing, registration, recording fees, excises and levies imposed upon Lender by reason of their respective interest in, or measured by amounts payable under the Note, this Agreement, the Mortgage or any other Loan Document (other than income, franchise and doing business taxes), and shall pay all stamp taxes and other taxes required to be paid on the Note, this Agreement, the Mortgage or the other Loan Documents. If Borrower fails to make such payment within five days after notice thereof from Lender, Lender may (but shall

not be obligated to) pay the amount due, and Borrower shall reimburse Lender on demand for all such Advances. If applicable law prohibits Borrower from paying such taxes, charges, filing, registration and recording fees, excises, levies, stamp taxes or other taxes, then Lender may declare the Indebtedness then unpaid to be immediately due and payable. In such event, no Prepayment Fee (as defined in the Note) shall be charged.

## **8.26 LENDER'S EXPENSES**

Borrower shall pay, on demand by Lender, all reasonable expenses, charges, costs and fees in connection with the negotiation, documentation and closing of the Loan, including all registration, recording fees and insurance consultant fees, if any, environmental consultant fees, costs of appraisals, costs of engineering reports, fees and disbursements of all counsel (both local and special) of Lender, escrow fees, cost of surveys, fees and expenses of Lender's Consultant or others employed by Lender to inspect the Collateral from time to time and reasonable out-of-pocket travel expenses incurred by Lender and Lender's agents and employees in connection with the Loan. At Closing, Lender may pay directly from the proceeds of the Loan each of the forgoing expenses.

## **9.00 NEGATIVE COVENANTS OF THE BORROWER**

The Borrower covenants and agrees that, so long as the Loan is outstanding:

### **9.01 RESTRICTIONS ON EASEMENTS, COVENANTS AND RESTRICTIONS**

The Borrower will not create or suffer to be created or to exist any easement, right of way, restriction, covenant, condition, license or other right in favor of any Person which affects or might affect title to the Mortgaged Premises or the use and occupancy of the Mortgaged Premises or any part thereof without (i) submitting to the Lender and the proposed instrument creating such easement, right of way, covenant, condition, license or other right, accompanied by a survey showing the exact proposed location thereof and such other information as the Lender may reasonably request, and (ii) obtaining the prior approval of the Lender.

### **9.02 RESTRICTIONS ON INDEBTEDNESS**

The Borrower will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

(a) Indebtedness to the Lender arising under any of the Loan Documents;

(b) current liabilities of the Borrower incurred in the ordinary course of business but not incurred through (i) the borrowing of money, or (ii) the obtaining of credit except for credit on an open account basis customarily extended and in fact extended in connection with normal purchases of goods and services;



(c) Indebtedness in respect of taxes, assessments, governmental charges or levies and claims for labor, materials and supplies to the extent that payment therefore shall not at the time be required to be made in accordance with the provisions of Section 8.08;

(d) Indebtedness in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which the Borrower shall at the time in good faith be prosecuting an appeal or proceeding for review and in respect of which a stay of execution shall have been obtained pending such appeal or review;

(e) endorsements for collection, deposit or negotiation and warranties of products or services, in each case incurred in the ordinary course of business; and

(f) unsecured Indebtedness of the Borrower owing to any member of the Borrower, that is expressly subordinated and made junior to the payment and performance in full of the Obligations and evidenced as such by a written instrument containing subordination provisions in form and substance approved by the Lender.

### **9.03 RESTRICTIONS ON LIENS, ETC.**

The Borrower will not (a) create or incur or suffer to be created or incurred or to exist any lien, encumbrance, mortgage, pledge, charge restriction or other security interest of any kind upon any of its property or assets of any character whether now owned or hereafter acquired, or upon the income or profits therefrom; (b) transfer any of its property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment of its general creditors; (c) acquire or agree or have an option to acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (d) suffer to exist for a period of more than thirty (30) days after the same shall have been incurred any Indebtedness or claim or demand against it that if unpaid might by law or upon bankruptcy or insolvency, or otherwise, be given any priority whatsoever over its general creditors; or (e) sell, assign, pledge or otherwise transfer any accounts, contract rights, general intangibles, chattel paper or instruments, with or without recourse; provided that the Borrower may create or incur or suffer to be created or incurred or to exist, the following Permitted Liens:

(i) liens to secure taxes, assessments and other governmental charges or claims for labor, material or supplies in respect of obligations not overdue;

(ii) deposits or pledges made in connection with, or to secure payment of, workmen's compensation, unemployment insurance, old age pensions or other social security obligations;

(iii) liens of carriers, warehousemen, mechanics and materialmen, and other like liens on properties other than the Mortgaged Premises in existence less than 120 days from the date of creation thereof in respect of obligations not overdue;

(iv) encumbrances on properties other than the Mortgaged Premises consisting of easements, rights of way, covenants, restrictions on the use of real property and defects and irregularities in the title thereto, landlord's or lessor's liens under leases to which the Borrower is a party, and other minor liens or encumbrances on properties other than the Mortgaged Premises none of which in the opinion of the Borrower interferes materially with the use of the property affected in the ordinary conduct of the business of the Borrower, which defects do not individually or in the aggregate have a materially adverse effect on the business of the Borrower;

(v) liens in favor of the Lender under the Loan Documents; and

(vi) other liens on the Mortgaged Premises consisting of easements, rights of way, covenants and restrictions if and to the extent the same have been approved by the Lender.

#### **9.04 RESTRICTIONS ON INVESTMENTS**

The Borrower will not make or permit to exist or to remain outstanding any Investment except Investments in:

(a) marketable direct or guaranteed obligations of the United States of America that mature within one (1) year from the date of purchase by the Borrower;

(b) demand deposits, certificates of deposit, bankers acceptances and time deposits of United States banks having total assets in excess of \$1,000,000,000; and

(c) securities commonly known as "commercial paper" issued by a corporation organized and existing under the laws of the United States of America or any state thereof that at the time of purchase have been rated and the ratings for which are not less than "P 1" if rated by Moody's Investors Services, Inc., and not less than "A 1" if rated by Standard and Poor's.

#### **9.05 MERGER, CONSOLIDATION AND DISPOSITION OF ASSETS**

(a) The Borrower will not become a party to any merger or consolidation, or agree to or effect any asset acquisition or stock acquisition (other than the acquisition of assets in the ordinary course of business consistent with past practices).

(b) The Borrower will not become a party to or agree to or effect any disposition of the Mortgaged Premises or any part thereof, unless such agreement provides for the payment, in full, of all of Borrower's Obligations.

(c) The Borrower will not become a party to or agree to effect any disposition of assets, other than the disposition of assets not included in the Mortgaged Premises in the ordinary course of business, consistent with the past practices.

#### **9.06 SALE AND LEASEBACK**

The Borrower will not enter into any arrangement, directly or indirectly, whereby the Borrower shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Borrower intends to use for substantially the same purpose as the property being sold or transferred.

#### **9.07 COMPLIANCE WITH ENVIRONMENTAL LAWS**

Except as set forth on Exhibit "G", the Borrower will not do any of the following: (a) use any of the Real Estate or any portion thereof as a facility for the handling, processing, storage or disposal of Hazardous Materials, (b) cause or permit to be located on any of the Real Estate any underground tank or other underground storage receptacle for Hazardous Materials except in full compliance with Environmental laws, (c) generate any Hazardous Materials on any of the Real Estate except in full compliance with Environmental Laws, or (d) conduct any activity at any Real Estate or use any Real Estate in any manner so as to cause a Release.

#### **9.08 DISTRIBUTIONS**

The Borrower will not make any Distributions during the tenure of its Loan; provided, however, that during the tenure of the Loan, the Borrower may make distributions provided that (i) no Event of Default has occurred, (ii) that immediately following such Distribution, Borrower shall be in compliance with all financial covenants, and (iii) the Borrower has complied with all terms, covenants and conditions of this Agreement, including, without limitation, the covenants set forth in Section 15.01 hereof.

#### **9.09 NO GUARANTEES**

Borrower will not assume, guaranty, endorse or otherwise become directly or contingently liable, or permit any of its subsidiaries to assume, guaranty, endorse, or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in any debtor or otherwise to assure any creditor against loss) in connection with any Debt of any other Person.

#### **9.10 CORPORATE LOANS**

The Borrower agrees that it shall neither make any loans, nor investments in other corporations, business entities or to any other Persons, until all Obligations are fully paid.

#### **9.11 ADVERSE TRANSACTIONS**

The Borrower shall not enter into any transaction which adversely affects the Collateral or its ability to repay the Obligations in full as and when due.

### **9.12 PREPAYMENT**

The Borrower shall not prepay any Debt other than the Obligations, except in the ordinary course of business and to the extent that it does not have a material adverse effect on the financial condition of the Borrower.

### **9.13 AFFILIATE TRANSACTIONS**

Excluding distributions to the sole member where no Event of Default has occurred or will occur after giving effect to the distribution, the Borrower shall not, sell, transfer, distribute or pay any money or property to any Affiliate or invest in (by capital contribution or otherwise) or purchase or repurchase any stock or debt, or any property, of any Affiliate, or become liable on any guaranty of the indebtedness, dividends or other obligation of any Affiliate.

## **10.00 CONDITIONS TO FUNDING**

The obligation of the Lender to Advance Loan proceeds shall be subject to the satisfaction of the following conditions precedent:

### **10.01 LOAN DOCUMENTS**

Each of the Loan Documents shall have been duly executed and delivered by the respective parties thereto, shall be in full force and effect and shall be in form and substance satisfactory to the Lender. The Lender shall have received a fully executed copy of each such document.

### **10.02 CERTIFIED COPIES OF ORGANIZATION DOCUMENTS**

The Lender shall have received from the Borrower and Guarantor, a copy, certified as of a recent date by the appropriate officer of the State in which the Borrower and Guarantors are organized, to be true and complete, of Borrower's operating agreement and any other of Borrower's and Guarantor's organizational documents as in effect on such date of certification.

### **10.03 RESOLUTIONS - BORROWER**

All action necessary for the valid execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents to which it is or is to become a party shall have been duly and effectively taken, and evidence thereof satisfactory to the Lender shall have been provided to the Lender. The Lender shall have received from the Borrower, true copies of the resolutions adopted by its member authorizing the transactions described herein, each certified as of a recent date to be true and complete.

### **10.04 RESOLUTIONS - GUARANTOR**

All action necessary for the valid execution, delivery and performance by the Guarantor of this Agreement and the other Loan Documents to which it is or is to become a party shall have been duly and effectively taken, and evidence thereof satisfactory to the Lender shall have been

provided to the Lender. The Lender shall have received from the Guarantor, true copies of the resolutions adopted by its directors authorizing the transactions described herein, each certified as of a recent date to be true and complete.

**10.05 RESERVED**

**10.06 RESERVED**

**10.07 VALIDITY OF LIENS**

The Security Documents shall be effective to create in favor of the Lender a legal, valid and enforceable first lien and security interest in the Collateral and first mortgage on the Mortgaged Premises. All filings, recordings, deliveries of instruments and other actions necessary or desirable in the opinion of the Lender to protect and preserve such lien and security interest shall have been duly effected. The Lender shall have received evidence thereof in form and substance satisfactory to the Lender.

**10.08 DELIVERY OF DOCUMENTS**

The following items or documents shall have been delivered to the Lender by the Borrower and shall be in form and substance satisfactory to the Lender:

(a) Title Policy. The Title Policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(b) Other Insurance. Duplicate originals or certified copies of all policies of insurance required by this Agreement or other Loan Documents to be obtained and maintained by Borrower; provided, however, at the Closing, Binders of insurance policies and/or Certificates of Insurance will be provided.

(c) Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Lender, which report or reports shall indicate a condition of the Land and any existing improvements thereon in all respects satisfactory to the Lender in its sole discretion and upon which report or reports the Lender is expressly entitled to rely.

(d) Surveys and Taxes. A Survey of the Land, with current Survey Affidavit (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Closing Date.

#### **10.09 LEGAL OPINIONS**

The Lender shall have received favorable opinions in form and substance satisfactory to the Lender and the Lender's counsel, addressed to the Lender and dated as of the Closing Date, from Borrower's legal counsel.

#### **10.10 LIEN SEARCH**

The Lender shall have received a certification from Title Insurance Company or counsel satisfactory to the Lender that a search of the public records disclosed no conditional sales contracts, security agreements, mortgages, chattel mortgages, leases of personalty, financing statements, title retention agreements which affect the Collateral or other lien on the Mortgaged Premises other than the Permitted Exceptions.

#### **10.11 [RESERVED]**

#### **10.12 APPRAISAL**

The Lender shall have received an Appraisal, in form and substance satisfactory to the Lender.

#### **10.13 [RESERVED]**

#### **10.14 REPRESENTATIONS AND WARRANTIES**

The representations of warranties of the Borrower and the Guarantor in the Loan Documents or otherwise made by or on behalf of the Borrower or the Guarantor in connection therewith or after the date thereof shall have been true and correct in all material respects when made and shall be true and correct in all material respects on the Closing Date.

#### **10.15 PROCEEDINGS AND DOCUMENTS; COSTS**

All proceedings in connection with the transactions contemplated by this Agreement and the other Loan Documents shall be satisfactory to the Lender and the Lender's counsel in form and substance, and the Lender shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as the Lender and the Lender's counsel may reasonably require. The Borrower shall reimburse Lender on demand for all reasonable costs and expenses incurred by Lender in connection with the Term Loan, including, without limitation, legal, engineering, inspection and appraisal fees.

#### **10.16 LEASES/SUBORDINATION AGREEMENTS AND ESTOPPELS**

Certified copies of all Leases, as amended, together with Subordination, Nondisturbance and Attornment Agreement executed by the Primary Tenant located at the Mortgaged Premises as are required by the title company in order to confirm that no Lease has priority over the Mortgage all as more fully described in Exhibit "J."

## **11.00 PERFORMANCE; NO DEFAULT**

The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the Closing and there shall exist no Default or Event of Default.

## **11.01 REPRESENTATIONS AND WARRANTIES**

Each of the representations and warranties made by the Borrower in the Loan Documents or otherwise made by or on behalf of the Borrower and/or Guarantor in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made.

## **12.00 SECURITY INTEREST**

Borrower, for valuable consideration received, hereby pledges, assigns, transfers and grants to Lender a continuing lien and security interest in all tangible and intangible personal property of Borrower (whether now existing or hereafter acquired or arising, and wherever located) upon, concerning or in any way relating to, or unrelated to, the Mortgaged Premises, including, without limitation, (i) all fixtures, machinery, equipment, furniture, inventory, building supplies, appliances and other personal property, including, but not limited to, furnaces, ranges, heaters, plumbing goods, gas and electric fixtures, screens, screen doors, mantels, shades, storm doors and windows, awnings, oil burners and tanks, gas or electric refrigerators and refrigerating systems, ventilating and air conditioning apparatus and equipment, doorbell and alarm systems, sprinkler and fire extinguishing systems, portable or sectional buildings, and all other fixtures and equipment of whatever kind or nature now or hereafter located in or on the Mortgaged Premises, or used or intended to be used in connection with the use, operation, construction or enjoyment of the Mortgaged Premises, all of which shall be deemed fixtures and a part of the Mortgaged Premises as between the parties hereto and all persons claiming by, through or under them, (ii) all leases, contracts or agreements relating to the lease, rental, hire or use by Borrower of any of the aforementioned personal property, (iii) all leases, tenancies, occupancies and license arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of or the conduct of any activity upon or in to the Mortgaged Premises or any portion thereof, and all guaranties and security relating thereto (individually, a "Lease" and collectively, the "Leases"), (iv) all rents, issues, profits and other benefits from the Mortgaged Premises, any of the personal property described herein, and any of the leases, tenancies, occupancies, license arrangements and rental agreements relating thereto, (v) all contracts, agreements, accounts, chattel paper, general intangibles, licenses, rights, permits and approvals, privileges, warranties and representations relating to the ownership, use, operation, management, construction, repair or service of any of the Mortgaged Premises or personal property described herein, (vi) any and all agreements to sell the Mortgaged Premises or any portion thereof, (vii) all funds held by Lender as tax or insurance escrow payments or for other purposes, (viii) all insurance policies and all proceeds or unearned insurance premiums relating thereto, (ix) all claims, awards, damages or proceeds resulting from any condemnation or other taking of, or for any damage to, any of the Mortgaged Premises or personal property described herein, (x) all claims to rebates, refunds or abatements of any property taxes relating to any of the Mortgaged Premises or personal property described herein, (xi) all

construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guaranties and warranties, and plans and specifications relating to the construction of improvements upon the Mortgaged Premises, (xii) all proceeds, products, substitutions and accessions to any of the foregoing, together with, and whether or not related to the Mortgaged Premises, and all machinery, equipment, goods, inventory, accounts, including health care insurance receivables, chattel paper, general intangibles, including payment intangibles and amounts owed by other than customers, regardless of whether or not they constitute proceeds of other collateral; all chose-in-action, cash, cash deposits, deposit accounts, investment property, including without limitation, securities, stocks, bonds, warrants, options, documents, documents of title, instruments, including promissory notes, deposits, debts, refunds, letter of credit rights, supporting obligations, policies and certificates of insurance, obligations and liabilities in whatever form owing from any person, corporation, or other legal entity; all books, records, evidences of title, goodwill and all papers relating to the operation of the Borrower's business; all federal, state, and local tax refunds and/or abatement and any loss carryback tax refunds; all patents, patents rights, trade secrets, know-how, trademarks, trade names, logos, registrations, customer lists, computer programs, and assignments of patents all intellectual property as defined in 11 USC 101 (53) to the extent that such intellectual property is assignable; all fixtures, real estate leases, any and all equipment leases, rentals and other sums payable thereunder, other chattel paper, purchase option payments, lessor's interest in leased equipment and insurance proceeds; any licenses or interests in real estate; all liens, guarantees, securities, rights, remedies and privileges pertaining to all of the foregoing, all property allocable to unshipped orders and all merchandise returned by or reclaimed by or repossessed from customers, all rights of stoppage in transit, replevin, repossession and reclamation and all other rights of an unpaid vendor or lienor; and all interest of the Borrower in goods or merchandise as to which an account receivable for goods sold or delivered has arisen;

And all of the above, wherever located, whether now owned or now due or hereafter arising or acquired or coming due and including the products and proceeds thereof (if any) and all accessions and additions thereto and all replacements and substitutions therefore, cash and stock dividends (if applicable), and all proceeds of credit, fire, casualty, or other insurance upon said property, or any of the above which are acquired with any cash proceeds or other collateral. The term "proceeds" shall include, without limitation, all types or classifications of non-cash proceeds acquired with cash proceeds.

**12.01** The security interest granted hereby is to secure payment and performance of all Obligations from Borrower to Lender, together with all interest, fees, charges and expenses including the reasonable expenses of the Lender's counsel in the maintaining, foreclosing and selling of any of the Collateral.

**12.02** IT IS THE TRUE, CLEAR, AND EXPRESS INTENTION OF THE Borrower that the continuing grant of this security interest remain as security for payment and performance of all Obligations, whether now existing, or which may hereinafter be incurred by future advances, or otherwise; and whether, or not, such obligation is related to the transaction described in this Agreement, by class, or kind, or whether or not contemplated by the parties at the time of the granting of this security interest. The notice of the continuing grant of this security interest



therefore shall not be required to be stated on the face of any document representing any such obligation, nor otherwise identified it as being secured hereby.

### **13.00 EVENTS OF DEFAULT AND REMEDIES**

#### **13.01 EVENTS OF DEFAULT**

The occurrence of any one or more of the following conditions or events shall constitute an "Event of Default":

(a) any failure by the Borrower to pay when due and payable any interest on or principal of or other sum payable under the Note; or

(b) any failure by the Borrower following ten (10) days' notice from Lender to Borrower to pay as and when due and payable any other sums to be paid by the Borrower to the Lender under this Agreement or any of the Loan Documents; or

(c) title to the Collateral is or becomes unsatisfactory to the Lender by reason of any lien, charge, encumbrance, title condition or exception (including without limitation, any mechanic's, materialmen's or similar statutory or common law lien or notice thereof), and such matter causing title to be or become unsatisfactory is not cured or removed (including by bonding) within thirty (30) days after notice thereof from the Lender to the Borrower; or

(d) default of payment, liability obligation, covenant or undertaking of the Borrower herewith or under the Mortgage or Loan Documents; or

(e) the Mortgaged Premises or any part thereof is injured by fire, explosion, accident, flood or other casualty, provided, however, if no Event of Default under this Agreement or any of the Loan Documents has occurred and is continuing, and there are sufficient insurance proceeds to restore the Mortgaged Premises and the cost to remedy the casualty is less than available insurance proceeds then, in this case, this Section 13.01(e) shall not constitute an Event of Default; or

(f) the Mortgaged Premises or any part thereof is subject to a Taking, provided, however, Lender agrees to allow payments to be made in accordance with the terms of the Mortgage. If no other Event of Default exists and there is sufficient cash flow from the Primary Tenant for the Debt Service Coverage Ratio then this Section 13.01(f) shall not constitute an Event of Default ; or

(g) any of the members of the Borrower and/or any Guarantor shall be convicted for a federal crime, a punishment for which could include the forfeiture of any of its assets; or

(h) any failure by the Borrower to duly observe or perform any other term, covenant, condition or agreement under this Agreement and continuance of such failure for a period of thirty (30) days after notice thereof from the Lender; or

(i) any modification, amendment, termination, default, supplement, novation or otherwise of the Master Lease Agreement, without Lender's prior written consent, which is reserved to Lender's sole discretion; or

(j) (i) any default occurs in the payment, performance or observance of any term, covenant or provision of any Hedging Contract entered into by Borrower, (ii) any "termination event" or other similar event occurs in any Hedging Contract entered into by Borrower that gives the party other than Borrower the right to terminate such Hedging Contract or any transaction thereunder, or (iii) any representation or warranty made by Borrower in any Hedging Contract is false in any material respect when such representation or warranty is made or is deemed made.

### **13.02 ACCELERATION**

If any one or more of the Events of Default shall occur, the Lender may demand all unpaid principal of and accrued interest on the Note, together with all other amounts owing under the Loan Documents, to be immediately due and payable, whereupon same shall become and be immediately due and payable, and without presentment, protest, demand or other notice of any kind, all of which are hereby expressly waived by the Borrower and Guarantor.

### **13.03 OTHER REMEDIES**

If any one or more of the Events of Default shall have occurred, and whether or not the Lender shall have accelerated the maturity of the Loan pursuant to Section 13.02, the Lender may proceed to protect and enforce its rights and remedies under this Agreement, the Note or any of the other Loan Documents by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, including as permitted by applicable law the obtaining of the ex parte appointment of a receiver, and, if any amount owed to the Lender shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Lender. No remedy conferred upon the Lender or the holder of the Note in this Agreement or in any of the other Loan Documents is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other legal or equitable right of the Lender. No remedy conferred upon the Lender or the holder of the Note in this Agreement or in any of the other Loan Documents is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or thereunder or now or hereafter existing at law or in equity or by statute or any other provision of law.

### **13.04 RIGHTS AS TO COLLATERAL**

Upon the occurrence of an Event of Default and after any applicable grace period, and at any time thereafter, in addition to other rights and remedies the Lender has under this Agreement, the Lender may:

**13.04.1** Notify account debtors at Borrower's expense, that the Collateral has been assigned to Lender and that payments shall be made directly to Lender and upon request of Lender,

Borrower will so notify such account debtor that their accounts must be paid to Lender. This right may be exercised by the Lender at any time, even prior to default. Borrower will immediately upon receipt of all checks, drafts, cash and other remittances deliver the same in kind to the Lender. Lender shall have full power to collect, compromise, endorse, sell or otherwise deal with the Collateral or proceeds thereof in its own name or in the name of Borrower and Borrower hereby, for consideration paid, irrevocably appoints the Lender its attorney-in-fact for this purpose.

**13.04.2** Without notice to Borrower, enter and take possession of all Collateral and the Mortgaged Premises on which they are now or hereafter located, including without limitation, breaking the close and changing and replacing locks as may be required without the same being considered as a trespass, as Borrower hereby expressly provides authority for the same. The Lender, at its sole discretion, may operate and use Borrower's equipment, complete work in process and sell inventory without being liable to the Borrower on account of any losses, damage or depreciation that may occur as a result thereof so long as Lender shall act reasonably and in good faith and may lease or license the Collateral to third persons or entities for such purposes; and in any event, Lender may at its option and without notice to Borrower, except as specifically herein provided, sell, lease, assign and deliver, the whole or any part of the Collateral, or any substitute therefore, or any addition thereto, at public or private sale, for cash, upon credit, or for future delivery, at such prices and upon such terms as Lender deems advisable, including without limitation the right to sell or lease in conjunction with other property, real or personal, and allocate the sale proceeds or leases among the items of property sold without the necessity of the Collateral being present at any such sale, or in view of prospective purchasers thereof. Lender shall give Borrower timely notice by hand delivery to Borrower or by United States mail, postage prepaid (in which event notice shall be deemed to have been given when so deposited in the mail), at the address specified herein, of the time and place of any public or private sale or other disposition unless the Collateral is perishable, threatens to decline speedily in value, or is the type customarily sold in a recognized market. Upon such sale, Lender may become the purchaser of the whole or any part of the Collateral sold, discharged from all claims and free from any right of redemption. In case of any such sale by Lender of all or any of said Collateral on credit, or for future delivery, such property so sold may be retained by Lender until the selling price is paid by the purchaser. The Lender shall incur no liability in case of the failure of the purchaser to take up and pay for the Collateral so sold. In case of any such failure, the said Collateral may be again, from time-to-time, sold.

**13.04.3.** Continue to occupy and use all premises which the Borrower now occupies or may hereafter have or occupy, to the extent Borrower could legally do so, and may use all trademarks, service marks, trade names, trade styles, logos, goodwill, trade secrets, franchises, licenses and patents which the Borrower now has or may hereafter acquire, including the following rights:

- (i) the rights in said marks, name, styles, logos and goodwill acquired by the common law of the United States or of any state thereof or under the law of any foreign nation, organization, or subdivision thereof;

(ii) the rights acquired by registrations of said marks, names, styles, and logos under the statute of any foreign country, or the United States, or any state or subdivision thereof;

(iii) the rights acquired in each and every form of said mark, name, style and logo as used by the Borrower notwithstanding that less than all of such forms would be registered and notwithstanding the form of said mark, name and style;

(iv) the right to use or license any party to the use of all or any of said marks, names, styles, logos and goodwill in connection with the sale of goods and/or the rendering of services in the conduct of services advertising, promotion and the like anywhere in the world;

(v) the right to use said marks, names, styles, logos and goodwill either in connection with or entirely independent from the Collateral;

(vi) the right to assign, transfer and convey a partial interest or the entire interest in any one or more of said marks, names, styles or logos;

(vii) the right to seek registration, foreign or domestic, of any of said marks, names, styles or logos which was not registered as of the date hereof or registered subsequently;

(viii) the right to prosecute pending trademark applications for foreign or domestic registration (federal or state) of any of said marks, names, styles or logos.

**13.04.4** Act as attorney-in-fact for Borrower for the purposes herein described, and Borrower does hereby make, constitute and appoint any officer or agent of Lender as Borrower's true and lawful attorney-in-fact, with full power: to endorse the name of Borrower or any of Borrower's officers or agents upon any assignments, notes, checks, drafts, money orders, or other instruments of payment or Collateral that may come into possession of Lender for purposes of such recovery of accounts receivable monies; to sign and endorse the name of Borrower or any of Borrower's officers or agents upon any negotiable instrument, invoice, freight or express bill, bill of lading, storage or warehouse receipts, drafts, assignments, verifications and notices in connection with accounts, and any instruments or documents relating thereto or to Borrower's rights therein; to give notice to the United States Post Office to effect changes of address so that mail addressed to the Borrower may be permanently delivered directly to the Lender for purposes of accepting same, and obtaining access to contents, in order to take possession of such accounts receivable monies, and all other collateral, with full power to do any and all things necessary to be done in and about the premises as fully and effectually as Borrower might or could do; and Borrower does hereby ratify all that Lender shall lawfully do, or cause to be done by virtue hereof.

**13.04.5** Make all Obligations immediately due and payable, without presentment, demand, protest, hearing or notice of any kind and exercise the remedies of a Lender afforded by

the Uniform Commercial Code and other applicable law or by the terms of any agreement between Borrower and Lender.

**13.04.6** In the case of any sale or disposition of the Collateral, or the realization of funds therefrom, the proceeds thereof shall first be applied to the payment of the reasonable expenses of re-taking, maintaining, and foreclosure of Collateral, and costs, fees and expenses of such sale, commissions, reasonable attorney's fees and all charges paid or incurred by Lender pertaining to said sale, including any taxes or other charges imposed by law upon the Collateral and/or the owning, holding or transferring thereof; secondly, to pay, satisfy, and discharge the Obligations secured hereby pro rata in accordance with the unpaid amount thereof; and thirdly, to pay the surplus, if any, to Borrower, provided that the time of any application of the proceeds shall be at the sole and absolute discretion of the Lender. To the extent such proceeds do not satisfy the foregoing items, Borrower hereby promises and agrees to pay the deficiency.

**13.04.7** The Lender and the holders of the Obligations may take or release other security, may release any party primarily or secondarily liable for any of the Obligations, may grant extensions, renewals or indulgences with respect to the Obligations, or may apply to the Obligations the proceeds of the Collateral or any amount received on account of the Collateral by the exercise of any right permitted hereunder, without resorting or regard to other security or sources of reimbursement.

**13.04.8** Require the Borrower to assemble the Collateral in a single location at a place to be designated by Lender and make the Collateral at all times secure and available to the Lender.

**13.04.9** The Lender shall hereby also be granted a security interest in, and right of set off against any balance on any deposit, deposit account, agency, reserve, holdback, or other account maintained by, or on behalf of, the Borrower with the Lender and the Lender shall have the right to apply the proceeds of such foreclosure or set off against such items of Borrowers' Obligations as Lender may select.

**13.04.10** All rights and remedies of Lender whether provided for herein or in other agreements, instruments, or documents, or conferred by law, are cumulative and not alternative and may be enforced successively.

**13.04.11** The parties agree that in the event that a determination of Adequate Protection of Lender is required under Section 362 or 363 of the Bankruptcy Reform Act of 1978 (Code), its successor, or Bankruptcy Rules in connection therewith, that:

A. The bargain of the parties at the time of lien creation hereunder in order to provide the Lender with adequate protection to induce it to make the loan(s), included stated ratios herein.

B. That in the event of any proceeding under the Code, that the said ratio of the value (as determined by the Lender in its sole discretion) Collateral secured to Lender to the amount of the Obligation ("Collateral-To-Obligation Ratio"), must

be increased by an additional one hundred ten percent (110%) in order to continue to provide minimum levels of Adequate Protection to Lender due to the reduced expectation for present and future prospects of lien enforcement resulting from the existence of proceedings under the Code. This agreed minimum increase in said ratio shall not act to bar Lender from presenting evidence that even such increase is insufficient and leaves the Lender without Adequate Protection, based upon the deteriorating nature or kind of Collateral, wholly or in part, in any instance.

C. That the parties agree that the costs of liquidating and collecting of Collateral, as well as the potential for rapid Collateral deterioration if Borrower is, at any time, subject to the Code, all require that the original Collateral-To-Obligation Ratio be increased, as aforesaid, as a requirement of minimum Adequate Protection, in addition to such other additional Adequate Protection as may be required by the Lender.

D. The parties agree that these covenants shall be conclusive evidence in any proceeding to determine minimum Adequate Protection under the Code, as to the intention and agreement of the parties at both this time, and at all times hereinafter, until the Obligations to the Lender, are paid in full.

E. That these agreements may be submitted to the Court in any such proceeding, by the Lender, in its sole and exclusive discretion, as conclusive evidence as to the agreement of the parties at the time of such hearing, concerning minimum Adequate Protection to be provided to the Lender at the time of presentment. PROVIDED, HOWEVER, that such submission shall not constitute a waiver of any default or breach hereunder, or of any other agreement by the Borrower to the Lender, but shall remain only as evidence for the limited purposes stated herein.

F. PROVIDED, FURTHER that at all times the Lender reserves, and does not waive Borrower's obligation to provide Adequate Protection prior to the Borrower's use of "cash collateral" as defined in Section 363 of the Code.

**13.04.12** The Lender has no obligation to attempt to satisfy the Obligations by collecting from any other Person liable for them and Lender may release, modify or waive any Collateral provided by any other Person to secure any of the Obligations, all without affecting Lender's rights against Borrower. Borrower waives any right it may have to require Lender to pursue any third Person for any of the Obligations.

**13.04.13** Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

**13.04.14** Lender may sell the Collateral without giving any warranties as to the Collateral. The Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect, the commercial reasonableness of the sale of the Collateral.

**13.04.15** If Lender agrees with a purchaser to sell the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event that purchaser fails to pay for the Collateral, Lender may resell the Collateral and Borrower shall be credited with the net proceeds of the sale.

**13.04.16** In the event Lender purchases any of the Collateral being sold, Lender may pay for the Collateral by crediting some or all of the Obligations of the Borrower.

**13.04.17** Lender has no obligation to marshal any assets in favor of Borrower or in payment of any of the Obligations or any other obligations owed to Lender by Borrower or any other person.

### **13.05 DISTRIBUTION OF COLLATERAL PROCEEDS**

In the event that, following the occurrence or during the continuance of any Default or Event of Default, the Lender receives any monies in connection with the enforcement of any the Security Documents, or otherwise with respect to the realization upon any of the Collateral, such monies shall be distributed for application as follows:

(a) First, to the payment of, or (as the case may be) the reimbursement of the Lender for or in respect of all reasonable costs, expenses, attorneys fees, disbursements and losses which shall have been incurred or sustained by the Lender in connection with the collection of such monies by the Lender, for the exercise, protection or enforcement by the Lender of all or any of the rights, remedies, powers and privileges of the Lender under this Agreement or any of the other Loan Documents or in respect of the Collateral or in support of any provision of adequate indemnity to the Lender against any taxes or liens which by law shall have, or may have, priority over the rights of the Lender to such monies;

(b) Second, to all Obligations in such order or preference as the Lender may determine in its sole discretion; provided, however, that the Lender may in its discretion make proper allowance to take into account any Obligations not then due and payable;

(c) Third, upon payment and satisfaction in full or other provisions for payment in full satisfactory to the Lender of all of the Obligations, to the payment of any obligations required to be paid pursuant to Article IX of the Uniform Commercial Code of the Commonwealth of Massachusetts; and

(d) Fourth, the excess, if any, shall be returned to the Borrower or to such other Persons as are entitled thereto.

### **13.06 POWER OF ATTORNEY**

For the purposes of carrying out the provisions and exercising the rights, remedies, powers and privileges granted by or referred to in this Section 13.06, the Borrower hereby irrevocably constitutes and appoints the Lender its true and lawful attorney-in-fact, with full power of substitution, to execute, acknowledge and deliver any instruments and do and perform any acts which are referred to in this Section 13.06, in the name and on behalf of the Borrower. The power vested in such attorney-in-fact is, and shall be deemed to be, coupled with an interest and irrevocable.

### **13.07 WAIVERS**

The Borrower hereby waives to the extent not prohibited by applicable law (a) all presentments, demands for performance, notices of nonperformance (except to the extent required by the provisions hereof or of any of the other Loan Documents), protests and notices of dishonor, (b) any requirement of diligence or promptness on the Lender's part in the enforcement of its rights (but not fulfillment of its obligations) under the provisions of this Agreement or any of the other Loan Documents, and (c) any and all notices of every kind and description which may be required to be given by any statute or rule of law and any defense of any kind which the Borrower may now or hereafter have with respect to its liability under this Agreement or under any of the other Loan Documents.

### **14.00 FINANCING STATEMENTS**

The Borrower hereby agrees to pay the cost of filing any financing statement, or other notices appropriate under applicable law, in respect of any security interest created pursuant to this Agreement or at any other time which may at any time be required or which, in the opinion of the Lender, may at any time be desirable. In the event that any re-recording or re-filing thereof (or the filing of any statements of continuation or assignment of any financing statement) is required to protect and preserve such lien or security interest, the Borrower shall, at its cost and expense, cause the same to be re-recorded and/or re-filed at the time and in the manner requested by the Lender. The Borrower hereby irrevocably designates the Lender, its agents, representatives and designees as agents and attorneys-in-fact for the Borrower to sign (if applicable) such financing statements, or other instruments in connection herewith, on behalf of the Borrower and file the same, as required at the cost of Borrower.

### **15.01 COVENANTS AS TO BORROWER**

Borrower, agrees to comply with the following financial ratios the default of which shall constitute a default of this Agreement:

(a) Maximum loan-to-value ratio shall at all times not be in excess of sixty-five percent (65%).

(b) Commencing at 2017 fiscal year end, and each fiscal year end thereafter, the Borrower will be tested for compliance with the Debt Service Coverage Ratio



which shall not be less than 1.15:1.00.

#### **16.00 TENURE**

Borrower's liability under this Agreement shall commence with the date hereof and continue in full force and effect and be binding upon Borrower until all Obligations whether now in existence, or created hereinafter, shall have been fully paid and satisfied, and until so paid and satisfied, Lender shall be entitled to retain the security interest granted hereby in all Collateral. At any time, either party may advise the other that no further loans or advances are to be made, but such notice shall in no way cause any and all obligations of the Borrower to Lender to be waived.

#### **17.00 SETOFF**

Regardless of the adequacy of any Collateral, and at all times, any deposits (general or specific, time or demand, provisional or final, regardless of currency, maturity, or the branch of the Lender where such deposits are held) or other sums credited by or due from the Lender to the Borrower and any securities or other property of the Borrower in the possession of the Lender may be applied to or set off against the payment of the Obligations and any and all other liabilities, direct, or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, of the Borrower to the Lender in accordance with and subject to the terms and conditions of the Term Note.

#### **18.00 EXPENSES**

The Borrower agrees to pay (a) the reasonable costs of producing and reproducing this Agreement, the other Loan Documents and the other agreements and instruments mentioned herein, (b) any taxes (including any interest and penalties in respect thereto) payable by the Lender (other than taxes based upon the Lender's net income), including any recording, mortgage or intangibles taxes in connection with the Mortgage, or other taxes payable on or with respect to the transactions contemplated by this Agreement, including any taxes payable by the Lender after the Closing Date (the Borrower hereby agreeing to indemnify the Lender with respect thereto), (c) all title insurance premiums, and the reasonable fees, expenses and disbursements of the Lender's counsel or any local counsel to the Lender incurred in connection with the preparation, administration or interpretation of the Loan Documents and other instruments mentioned herein, the making of the Loan Advance hereunder, and amendments, modifications, approvals, consents or waivers hereto or hereunder, (d) the fees, expenses and disbursements of the Lender incurred in connection with the preparation, administration or interpretation of the Loan Documents and other instruments mentioned herein, (e) all reasonable out-of-pocket expenses (including reasonable attorneys' fees and costs, which attorneys may be employees of the Lender and the fees and costs of consultants, accountants, auctioneers, receivers, brokers, property managers, appraisers, investment bankers or other experts retained by the Lender in connection with (i) the enforcement of or preservation of rights under any of the Loan Documents against the Borrower, Guarantor or the administration thereof after the occurrence of a Default or Event of Default and (ii) any litigation, proceeding or dispute whether arising hereunder or otherwise, in any way related to the Lender's relationship with the Borrower or the Guarantor, and (f) all reasonable fees, expenses and disbursements of the Lender incurred in connection with UCC searches, UCC filings, title

rundowns, title searches or mortgage recordings. The covenants of this Section 18.00 shall survive payment or satisfaction of payment of all amounts owing with respect to the Term Note but subject to the express provisions of the Term Note only to the extent the proceeds from the Mortgaged Premises are available to satisfy these covenants. The Lender shall act reasonably in incurring any costs and expenses described in this Section 18.00 which are to be paid by the Borrower.

## **19.00 INDEMNIFICATION**

Except for gross negligence committed by Lender, the Borrower agrees to indemnify and hold harmless the Lender from and against any and all third party claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages and expenses of every nature and character arising out of this Agreement or any of the other Loan Documents or the transactions contemplated hereby and thereby including, without limitations, (a) any brokerage, leasing, finders or similar fees, (b) any condition of the Mortgaged Premises whether related to the quality of construction or otherwise, (c) any actual or alleged violation of any Requirements, (d) the Borrower entering into or performing this Agreement or any of the other Loan Documents or (e) with respect to the Borrower and Guarantor, their respective properties and assets, the violation of any Environmental Law, the Release or threatened Release of any Hazardous Materials or any action, suit, proceeding or investigation brought or threatened with respect to any Hazardous Materials (including, but not limited to claims with respect to wrongful death, personal injury or damage to property), in each case including, without limitation, the reasonable fees and disbursements of counsel and allocated costs of internal counsel incurred in connection with any such investigation, litigation or other proceeding. In litigation, or the preparation therefore, the Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Borrower agrees to pay promptly the reasonable fees and expenses of such counsel. The obligations of the Borrower under this Section 19.00 shall survive the satisfaction of the Loan and shall continue in full force and effect so long as the possibility of such claim, action or suit exists. If, and to the extent that the obligations of the Borrower under this Section 19.00 are unenforceable for any reason, the Borrower hereby agrees to make the maximum contribution to the payment in satisfaction of such Obligations which is permissible under applicable law, but only to the express provisions of the Term Note.

## **20.00 LIABILITY OF THE LENDER**

No action shall be commenced by the Borrower or Guarantor for any claim against the Lender under the terms of this Agreement unless written notice thereof, specifically setting forth the claim of the Borrower, shall have been given to the Lender at least fifteen (15) Business Days prior to the commencement of such action. The liability of the Lender to the Borrower and Guarantor for any breach of the terms of this Agreement by the Lender shall not exceed a sum equal to the amount of the Loan Advance, together with interest thereon at the rate payable by the Borrower under the terms of the Note which the Borrower is to receive hereunder, computed from the date of Lenders Liability. In no event shall the Lender be liable to the Borrower and/or Guarantor, or anyone claiming by, under or through the Borrower and/or Guarantor, for any special, exemplary, punitive or consequential damages, whatever the nature of the breach of the terms of this Agreement by the Lender, such damages and claims therefore being expressly waived by the Borrower and Guarantor.

## **21.00 RIGHTS OF THIRD PARTIES**

All conditions to the performance of the obligations of the Lender under this Agreement, including the obligation to make the Loan Advance, are imposed solely and exclusively for the benefit of the Lender and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that the Lender will refuse to make the Loan Advance in the absence of strict compliance with any or all thereof and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by the Lender at any time if in its sole discretion it deems it desirable to do so. In particular, the Lender makes no representations and assumes no obligations as to third parties concerning the quality of the construction by the Borrower of the Improvements or the absence thereof of defects.

## **22.00 SURVIVAL OF COVENANTS, ETC.**

All covenants, agreements, representations and warranties made herein, in the Term Note, in any of the other Loan Documents or in any documents or other papers delivered by or on behalf of the Borrower or the Guarantor pursuant hereto and thereto shall be deemed to have been relied upon by the Lender, notwithstanding any investigation heretofore or hereafter made by it. All statements contained in any certificate or other paper delivered to the Lender at any time by or on behalf of the Borrower or the Guarantor pursuant hereto or in connection with the transactions contemplated hereby shall constitute representations and warranties by the Borrower or the Guarantor hereunder.

## **23.00 ASSIGNMENTS; PARTICIPATION; ETC.**

### **23.01 ASSIGNMENT BY THE LENDER.**

The Lender may freely assign this Agreement in its entirety to another financial institution (the "Assignee") without the consent of the Borrower or any other party; provided, however, that, in the event of any such assignment, Berkshire Bank (as the Lender prior to such assignment) and the Assignee shall enter into an intercreditor agreement in form and substance satisfactory to Berkshire Bank in order to protect its rights as a secured party with respect to those Lender Hedging Obligations relating to any Hedging Contracts entered into prior to the date of assignment of this Agreement between the Borrower and Berkshire Bank. Such rights of Berkshire Bank following such assignment shall be *pari passu* with the rights of the Assignee as to the Loan and shall in no way be subordinate, whether as to lien or payment.

### **23.02 PARTICIPATIONS**

The Lender may sell participations to one or more banks or other entities in all or a portion of the Lender's rights and obligations under this Agreement and the other Loan Documents; Provided that (a) any such sale or participation shall not affect the rights and duties of the Lender hereunder to the Borrower and (b) the only rights granted to the participant pursuant to such

participation arrangements with respect to waivers, amendments or modifications of the Loan Documents shall be the right to approve waivers, amendments or modifications that would reduce the principal of or the interest rate on the Term Loan, extend the term or increase the amount of the Term Loan or extend any regularly scheduled payment date for principal or interest.

### **23.02 PLEDGE BY THE LENDER**

The Lender may at any time pledge all or any portion of its interest and rights under this Agreement (including all or any portion of the Note) to any of the twelve Federal Reserve Banks organized under Section 4 of the Federal Reserve Act, 12 U.S.C., § 341. No such pledge or the enforcement thereof shall release the Lender from its obligations hereunder or under any of the other Loan Documents.

### **23.03 NO ASSIGNMENT BY THE BORROWER**

The Borrower shall not assign or transfer any of its rights or obligations under any of the Loan Documents without the prior approval of the Lender.

### **24.00 RELATIONSHIP**

The relationship between the Lender and the Borrower is solely that of a lender and borrower, and nothing contained herein or in any of the other Loan Documents shall in any manner be construed as making the parties hereto partners, joint venturers or any other relationship other than lender and borrower.

### **25.00 NOTICES**

Each notice, demand, election or request provided for or permitted to be given pursuant to this Agreement (hereinafter in this Section 25.00 referred to as "Notice") must be in writing and shall be deemed to have been properly given or served by personal delivery or by sending same by overnight courier or by depositing same in the United States Mail, postpaid and registered or certified, return receipt requested, and addressed as follows:

|                   |   |
|-------------------|---|
| If to the Lender: | Berkshire Bank<br>19 Harrison Avenue<br>Springfield, MA 01103<br>Attn: Joseph M. Marullo, Senior Vice President |
|-------------------|---|

|                 |  |
|-----------------|--|
| with a copy to: | Peter W. Shrair, Esquire<br>Cooley, Shrair, P.C.<br>1380 Main Street<br>Springfield, Massachusetts 01103 |
|-----------------|--|

If to the Borrower: Tradeport Development III, LLC  
c/o Griffin Industrial Realty, Inc.  
204 West Newberry Road  
Bloomfield, CT 06002

With a copy to: Thomas M. Daniells, Esquire  
Murtha Cullina LLP  
CityPlace 1  
185 Asylum Street  
Hartford, CT 06103

If to Guarantor: Griffin Industrial Realty, Inc.  
204 West Newberry Road  
Bloomfield, CT 06002

With a copy to: Thomas M. Daniells, Esquire  
Murtha Cullina LLP  
CityPlace 1  
185 Asylum Street  
Hartford, CT 06103

Each Notice shall be effective upon being personally delivered or upon being sent by overnight courier or upon being deposited in the United States Mail as aforesaid. The time period in which a response to such Notice must be given or any action taken with respect thereto (if any), however, shall commence to run from the date of receipt if personally delivered or sent by overnight courier, or if so deposited in the United States Mail, the earlier of three (3) Business Days following such deposit or the date of receipt as disclosed on the return receipt. Rejection or other refusal to accept or the inability to deliver because of changed address for which no Notice was given shall be deemed to be receipt of the Notice sent. By giving at least thirty (30) days prior Notice thereof, the Borrower or the Lender shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

## **26.00 GOVERNING LAW**

This Agreement and each of the other Loan Documents, except as otherwise specifically provided therein, are contracts under the laws of the Commonwealth of Massachusetts and shall for all purposes be construed in accordance with and governed by the laws of said Commonwealth (excluding the laws applicable to conflicts or choice of law).

## **27.00 CONSENT TO JURISDICTION**

THE BORROWER AND GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO PERSONAL JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, AND (B) WAIVES ANY AND ALL PERSONAL RIGHTS UNDER THE LAWS OF ANY STATE (I) TO THE RIGHT, IF ANY, TO TRIAL BY JURY, (II) TO OBJECT TO JURISDICTION WITHIN THE COMMONWEALTH OF MASSACHUSETTS OR VENUE IN ANY PARTICULAR FORUM WITHIN THE COMMONWEALTH OF MASSACHUSETTS, AND (III) TO THE RIGHT, IF ANY, TO CLAIM OR RECOVER ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN ACTUAL DAMAGES. THE BORROWER AGREES THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED DIRECTED TO THE BORROWER AT THE ADDRESS SET FORTH IN SECTION 25.00 ABOVE, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL BE SO MAILED. NOTHING CONTAINED HEREIN, HOWEVER, SHALL PREVENT THE LENDER FROM BRINGING ANY SUIT, ACTION OR PROCEEDING OR EXERCISING ANY RIGHTS AGAINST ANY COLLATERAL AND AGAINST THE BORROWER, AND AGAINST ANY PROPERTY OF THE BORROWER, IN ANY OTHER STATE. INITIATING SUCH SUIT, ACTION OR PROCEEDING OR TAKING SUCH ACTION IN ANY STATE SHALL IN NO EVENT CONSTITUTE A WAIVER OF THE AGREEMENT CONTAINED HEREIN THAT THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS SHALL GOVERN THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE LENDER HEREUNDER OR THE SUBMISSION HEREIN BY THE BORROWER TO PERSONAL JURISDICTION WITHIN THE COMMONWEALTH OF MASSACHUSETTS.

## **28.00 HEADINGS**

The captions in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

## **29.00 COUNTERPARTS**

This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

### **30.00 ENTIRE AGREEMENT, ETC.**

The Loan Documents and any other documents executed in connection herewith or therewith express the entire understanding of the parties with respect to the transactions contemplated hereby. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except as provided in Section 31.00.

### **31.00 CONSENTS, AMENDMENTS, WAIVERS, ETC.**

Except as otherwise expressly set forth in any particular provision of this Agreement, any consent or approval required or permitted by this Agreement to be given by the Lender may be given, and any term of this Agreement or of any other instrument related hereto or mentioned herein may be amended, and the performance or observance by the Borrower of any terms of this Agreement or such other instrument or the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon. No course of dealing or delay or omission on the part of the Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. No Advance made by the lender hereunder during the continuance of any Default or Event of Default shall constitute a waiver thereof. No notice to or demand upon the Borrower shall entitle the Borrower to other or further notice or demand in similar or other circumstances.

### **32.00 TIME OF THE ESSENCE**

Time is of the essence with respect to each and every covenant, agreement and obligation of the Borrower and the Guarantor under this Agreement and the other Loan Documents.

### **33.00 SEVERABILITY**

The provisions of this Agreement are severable, and if any one clause or provision hereof shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as a sealed instrument as of the date first set forth above.

[THE REMAINDER OF THIS PAGE INTENTIONALLY ENDS HERE;  
SIGNATURE PAGE TO FOLLOW]

BORROWER:

TRADEPORT DEVELOPMENT III, LLC

By: River Bend Holdings, LLC  
Its Sole Member

By: Griffin Industrial, LLC  
Its Sole Member

/s/ THOMAS DANIELLS  
Witness Thomas M. Daniells

By: /s/ ANTHONY GALICI  
Name: Anthony J. Galici  
Title: Vice President

/s/ MATTHEW HOBERMAN  
Witness Thomas M. Hoberman

GUARANTOR:

GRIFFIN INDUSTRIAL REALTY, INC.

/s/ THOMAS DANIELLS  
Witness Thomas M. Daniells

By: /s/ ANTHONY GALICI  
Name: Anthony J. Galici  
Title: Vice President

/s/ MATTHEW HOBERMAN  
Witness Thomas M. Hoberman

LENDER:

BERKSHIRE BANK

/s/ TIMOTHY HUSSEY  
Witness Timothy Hussey

By: /s/ JOSEPH MARULLO  
Joseph M. Marullo,  
Senior Vice President

/s/ JOC DROST  
Witness Joc Drost

*{Signature page to the Amended and Restated Loan and Security Agreement}*



## EXHIBIT A

### PROPERTY DESCRIPTION

That certain piece or parcel of land, with the improvements thereon, if any, situated in the Town of Windsor, County of Hartford and State of Connecticut, being shown as "100 INTERNATIONAL DRIVE", on a certain map entitled, "REVISION TO RESUBDIVISION PLAN PREPARED FOR GRIFFIN LAND STONE RD., INTERNATIONAL DR. & RAINBOW RD. WINDSOR, CONNECTICUT SCALE: 1 IN = 200 FT DECEMBER 19, 2005 REVISION PER TOWN STAFF 1/10/06" prepared by Ed Lally and Associates, Inc., which map is on file in the Windsor Town Clerk's Office as Map No. 5212, to which reference may be had for a more particular description.

## EXHIBIT B

### PERMITTED LIENS

No other UCC financing statements have been filed in connection with any of the Company's assets excepting only as follows:

1. 2679285 UCC-1 in favor of Berkshire Bank
2. 2973738 UCC-3 Continuation in favor of Berkshire Bank

## EXHIBIT C

### PHOTOCOPY OF TERM NOTE

#### TERM NOTE

\$10,600,000

July 14, 2017

FOR VALUE RECEIVED, Tradeport Development III, LLC (the "Borrower"), a Connecticut limited liability company, having a chief executive principal place of business at 204 West Newberry Road, Bloomfield, Connecticut, promises to pay to the order of Berkshire Bank (the "Lender"), a Massachusetts banking corporation, at Lender's office located at 19 Harrison Avenue, Springfield, Massachusetts 01103, or at such other place as Lender may designate in writing, the principal sum of Ten Million Six Hundred Thousand and 00/100 Dollars (\$10,600,000), plus interest from the date hereof, all as hereinafter set forth. This Note replaces a certain Construction Note dated February 6, 2009, given by Borrower to Lender. This Note is the Term Note described in an Amended and Restated Loan and Security Agreement of even date herewith between the Borrower and the Lender (the "Loan Agreement"). The terms defined in the Loan Agreement shall have their defined meanings apply herein. This Note is subject to, and governed by the Loan Agreement in all respects.

#### INTEREST

For the entire term of the Loan, the Loan shall bear interest at an adjustable annual rate equal to the one (1) month LIBOR Rate, plus two hundred five (205) basis points. Such adjustments shall become effective on the 1<sup>st</sup> day of each month (the "Reset Date"). Lender shall not be required to notify Borrower of adjustments in said interest rate.

#### REPAYMENT

Principal and interest due Lender hereunder shall be repaid as follows:

A. Commencing on August 1, 2017 and thereafter on the same day of each succeeding month ("Interest Period") for a period of one hundred twenty (120) months (excepting the final payment) and based on an amortization period of twenty-five (25) years, monthly payments of principal plus interest, in arrears, calculated at the above rate of interest on the outstanding principal balance. A repayment schedule based on the payments under this Note is attached hereto as Exhibit A.

B. Any remaining unpaid principal, and all accrued interest thereon, shall be due and payable IN FULL on August 1, 2027 (the "Maturity Date").

Any payments received by Lender with respect to this Note prior to demand, acceleration or maturity shall be applied first to any costs, expenses or charges due Lender from Borrower, second to any unpaid accrued interest hereunder, and third to the unpaid principal hereunder. Any payments received after demand, acceleration or maturity shall be applied in such a manner as Lender shall determine.

If any payment required hereunder is more than ten (10) days past due, (in addition to interest accruing hereunder) a late charge of five (5.00%) percent of the overdue payment shall be charged to Borrower and be immediately due and payable to Lender. Any payment having a due date falling upon a Saturday, Sunday, or legal holiday shall be due and payable on the next business day for which Lender is open for business, and interest shall continue to accrue during the extended period.

If any payment received by Lender with respect to this Note shall be deemed by a court of competent jurisdiction to have been a voidable preference or fraudulent conveyance under federal or state law, or otherwise due any party other than Lender, then the obligation for which the payment was made shall not be discharged by the payment and shall survive as an obligation due hereunder, notwithstanding Lender's return to Borrower or any other party of the original of this Note or other instrument evidencing the obligation for which payment was made.

In the event the Borrower prepays all or any portion of this Note, whether as a result of acceleration or otherwise, the Borrower will pay to the Lender on the same date that any such payment is made any breakage fee, yield maintenance charge, termination fee or similar fee or charge as may be required pursuant to the Hedging Contract (as defined in the Loan Agreement) to cover loss, cost and expense attributable to such prepayment. All prepayments (with prepayment defined herein as any payment of principal in advance of its due date) shall be applied against the principal payments due hereunder in the inverse order of their maturity.

The following described property from Borrower, in addition to all other collateral now or hereafter provided by Borrower to Lender, shall secure this Note and all other present and future obligations of Borrower to Lender: Mortgage and Security Agreement and Collateral Assignment of Rents and Leases with respect to all of Borrower's property and chose-in-action, including, without limitation, real estate located at 100 International Drive, Windsor, Connecticut.

Any and all deposits or other sums at any time credited by, or due to Borrower hereof from Lender or any of its banking or lending affiliates or any loan participant under any loan arrangement between Lender and Borrower, and any cash, instruments, securities or other property of Borrower, now or hereafter in the possession of Lender, or any of its banking or lending affiliates or any loan participant under any loan arrangement between Lender and Borrower, whether for safekeeping or otherwise, shall at all times constitute security (and hereby remain subject to a pledge and grant of a security interest by Borrower) for the payment of this Note and all other obligations, whether now existing or hereafter arising, of Borrower to Lender and may be applied or set off against such Note or other obligations at any time, whether or not then due.

This Note shall be in default, and all unpaid principal, interest, and other amounts due hereunder, shall, at Lender's option, be immediately due and payable, without prior notice, protest, or demand, upon the occurrence of any Event of Default. Default upon this Note shall also operate as a default upon all other obligations of Borrower to Lender.

Upon the occurrence of an Event of Default hereunder, interest upon the principal balance hereof, and to the extent permitted by law, on any accrued but unpaid interest hereon, shall, at Lender's option, accrue at the Default Rate.

Borrower hereby waives presentment, demand, notice and protest and also waives any delay on the part of the holder hereof. Each also assents to (i) any extension, or other indulgence (including, without limitation, any release or substitution of collateral or of any direct or indirect obligor) permitted by Lender with respect to this Note and/or any collateral given to secure this Note and (ii) any extension or other indulgence, as described above, with respect to any other obligation or any collateral given to secure such other obligation of Borrower to Lender. A discharge or release of any party directly or indirectly liable hereon shall not discharge or otherwise affect the liability of any other party directly or indirectly liable hereon.

No indulgence, delay, or omission by Lender in exercising or enforcing any of its rights or remedies hereunder shall operate as a waiver thereof on that occasion nor on any other occasion. No waiver of any default hereunder shall operate as a waiver of any other default hereunder, nor as a continuing waiver. No waiver of a default or of any other right or remedy hereunder, nor any modification of any provision of this Note, shall be enforceable unless it is in writing signed by the party against whom the waiver or modification is to be enforced. All of Lender's rights and remedies hereunder and under any other related loan documents shall be cumulative and may be exercised singularly or concurrently, at Lender's sole and exclusive discretion.

It is not intended under this Note to charge interest at a rate exceeding the maximum rate of interest permitted to be charged under applicable law, but if interest exceeding said maximum rate should be paid hereunder, the excess shall, at Lender's option, be (a) deemed a voluntary prepayment of principal not subject to the prepayment premium (if any) set forth herein or (b) refunded to Borrower.

Borrower agrees to pay on demand all costs and expenses, including, but not limited to, reasonable attorneys' fees, incurred by Lender in connection with the protection and/or enforcement of any of Lender's rights or remedies against Borrower (whether or not any suit has been instituted by or against Lender).

This Note shall be binding upon Borrower hereof and upon its respective heirs, successors, and representatives, and shall inure to the benefit of Lender and its successors, endorsees and assigns.

No party obligated on account of this Note may seek contribution from any other party also obligated unless and until all obligations to Lender of the party to whom contribution is sought have been satisfied in full. Each reference to Lender herein is to the named payee hereto or any subsequent holder hereof, and their respective successors, endorsees and assigns.

Borrower represents to Lender that the proceeds of this Note will not be used for personal, family or household purposes and that this loan is strictly a commercial transaction.

Except as provided below, notwithstanding anything else to the contrary contained in this Term Note or in any other document or instrument, the indebtedness evidenced by this Term Note or evidence or secured thereunder shall be non-recourse to the Borrower and Borrower shall be liable upon the indebtedness evidence hereby or evidenced or secured thereby to the full extent (but only to the extent) of the security therefore, the same being the Mortgaged Premises and all rights, estates and interests therein or related thereto securing the payment of this Term Note. If an Event of Default occurs hereunder or under any of the Obligations, or in the timely and proper performance of any Obligations of Borrower thereunder, any judicial proceedings brought by Lender, or the holder hereof, against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security, title, estates, rights and security interests now or at any time hereafter securing the payment of this Term Note or the other Obligations of Borrower to Lender, and no attachment, execution or other writ of process shall be sought, issued, or levied upon any assets, properties or funds of Borrower other than the Mortgaged Premises (except as provided hereafter), and in the event of foreclosure of such liens, security, title, estates, rights or security interests, securing the payment of the Term Note, and/or other Obligations of Borrower, no judgment for any deficiency upon the indebtedness evidenced hereby or evidenced or secured thereby shall be sought or obtained by Lender, or the holder hereof, against Borrower, except on account of the occurrence of (i) any of the conditions specified in an Amended and Restated Environmental Indemnity Agreement of even date herewith, or (ii) any of the following A-I, in which case the Borrower shall be personally liable to Lender for all of Lender's loss, cost and damages (including without limitation, reasonable attorneys' fees) due to Lender by reason of, or in connection with the occurrence of any of the following events:

- A. The misapplication by Borrower of any insurance proceeds or condemnation awards, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
- B. The failure of the Borrower to pay any real estate taxes and assessments or insurance premiums with respect to the Mortgaged Premises or any charges for labor or materials which may result in the creation of liens on the Mortgaged Premises to the extent of Rents actually received;
- C. Following the occurrence of an Event of Default, the misapplication of any tenant rents or security deposits or any other refundable deposits, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
- D. Waste committed on the Mortgaged Premises or damage to the Mortgaged Premises as a result of the intentional misconduct or gross negligence of Borrower or the wrongful removal or destruction of any portion of the Mortgaged Premises; or

E. Any fraud or the material breach of any material representation or warranty made in connection with the Loan known by Borrower or any member of Borrower to have been false when made or deemed made, including any material misrepresentation or inaccuracy contained in any financial statement or other document provided to the Lender pursuant to this Term Note known by Borrower or any member of Borrower known to have been false or inaccurate when provided; or

F. Any filing by Borrower of a petition or application for relief, extension, moratorium or reorganization under any bankruptcy, insolvency or debtor's relief law, or the making of an assignment for the benefit of creditors, or the appointment of a receiver of any property of Borrower in any action initiated by, colluded in, or consented to, by Borrower; or

G. The contesting or opposition by Borrower of any motion for relief from the automatic stay filed by Lender in any involuntary bankruptcy proceeding of Borrower; or

H. Any acts of Borrower that are judicially determined to have been taken in bad faith with the intent to hinder, delay or interfere with the exercise by Lender of its rights and remedies under the Loan Documents after the occurrence of an Event of Default; or

I. The transfer of any ownership interest in or to creation of any voluntary lien on the Mortgaged Premises not permitted by the Loan Documents.

THIS NOTE SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, AND THE BORROWER SUBMITS TO THE JURISDICTION OF ITS COURTS WITH RESPECT TO ALL CLAIMS CONCERNING THIS NOTE OR ANY COLLATERAL SECURING IT.

ALL PARTIES TO THIS NOTE, INCLUDING LENDER, AND AS A NEGOTIATED PART OF THIS TRANSACTION, HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY, AS TO ALL ISSUES, INCLUDING ANY COUNTERCLAIMS, WITHOUT EXCEPTION, IN ANY ACTION OR PROCEEDING RELATING, DIRECTLY OR INDIRECTLY, TO THIS NOTE AND/OR OTHER INSTRUMENTS OR LOAN DOCUMENTS (IF ANY) EXECUTED IN CONNECTION HEREWITH.

BORROWER HEREBY WAIVES ANY AND ALL RIGHTS THAT THE BORROWER MAY HAVE UNDER SECTION 52-278(a) THROUGH 52-278(g) OF THE CONNECTICUT GENERAL STATUTES (AS AMENDED), INTENDING THEREBY THAT IN THE EVENT OF ANY LEGAL ACTION BETWEEN THE BORROWER AND THE LENDER ARISING OUT OF THIS AGREEMENT, THE LENDER MAY INVOKE ANY PRE-JUDGMENT REMEDY, INCLUDING BUT NOT BEING LIMITED TO, GARNISHMENT, ATTACHMENT, FOREIGN ATTACHMENT AND REPLEVIN, WITHOUT GIVING BORROWER ANY

NOTICE OR OPPORTUNITY FOR A HEARING. THIS WAIVER IS MADE BY THE BORROWER ON BEHALF OF THE BORROWER, ITS HEIRS, SUCCESSORS, AND ASSIGNS, AND SHALL APPLY TO ANY AND ALL ACTIONS AGAINST SUCH HEIRS, SUCCESSORS AND ASSIGNS.

This Note constitutes a final written expression of all of its terms and is a complete and exclusive statement of those terms. Any modification or waiver of any of these terms must be in writing signed by the party against whom the modification or waiver is to be enforced.

The Borrower agrees to be bound by the terms of this Note and acknowledge receipt of a signed copy hereof.

This Note shall be governed by the laws of the Commonwealth of Massachusetts, without regard to its principles of conflicts of laws, and shall take effect as a sealed instrument.

*{SIGNATURE PAGE FOLLOWS}*



Signed under seal as of the day and year first above written.

TRADEPORT DEVELOPMENT III, LLC

By: River Bend Holdings, LLC  
Its Sole Member

By: Griffin Industrial, LLC  
Its Sole Member

\_\_\_\_\_  
Witness

By:\_\_\_\_\_  
Name: Anthony J. Galici  
Title: Vice President

\_\_\_\_\_  
Witness

*{Signature Page to Term Note}*



| Start Date  | End Date    | Beginning Balance (USD) | Principal Payment (USD) |
|-------------|-------------|-------------------------|-------------------------|
| 14-Jul-2017 | 01-Aug-2017 | 10,600,000.00           | 19,224.65               |
| 01-Aug-2017 | 01-Sep-2017 | 10,580,775.35           | 19,296.41               |
| 01-Sep-2017 | 01-Oct-2017 | 10,561,478.94           | 19,368.46               |
| 01-Oct-2017 | 01-Nov-2017 | 10,542,110.48           | 19,440.76               |
| 01-Nov-2017 | 01-Dec-2017 | 10,522,669.72           | 19,513.34               |
| 01-Dec-2017 | 01-Jan-2018 | 10,503,156.38           | 19,586.19               |
| 01-Jan-2018 | 01-Feb-2018 | 10,483,570.19           | 19,659.32               |
| 01-Feb-2018 | 01-Mar-2018 | 10,463,910.87           | 19,732.70               |
| 01-Mar-2018 | 01-Apr-2018 | 10,444,178.17           | 19,806.38               |
| 01-Apr-2018 | 01-May-2018 | 10,424,371.79           | 19,880.32               |
| 01-May-2018 | 01-Jun-2018 | 10,404,491.47           | 19,954.54               |
| 01-Jun-2018 | 01-Jul-2018 | 10,384,536.93           | 20,029.04               |
| 01-Jul-2018 | 01-Aug-2018 | 10,364,507.89           | 20,103.81               |
| 01-Aug-2018 | 01-Sep-2018 | 10,344,404.08           | 20,178.87               |
| 01-Sep-2018 | 01-Oct-2018 | 10,324,225.21           | 20,254.20               |
| 01-Oct-2018 | 01-Nov-2018 | 10,303,971.01           | 20,329.82               |
| 01-Nov-2018 | 01-Dec-2018 | 10,283,641.19           | 20,405.71               |
| 01-Dec-2018 | 01-Jan-2019 | 10,263,235.48           | 20,481.90               |
| 01-Jan-2019 | 01-Feb-2019 | 10,242,753.58           | 20,558.36               |
| 01-Feb-2019 | 01-Mar-2019 | 10,222,195.22           | 20,635.11               |
| 01-Mar-2019 | 01-Apr-2019 | 10,201,560.11           | 20,712.16               |
| 01-Apr-2019 | 01-May-2019 | 10,180,847.95           | 20,789.47               |
| 01-May-2019 | 01-Jun-2019 | 10,160,058.48           | 20,867.09               |
| 01-Jun-2019 | 01-Jul-2019 | 10,139,191.39           | 20,945.00               |
| 01-Jul-2019 | 01-Aug-2019 | 10,118,246.39           | 21,023.19               |
| 01-Aug-2019 | 01-Sep-2019 | 10,097,223.20           | 21,101.67               |
| 01-Sep-2019 | 01-Oct-2019 | 10,076,121.53           | 21,180.46               |
| 01-Oct-2019 | 01-Nov-2019 | 10,054,941.07           | 21,259.52               |
| 01-Nov-2019 | 01-Dec-2019 | 10,033,681.55           | 21,338.90               |
| 01-Dec-2019 | 01-Jan-2020 | 10,012,342.65           | 21,418.57               |
| 01-Jan-2020 | 01-Feb-2020 | 9,990,924.08            | 21,498.52               |
| 01-Feb-2020 | 01-Mar-2020 | 9,969,425.56            | 21,578.79               |
| 01-Mar-2020 | 01-Apr-2020 | 9,947,846.77            | 21,659.35               |
| 01-Apr-2020 | 01-May-2020 | 9,926,187.42            | 21,740.20               |
| 01-May-2020 | 01-Jun-2020 | 9,904,447.22            | 21,821.38               |
| 01-Jun-2020 | 01-Jul-2020 | 9,882,625.84            | 21,902.84               |
| 01-Jul-2020 | 01-Aug-2020 | 9,860,723.00            | 21,984.61               |
| 01-Aug-2020 | 01-Sep-2020 | 9,838,738.39            | 22,066.68               |
| 01-Sep-2020 | 01-Oct-2020 | 9,816,671.71            | 22,149.07               |
| 01-Oct-2020 | 01-Nov-2020 | 9,794,522.64            | 22,231.76               |
| 01-Nov-2020 | 01-Dec-2020 | 9,772,290.88            | 22,314.75               |
| 01-Dec-2020 | 01-Jan-2021 | 9,749,976.13            | 22,398.07               |

|             |             |              |           |
|-------------|-------------|--------------|-----------|
| 01-Jan-2021 | 01-Feb-2021 | 9,727,578.06 | 22,481.68 |
| 01-Feb-2021 | 01-Mar-2021 | 9,705,096.38 | 22,565.62 |
| 01-Mar-2021 | 01-Apr-2021 | 9,682,530.76 | 22,649.86 |
| 01-Apr-2021 | 01-May-2021 | 9,659,880.90 | 22,734.42 |
| 01-May-2021 | 01-Jun-2021 | 9,637,146.48 | 22,819.29 |
| 01-Jun-2021 | 01-Jul-2021 | 9,614,327.19 | 22,904.49 |
| 01-Jul-2021 | 01-Aug-2021 | 9,591,422.70 | 22,990.00 |
| 01-Aug-2021 | 01-Sep-2021 | 9,568,432.70 | 23,075.82 |
| 01-Sep-2021 | 01-Oct-2021 | 9,545,356.88 | 23,161.98 |
| 01-Oct-2021 | 01-Nov-2021 | 9,522,194.90 | 23,248.45 |
| 01-Nov-2021 | 01-Dec-2021 | 9,498,946.45 | 23,335.24 |
| 01-Dec-2021 | 01-Jan-2022 | 9,475,611.21 | 23,422.36 |
| 01-Jan-2022 | 01-Feb-2022 | 9,452,188.85 | 23,509.80 |
| 01-Feb-2022 | 01-Mar-2022 | 9,428,679.05 | 23,597.58 |
| 01-Mar-2022 | 01-Apr-2022 | 9,405,081.47 | 23,685.67 |
| 01-Apr-2022 | 01-May-2022 | 9,381,395.80 | 23,774.10 |
| 01-May-2022 | 01-Jun-2022 | 9,357,621.70 | 23,862.85 |
| 01-Jun-2022 | 01-Jul-2022 | 9,333,758.85 | 23,951.94 |
| 01-Jul-2022 | 01-Aug-2022 | 9,309,806.91 | 24,041.37 |
| 01-Aug-2022 | 01-Sep-2022 | 9,285,765.54 | 24,131.11 |
| 01-Sep-2022 | 01-Oct-2022 | 9,261,634.43 | 24,221.21 |
| 01-Oct-2022 | 01-Nov-2022 | 9,237,413.22 | 24,311.63 |
| 01-Nov-2022 | 01-Dec-2022 | 9,213,101.59 | 24,402.40 |
| 01-Dec-2022 | 01-Jan-2023 | 9,188,699.19 | 24,493.50 |
| 01-Jan-2023 | 01-Feb-2023 | 9,164,205.69 | 24,584.94 |
| 01-Feb-2023 | 01-Mar-2023 | 9,139,620.75 | 24,676.72 |
| 01-Mar-2023 | 01-Apr-2023 | 9,114,944.03 | 24,768.86 |
| 01-Apr-2023 | 01-May-2023 | 9,090,175.17 | 24,861.32 |
| 01-May-2023 | 01-Jun-2023 | 9,065,313.85 | 24,954.13 |
| 01-Jun-2023 | 01-Jul-2023 | 9,040,359.72 | 25,047.30 |
| 01-Jul-2023 | 01-Aug-2023 | 9,015,312.42 | 25,140.81 |
| 01-Aug-2023 | 01-Sep-2023 | 8,990,171.61 | 25,234.67 |
| 01-Sep-2023 | 01-Oct-2023 | 8,964,936.94 | 25,328.88 |
| 01-Oct-2023 | 01-Nov-2023 | 8,939,608.06 | 25,423.44 |
| 01-Nov-2023 | 01-Dec-2023 | 8,914,184.62 | 25,518.35 |
| 01-Dec-2023 | 01-Jan-2024 | 8,888,666.27 | 25,613.62 |
| 01-Jan-2024 | 01-Feb-2024 | 8,863,052.65 | 25,709.25 |
| 01-Feb-2024 | 01-Mar-2024 | 8,837,343.40 | 25,805.22 |
| 01-Mar-2024 | 01-Apr-2024 | 8,811,538.18 | 25,901.57 |
| 01-Apr-2024 | 01-May-2024 | 8,785,636.61 | 25,998.27 |
| 01-May-2024 | 01-Jun-2024 | 8,759,638.34 | 26,095.32 |
| 01-Jun-2024 | 01-Jul-2024 | 8,733,543.02 | 26,192.75 |
| 01-Jul-2024 | 01-Aug-2024 | 8,707,350.27 | 26,290.53 |
| 01-Aug-2024 | 01-Sep-2024 | 8,681,059.74 | 26,388.69 |
| 01-Sep-2024 | 01-Oct-2024 | 8,654,671.05 | 26,487.20 |

|             |             |              |              |
|-------------|-------------|--------------|--------------|
| 01-Oct-2024 | 01-Nov-2024 | 8,628,183.85 | 26,586.09    |
| 01-Nov-2024 | 01-Dec-2024 | 8,601,597.76 | 26,685.35    |
| 01-Dec-2024 | 01-Jan-2025 | 8,574,912.41 | 26,784.97    |
| 01-Jan-2025 | 01-Feb-2025 | 8,548,127.44 | 26,884.96    |
| 01-Feb-2025 | 01-Mar-2025 | 8,521,242.48 | 26,985.34    |
| 01-Mar-2025 | 01-Apr-2025 | 8,494,257.14 | 27,086.08    |
| 01-Apr-2025 | 01-May-2025 | 8,467,171.06 | 27,187.20    |
| 01-May-2025 | 01-Jun-2025 | 8,439,983.86 | 27,288.71    |
| 01-Jun-2025 | 01-Jul-2025 | 8,412,695.15 | 27,390.58    |
| 01-Jul-2025 | 01-Aug-2025 | 8,385,304.57 | 27,492.83    |
| 01-Aug-2025 | 01-Sep-2025 | 8,357,811.74 | 27,595.48    |
| 01-Sep-2025 | 01-Oct-2025 | 8,330,216.26 | 27,698.50    |
| 01-Oct-2025 | 01-Nov-2025 | 8,302,517.76 | 27,801.91    |
| 01-Nov-2025 | 01-Dec-2025 | 8,274,715.85 | 27,905.71    |
| 01-Dec-2025 | 01-Jan-2026 | 8,246,810.14 | 28,009.88    |
| 01-Jan-2026 | 01-Feb-2026 | 8,218,800.26 | 28,114.46    |
| 01-Feb-2026 | 01-Mar-2026 | 8,190,685.80 | 28,219.41    |
| 01-Mar-2026 | 01-Apr-2026 | 8,162,466.39 | 28,324.77    |
| 01-Apr-2026 | 01-May-2026 | 8,134,141.62 | 28,430.51    |
| 01-May-2026 | 01-Jun-2026 | 8,105,711.11 | 28,536.66    |
| 01-Jun-2026 | 01-Jul-2026 | 8,077,174.45 | 28,643.19    |
| 01-Jul-2026 | 01-Aug-2026 | 8,048,531.26 | 28,750.12    |
| 01-Aug-2026 | 01-Sep-2026 | 8,019,781.14 | 28,857.46    |
| 01-Sep-2026 | 01-Oct-2026 | 7,990,923.68 | 28,965.19    |
| 01-Oct-2026 | 01-Nov-2026 | 7,961,958.49 | 29,073.34    |
| 01-Nov-2026 | 01-Dec-2026 | 7,932,885.15 | 29,181.87    |
| 01-Dec-2026 | 01-Jan-2027 | 7,903,703.28 | 29,290.81    |
| 01-Jan-2027 | 01-Feb-2027 | 7,874,412.47 | 29,400.17    |
| 01-Feb-2027 | 01-Mar-2027 | 7,845,012.30 | 29,509.93    |
| 01-Mar-2027 | 01-Apr-2027 | 7,815,502.37 | 29,620.10    |
| 01-Apr-2027 | 01-May-2027 | 7,785,882.27 | 29,730.68    |
| 01-May-2027 | 01-Jun-2027 | 7,756,151.59 | 29,841.68    |
| 01-Jun-2027 | 01-Jul-2027 | 7,726,309.91 | 29,953.08    |
| 01-Jul-2027 | 01-Aug-2027 | 7,696,356.83 | 7,696,356.83 |

## EXHIBIT D

### LIMITED GUARANTY

This Guaranty is executed and delivered as of this 14th day of July, 2017, by the undersigned, Griffin Industrial Realty, Inc., a Delaware corporation (“Guarantor”), with an address of 204 West Newberry Road, Bloomfield, Connecticut 06002 and Berkshire Bank, a Massachusetts banking corporation with a usual place of business at 19 Harrison Avenue, Springfield, Massachusetts 01103 (the “Lender”).

### WITNESSETH

WHEREAS, the Lender and Tradeport Development III, LLC, a Connecticut limited liability company (the “Borrower”) intend to enter into a loan transaction (the “Loan”) of even date herewith; and

WHEREAS, the Loan is evidenced by the Term Note of the Borrower of even date herewith payable to the Lender in the principal amount of Ten Million Six Hundred Thousand and 00/100 Dollars (\$10,600,000) (the “Term Note”), and will be secured, *inter alia*, by an Open-End Mortgage from the Borrower to the Lender dated February 6, 2009, as amended by First Amendment to Open-End Mortgage and Collateral Assignment of Rents and Leases of even date herewith (the “Mortgage”) on certain real estate owned by Borrower located at 100 Industrial Drive, Windsor, Connecticut (the “Mortgaged Premises”); and

WHEREAS, the proceeds of the Loan will be disbursed in accordance with the terms of an Amended and Restated Loan and Security Agreement among Borrower and Lender of even date herewith (the “Loan Agreement”). All capitalized terms used herein and not otherwise defined shall have the same meaning as set forth in the Loan Agreement; and

WHEREAS, the Lender has advised the Guarantor that it will not enter into the aforesaid Loan transaction with the Borrower unless, among other matters, the Guarantor guaranties the punctual payment and performance of certain obligations of the Borrower to the Lender as hereinafter provided; and

WHEREAS, the Guarantor is willing and has agreed to guarantee the payment and performance of the aforesaid obligations, as hereinafter provided; and

WHEREAS, the Guarantor is a direct or indirect owner of Borrower and will derive a direct economic benefit from the Loan.

NOW, THEREFORE, in consideration of any and all loans, advances, discounts and extensions of credit made and to be made by the Lender and Lenders to, for the account of, or on behalf of the Borrower, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Guarantor agrees as follows:

1. Definitions.

- (a) The term "Liabilities of the Borrower" shall mean all obligations, indebtedness and liability of any type of the Borrower to the Lender, whether now existing or hereafter incurred, whether direct, indirect, absolute or contingent, whether otherwise guaranteed or secured, and howsoever evidenced or acquired, including without limitation, (i) the prompt payment of all principal, interest and other charges due under the Note; and (ii) the prompt payment, performance and observance of all covenants, conditions and agreements contained in the Loan Agreement, the Mortgage and all other documents and instruments securing the Note or executed in connection therewith (the Note, the Loan Agreement, the Mortgage and all of such other documents and instruments being hereinafter collectively referred to as "Loan Documents");
- (b) The term "Guaranteed Obligations" shall mean:
  - (i) any and all loss, cost or damage (including, without limitation, reasonable attorneys' fees) incurred or suffered by Lender as a result of any of the following:
    - (a) The misapplication by Borrower of any insurance proceeds or condemnation awards, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
    - (b) The failure of the Borrower to pay any real estate taxes and assessments or insurance premiums with respect to the Mortgaged Premises or any charges for labor or materials which may result in the creation of liens on the Mortgaged Premises, all to the extent of Rents actually received;
    - (c) Following the occurrence of an Event of Default, the misapplication of any tenant rents or security deposits or any other refundable deposits, including, but not limited to, the failure to deliver same to Lender, any receiver or any purchaser at foreclosure, if appropriate;
    - (d) Waste committed on the Mortgaged Premises or damage to the Mortgaged Premises as a result of the intentional misconduct or gross negligence of Borrower or the wrongful removal or destruction of any portion of the Mortgaged Premises; or
    - (e) Any fraud or the material breach of any material representation or warranty made in connection with the Loan known by Borrower or any member of Borrower to have been false when made or deemed made, including any material misrepresentation or inaccuracy contained in any financial statement or other document provided to the Lender pursuant to this Agreement known by Borrower or any Member to have been false or inaccurate when provided; or

(f) Any filing by Borrower of a petition or application for relief, extension, moratorium or reorganization under any bankruptcy, insolvency or debtor's relief law, or the making of an assignment for the benefit of creditors, or the appointment of a receiver of any property of Borrower in any action initiated by, colluded in, or consented to, by Borrower; or

(g) The contesting or opposition by Borrower of any motion for relief from the automatic stay filed by Lender in any involuntary bankruptcy proceeding of Borrower; or

(h) Any acts of Borrower that are judicially determined to have been taken in bad faith with the intent to hinder, delay or interfere with the exercise by Lender of its rights and remedies under the Loan Documents after the occurrence of an Event of Default; or

(i) The transfer of any ownership interest in or to creation of any voluntary lien on the Mortgaged Premises not permitted by the Loan Documents.

For the avoidance of doubt, in no event shall the Guarantor be deemed to have guaranteed, and at all times, the term "Guaranteed Obligations" shall exclude any Hedging Obligations of Borrower, including, without limitation, any Lender Hedging Obligations.

1.1 Notwithstanding any limitation contained in any Loan Document or any other agreement, the Guarantor shall at all times be liable to Lender following demand on Guarantor for the prompt and full payment (and not merely of the collectability), performance and observance of one hundred percent (100%) of all amounts due to Borrower under the Master Lease Agreement.

2. Guaranty of Guaranteed Obligations. The Guarantor hereby guarantees to Lender the full, complete and punctual payment and performance (and not merely the collectability) of each and all of the Guaranteed Obligations.

3. Guaranty Absolute and Unconditional. This is a continuing, absolute and unconditional Guaranty of the Guaranteed Obligations. This Guaranty is not conditioned or contingent upon the genuineness, validity, or enforceability of the Loan Documents or other instruments relating to the creation or performance of the Liabilities of the Borrower or the pursuit by the Lender of any remedies which the Lender has now or may hereafter have with respect thereto under the Loan Documents at law, in equity, or otherwise. Furthermore, the Guarantor shall forthwith pay all sums due to the Lender hereunder without regard to any counterclaim, setoff, deduction, or defense of any kind which any party obligated under the Loan Documents may have or assert, and without abatement, suspension, deferment, or reduction on account of any occurrence whatsoever.

4. Events of Default. Upon the occurrence of any event or circumstance giving rise to any of the Guaranteed Obligations, the liabilities and obligations of the Guarantor hereunder shall immediately become due and payable, at the election of the Lender, upon Lender's written



demand. Lender shall have no obligation to exercise any right or remedy or to seek any recovery from any party obligated under the Loan Documents or to realize upon any collateral prior to proceeding hereunder against the Guarantor, and likewise the enforcement of the rights of Lender against the Borrower, any other party to the Loan Documents, or any collateral, shall not impair the right of the Lender to enforce this Guaranty against the Guarantor. The Guarantor expressly agrees that any such action by the Lender shall never operate as a release or other diminution of the liability of the Guarantor under this Guaranty.

5. Guarantor's Representations and Warranties. The Guarantor hereby represents and warrants that: (a) neither the execution nor performance of this Guaranty or the Master Lease Agreement will violate any indenture, agreement or other instrument to which the Guarantor is a party, or by which the Guarantor is bound, or be in conflict with, result in a breach of or constitute with due notice or lapse of time or both a default under, or except as may be provided by this Guaranty, result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Guarantor pursuant to any such indenture, agreement or instrument; (b) there is no action suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending or, to the knowledge of the Guarantor, threatened or affecting the Guarantor which, if adversely determined, would have a material adverse effect on the business, operations, properties, assets or condition, financial or otherwise, of the Guarantor; (c) the Guarantor is not party to any agreement or instrument or subject to any restriction adversely affecting the Guarantor's business, properties or assets, operations or conditions, financial or otherwise; and (d) the Guarantor is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which the Guarantor is a party.

6. Guarantor's Waivers; Waiver of Subrogation. With respect to this Guaranty and Guarantor's Master Lease Agreement obligation, the Guarantor waives notice of the incurring of Liabilities of the Borrower, the acceptance of this Guaranty by the Lender, presentment and demand for payment, protest, notice of protest, notice of dishonor or nonpayment of any instrument evidencing any Liabilities of the Borrower, acceleration, and intent to accelerate any right to require suit against the Borrower or any other party before enforcing this Guaranty; any right to have security applied before enforcing this Guaranty in any manner, any right to marshalling of assets; the defense of impairment of collateral; and all other suretyship defenses. The Guarantor consents and agrees that renewals and extensions of time of payment, surrender, release, exchange, substitution, dealing with or taking of additional collateral security, taking or release of any guaranties, abstaining from taking advantage of or realizing upon any collateral security or other guaranties and any and all other forbearances or indulgences granted by the Lender to the Borrower or any other party may be made, granted and effected by the Lender without notice to the Guarantor and without in any manner affecting the Guarantor's liability hereunder. Any notice to the Guarantor by the Lender at any time shall not imply that such notice or any further or similar notice was or is required.

The Guarantor also hereby waives any claim, right or remedy which the Guarantor may now have or hereafter acquire against the Borrower that arises hereunder and/or from the performance by the Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any



claim, right or remedy of the Lender against the Borrower or any security which the Lender now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. The Guarantor also agrees that any and all future debts and obligations of the Borrower to the Guarantor are hereby waived and postponed in favor of and subordinated to the full payment and performance of all Liabilities of the Borrower to the Lender.

7. Fees and Expenses. The Guarantor agrees to pay the Lender any and all costs, expenses and reasonable attorneys' fees paid or incurred by the Lender in enforcing or endeavoring to enforce this Guaranty. The Guarantor hereby grants to the Lender a continuing security interest in all accounts, deposits, and property of the Guarantor, and all proceeds thereof, from time to time with or in the hands of the Lender to secure the liabilities of the Guarantor hereunder, and the Lender shall have the same right to setoff with respect to deposits and other credits of the Guarantor as it has with respect to deposits and other credits of the Borrower under any agreements evidencing any of the Liabilities of the Borrower or under any applicable law.

8. Preference, Etc. The Guarantor agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of the principal of, interest on, or fees with respect to any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by the Lender upon insolvency, bankruptcy or reorganization of the Borrower or the Guarantor, or otherwise, all as though such payment had not been made.

9. Choice of Law; Modification; Successors and Assigns. This Guaranty is executed under and shall be construed in accordance with the local laws (excluding the conflict of laws rules, so-called) of the Commonwealth of Massachusetts (hereinafter the "State"). It may not be amended, modified or waived except by a written instrument describing such amendment, modification or waiver executed by the Guarantor and the Lender. It may not be assigned by the Guarantor. It shall inure to the benefit of the Lender, and its successors and assigns, and shall bind the Guarantor and the successors, representatives and heirs of the Guarantor.

10. WAIVER OF JURY TRIAL. THE GUARANTOR HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS GUARANTY, AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.

11. Jurisdiction and Venue. The Guarantor hereby irrevocably consents that any legal action or proceeding against the Guarantor or any of the Guarantor's property with respect to any matter arising under or relating to this Guaranty may be brought in any court of the State, or any Federal Court of the United States of America located in the State, as the Lender may elect, and by execution and delivery of this Guaranty the Guarantor hereby submits to and accepts with regard to any such action or proceeding, for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Guarantor further irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Guarantor at its address set forth herein. The foregoing, however, shall not limit the Lender's rights to serve process in any other manner

permitted by law or to bring any legal action or proceeding or to obtain execution of judgment in any other jurisdiction. The Guarantor hereby irrevocably waives any objection which it may now or hereafter have to the laying of the venue of any suit, action or proceeding brought in the State arising out of or relating to this Guaranty, and hereby further irrevocably waives any claim that the State is not a convenient forum for any such suit, action or proceeding.

12. Borrower's Discharge. If for any reason any of the Liabilities of the Borrower have been discharged or have become irrecoverable from the Borrower by operation of law or for any other reason, the Guaranteed Obligations of the Guarantor under this Guaranty shall nevertheless remain in full force and effect notwithstanding such discharge or irrecoverability.

13. Notices. Except as otherwise specifically provided for herein, any notice, demand or communication hereunder shall be given in writing and mailed or delivered to each party at its address or telecopier number set forth below, or, as to each party, at such other address or telecopier number as shall be designated by such party by a prior notice to the other party in accordance with the terms of this provision.

Any notice to the Lender shall be sent as follows:

Berkshire Bank  
19 Harrison Avenue  
Springfield, MA 01103  
Attn: Joseph M. Marullo, Vice President

with a copy to:

Peter W. Shrair, Esquire  
Cooley, Shrair P.C.  
1380 Main Street  
Springfield, MA 01103

Any notice to Guarantor shall be sent as follows:

Griffin Industrial Realty, Inc.  
204 West Newberry Road  
Bloomfield, CT 06002

with a copy to:

Thomas M. Daniells, Esquire  
Murtha Cullina, LLC  
CityPlace I  
185 Asylum Street  
Hartford, CT 06103

All notices hereunder shall be effective (i) three (3) business days after such notice is

mailed, by registered or certified mail, postage prepaid (return receipt requested), (ii) upon delivery by hand, (iii) upon delivery if delivered by overnight courier (such delivery to be evidenced by the courier's records), and (iv) in the case of any notice or communication by telex or telecopy, on the date when sent.

14. Assignments and Participations. The Guarantor agrees that the Lender shall have the right at all times to sell its interests in the Loan Agreement and all or any portion of the Liabilities of the Borrower and all documents and instruments evidencing or pertaining to the Liabilities of the Borrower including this Guaranty, and to grant one or more participations in the Liabilities of the Borrower and in all documents and instruments evidencing or pertaining to the Liabilities of the Borrower including this Guaranty, to the extent permitted under and in accordance with the terms of the Loan Agreement. In connection therewith, the Guarantor hereby irrevocably authorizes the Lender to deliver to each such purchaser, participant and prospective purchaser or participant originals and copies of all loan documents and instruments and this Guaranty and all financial statements and other credit and factual data from time to time in the Lender's possession which relate to the Borrower and/or all guarantors, including the Guarantor. This Guaranty is expressly declared to be transferable and assignable.

15. GUARANTOR HEREBY WAIVES ANY AND ALL RIGHTS THAT THE GUARANTOR MAY HAVE UNDER SECTION 52-278(a) THROUGH 52-278(g) OF THE CONNECTICUT GENERAL STATUTES (AS AMENDED), INTENDING THEREBY THAT IN THE EVENT OF ANY LEGAL ACTION BETWEEN THE GUARANTOR AND THE LENDER ARISING OUT OF THIS AGREEMENT, THE LENDER MAY INVOKE ANY PRE-JUDGMENT REMEDY, INCLUDING BUT NOT BEING LIMITED TO, GARNISHMENT, ATTACHMENT, FOREIGN ATTACHMENT AND REPLEVIN, WITHOUT GIVING BORROWER ANY NOTICE OR OPPORTUNITY FOR A HEARING. THIS WAIVER IS MADE BY THE GUARANTOR ON BEHALF OF THE GUARANTOR, ITS SUCCESSORS, AND ASSIGNS, AND SHALL APPLY TO ANY AND ALL ACTIONS AGAINST SUCH SUCCESSORS AND ASSIGNS.

16. Credit Reports. Each legal entity and individual obligated on this Guaranty hereby authorizes Lender to order and obtain, from a credit reporting agency of Lender's choice, a third party credit report on such legal entity and individual.

17. Severability. If any other provision or obligation under this Guaranty shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be deemed severed from this Guaranty and the validity, legality and enforceability of the remaining provisions or obligations shall remain in full force as though the invalid, illegal or unenforceable provision had never been a part of this Guaranty.

18. Joint and Several Obligations; Gender. If more than one Guarantor has signed this Guaranty, the obligations of the Guarantor are joint and several. The term "Guarantor" and all pronouns referring thereto as used herein shall be construed in the masculine, feminine, neuter or singular or plural as the context may require.

*{SIGNATURE PAGE FOLLOWS}*

This Guaranty has been executed by the Guarantor, under seal, as of the date above written.

WITNESS:

GRIFFIN INDUSTRIAL  
REALTY, INC.

\_\_\_\_\_  
\_\_\_\_\_

BY: \_\_\_\_\_  
Anthony J. Galici  
Vice President

*{Signature Page to the Limited Guaranty}*

EXHIBIT E

INTELLECTUAL PROPERTY

NONE

EXHIBIT F

AFFILIATE TRANSACTIONS

NONE

EXHIBIT G

ENVIRONMENTAL DISCLOSURE

EXHIBIT H

SECURED AND UNSECURED DEBT

NONE



## EXHIBIT I

### LEASES

Second Amendment to Indenture of Lease dated as of June 22, 2017, by and between Tire Rack, Inc. and Tradeport Development III, LLC

First Amendment of Lease dated as of December 8, 2009, by and between Tire Rack, Inc. and Tradeport Development III, LLC

Indenture of Lease dated January 9, 2009, by and between Tire Rack, Inc. and Tradeport III, LLC.

Subordination, Non-Disturbance and Attornment Agreement dated February 6, 2009 by and among Tire Rack, Inc., Berkshire Bank and Tradeport III.

**PROMISSORY NOTE**

\$12,150,000

August 30, 2017

**FOR VALUE RECEIVED**, the undersigned, **RIVERBEND CONCORD PROPERTIES I LLC**, a North Carolina limited liability company (“Borrower”), promises to pay to the order of **40|86 MORTGAGE CAPITAL, INC.**, a Delaware corporation, (“Payee”; Payee and/or any subsequent holder(s) hereof, “Lender”), at Payee’s address at 535 North College Drive, Carmel, Indiana 46032 or at such other place as Lender shall designate from time to time in writing, the principal sum of Twelve Million One Hundred Fifty Thousand and No/100 Dollars (\$12,150,000.00), together with interest on the unpaid principal balance of such indebtedness from time to time outstanding from the date of disbursement at the rates hereinafter set forth, in lawful money of the United States of America, such principal and interest being due and payable as follows:

1. **INTEREST AND PAYMENTS.**

A. **Interest Rate.** Interest shall accrue on the outstanding principal amount of this Promissory Note (this “Note”) at the rate of three and ninety seven hundredths percent (3.97%) per annum commencing on the date of disbursement of funds by Payee hereunder (the “Closing”) to and including the Final Maturity Date (hereinafter defined).

B. **Payment Terms.**

[i] Interest for the calendar month in which the Closing takes place shall be prorated on a daily basis as provided in Subparagraph 1D hereof and shall be paid in advance at Closing. Thereafter, principal and interest shall be payable in equal monthly installments of fifty seven thousand seven hundred ninety six and 02/100 dollars (\$57,796.02) each, such installments to be due on the first day of each calendar month during the term hereof, commencing on the first day of October, 2017.

[ii] The entire outstanding principal balance of the indebtedness evidenced hereby, plus all accrued but unpaid interest thereon, shall be due and payable in full on September 1, 2027 (the “Final Maturity Date”). Borrower acknowledges that because monthly installments of principal and interest required in Subparagraph B[i] above are based on a thirty (30) year amortization period and that the term of this Note is shorter than the amortization period, a substantial portion of the principal balance of this Note will be due on the Final Maturity Date.

C. **Basis Point.** As used in this Note, the term “Basis Point” shall mean one one-hundredth (1/100th) of one percentage point of interest.

D. **Calculation of Interest.** All interest on any indebtedness evidenced by this Note shall be calculated on the basis of a three hundred sixty (360)-day year consisting of twelve 30 day months. Interest for partial months shall be calculated by multiplying the principal balance

of this Note by the applicable per annum rate, dividing the product so obtained by 365, and multiplying the result by the actual number of days elapsed.

2. APPLICATION OF PAYMENTS. All payments made under this Note shall be applied first in reduction of any Late Charges (as hereinafter defined), next in reduction of any sums advanced by Lender to cure Defaults (as defined in the Mortgage) under the Mortgage (defined below), next in reduction of any applicable Make Whole Payment (as hereinafter defined), next in reduction of current interest, and any remaining amount in reduction of the outstanding principal balance or, in the Event of Default (as defined in the Mortgage), in such other order or proportion of said obligations as Lender, in Lender's sole discretion, may determine. Until directed otherwise in writing by Lender, all payments under this Note shall be made by electronic fund transfer debit entries to Borrower's account at an Automated Clearing House ("ACH") member bank. Each payment shall be initiated by Lender (or, at Lender's option, by its loan servicing agent) through the ACH network for settlement on the respective due dates. Prior to each payment due date, Borrower shall deposit and/or maintain sufficient funds in its account to cover each debit entry. Notwithstanding the foregoing, the failure, for whatever reason other than Lender's failure to properly initiate payment, of the electronic funds transfer debit entry transaction to be timely completed shall not relieve Borrower from its obligations to promptly and timely make all payments called for under this Note when due and to comply with Borrower's other obligations hereunder.

3. COLLATERAL. The indebtedness evidenced by this Note is secured by, among other things, that certain Deed of Trust, Assignment of Rents and Security Agreement (the "Mortgage") from Borrower, for the benefit of Payee, conveying property lying and being in Cabarrus County, North Carolina as the same is more particularly described in the Mortgage, as security for the performance by Borrower of its obligations hereunder, that certain Assignment of Leases and Rents of even date herewith between Borrower and Payee (the "Assignment of Leases and Rents"), any cash deposit, certificate of deposit or letter of credit given in connection with this Note, and any other document executed in connection with this Note. All of the property and other interests of Borrower encumbered by or subject to the terms of the Mortgage is hereinafter referred to as the "Property."

4. LATE CHARGE. Prior to the acceleration of this Note or the Final Maturity Date, Borrower shall pay to Lender a late charge ("Late Charge") equal to five percent (5%) of any monthly payment under this Note (including any interest), or any other deposit or reserve due pursuant to any Loan Document not paid within three (3) days of the due date of such amount without regard to the grace period provided in Paragraph 5 below, not as a penalty, but as compensation to Lender for the cost of collecting and processing such late payment. Borrower agrees that any Late Charge represents a good faith reasonable estimate of the probable cost to Lender of such delinquency. Lender shall have no obligation to accept any late payment not accompanied by a Late Charge, but if Lender does so, Lender shall not thereby waive its right to the Late Charge.

5. INTEREST UPON DEFAULT; ACCELERATION. Each of the following shall constitute an Event of Default (as set forth in Paragraph 2.1 of the Mortgage): (a) failure by Borrower to pay the outstanding Indebtedness (as defined in the Mortgage) on or before the Final Maturity Date; (b) except for the final payment due on the Final Maturity Date, failure by Borrower

to pay any installment of principal or interest under the Note or other indebtedness secured by the Mortgage or any other sum that may be due and payable under any of the Loan Documents, within ten (10) days from the date when due and payable (provided that Lender shall have no obligation to give Borrower notice of any such failure); and (c) all other Events of Default described in Section 2.1 of the Mortgage. Borrower does hereby agree that upon the occurrence of an Event of Default and while any Event of Default exists, including, without limitation, the failure of Borrower to pay the outstanding principal balance of the loan evidenced by this Note (the "Loan") in full upon acceleration of this Note prior to the Final Maturity Date, Lender shall be entitled to receive and Borrower shall pay interest on the entire unpaid sum, effective from the date the Event of Default occurs at a per annum rate (the "Default Rate") equal to 500 Basis Points above the interest rate that would otherwise be in effect under this Note, but in no event to exceed the highest rate permitted under the laws of the jurisdiction where the property secured by the Mortgage is situated. Unpaid interest at the Default Rate shall be added to the unpaid principal balance of this Note and shall be deemed secured by the Mortgage. In the event of such failure to pay, and/or if there occurs an Event of Default under the Mortgage, the Assignment of Leases and Rents, that certain Environmental Indemnity Agreement of even date herewith executed by Borrower in favor of Payee (the "Environmental Indemnity Agreement"), or in or under any other document or instrument evidencing, securing, or otherwise relating to the indebtedness evidenced hereby (this Note, the Mortgage, the Assignment of Leases and Rents, the Environmental Indemnity Agreement, and such other documents and instruments, and any amendments or modifications thereto or replacements or substitutions therefor, are collectively referred to as "Loan Documents"), Lender may at its option, in addition to any other remedies to which it may be entitled, declare the total unpaid principal balance of the indebtedness evidenced hereby, together with all accrued but unpaid interest thereon and any applicable Make Whole Payment and all other sums owing, immediately due and payable.

6. PREPAYMENT; MAKE WHOLE PAYMENT. For purposes of this Note, a "Loan Year" shall refer to each twelve (12)-month period (except the First Loan Year shall include the period between the date hereof and the first day of the next succeeding calendar month). Except for prepayment resulting from the payment to Lender of insurance proceeds or awards in eminent domain, the Loan shall be closed to prepayment for the first Loan Year. Thereafter, Borrower shall have the privilege to pay the Loan in full (including all accruals), but not in part, on any regular monthly payment date, with at least forty-five (45) days prior written notice to Lender and upon payment of a make whole payment ("Make Whole Payment") in an amount as calculated below. Borrower recognizes and agrees that any prepayment of the indebtedness evidenced hereby may result in economic loss and damages to Lender due to Lender's failure to receive the benefit of its investment and interest rate as contracted for in this Note. In order to compensate Lender for the economic loss arising from loss of the interest rate and payment stream contracted for in this Note, Borrower agrees that any prepayment of this Note shall include the payment of the Make Whole Payment. Borrower agrees that the calculation of the Make Whole Payment is a liquidated amount which is a reasonable estimate of the anticipated economic loss that would result from prepayment of this Note.

During the second through fifth Loan Years, the Make Whole Payment will be calculated as follows ("Prepayment Calculation"):

A. Determine the then current quoted yield (plus fifty (50) basis points), as of the date thirty (30) days prior to the scheduled prepayment date, on a United States Treasury Security which matures on the date nearest but not beyond the Final Maturity Date, and in the event that the yield rate on publicly traded United States Treasury Securities is not obtainable, then the nearest equivalent issue or index shall be selected by Lender.

B. Use the yield determined in A above to discount to present value (assuming the Loan is outstanding for the full original schedule) as of the date of prepayment the sum of (i) on a monthly basis, the remaining future Loan payments and (ii) the balloon balance (if any) due on the Final Maturity Date.

C. Subtract the then current outstanding Loan balance from the present value obtained in B. above to determine the Make Whole Payment.

Notwithstanding the foregoing, (i) the Make Whole Payment will be, in any case, at least one percent (1%) of the then outstanding Loan balance and (ii) during the last five (5) Loan Years, the Loan may be prepaid at par.

Prepayments resulting from acceleration of the maturity of this Note because of an Event of Default, without regard to when such acceleration occurs, shall be subject to payment of the Make Whole Payment in order to compensate Lender for the loss of the bargain evidenced by this Note. Therefore, if the maturity of this Note is accelerated by reason of any Event of Default hereunder or under any other Loan Document, Borrower recognizes and agrees that any prepayment of the indebtedness evidenced hereby resulting from such Event of Default (including without limitation, prepayments resulting from foreclosure and sale, sale under a power of sale, and any redemption following foreclosure of the Mortgage) shall constitute a breach of the restrictions on prepayment set forth herein and will result in damages to Lender due to Lender's failure to receive the benefit of its investment as contracted for in this Note, and Borrower agrees to pay to Lender, in addition to all other amounts due, a Make Whole Payment derived from the Prepayment Calculation; provided, however, in no event shall the Make Whole Payment paid by Borrower exceed the maximum amount permitted by applicable law. Provided no Event of Default exists, no Make Whole Payment, charge, or penalty shall be due as a result of the acceleration of the Loan resulting from any casualty or condemnation.

Borrower expressly waives any right to prepay the indebtedness evidenced hereby except as specifically provided above in this Paragraph 6. Borrower acknowledges that it is a knowledgeable real estate developer or investor that fully understands the effect of the waiver and agreements contained above, considers that making of the Loan by Lender evidenced hereby at the interest rate(s) set forth above is sufficient consideration for such waiver and agreements, and understands that Lender would not make the Loan without such waiver and agreements. Any breach of this clause will constitute a n Event of Default hereunder and will render the indebtedness evidenced by this Note payable on demand without notice.

7. ATTORNEYS' FEES. If this Note is placed in the hands of an attorney for collection or is collected through any legal or administrative proceeding, including, without limitation, bankruptcy or insolvency proceedings, or if Lender shall engage counsel in any matters relating to a Default in the performance of obligations to Lender under this Note, or any of the

Loan Documents, Borrower promises to pay, in addition to costs and disbursements otherwise allowed, to the extent permitted by law, Reasonable Attorneys' Fees (as defined in the Mortgage), including fees incurred for trial and appellate proceedings.

8. WAIVER. Borrower hereby waives presentment for payment, notice of nonpayment, demand, Default, dishonor, and protest.

9. FORBEARANCE. Lender shall not be deemed to have waived any of Lender's rights or remedies under this Note unless such waiver is express and in a writing signed by Lender, and no delay or omission by Lender in exercising, or failure by Lender on any one or more occasions to exercise, any of Lender's rights hereunder or under the Loan Documents, or at law or in equity, including, without limitation, Lender's right, after any Event of Default, to declare the entire indebtedness evidenced hereby immediately due and payable, shall be construed as a novation of this Note or shall operate as a waiver or prevent the subsequent exercise of any or all of such rights. Acceptance by Lender of any portion or all of any sum payable hereunder whether before, on or after the due date of such payment, shall not be a waiver of Lender's right either to require prompt payment when due of all other sums payable hereunder or to exercise any of Lender's rights, powers and remedies hereunder or under the Loan Documents. A waiver of any right on one occasion shall not be construed as a waiver of Lender's right to insist thereafter upon strict compliance with the terms hereof without previous notice of such intention being given to Borrower, and no exercise of any right by Lender shall constitute or be deemed to constitute an election of remedies by Lender precluding the subsequent exercise by Lender of any or all of the rights, powers and remedies available to it hereunder, under any of the other Loan Documents, or at law or in equity. Borrower expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to, or in conflict with, the foregoing. Borrower consents to any and all renewals and extensions in the time of payment hereof without in any way affecting the liability of Borrower or any person liable or to become liable with respect to any indebtedness evidenced hereby. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part, unless Lender agrees otherwise in writing.

10. RENUNCIATION AND ASSIGNMENT OF EXEMPTIONS. Borrower hereby waives and renounces for itself, its legal representatives, successors and assigns, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, exemption, and homestead right, entitlement, or exemption now provided, or which may hereafter be provided, by the Constitution or laws of the United States of America or of any state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note. Borrower hereby transfers, conveys and assigns to Lender a sufficient amount of such homestead right, entitlement, or exemption as may be set apart in bankruptcy, to pay this Note in full, with all costs of collection, and does hereby direct any trustee in bankruptcy having possession of such homestead right, entitlement, or exemption to deliver to Lender a sufficient amount of property or money set apart as exempt to pay the indebtedness evidenced hereby, or any renewal thereof, and does hereby appoint Lender the attorney-in-fact for Borrower to claim any and all homestead right, entitlement, or other exemptions allowed by law.

11. APPLICABLE LAW. This Note shall be governed by, enforced under and interpreted in accordance with the laws of the state in which the Property is located, without regard to principles of conflicts of laws. The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Note may be brought in a court of record in the state in which the Property is located or in the courts of the United States of America located in the state in which the Property is located, (b) consent to the non-exclusive jurisdiction of each such court in any suit, action or proceeding, and (c) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

12. LIMIT ON INTEREST. Borrower and Lender intend to comply strictly with all usury laws now or hereafter in force in the jurisdiction in which the Property is located, and Lender and Borrower stipulate and agree that none of the terms and provisions contained in this Note or in any other instrument executed in connection herewith shall ever be construed to create a contract to pay interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law. Neither Borrower nor any guarantors, endorsers, sureties, indemnitors or other parties now or hereafter becoming liable for payment of this Note shall ever be required to pay interest on this Note at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this paragraph shall control over all other provisions of this Note and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event the maturity of this Note is accelerated. If the maturity of this Note shall be accelerated for any reason or if the principal of this Note is paid prior to the end of the term of this Note, and as a result thereof the interest received for the actual period of existence of the Loan evidenced by this Note exceeds the maximum permitted by applicable law, Lender shall refund to Borrower the amount of such excess and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender shall collect monies which are deemed to constitute interest which would increase the effective interest rate on this Note to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the lawful rate shall, upon such determination, be immediately applied to reduce the unpaid principal balance of this Note, and if such principal balance has been repaid in full, then returned to Borrower, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Note, Borrower acknowledges that it believes the Loan evidenced by this Note to be non-usurious and agrees that if, at any time, Borrower should have reason to believe that such Loan is in fact usurious, it will give Lender notice of such condition and Borrower agrees that Lender shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" or "applicable usury law" as used in this Paragraph 12 shall mean the laws of the state in which the Property is located or the laws of the United States of America, whichever laws allow the greater rate of interest and do not violate the laws of the state in which the Property is located, as such laws now exist or may be changed or amended or come into effect in the future. If any clauses or provisions herein contained operate or would prospectively operate to invalidate this Note, then such clauses or provisions only shall be held for naught, as though not herein contained and the remainder of this Note shall remain operative and in full force and effect.

13. NOTICES. All notices, demands or requests provided for or permitted to be given hereunder shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, or by overnight courier, to the addresses set out below or to such other addresses as are specified by no less than ten (10) days prior written notice delivered in accordance herewith:

If to Borrower: Riverbend Concord Properties I LLC  
c/o Griffin Industrial Realty, Inc.  
204 West Newberry Road  
Bloomfield, Connecticut 06002  
Attn: Anthony Galici, Vice President

with a copy to: Griffin Industrial Realty, Inc.  
641 Lexington Avenue, 26<sup>th</sup> Floor  
204 West Newberry Road  
New York, New York 10022  
Attn: Michael Gamzon

and: Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202  
Attn: Evan M. Bass, Esq.

If to Lender: 40|86 Mortgage Capital, Inc.  
535 North College Drive  
Carmel, IN 46032  
Attn: Mortgage Loan Servicing, Loan No.  
1803

All such notices, demands and requests shall be deemed effectively given and delivered three (3) days after the postmark date of mailing by first-class United States mail, the day after delivery to a nationally-recognized overnight courier, or, if delivered personally, when received. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given in accordance with the time period provided herein, shall be deemed to be receipt of the notice, demand or request sent.

14. LIMITED EXCULPATION. It is understood and agreed that Borrower has executed this Note for the sole purpose of establishing the existence of the indebtedness evidenced hereby, and Lender agrees that it will look solely to the Property, to any other collateral given by Borrower to secure the indebtedness evidenced hereby and to the rents, issues and profits therefrom for the payment of the indebtedness evidenced hereby and any other amounts owed under the Loan Documents, and not to Borrower or the partners, officers, directors, members, managers or



shareholders or beneficiaries of Borrower, except as provided in this Paragraph 14. Lender further agrees that in connection with any Lender action to foreclose or enforce any provisions of the Loan Documents or any other document executed in connection herewith, Lender will not seek any deficiency judgment against Borrower or the partners, officers, directors, members, managers or shareholders or beneficiaries of Borrower (unless necessary to preserve or enforce Lender's rights and remedies against the Property); provided, however, that nothing in this paragraph shall be, or be deemed to be, a release or impairment of said indebtedness or the lien created hereby upon the Property or preclude Lender from suing upon this Note for the purpose of foreclosing the Mortgage and establishing the liability of Borrower and any guarantor, if applicable, ("Guarantor") of the non-recourse carve-outs set forth in subparagraph (A) and (B) below in case of any Default or Defaults hereunder or under the Loan Documents or from enforcing any of its rights, including any remedy of injunctive or other equitable relief; and provided further that Borrower and any Guarantor, if applicable, shall be and shall remain personally liable, jointly and severally, for the following:

A. Liability for Loss. Repayment of any loss, damage, cost, expense, liability, claim or other obligation incurred or suffered by Lender, directly or indirectly, as a result of or related in any way to:

- (i) any liability under the Environmental Indemnity Agreement;
- (ii) misapplication or misappropriation of (1) insurance proceeds covering any of the Property, (2) condemnation awards or proceeds of any conveyance in lieu of taking, (3) tenant security deposits or lease termination fees (including any amounts paid in connection with tenant bankruptcy), or (4) from and after an Event of Default, income, rents, issues, profits and revenues arising or issuing from the Property;
- (iii) rents collected more than one month in advance;
- (iv) Borrower's amendment, modification, extension or termination of any existing leases or entering into new leases in violation of the Loan Documents (provided that losses related to any termination shall be deemed to equal the aggregate rent for the term of such lease after termination);
- (v) Borrower's failure to pay real estate taxes, charges for material or labor or other charges that can create a lien on the Property;
- (vi) (1) Borrower's failure to have in effect or pay any deductibles for insurance policies required by the Loan Documents or (2) the assertion of any defense or offset by an insurer under any required policy caused by any act or omission of Borrower or its affiliates, employees or agents;
- (vii) claims, including, without limitation, claims of offset or abatement of rent, made by any tenant of the Property caused in whole or in part, by any action or omission of Borrower or its affiliates, agents or employees commencing prior to the date Lender takes actual control of the Property, regardless of when asserted;

(viii) failure to return to Lender or reimburse Lender for Borrower's fixtures or personal property taken from the Property by or on behalf of Borrower out of the ordinary course of business and not replaced by items of like or greater value;

(ix) waste at the Property caused or permitted by Borrower or its agents or employees; and/or

(x) Lender's Reasonable Attorneys' Fees, expenses, court costs, and transfer taxes incurred in connection with the enforcement of Lender's rights and remedies, including but not limited to foreclosure, bankruptcy or deed in lieu of foreclosure; and

B. Full Liability. The payment of the full amount of the Loan, including, without limitation, all principal, interest, fees, any Make Whole Payment and all other amounts due by Borrower under this Note and the other Loan Documents upon the occurrence of any of the following events:

(i) fraud or material misrepresentation by, or gross negligence or willful misconduct of, Borrower or any Guarantor, or any of their affiliates, agents or employees with respect to the Loan;

(ii) transfer or voluntary encumbrance of the Property in violation of the Loan Documents;

(iii) Borrower, Guarantor(s) or any entity comprising Borrower or Guarantor(s) transfers or pledges ownership interests in violation of the Loan Documents or Borrower enters into subordinate financing on the Property;

(iv) Borrower colludes with creditors with respect to the filing or advancement of an involuntary bankruptcy or insolvency proceeding with respect to Borrower;

(v) Borrower files or consents to any bankruptcy, reorganization or arrangement under any bankruptcy or insolvency law or Borrower has appointed for it or the whole or any substantial part of its property (other than upon the petition or filing of Lender) a receiver, conservator or similar official;

(vi) the substantive consolidation of Borrower with any other person or entity in a bankruptcy or similar proceeding;

(vii) by reason of bankruptcy, insolvency, or similar creditors' rights laws, Borrower asserts or has filed against it a claim that the transaction creating the lien of the Mortgage is a fraudulent conveyance, fraudulent transfer or preferential transfer; or

(viii) Borrower, Guarantor or any of their affiliates disputes the validity of the first priority liens and security interests securing the Loan.

Nothing contained in this Paragraph 14 shall [x] be deemed to be a release or impairment of the indebtedness evidenced by, created or arising under this Note or the other Loan Documents

or be deemed to be a release or impairment of the lien of the Loan Documents upon the Property, [y] preclude Lender in the case of any Event of Default from foreclosing on the Property or exercising any power of sale contained in the Loan Documents, or except as expressly limited in this paragraph, from enforcing any of the other rights of Lender, [z] preclude Lender from enforcing its rights under any guaranties of the indebtedness or the Environmental Indemnity Agreement, pursuant to the terms of such guaranties and the Environmental Indemnity Agreement or [aa] restrict personal liability under the Environmental Indemnity Agreement. Borrower's and any Guarantor's liability pursuant to subparagraph (A) and (B) above shall survive foreclosure of the Mortgage, any sale under any power of sale in the Loan Documents, the acceptance of a deed in lieu of foreclosure thereof, and the exercise by Lender of any of its other rights and remedies under the Loan Documents.

15. TIME IS OF ESSENCE. TIME IS OF THE ESSENCE in complying with all of the terms, provisions and conditions of this Note.

16. AMENDMENT. This Note may not be waived, changed, modified or discharged orally, except by an agreement in writing signed by the party against whom the enforcement of waiver, change, modification or discharge is sought.

17. BORROWER. The term "Borrower" as used herein shall include the maker(s) of this Note, and all person(s) or entity(ies) now or hereafter liable with respect to this Note, whether as maker, principal, surety, guarantor, endorser or otherwise, each of whom shall be jointly and severally liable for all of the obligations of the maker(s) hereunder.

18. SEPARATE ACTIONS. Each installment of principal and interest owing on this Note may be recovered in a separate action, or in the event that Lender accelerates the maturity of this Note pursuant to Lender's options hereunder or under any of the other Loan Documents, all sums becoming due and payable pursuant to such acceleration may be recovered in a single action. Lender, or any person claiming by, through, or under Lender, shall have the absolute right to seek one or more money judgments in each such cause of action based on this Note.

19. GENDER. The singular shall include the plural and vice versa. The obligations and liabilities hereunder are joint and several and shall be binding upon the heirs, successors, legal representatives, endorsers and assigns of the parties hereof.

20. HEADINGS. The underlined words appearing at the commencement of the paragraphs are included only as a guide to the contents thereof and are not to be considered as controlling, enlarging or restructuring the language or meaning of those paragraphs.

21. SEVERABILITY. If any term or provision of this Note is found to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms and provisions of this Note or any part thereof, which shall remain in full force and effect.

22. NON-BUSINESS DAYS. If any payment required hereunder or under any other Loan Document becomes due on a Saturday, Sunday, or legal holiday in the state in which the Property is located (those being non-business days), then such payment shall be due and payable on the immediately succeeding business day.

23. WAIVER OF JURY TRIAL. BORROWER AND LENDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, DO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THEIR RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE MORTGAGE, ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ANY ACTION OF EITHER PARTY ARISING OUT OF OR RELATED IN ANY MANNER TO THIS NOTE, THE LOAN, THE OTHER LOAN DOCUMENTS OR THE PROPERTY (INCLUDING WITHOUT LIMITATION, ANY ACTION TO RESCIND OR CANCEL THIS NOTE AND ANY CLAIMS OR DEFENSES ASSERTING THAT THIS NOTE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE DELIVERY AND ACCEPTANCE OF THIS NOTE AND SHALL SURVIVE THE CLOSING OR ANY TERMINATION OF THIS NOTE OR THE OTHER LOAN DOCUMENTS.

[The Remainder of this Page is Intentionally left Blank]

**IN WITNESS WHEREOF**, the undersigned has signed and delivered this Note as of the date set forth above.

**BORROWER:**

**RIVERBEND CONCORD PROPERTIES I LLC,**  
a North Carolina limited liability company

By: Griffin Industrial, LLC  
a Connecticut limited liability company  
its Sole Member

By: /s/ MICHAEL GAMZON  
Michael Gamzon, President

This Instrument prepared by  
and when recorded return to:

Geoffrey M. White  
Frost Brown Todd  
400 W. Market Street  
Suite 3200  
Louisville, Kentucky 40202

**DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

NOTE: COLLATERAL IS OR INCLUDES FIXTURES

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THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (this "Deed of Trust") is made and entered into as of August 30, 2017, from **RIVERBEND CONCORD PROPERTIES I LLC**, a North Carolina limited liability company ("Borrower"), whose address is 204 West Newberry Road, Bloomfield, Connecticut 06002 to **CHICAGO TITLE INSURANCE COMPANY**, a Florida corporation ("Trustee"), whose address is 200 S. Tryon Street, Suite 800, Charlotte, North Carolina 28202, for the benefit of **40|86 MORTGAGE CAPITAL, INC.**, a Delaware corporation ("Lender"), whose address is 535 North College Drive, Carmel, Indiana 46032;

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

FOR AND IN CONSIDERATION OF THE PREMISES, the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the Indebtedness (as hereinafter defined) and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, bargain, sell, convey, mortgage, assign, transfer, pledge and set over and confirm unto Trustee and the successors and substitutes of Trustee forever, IN TRUST WITH POWER OF SALE, for the benefit and security of Lender all of the following (collectively referred to as the "Property"):

1. All those tracts or parcels of land located in the City of Concord, Cabarrus County, State of North Carolina, as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Land").

2. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, pipes, heaters, furnaces, engines and machinery, escalators, boilers, ranges, elevators, motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment, washers, dryers, water heaters, mirrors, mantels, air conditioning apparatus (including, without limitation humidity control equipment), refrigeration plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, alarm devices of any type, automatic sprinkler systems, carpet, cabinets and shelving, partitions, paneling, and wall covering, and windows of every type, which are or shall be attached to the Land or said buildings, structures, or improvements and all other fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, building supplies and materials, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangibles and personal property of every kind and nature whatsoever (other than personal property which may be or deemed to be toxic or Hazardous Materials, as defined in that certain Environmental Indemnity Agreement regarding the Property, dated of even date herewith) now or hereafter owned by Borrower and located in, on, or about, or used or intended to be used with or in connection with the use, operation, or enjoyment of the Property, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, and proceeds from a sale of any of the foregoing, and all right, title and interest of Borrower in any such fixtures, machinery, equipment, furniture, furnishings, appliances, vehicles, and goods to become fixtures, and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter

made by Borrower or on behalf of Borrower, all tradenames, trademarks, servicemarks, logos and goodwill which in any way are now owned by Borrower or are now owned or hereafter acquired by Borrower and which relate or pertain to the Property; and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the Indebtedness and to be secured by this Deed of Trust, excluding, however, all business or trade fixtures, equipment, and personal property owned by present and future tenants at the Property;

3. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, shrubs, crops, trees, and timber now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, minerals, royalties, easements, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

4. All present and future income, rents, issues, profits and revenues of the Property from time to time accruing (including, without limitation, all payments under leases or tenancies, unearned premiums on any insurance policy carried by Borrower for the benefit of Lender and/or the Property, tenant security deposits, escrow funds and all awards or payments, including interest thereon and the right to receive same, growing out of or as a result of any exercise of the right of eminent domain, including the taking of any part or all of the Property or payment for alteration of the grade of any street upon which said Property abuts, or any other injury to, taking of or decrease in the value of said Property to the extent of all amounts which may be owing on the Indebtedness at the date of receipt of any such award or payment by Borrower, and the Reasonable Attorneys' Fees (as hereinafter defined), costs and disbursements incurred by Lender in connection with the collection of such award or payment), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law or in equity, of Borrower of, in and to the same; reserving only the right to Borrower to collect the same as long as no Event of Default as defined in Paragraph 2.1 shall have occurred together with all Termination Amounts (as defined in Paragraph 1.3 of that certain Assignment of Leases and Rents made by Borrower, dated of even date herewith);

5. Subject to Paragraph 1.3 hereof, all insurance proceeds, contracts, permits, licenses, plans or intangibles now or hereafter dealing with, affecting or concerning the Property, including, without limitation, all rights accruing to Borrower from any and all contracts with all contractors, architects, engineers or subcontractors relating to the construction of improvements on or upon the Property, including payment, performance and/or materialmen's bonds and any other related choses in action; and

6. All grants or incentive payments received by Borrower pursuant to Borrower's rights under that certain Economic Development Agreement dated as of February 28, 2014 with the City of Concord, North Carolina relating to the Property (the "EDA").

TO HAVE AND TO HOLD the Property and all parts, rights, members, and appurtenances thereof, for the use, benefit and behoof of the Trustee and his/her successors or substitute in this trust and to his/her or their successors or substitutes in trust for the use and benefit of Lender and the successors and assigns of Lender, IN FEE SIMPLE forever; and Borrower covenants that Borrower is lawfully seized and possessed of the Property as aforesaid, and has good right to convey and mortgage the same, that the same are unencumbered except as to those matters expressly set forth in Exhibit B, attached hereto and incorporated herein by this reference (the "Permitted Exceptions"), and that Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Exceptions.

This Deed of Trust is given to secure the payment of the following in such manner as Lender in its sole discretion shall determine (collectively referred to as the "Indebtedness"):

1. The debt evidenced by that certain Promissory Note dated of even date herewith made by Borrower and payable to the order of Lender in the original principal amount of \$12,150,000 (together with any and all renewals, extensions, substitutions, modifications and consolidations, the "Note"). The final maturity date ("Final Maturity Date") of the Note is September 1, 2027.

2. Any and all additional advances made by Lender to protect or preserve the Property or the security title or interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder, or for any other purpose provided herein or in the other Loan Documents (as hereinafter defined) (whether or not the original Borrower remains the owner of the Property at the time of such advances), provided, however, nothing herein shall be deemed to obligate Lender to make any such advances;

3. Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, now existing or hereafter coming into existence however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent or due or to become due and all renewals extensions substitutions modifications and consolidations thereof; and

1. Any and all obligations and covenants of Borrower under any other document, instrument or agreement now or hereafter evidencing, securing or otherwise relating to the Note secured hereby (the Note, this Deed of Trust, that certain Assignment of Leases and Rents, that certain Environmental Indemnity Agreement, any Escrow Agreement or Holdback Agreement, that certain Borrower's Affidavit, each of the foregoing being dated of even date herewith, the UCC-1 Financing Statements, and any amendments or modifications thereto or replacements or substitutions thereof and all of such other documents, instruments and agreements are hereinafter sometimes referred to collectively as the "Loan Documents"), and all costs of collection, including Reasonable Attorneys' Fees. As used herein, the phrase "Reasonable Attorneys' Fees" shall mean fees charged by attorneys selected by Lender based upon such attorneys' then prevailing

hourly rates as opposed to any statutory presumption specified by any statute then in effect in the state where the Property is located.

Provided, always, and it is the true intent and meaning of the parties, that when Borrower shall pay or cause to be paid to Lender, its successors or assigns, all the Indebtedness according to the conditions and agreements of the Note and of this Deed of Trust and shall keep, perform and observe all of the covenants, obligations and agreements contained in the Loan Documents, all without delay, as required thereunder and hereunder, then this Deed of Trust shall cease, terminate and be null and void; otherwise this Deed of Trust shall remain in full force and effect.

## ARTICLE 1. ACOVENANTS, WARRANTIES AND AGREEMENTS

Borrower hereby further covenants and agrees with Lender as follows:

### 1.1 Payment of Indebtedness, Covenants and Warranties.

Borrower will pay the Note according to the terms thereof and will pay all other sums now or hereafter secured hereby at the time and in the manner provided under the Note, this Deed of Trust, any instrument evidencing a future advance and any other Loan Document and Borrower will otherwise perform, comply with and abide by each and every stipulation, agreement, condition and covenant contained in the Note, this Deed of Trust and every other Loan Document and any other agreement with respect to the Property to which Borrower is a party.

Borrower shall protect, indemnify and hold Lender harmless from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs, and expenses (including, without limitation, Reasonable Attorneys' Fees and court costs) imposed upon or incurred by Lender by reason of this Deed of Trust or in exercising, performing, enforcing, or protecting its rights, title, or interests set forth herein, and any claim or demand whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking to be performed or discharged by Lender under this Deed of Trust and including any claims of Lender's negligence or strict liability, but excluding Lender's willful misconduct or gross negligence. In addition, Borrower covenants and agrees that it shall:

(1) not initiate, join in or consent to any change in any covenant, easement, or other public or private restriction, limiting or defining the uses which may be made of the Property, or any part thereof, without Lender's prior written consent;

(2) not take any action or fail to take any action which will result in any lien or encumbrance upon the Property or any imposition affecting the Note or this Deed of Trust; and

(3) indemnify and hold Lender harmless from any and all costs, damages or liabilities resulting from, arising out of, or related to, the creation or existence of liens, impositions or encumbrances (other than the Permitted Encumbrances) by or against Borrower or Borrower's predecessor in title, or the Property.

## 1.2 Taxes, Liens and Other Charges.

A. In the event of the passage of any law, order, rule or regulation subsequent to the date hereof, in any manner changing or modifying the taxation of mortgages or security agreements or debts secured thereby or the manner of collecting taxes so as to affect Lender adversely, Borrower shall promptly pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment or if, in the opinion of Lender, any such law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness secured by this Deed of Trust and all accrued interest thereon shall, at the option of Lender, become immediately due and payable.

B. Borrower shall pay, at least five (5) days before delinquency, all taxes, levies, license fees, permit fees, liens, judgments, assessments and all other expenses, fees and charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever now or hereafter levied, assessed, confirmed or imposed on, or with respect to, or which may be a lien upon, the Property, or any part thereof, or any estate, right, or interest therein, or upon the rents, issues, income or profits thereof, or incurred in connection with the Note, the Indebtedness or any of the Loan Documents, and all premiums on policies of insurance covering, affecting, or relating to the Property, as required pursuant to Paragraph 1.3 hereof, and Borrower shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments, insurance premiums and other fees and charges as Lender may require.

C. Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created, filed of record or to remain outstanding upon all or any part of the Property and shall remove the same within thirty (30) days. Notwithstanding the foregoing, Borrower shall have the right to contest in good faith and with all diligence the existence, amount or validity of any such liens, provided (i) Borrower complies with all requirements of any such contest, (ii) Borrower places adequate security, satisfactory to Lender, with Lender as part of the appeal process, and (iii) Borrower gives prior written notice of its intent to contest to Lender.

## 1.3 Insurance.

A. Borrower shall, at its expense, procure for, deliver to and maintain for the benefit of Lender until the Indebtedness is fully repaid, original, fully paid insurance policies (or if such policy is a "blanket" policy which includes land, improvements, personalty, or income other than the Property or income derived from the Property, a certified copy of such blanket policy and an original certificate from the insurer evidencing the allocation of coverage to the Property and the income from the Property), providing the following types of insurance relating to the Property, issued by insurance companies with a Best's rating of "A" or better and an FSC rating of X or better, in such amounts, in such form and content and with such expiration dates as are approved by Lender, in Lender's sole discretion, such policies to provide that the insurer shall give Lender at least thirty (30) days' prior written notice of cancellation, amendment, non-renewal or termination, in the manner provided for the giving of notices under Paragraph 4.5 hereof and to provide that no act done or omission by the insured shall invalidate or diminish the insurance

provided to Lender and, except for liability policies, to contain a standard mortgagee clause satisfactory to Lender.

[1] "Special Perils" or "All Risks" form of property insurance insuring against all risks of physical loss, including, without limitation, fire, extended coverage, vandalism, malicious mischief, earthquake, wind, flood and collapse, insuring to the extent of the full replacement cost of the improvements on the Property without deduction for depreciation, either without co-insurance requirements or with agreed amount endorsement attached and having a deductible of no more than \$50,000.00 per occurrence.

[2] General liability insurance covering all liabilities incident to the ownership, possession, occupancy and operation of the Property and naming Lender as an additional insured thereunder, having limits of not less than \$1,000,000 each accident, \$1,000,000 each person, and \$2,000,000.00 property damage, and having a deductible of no more than \$50,000.00 per occurrence. Lender reserves the right to require increased coverage under this Subparagraph [2].

[3] Rent or business interruption insurance against loss of income arising out of any hazard against which the Property is required to be insured under Subparagraph 1.3A[1] above, in an amount not less than twelve (12) months' gross rental income from the Property.

[4] Flood hazard insurance, if the Property is in an area which is, at any time during the term of this Deed of Trust, identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency as having special flood or mud slide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended;

[5] Boiler and machinery insurance;

[6] If applicable, worker's compensation insurance; and

[7] Such other insurance with respect to the Property or any replacements or substitutions therefor, in such amounts as may from time to time be required by Lender, against other insurable casualties which at the time are commonly insured against in the case of properties of similar character.

B. Borrower covenants and agrees that Lender is hereby authorized and empowered, at its option, to adjust, compromise or settle any loss under any insurance policies maintained pursuant hereto, and to collect and receive the proceeds from any policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact to do so. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums,

including Reasonable Attorneys' Fees, Lender may apply the net proceeds ("Net Proceeds") or any part thereof, at its sole option [i] to a prepayment of the Note without Make Whole Payment (as defined in the Note) or penalty (unless an Event of Default then exists), [ii] to the repair and/or restoration of the Property, upon such conditions as Lender may determine, and/or [iii] for any other purposes or objects for which Lender is entitled to advance funds under this Deed of Trust, all without reducing or impairing the lien of this Deed of Trust or any obligations secured hereby. Any balance of the Net Proceeds then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower and shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy, regardless of the cause of such failure.

Notwithstanding the provisions of Paragraph 1.3B of this Deed of Trust, Lender shall release the Net Proceeds to Borrower for reimbursement of the costs of repair, rebuilding, or restoration of the improvements to the Property to as good or better condition as such improvements were in immediately prior to any casualty on account of which the Net Proceeds are paid (the "Restoration"), provided that such net proceeds shall be released upon the following conditions which must be fulfilled to the satisfaction of Lender, in Lender's sole discretion:

(a) Lender shall have determined that the improvements on the Property can be restored to as good or better condition as such improvements were in immediately prior to the casualty on account of which the Net Proceeds were paid;

(b) Lender shall have determined that the Net Proceeds, together with any funds paid by Borrower to Lender, shall be sufficient to complete the Restoration;

(c) No Default and no Event of Default shall then exist;

(d) Such casualty shall have occurred more than twelve months prior to the Final Maturity Date;

(e) No Lease shall have been terminated or modified, or be subject to termination as a result of such casualty prior to the completion of the Restoration within the timeframes required under the Leases, and no rent shall have been abated or shall be subject to abatement unless such rent is fully covered by rent loss or business interruption insurance; and

(f) Lender shall have approved the plans and specifications to be used in connection with the Restoration and shall have received written evidence, satisfactory to Lender, that such plans and specifications have been approved by all governmental and quasi-governmental authorities having jurisdiction and by all other persons or entities required to approve such plans and specifications.

Net Proceeds in excess of the amount necessary to complete the Restoration shall, at the option of Lender, be applied to the outstanding Indebtedness, in such order as Lender may



determine in its sole discretion without Make Whole Payment (so long as no Event of Default then exists).

If, within a reasonable period of time after the occurrence of any casualty, Borrower shall not have submitted to Lender, and received Lender's approval of plans and specifications for the Restoration or shall not have obtained approval of such plans and specifications from all governmental authorities and other persons and entities whose approval is required, or if Borrower shall fail to commence promptly such Restoration, or if thereafter Borrower fails to carry out diligently such Restoration or is delinquent in the payment to mechanics, materialmen or others for the costs incurred in connection with such Restoration, or if Lender determines that any other condition of this Paragraph is not satisfied within a reasonable period of time after the occurrence of any such loss or damage, then in addition to all other rights herein set forth, at Lender's option (x) Lender may declare that an Event of Default has occurred and/or (y) Lender may dispose of the Net Proceeds as provided in this Paragraph 1.3B without Make Whole Payment and/or (z) Lender, or any lawfully appointed receiver of the Property may, but shall not be obligated to, perform or cause to be performed such Restoration and may take such other steps as they deem advisable to carry out such Restoration, and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Lender and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Lender or any such receiver) arising out of anything done by them or any of them pursuant to this Paragraph 1.3B and Lender may, in its discretion apply any insurance proceeds held by it to reimburse itself and/or such receiver for all amounts expended or incurred in connection with the performance of such Restoration, including Reasonable Attorneys' Fees, and any excess costs shall be paid by Borrower to Lender and Borrower's obligation to pay such excess costs shall be secured by the lien of this Deed of Trust and, if not paid within five (5) days of invoice, shall bear interest at the Default Rate (as defined in the Note), until paid.

C. At least five (5) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.3, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the full payment of premiums for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Deed of Trust or any other transfer of title to the Property in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies maintained pursuant to this Paragraph 1.3 then in force shall belong to the foreclosure purchaser and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser, without accounting to Borrower for any unearned premiums therefor.

1.4 Monthly Deposits. Borrower shall deposit monthly with Lender, concurrently with each regular monthly Loan payment, or at Lender's option, with an escrow agent designated by Lender, whose fee shall be paid by Borrower, until the Indebtedness is fully repaid, such sum or sums determined by Lender in its sole discretion to be sufficient to pay, at least thirty (30) days before due, all taxes, assessments, insurance premiums and similar charges ("Impositions") with respect to the Property. Said deposits shall be held by Lender or such escrow agent free of any liens or claims on the part of creditors of Borrower and as part of the security of Lender, to be used by Lender to pay the Impositions as the same accrue and are due and payable. Nothing contained



herein shall cause Lender to be deemed a trustee as to said deposits. Said deposits may be commingled with the general funds of Lender and no interest shall be payable thereon. If said funds are insufficient to pay the Impositions in full, as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required. Nothing contained herein shall cause Lender to be obligated to pay any amounts in excess of the amount of funds deposited with Lender pursuant to this paragraph. Should Borrower fail to deposit with Lender sums sufficient to pay in full the Impositions at least thirty (30) days before the date when due, Lender, at Lender's election, but without any obligation so to do, may advance any amounts required to make up the deficiency, and any amounts so advanced shall be deemed part of the Indebtedness secured by the Loan Documents and shall bear interest at the Default Rate. Upon any Event of Default under this Deed of Trust or the Note or any other Loan Document, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect. In the event of a foreclosure of this Deed of Trust, the purchaser of the Property shall succeed to all the rights of Borrower in and to such deposits. The collection of such deposits by Lender shall not relieve Borrower of any of the obligations of Borrower under Paragraph 1.2 or 1.3 or any other provision of this Deed of Trust, and unless Lender is grossly negligent, under no circumstances shall Lender be liable for failure to make any payment on behalf of Borrower, including, without limitation, payments of taxes, assessments or insurance premiums.

1.5 Condemnation. If all or any material portion (as determined by Lender in Lender's commercially reasonable discretion) of the Property shall be damaged or taken through condemnation (which term when used in this Deed of Trust shall include any damage or taking by any governmental or quasi-governmental authority and any transfer or grant by private sale made in anticipation of or in lieu thereof), either temporarily or permanently, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable without Make Whole Payment (so long as no Event of Default then exists) and without notice to Borrower or any other person or entity. Promptly upon learning of the institution or the proposed, contemplated or threatened institution of any condemnation proceeding, Borrower shall notify Lender of the pendency of such proceedings, and no settlement respecting awards in such proceedings shall be effected without the consent of Lender. Lender shall be entitled to receive all compensation, awards, proceeds and other payments or relief relating to or payable as a result of such condemnation ("Award"), and any failure by Borrower to immediately deliver any Award received directly by Borrower to Lender shall constitute an immediate Event of Default under Paragraph 2.1 of this Deed of Trust, without any notice or cure periods. Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender. If Lender does not elect to declare the entire Indebtedness immediately due and payable, as provided above, then Lender, after deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including, without limitation, Reasonable Attorneys' Fees, may apply the net award ("Net Award") or any part thereof, at its option, [i] to a prepayment of the Note, without Make Whole Payment (unless an Event of Default then exists), [ii] to the repair and/or restoration of the Property upon such conditions as Lender may determine, and/or [iii] for any other purposes or objects for which Lender is entitled to advance funds under this Deed of Trust, all without reducing or impairing the lien of this Deed of Trust or any obligations secured hereby. Any balance of such

moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. If, prior to the receipt by Lender of such award or proceeds, the Property shall have been sold on foreclosure of this Deed of Trust, or as a result of other legal action relating to this Deed of Trust or the Note, Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Deed of Trust or the Note shall have been sought or recovered, and to the extent of Reasonable Attorneys' Fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

Notwithstanding the provisions of the immediately preceding paragraph of this Paragraph 1.5, Lender shall release the Net Award paid to it for any taking of a portion of the Property to Borrower for reimbursement of the costs of restoration of the Property and the improvements thereon to as good or better condition as existed immediately prior to such taking, to the extent possible in light of the taking ("Condemnation Restoration"), provided that the Net Award shall be released upon the following conditions which must be fulfilled to the satisfaction of Lender in Lender's sole discretion:

- (a) Lender shall have determined that the Property and the improvements thereon can be restored to as good or better condition as existed immediately prior to such taking, taking into account diminution of the Property as a result of such taking;
- (b) Lender shall have determined that the Net Award, together with any funds paid by Borrower to Lender, shall be sufficient to complete the Condemnation Restoration;
- (c) No Default and no Event of Default shall then exist;
- (d) Such taking shall have occurred more than twenty-four months prior to the Final Maturity Date;
- (e) No Lease shall have been terminated, or be subject to termination as a result of such condemnation and no rent shall have been abated or shall be subject to abatement unless such rent is fully covered by rent loss or business interruption insurance; and
- (f) Lender shall have approved the plans and specifications to be used in connection with the Condemnation Restoration and shall have received written evidence, satisfactory to Lender, that such plans and specifications have been approved by all governmental and quasi-governmental authorities having jurisdiction and by all other persons or entities required to approve such plans and specifications.

Net Award in excess of the amount necessary to complete the Condemnation Restoration shall, at the option of Lender, be applied to the outstanding Indebtedness, in such order

as Lender may determine in its sole discretion without Make Whole Payment (so long as no Event of Default then exists).

If, within a reasonable period of time after the occurrence of any such taking, Borrower shall not have submitted to Lender, and received Lender's approval of, plans and specifications for the Condemnation Restoration or shall not have obtained approval of such plans and specifications from all governmental authorities and other persons and entities whose approval is required, or if Borrower shall fail to commence promptly such restoration, or if thereafter Borrower fails to carry out diligently such Condemnation Restoration or is delinquent in the payment to mechanics, materialmen or others for the costs incurred in connection with such Condemnation Restoration, or if Lender determines that any other condition of this Paragraph 1.5B is not satisfied within a reasonable period of time after the occurrence of any such taking, then in addition to all other rights herein set forth, at Lender's option (x) Lender may declare that an Event of Default has occurred and/or (y) Lender may dispose of such Net Award as provided above in this Paragraph 1.5 and/or (z) Lender, or any lawfully appointed receiver of the Property may, but shall not be obligated to, perform or cause to be performed such Condemnation Restoration and may take such other steps as they deem advisable to carry out such Condemnation Restoration, and may enter upon the Property for any of the foregoing purposes, and Borrower hereby waives, for itself and all others holding under it, any claim against Lender and such receiver (other than a claim based upon the alleged gross negligence or intentional misconduct of Lender or any such receiver) arising out of anything done by them or any of them pursuant to Paragraph 1.5 and Lender may, in its discretion apply any such Net Award held by it to reimburse itself and/or such receiver for all amounts expended or incurred in connection with the performance of such Condemnation Restoration, including Reasonable Attorneys' Fees, and any excess costs shall be paid by Borrower to Lender and Borrower's obligation to pay such excess costs shall be secured by the lien of this Deed of Trust and, if not paid within five (5) days of invoice, shall bear interest at the Default Rate, until paid.

#### 1.6 Care of Property.

A. Borrower shall keep all improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, shall not commit or suffer any waste, and shall not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Property or any part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Property.

B. Borrower shall not remove, demolish or materially alter, enlarge or materially change any structure or other improvement located on the Land without Lender's consent, nor shall any new improvements be constructed on the Property without Lender's consent, provided however, Lender has approved a lease, the work to be performed thereunder shall also be approved. Borrower shall not remove or permit to be removed from the Land any fixture, personal property or part of the Property without the consent of Lender, except where authorized by any lease approved by Lender where such items are the property of tenant or appropriate replacements are immediately made which are free of any lien, security interest or claim superior to that of this Deed of Trust and which have a value and utility at least equal to the value and utility of the fixture or personal property removed, which replacement shall, without further action, become subject to the lien of this Deed of Trust.

C. Without otherwise limiting the Borrower's covenant not to commit or permit waste, Borrower shall not (i) remove or permit the removal of sand, gravel, topsoil or timber, (ii) engage in pit operations, (iii) use or permit the use of the Property as a land fill or dump, (iv) burn or bury or permit the storage, burning or buying of any material or product which will result in contamination by Hazardous Materials of the Property or the groundwater or which will require the issuance of a permit by the Environmental Protection Agency or any state or local government agency governing the issuance of hazardous or toxic waste permits, or (v) request or permit a change in zoning or land use classification.

D. Subject to the rights of tenants, Lender or its representative is hereby authorized to enter upon and inspect the Property at all reasonable times upon prior notice to Borrower. Notwithstanding the foregoing, Lender shall not be required to give notice upon the occurrence of an Event of Default or in the event of an emergency.

E. Borrower will perform and comply promptly with, and cause the Property to be maintained, used and operated in accordance with, any and all [i] present and future laws, ordinances, rules, and regulations, and requirements of every duly constituted governmental or quasi-governmental authority or agency applicable to Borrower or the Property, including without limitation, all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, air emissions and other environmental matters, all zoning and other land use matters, and rules, regulations and ordinances of the United States Environmental Protection Agency and all other applicable federal, state and local agencies and bureaus; [ii] similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions; [iii] similarly applicable duties or obligation of any kind imposed under any Permitted Exception, or otherwise by law, covenant, condition, agreement or easement, public or private; [iv] policies of insurance at any time in force with respect to the Property; [v] present and future handicap and disability compliance laws and regulations, including but not limited to, all standards and requirements specified under Title III of the Americans with Disabilities Act and all applicable accessibility guidelines and any other regulations promulgated thereunder; and [vi] the terms and conditions of any other financing secured by a lien on all or any part of the Property. If Borrower receives any notice that Borrower or the Property is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Borrower will promptly furnish a copy of such notice to Lender.

F. If all or any part of the Property shall be damaged by fire or other casualty, Borrower shall give immediate written notice thereof to Lender and, subject to Paragraph 1.3B, shall promptly restore the Property to the equivalent of its original condition; and if a part of the Property shall be damaged through condemnation, Borrower shall, subject to Paragraph 1.5, promptly restore, repair or alter the remaining portions of the Property in a manner satisfactory to Lender. In the event all or any portion of the Property shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall, subject to Paragraph 1.3 and/or Paragraph 1.5 as applicable, promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Property, as determined by Lender, exceeds the actual net insurance or condemnation proceeds received by Lender in connection with such damage or destruction.

#### 1.7 Security Agreement.

[1] With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, water rights, farm products, consumer goods and general intangibles owned by Borrower and referred to or described in the granting clauses of this Deed of Trust or owned by Borrower and in any way connected with the use and enjoyment of the Property, including any personal property or fixtures included within the definition of the term "Property" (other than any personal property which may be now or hereafter deemed to be toxic or Hazardous Materials) whether now owned or hereafter from time to time acquired, together with all substitutions, replacements, additions, attachments, accessories and all of the rents, issues, income, revenues, security deposits and profits derived from the Property (collectively referred to as the "Collateral"), this Deed of Trust is hereby also made and declared to be a security agreement encumbering each and every item of such property comprising a part of the Collateral, in compliance with the provisions of the Uniform Commercial Code as enacted in the state where the Property is located, and Borrower hereby grants Lender a security interest in all such Collateral. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Deed of Trust shall include, but not be limited to those [i] prescribed herein, or [ii] prescribed by general law, or [iii] prescribed by the specific statutory provisions now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of any such financing statement or statements in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether any such item is physically attached to the improvements, serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Deed of Trust, or any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to [A] the proceeds of any insurance policy, or [B] any award in eminent domain proceedings for a taking or for loss of value, or [C] Borrower's interest as landlord in any present or future Lease or sublease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to a tenant Lease of space in the Property or otherwise, shall not in any way alter any of the rights of Lender as determined by this Deed of Trust or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses [A], [B], or [C] of this sentence, that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. Said security interest shall attach thereto as soon as Borrower obtains any interest in any of the Collateral and before the Collateral becomes fixtures or before the Collateral is installed or affixed to other collateral for the benefit of Lender, to secure the Indebtedness, and all other sums and charges which may become due hereunder or thereunder. The security interest held by Lender shall cover cash and non-cash proceeds of the Collateral, but nothing contained herein shall be construed as



authorizing, either expressly or by implication, the sale or other disposition of the Collateral by Borrower, which sale or other disposition is hereby expressly prohibited without the Lender's prior written consent, or as otherwise provided herein. No personal property or business equipment owned by any Tenants (as hereinafter defined) holding under Borrower is included within this Deed of Trust, except to the extent of Borrower's landlord's lien with respect thereto. Notwithstanding the foregoing, (i) Collateral specifically excludes all trade or business fixtures, equipment, and personal property owned by tenants of the Property, and (ii) it is recognized that Borrower's rights in certain of the Collateral are subject to the rights of tenants to utilize the same for the term of their leases.

In the Event of Default under this Deed of Trust, Lender, pursuant to said Uniform Commercial Code, shall have the option of proceeding as to both real and personal property in accordance with its rights and remedies in respect of the real property, in which event the default provisions of the Uniform Commercial Code shall not apply. The parties agree that, in the event Lender elects to proceed with respect to the Collateral separately from the real property, the requirement of the Uniform Commercial Code as to reasonable notice of any proposed sale or disposition of the Collateral shall be met if such notice is mailed to the Borrower, as hereinafter provided, at least five (5) days prior to the time of such sale or disposition. Borrower agrees that, without the prior written consent of Lender, Borrower will not remove or permit to be removed from the real property hereby conveyed, any of the Collateral unless the same is replaced immediately with unencumbered Collateral of a quality and value equal or superior to that which it replaces. All such replacements, renewals and additions shall become and be immediately subject to the security interest of this Deed of Trust and be covered thereby. Borrower warrants and represents that all Collateral now is, and that all replacements thereof, substitutions therefor or additions thereto will be, free and clear of liens, encumbrances or security interests of others, except as to the Permitted Exceptions.

B. Borrower warrants that [i] Borrower's (that is, "Debtor's") name, identity, and principal place of business are as referred to in the first paragraph of this Deed of Trust, [ii] Borrower (that is, "Debtor") has been using or operating under said name and identity without change since April 28, 2017, and [iii] the location of all tangible collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses [i] or [iii] of this Subparagraph 1.7B within thirty (30) days of the effective date of any such change, and Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming misleading or losing its perfected status.

C. Some of the items of Collateral described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Deed of Trust shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Lender, as "Secured Party," or Borrower, as "Debtor," at their respective mailing addresses set out in Paragraph 4.5 hereof.

D. Borrower further covenants and agrees that all of the Collateral shall be owned by Borrower and shall not be the subject matter of any lease or other instrument, agreement

or transaction whereby the ownership or beneficial interest thereof or therein shall be held by any person or entity other than Borrower, except to the extent Lender consents in writing to any lease of any of such property, which consent may be withheld or delayed in Lender's sole discretion; nor shall Borrower create or cause to be created any security interest covering any such property, other than [i] the security interest created herein in favor of Lender, [ii] the rights of Tenants lawfully occupying the Property pursuant to Leases approved by Lender, and [iii] the Permitted Exceptions.

E. Borrower hereby authorizes Lender to file such financing statements, amendments and continuations to financing statements and take such other steps as are determined by Lender, in its sole discretion, to be necessary to perfect any of the liens and security interests created herein, including the filing of financing statements with the Secretary of State in the state of Borrower's formation and the filing of fixture filings in any location where goods which are or are to become fixtures or timber to be cut or as extracted minerals are located.

1.8 Subrogation. To the full extent of the Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each lien, claim, demand and other encumbrance on the Property which is paid or satisfied, in whole or in part, out of the proceeds of the Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby, preserved and shall pass to and be held by Lender as additional collateral and further security for the Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that any instrument providing public notice of the same may be satisfied and canceled of record.

#### 1.9 Transfer of the Property; Secondary Financing.

A. The identity and expertise of Borrower were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, extending the Indebtedness to Borrower, and any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness. Borrower covenants and agrees with Lender, as part of the consideration for extending the Indebtedness to Borrower, that without Lender's prior written consent, Borrower shall not, voluntarily or by operation of law: [i] sell, transfer, convey, pledge, encumber, assign or otherwise hypothecate or dispose of, all or any part of the Property or any interest therein whether or not as collateral security for any other obligation of Borrower (other than replacements of Collateral in the ordinary course of business); [ii] if Borrower or Guarantor is a limited liability company, corporation, partnership, trust, or other entity sell, transfer, encumber or otherwise dispose of voting control or more than fifty percent (50%) of the financial interest in Borrower or Guarantor or change their manager, managing member, or general partners; nor [iii] cause or permit any junior encumbrance or lien to be placed on the Property or other security for the Indebtedness, including, without limitation, any lien securing any assessment, bond, loan, financing, or other debt incurred pursuant to "property assessed clean energy," "special energy financing district," or similar provisions of applicable law ("PACE Financing"). Any purported transaction in violation of the foregoing shall be void and shall entitle Lender to declare the entire Indebtedness immediately due and payable without notice or demand. Such consent may be given

or withheld by Lender in its sole discretion and may be conditioned upon payment to Lender of a fee for processing the request for consent and other administrative costs incurred in connection therewith, and/or an increase in the rate of interest on the unpaid balance of the Indebtedness to a then current market rate, and/or a change in the term of the Note, and/or other changes in the terms of the Loan Documents, all of which Borrower hereby agrees are reasonable conditions to the approval of any such transfer. In all events, if Lender consents to any such sale, transfer, conveyance, pledge, encumbrance, assignment, hypothecation or disposition, at the option of Lender the manager of the Property, if any, shall remain the same before and after the transfer and the transferee shall be a creditworthy person or entity of sound financial reputation.

B. The consent by Lender to any sale, transfer, conveyance, pledge, encumbrance, assignment, creation of a security interest in or other hypothecation or disposition of the Property or the beneficial interests of Borrower shall not be deemed to constitute a novation of the Indebtedness or a consent to any further sale, transfer, pledge, encumbrance, creation of a security interest or other hypothecation or disposition, or a waiver of Lender's right, at its option, to exercise its remedies for Event of Default, without notice to or demand upon Borrower or to any other person or entity upon any such sale, transfer, pledge, encumbrance, creation of a security interest in or other hypothecation, or disposition to which Lender shall not have consented. Should Borrower transfer, assign, convey, sell, mortgage or hypothecate the property described herein, or any interest therein, either legal or equitable, without the prior written consent of Lender, Lender shall have the right to immediately accelerate all sums due under the Note secured hereby and demand immediate payment thereof. Such transfer without Lender's prior written consent shall be an Event of Default hereunder and shall enable Lender to exercise any and all remedies herein.

C. Notwithstanding the provisions of Paragraph 1.9(a) of this Deed of Trust, Lender shall consent on two and only two occasions during the term of the Note to a transfer of all the interests of Borrower in the Property provided that there has occurred no Event of Default hereunder (whether or not subsequently cured), and provided further that the following conditions are satisfied, as determined by Lender in its sole discretion:

- (a) Lender shall have approved in writing the experience, managerial ability, and reputation of the transferee;
- (b) The transferee must be a single entity and a single purpose entity. Any requests for approval of multiple transferees are subject to the approval or disapproval of Lender in its sole discretion and, if approved, shall be subject to such fees as Lender requires, in its sole discretion, to compensate Lender for the cost of servicing a loan with multiple obligors;
- (c) Borrower shall have paid to Lender, prior to such transfer, a sum-equal to one-half percent (1/2%) of the unpaid principal balance of the Note at the time of the first transfer and a sum equal to one percent (1%) of the unpaid principal balance of the Note at the time of the second transfer, together with any accrued interest at the time of such transfer together with all other fees or costs that are outstanding, as a consent fee and not as a partial prepayment of the principal balance of the Note;



- (d) Borrower shall have reimbursed Lender for all costs of any attorney, surveyor, appraiser, inspection, investigation, travel, lodging, document preparation, and any other costs incurred by Lender in reviewing such transfer and in completing the same in accordance herewith, whether or not the transfer actually closes;
- (e) The transferee approved by Lender shall have assumed the obligations of Borrower under the Note, this Deed of Trust, and the other Loan Documents, and shall have executed such instruments, certificates, and other documents, in form and substance satisfactory to Lender in its sole discretion, as specified by Lender, to accomplish and to evidence such assumption;
- (f) The transferee and its principals shall have executed such instruments, certificate and other documents, in form and substance satisfactory to Lender in its reasonable discretion, as specified by Lender, to make such transferee and its principals liable for the nonrecourse carve outs set forth in Paragraph 14 of the Note (including a Guaranty Agreement to be executed by such principals) and the obligations set forth in that certain Environmental Indemnity Agreement of even date herewith;
- (g) The transferee and its principals shall have provided Lender with any and all materials reasonably requested by Lender to process the Loan assumption in accordance with Lender's requirements;
- (h) Borrower shall have performed any and all maintenance to the Property necessary to maintain the Property and improvements thereto in a good state of repair, prior to such transfer;
- (i) The transferee shall be of a creditworthy nature based upon Lender's customary underwriting standards in effect at the time of such transfer, including but not limited to, net worth and cash flow requirements as applied to borrowers for new loans in the amount of the Note, and which are secured by property substantially similar to the Property;
- (j) Lender shall have approved the form and content of current estoppel certificates from (i) all Tenants leasing 10% or more of the net leasable area of the Property and (ii) Tenants leasing at least 70% of the remaining occupied square footage in the Property;
- (k) Borrower shall have given Lender thirty (30) days prior written notice of its intent to transfer the Property;
- (l) Borrower shall provide Lender with an endorsement to Lender's title policy insuring the continued first priority of this Deed of Trust subsequent to the transfer; and

- (m) The transferee shall have provided Lender with UCC-3 Financing Statements with respect to all of Lender's UCC Financing Statements, showing the transferee as debtor.

1.10 Limit on Interest. If from any circumstances whatsoever, fulfillment of any provision of this Deed of Trust, the Note or any other Loan Document, at the time performance of such provision shall be due shall involve exceeding the limit on interest presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then Lender may, at its option [i] declare the entire Indebtedness secured hereby, including accrued interest and interest at the Default Rate, if any and all other sums owing, immediately due and payable without Make Whole Payment, [ii] reduce the obligations to be fulfilled to such limit on interest, or [iii] apply the amount that would exceed such limit on interest to the reduction of the outstanding principal balance of the Note, and not to the payment of interest, with the same force and effect as though Borrower had specifically designated such sums to be so applied to principal and Lender had agreed to accept such extra payment(s) as a premium-free prepayment, so that in no event shall any exaction be possible under the Note or Deed of Trust, that is in excess of the applicable limit on interest. It is the intention of Borrower and Lender not to create any obligation in excess of the amount allowable by applicable law. The provisions of this paragraph shall control every other provision of this Deed of Trust, and any provision of the Loan Documents in conflict with this Paragraph 1.10.

1.11 Performance by Lender of Defaults by Borrower. Borrower covenants and agrees that, if it shall Default in the payment of any tax, lien, assessment, or charge levied or assessed against the Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Deed of Trust, then Lender, at its option, but without obligation and without notice, may pay, perform or observe the same, and all payments made or costs incurred by Lender in connection therewith shall be secured hereby and shall be, upon demand, immediately repaid by Borrower to Lender with interest thereon, from the date such payment is made or expense is incurred by Lender to the date Lender is reimbursed therefor, at the Default Rate. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term without thereby becoming liable to Borrower or any person in possession of any portion of the Property holding under Borrower. Borrower expressly acknowledges and agrees, however, that notwithstanding anything contained in this Paragraph 1.11 to the contrary, Lender shall not be obligated under this Paragraph 1.11 to incur any expense or to perform any act whatsoever. Borrower further acknowledges that no performance by Lender of Borrower's obligations shall cure Borrower's Default or release Borrower from those or any other obligations under this Deed of Trust. Borrower hereby indemnifies Lender against any and all costs (including Reasonable Attorneys' Fees), liabilities or damages, arising from or in any way related to the performance of Borrower's obligations by Lender.

1.12 Assignment of Leases and Rents.

A. As additional collateral and to further secure the Indebtedness and other obligations of Borrower, Borrower does hereby absolutely, presently and irrevocably assign, grant, transfer, and convey to Lender, its successors and assigns, all of Borrower's right, title, and interest in, to, and under all leases, subleases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts and other contracts, licenses and permits, map approvals and conditional use permits, whether written or oral, now or hereafter affecting all or any part of the Property, and any agreement for the use or occupancy of all or any part of the Property which may have been made heretofore or which may be made hereafter, including any and all extensions, renewals, and modifications of the foregoing and guaranties of the performance or obligations of any tenants thereunder, and all other arrangements of any sort resulting in the payment of money to Borrower or in Borrower becoming entitled to the payment of money for the use of the Property or any part thereof whether such user or occupier is tenant, invitee, or licensee (all of the foregoing referred to collectively as the "Leases" and individually as a "Lease", and said tenants, invitees, and licensees are referred to collectively as "Tenants" and individually as "Tenant" as the context requires), which Leases cover all or portions of the Property; together with all of Borrower's right, title, and interest in and to all income, rents, issues, royalties, profits, rights and benefits and all Tenants' security and other similar deposits derived with respect to the Leases and with respect to the Property, including, without limitation, all base and minimum rents, percentage rents, additional rents, payments in lieu of rent, expense contributions, Termination Amounts and other similar such payments (collectively referred to as "Income"), and the right to collect the same as they become due, it being the intention of the parties hereto to establish an absolute transfer and assignment of all of the Leases and the Income to Lender, and not just to create a security interest.

B. Although this Deed of Trust constitutes an absolute, present and current assignment of all Income, as long as no Event of Default on the part of Borrower shall have occurred, Lender shall not demand that such Income be paid directly to Lender, and Borrower shall have a license to collect, but not more than one (1) month prior to the due date thereof all such Income from the Property (including, without limitation, all rental payments under the Leases).

1.13 Books, Records, Accounts and Monthly Reports. Borrower shall keep and maintain, or shall cause to be kept and maintained, at Borrower's cost and expense, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Property and in connection with any services, equipment, or furnishings provided in connection with the operation of the Property. Lender and Lender's agents, accountants and attorneys shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Borrower or such other person or entity maintaining such books, records or accounts and to make copies or extracts thereof as Lender shall desire and to discuss Borrower's affairs, finances and accounts with Borrower and with the officers and principals of Borrower, at such reasonable times as may be requested by Lender. Borrower shall furnish to Lender annually within ninety (90) days after the end of each fiscal year (which, for Borrower is November 30<sup>th</sup> of each year), at Borrower's expense, a cash basis statement of the operation of the Property for such fiscal year, prepared in accordance with consistently applied accounting principles, showing in detail all revenues derived from rents, profits and all other sources, and all expenses and disbursements made in connection with the Property, an annual balance sheet, profit and loss statement, and all supporting schedules covering the operation of the Property, together with a rent roll for the Property containing, at a minimum,

the names of all tenants and guarantors of any Leases, the rentable square footage of each leased space, a schedule of past-due rents, dates of occupancy, the term of the Leases, base rents and base rents per rentable square foot, additional rent, rental concessions, security deposits, lease commissions outstanding, and renewal options under the Leases. From and after Default Lender may require that any such statements shall be audited and/or prepared and certified by an independent certified public accountant selected or approved by Lender. Borrower shall further provide Lender, on a quarterly basis, with such interim balance sheet and profit and loss statements on the operation of the Property and the financial condition of Borrower as Lender may reasonably require. All of the foregoing financial statements shall fairly and accurately present the financial condition of the subject thereof as of the dates thereof and shall be certified by Borrower's principal financial or accounting officer. In the event that Borrower shall refuse or fail to furnish any statement as aforescribed, or in the event such statement shall be inaccurate or false, or in the event of failure of Borrower to permit Lender or its representatives to inspect the Property or the said books and records, such acts of Borrower shall be a Default hereunder and Lender may proceed in accordance with the rights and remedies afforded it under the provisions hereof. If any of the materials described in this paragraph that are required to be delivered to Lender is not timely delivered, Borrower shall promptly pay to Lender, as a late charge, the sum of \$500. In addition, Borrower shall promptly pay to Lender an additional late charge of \$500 for each full month during which such item remains undelivered following written notice from Lender. Borrower acknowledges that Lender will incur additional expenses as a result of any such late deliveries, which expenses would be impracticable to quantify, and that Borrower's payments under this paragraph are a reasonable estimate of such expenses. Borrower shall cause any Guarantor to furnish to Lender financial statements (balance sheets, income statements, and cash flow statements) at the same time that Borrower's financial statements are delivered to Lender. Borrower shall cause any Guarantor to furnish copies of its tax returns to Lender.

1.14 ERISA. Notwithstanding any other provision in this Deed of Trust to the contrary, under no circumstances shall Borrower transfer any interest in the Property, directly or indirectly, to an employee benefit plan covered under Title I, Part 4 of the Employee Retirement Income Security Act of 1974 amended ("ERISA"), or Section 4975 of the Internal Revenue Code of 1986, as amended ("IRC"), unless prior to such transaction, Lender obtains written representations from the employee benefit plan and Borrower, satisfactory to Lender, that the employee benefit plan has an exemption from the prohibited transaction provisions of Section 406 of ERISA and Section 4975 of the IRC which would apply to this loan if Lender is a "party in interest" or a "disqualified person" either at the time of such transaction or if Lender should become a "party in interest" or a "disqualified person" anytime thereafter during the term of this loan.

1.15 Loan Purpose. That the Loan secured by this Deed of Trust has been incurred and made solely for business purposes, such covenant and agreement having been made to induce Lender to make the Loan; and the proceeds of the Loan are being used entirely for such business purposes.

1.16 Single Purpose Entity.

A. Borrower covenants and agrees that it has not and shall not:

[1] engage in any business or activity other than the acquisition, ownership, operation and maintenance of the Property, and activities incidental thereto;

[2] acquire or own any material asset other than (i) the Property, and (ii) such incidental personal property as may be necessary for the operation of the Property;

[3] merge into or consolidate with any person or entity or dissolve, terminate or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure, without in each case Lender's consent;

[4] fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the laws of the jurisdiction of its organization or formation, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's Partnership Agreement, Articles or Certificate of Incorporation, Articles of Organization or Formation, Operating Agreement, Limited Liability Company Agreement or similar organizational documents, as the case may be;

[5] own any subsidiary or make any investment in or acquire the obligations or securities of any other person or entity without the consent of Lender;

[6] commingle its assets with the assets of any of its partner(s), members, shareholders, affiliates, or of any other person or entity or transfer any assets to any such person or entity other than distributions on account of equity interests in the Borrower permitted hereunder and properly accounted for;

[7] incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Indebtedness, except unsecured trade and operational debt incurred with trade creditors in the ordinary course of its business of owning and operating the Property that are due and payable within thirty (30) days after the date incurred in such amounts as are normal and reasonable under the circumstances, provided that such debt is not evidenced by a note and is paid when due and provided in any event the outstanding principal balance of such debt shall not exceed at any one time three percent (3%) of the outstanding Indebtedness;

[8] allow any person or entity to pay its debts and liabilities (except a Guarantor) or fail to pay its debts and liabilities solely from its own assets;

[9] fail to maintain its records, books of account and bank accounts separate and apart from those of the shareholders, partners, members, principals and affiliates of Borrower, the affiliates of a shareholder, partner or member of Borrower, and any other person or entity or fail to prepare and maintain its own balance sheet, profit and loss statement and statement of operation of its property;

[10] enter into any contract or agreement with any shareholder, partner, member, principal or affiliate of Borrower, any guarantor of all or a portion of the Indebtedness (a "Guarantor") or any shareholder, partner, member, principal or affiliate

thereof, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any shareholder, partner, member, principal or affiliate of Borrower or Guarantor, or any shareholder, partner, member, principal or affiliate thereof;

[11] seek dissolution or winding up in whole, or in part;

[12] fail to correct any known misunderstandings regarding the separate identity of Borrower;

[13] guarantee or become obligated for the debts of any other entity or person or hold itself out to be responsible or pledge its assets or creditworthiness for the debts of another person or entity or allow any person or entity to hold itself out to be responsible or pledge its assets or creditworthiness for the debts of the Borrower (except for a Guarantor);

[14] make any loans or advances to any third party, including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof;

[15] intentionally omitted;

[16] fail either to hold itself out to the public as a legal entity separate and distinct from any other entity or person or to conduct its business solely and hold its assets in its own name in order not (i) to mislead others as to the entity with which such other party is transacting business, or (ii) to suggest that Borrower is responsible for the debts of any third party (including any shareholder, partner, member, principal or affiliate of Borrower, or any shareholder, partner, member, principal or affiliate thereof);

[17] fail to allocate fairly and reasonably among Borrower and any third party (including, without limitation, any Guarantor) any overhead for common employees, shared office space or other overhead and administrative expenses;

[18] allow any person or entity to pay the salaries of its own employees, if any, or fail to maintain a sufficient number of employees for its contemplated business operations;

[19] fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;

[20] file a voluntary petition or otherwise initiate proceedings to have the Borrower or any general partner or managing member adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against the Borrower or any general partner or managing member, or file a petition seeking or consenting to reorganization or relief of the Borrower or any general partner or managing member as debtor under any applicable federal or state law relating to bankruptcy, insolvency, or other relief for debtors with respect to the Borrower or any general partner or managing member;

or seek or consent to the appointment of any trustee, receiver, conservator, assignee, sequestrator, custodian, liquidator (or other similar official) of the Borrower or any general partner or managing member or of all or any substantial part of the properties and assets of the Borrower or any general partner or managing member, or make any general assignment for the benefit of creditors of the Borrower or any general partner or managing member, or admit in writing the inability of the Borrower or any general partner or managing member to pay its debts generally as they become due or declare or effect a moratorium on the Borrower or any general partner or managing member debt or take any action in furtherance of any such action;

[21] share any common logo with or hold itself out as or be considered as a department or division of (i) any shareholder, partner, principal, member or affiliate of Borrower, (ii) any affiliate of a shareholder, partner, principal, member or affiliate of Borrower, or (iii) any other person or entity or allow any person or entity to identify the Borrower as a department or division of that person or entity;

[22] conceal assets from any creditor, or enter into any transaction with the intent to hinder, delay or defraud creditors of the Borrower or the creditors of any other person or entity; or

[23] fail to provide in its (i) Articles of Organization, Certificate of Formation, Limited Liability Company Agreement and/or Operating Agreement, as applicable, if it is a limited liability company, (ii) Limited Partnership Agreement, if it is a limited partnership or (iii) Certificate of Incorporation, if it is a corporation, that for so long as the Loan is outstanding pursuant to the Note, this Deed of Trust and the other Loan Documents, it shall not file or consent to the filing of any petition, either voluntary or involuntary, to take advantage of any applicable insolvency, bankruptcy, liquidation or reorganization statute, or make an assignment for the benefit of creditors without the affirmative vote of all other partners/members/directors.

[24] fail to maintain its books, records, resolutions and agreements as official records;

[25] fail to observe all limited liability company and other organizational formalities; or

[26] maintain its assets in such a manner that will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other person or entity.

1.17 EDA. Borrower covenants and warrants to Lender that the last tax year for which Borrower will receive any grants or other incentive payments pursuant to the EDA will be for the 2017 tax year, and Borrower agrees to comply with all terms and provisions set forth in the EDA in order to receive grants or other incentive payments associated with the payment of the 2017 tax bill.

## ARTICLE 2. DEFAULT AND REMEDIES

### 2.1 Events of Default.



A. As used in the Loan Documents, the term “Default” means the occurrence of any event that, with the giving of notice or the passage of time, or both, would be an Event of Default. The occurrence of any one or more of the following events shall be, and shall constitute the commencement of, an “Event of Default” hereunder (any Event of Default that has occurred shall continue unless and until waived by Lender in writing in its sole discretion). Each of the following shall constitute an Event of Default, without cure or grace period unless expressly otherwise provided herein:

[1] Payment.

(a) Failure by Borrower to pay the outstanding Indebtedness on or before the Final Maturity Date;

(b) Except for the final payment due on the Final Maturity Date, failure by Borrower to pay any installment of principal or interest under the Note or other indebtedness secured by this Deed of Trust or any other sum that may be due and payable under any of the Loan Documents, within ten (10) days from the date when due and payable (provided that Lender shall have no obligation to give Borrower notice of any such failure);

[2] Transfer. Any transfer under Paragraph 1.9 to which Lender shall not have first consented in writing;

[3] Condemnation Event. An event shall occur which under the specific terms of Paragraph 1.5 shall give the Lender the option to accelerate the maturity of the Indebtedness.

[4] Other Non-Monetary Default. Failure by Borrower duly to observe or perform any other term, covenant, condition or agreement of this Deed of Trust within thirty (30) days after written notice of such failure; provided, however, if such failure cannot be cured within such thirty (30) day period, then failure by Borrower to commence the curing thereof within such thirty (30) day period and diligently to prosecute such curing to completion within a reasonable time thereafter, not to exceed ninety (90) additional days, provided, further, that the notice and grace period set forth in this subparagraph shall not apply to any other Event of Default expressly set forth in this Paragraph 2.1 or to any other Event of Default defined as such elsewhere in this Deed of Trust, in any other Loan Document or to any other covenant or condition with respect to which a grace period is expressly provided elsewhere;

[5] Misrepresentation. The fact that any representation or warranty of Borrower contained in this Deed of Trust or of Borrower or any Guarantor in any other Loan Document proves to be untrue or misleading in any respect as of the time made;

[6] Default under other Loan Document. The occurrence of any Event of Default under any of the other Loan Documents;

[7] Tax Lien. The filing of any federal tax lien against the Property;



[8] Bankruptcy. The filing by Borrower, any general partner, manager, trustee or managing member of Borrower, or any endorser or guarantor of the Note, of a voluntary petition in bankruptcy pursuant to any federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors (referred to collectively as “Bankruptcy Law”) or the issuing of an order for relief against Borrower, any general partner, manager, trustee or managing member of Borrower or any endorser or guarantor of the Note under any such Bankruptcy Law, or the filing by Borrower, any general partner, manager, trustee or managing member of Borrower or any endorser or guarantor of the Note of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under any present or future Bankruptcy Law;

[9] Appointment of Receiver, Etc. Borrower’s or any of its general partners, managers, trustees or managing members or any such endorser’s or guarantor’s seeking or consenting to or acquiescing in the appointment of any trustee, custodian, receiver, or liquidator of Borrower, any general partner, manager, trustee or managing member of Borrower, any such endorser or guarantor, or of all or any substantial part of the Property or of any or all of the income, rents, revenues, issues, earnings, profits or income thereof or of any other property or assets of Borrower, any general partner, manager, trustee or managing member of Borrower or of such endorser or guarantor; or the making by Borrower or any such endorser or guarantor of any general assignment for the benefit of creditors, or the admission in writing by Borrower or any such endorser or guarantor of its inability to pay its debts generally as they become due, or the commission by Borrower or any such endorser or guarantor of any act providing grounds for the entry of an order for relief under any Bankruptcy Law;

[10] Involuntary Bankruptcy. Failure to cause the dismissal of any involuntary petition in bankruptcy brought against Borrower, any general partner, manager, trustee or managing member of Borrower or any endorser or guarantor of the Note within sixty (60) calendar days after the same is filed but in any event prior to the entry of an order, judgment, or decree approving such petition;

[11] Waste. The Property is subjected to actual or threatened waste, or all or any material part thereof is removed, demolished, or altered without the prior written consent of Lender;

[12] Dissolution. Borrower, any general partner, manager, trustee or managing member of Borrower or any endorser or guarantor of the Note (if a business entity) is liquidated, dissolved, has its charter expires or is revoked, partitioned, terminated or expires, or Borrower any general partner, manager, trustee or managing member of Borrower or any endorser or guarantor of the Note (if an individual) dies;

[13] Guarantor. Any guarantor shall contest, repudiate or purport to revoke any guaranty, indemnity agreement or other instrument which it has executed in connection with the Loan for any reason or if any such guaranty, indemnity or other instrument shall cease to be in full force and effect as to the guarantor or shall be judicially declared null and void as to the guarantor;

[14] Challenge to Lien. The filing by any person or entity of any claim in any legal or equitable proceeding challenging the first priority lien of this Deed of Trust, including, without limitation, mechanic's liens and any lien securing PACE Financing, subject only to the Permitted Exceptions;

[15] Property Management. Without the prior written consent of Lender, Borrower enters into, or terminates or cancels any agreement pertaining to management of the Property; amends or modifies any such management agreement, or consents to any such amendment or modification, without Lender's prior written consent, such consent not to be unreasonably withheld; or consents to any termination, cancellation, amendment or modification of any such management agreement;

[16] Default under other loan. Default by Borrower under any other loan secured by a lien on any portion of the Property and the expiration of any applicable notice and/or cure period;

[17] Forfeiture. The filing of any action under any federal or state law, which permits forfeiture of Borrower's interest in the Property, including but not limited to, any indictment under the Racketeer Influence and Corrupt Organization Act of 1970 (RICO); or

[18] Single Purpose Status. A Default in the performance of or a violation of any covenant or agreement set out in Paragraph 1.16 of this Deed of Trust.

2.2 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, become immediately due and payable without notice or demand, which are hereby expressly waived, time being of the essence of this Deed of Trust; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

Lender's Right to Enter and Take Possession, Operate and Apply Revenues.A. If an Event of Default shall have occurred, Borrower upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property and if, and to the extent, permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property without the appointment of a receiver, or an application therefor, and may exclude Borrower and its respective agents and employees wholly therefrom, and may have joint access with Borrower to the books, papers and accounts of Borrower.

B. If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property to Lender, to the entry of which judgment or decree Borrower hereby specifically consents. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents; and all such expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

C. Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Property and conduct the business thereof and, from

time to time [i] make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; [ii] insure or keep the Property insured; [iii] manage and operate the Property and exercise all the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise with respect to the same; [iv] enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be in its best interest; and [v] perform all acts required of Borrower as lessor under any lease of all or any part of the Property, all as Lender may from time to time determine to be to its best advantage. Lender may collect and receive all the income, rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting: [A] all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); [B] the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; [C] the cost of such insurance; [D] such taxes, assessments and other similar charges as Lender may at its option pay; [E] other proper charges upon the Property or any part thereof; and [F] the compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys and proceeds so received by Lender to the payment of principal and interest in whatever order or priority Lender may elect. Anything in this Paragraph 2.3 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as the result of any exercise by Lender of its rights under this Deed of Trust, and Lender shall be liable to account only for the rents, incomes, issues, profits, and revenues actually received by Lender.

D. For the purpose of carrying out the provisions of this Paragraph 2.3, to the extent permitted by applicable law, Borrower hereby irrevocably constitutes and appoints Lender the true and lawful attorney-in-fact of Borrower to do and perform, from time to time, any and all actions necessary and incidental to such purpose, and Borrower does, by these presents, ratify and confirm any and all actions of said attorney-in-fact.

E. In the event that all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Deed of Trust, shall have been paid and all Events of Default cured and satisfied, and as a result thereof, Lender surrenders possession of the Property to Borrower, the same right of taking possession shall exist if any subsequent Event of Default shall occur.

2.4 Receiver. If an Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the sufficiency or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the income, rents, issues, profits, and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state within which the Land is located. Borrower shall pay to Lender upon demand all expenses, including receiver's fees, Reasonable Attorneys' Fees, costs, and agent's compensation, incurred pursuant to the provisions of this Paragraph 2.4; and all such expenses shall be secured by this Deed of Trust and bear interest at the Default Rate.

## 2.5 Enforcement.

A. If an Event of Default shall have occurred, Lender, at its option, may institute legal proceedings for the foreclosure of this Deed of Trust.

B. If a Default shall have occurred, Lender, at its option, may direct the Trustee to sell, pursuant to the power of sale herein granted, the Property to satisfy the Indebtedness secured hereby. Such sale by Trustee pursuant to the conveyance to Trustee and the power of sale shall be conducted in accordance with applicable law with respect to notice, advertisement, sale procedures and payments of Trustees' fees and expenses.

C. Lender shall have the right from time to time to enforce any legal or equitable remedy against Borrower, including, without limitation, suing for any sums, whether interest, principal or any installment of either or both, taxes, penalties or any other sums required to be paid under the terms of this Deed of Trust, as the same become due, without regard to whether or not all of the Indebtedness shall then be due, and without prejudice to the right of Lender thereafter to enforce any other remedy, including, without limitation, an action of foreclosure, whether or not such other remedy be based upon an Event Default which existed at the time of commencement of an earlier or pending action, and whether or not such other remedy be based upon the same Event of Default upon which an earlier or pending action is based.

2.6 Purchase by Lender. Upon any foreclosure sale or Trustee's sale, Lender may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price.

2.7 Application of Proceeds of Sale. In the event of a foreclosure or Trustee's sale of all or any portion of the Property, the proceeds of said sale shall be applied, in whatever order Lender in its sole discretion may decide, to the expenses of such sale and of all proceedings in connection therewith, including Reasonable Attorneys' Fees, to insurance premiums, liens, assessments, taxes and charges, including utility charges, advanced by Lender, to payment of the outstanding principal balance of the Indebtedness, together with any Make Whole Payment, fees or charges herein or in the Note provided, or to the accrued interest on all of the foregoing, and finally the remainder, if any, shall be paid to Borrower.

2.8 Borrower as Tenant Holding Over. In the event of any such Trustee's sale or foreclosure sale by Lender, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.9 Leases. Lender, at its option, is authorized to foreclose this Deed of Trust or to direct Trustee to sell the Property subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the Indebtedness.

2.10 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Deed of Trust by foreclosure, power of sale, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any

reason, or shall have been determined adversely to Lender, then in every such case [i] Borrower and Lender shall be restored to their former positions and rights, [ii] all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, [iii] each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Default, and [iv] neither this Deed of Trust, nor the Note, nor the Indebtedness, nor any other of the Loan Documents shall be or shall be deemed to have been released or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the above.

2.11 No Reinstatement. If an Event of Default under Paragraph 2.1A[1] shall have occurred and Lender shall have proceeded to enforce any right, power or remedy permitted hereunder, then a tender of payment by Borrower or by anyone on behalf of Borrower of the amount necessary to satisfy all sums due hereunder made at any time prior to foreclosure or Trustee's sale, or the acceptance by Lender of any such payment so tendered, shall not constitute a reinstatement of the Note or this Deed of Trust.

2.12 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Deed of Trust or any other Loan Document is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.13 Suits to Protect the Property. Lender shall have the power [i] to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Deed of Trust, [ii] to preserve or protect its interest in the Property and in the income, rents, issues, profits and revenues arising therefrom, and [iii] to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

2.14 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, its creditors or its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount of the Indebtedness at the date of the institution of such proceedings and for any additional amount of the Indebtedness after such date.

2.15 Marshalling. At any foreclosure or Trustee sale, the Property may, at Lender's option, be offered for sale for one total price, and the proceeds of such sale accounted for in one account without distinction between the items of security or without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling; and in the event Lender, at its option, elects to sell the Property or cause the Trustee to sell the Property in parts or parcels, said sales may be held from time to time, and this Deed of Trust shall not terminate until all of the Property not previously sold shall have been sold.

Borrower consents that the provisions of N.C. Gen. Stat §45-45.1 or any similar statute hereafter enacted in replacement or in substitution thereof shall be inapplicable to this Deed of Trust.

2.16 Security Deposits. If Borrower shall obtain from a tenant or subtenant of the Property, or a part thereof, a deposit to secure such tenant's or subtenant's obligations, such funds, following any Event of Default under this Deed of Trust, shall be deposited with Lender in an account maintained by Lender in its name; but any such deposit shall be returned to Borrower when required, by the terms of any such lease, sublease or occupancy agreement, to be paid over to the tenant or subtenant; and Borrower represents that the provisions of any applicable laws relating to security deposits have been satisfied with respect to each existing tenant, subtenant or occupant of the Property and agrees that they will be satisfied with respect to each new tenant, subtenant, or occupant of the Property; and Borrower will furnish details of such satisfaction from time to time upon the request of Lender in such detail as Lender may require.

2.17 Waiver of Appraisalment, Valuation, Impairment of Collateral, Etc. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any moratorium, reinstatement, forbearance, appraisalment, valuation, stay, extension, homestead right, entitlement or exemption, or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Property or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Deed of Trust marshalled upon any foreclosure. Borrower agrees that Lender may, at its discretion, and without the knowledge or consent of Borrower, release any guarantor of the Indebtedness or release any collateral for the Indebtedness, all without affecting the validity or priority of the lien of this Deed of Trust, and Borrower hereby expressly waives the right to assert any defense based upon such releases or upon any assertion that any such release has impaired Lender's collateral.

2.18 Waiver of Homestead. Borrower hereby waives and renounces all homestead right, entitlement, and exemption provided for by the Constitution and the laws of the United States of America and of any state, in and to the Property as against the collection of the Indebtedness, or any part hereof.

### ARTICLE 3. LIMITED EXCULPATION

3.1 Limited Exculpation. The provisions of Paragraph 14 of the Note are incorporated herein by this reference to the fullest extent as if the text of such paragraph was set forth in its entirety herein.

### ARTICLE 4. MISCELLANEOUS PROVISIONS

4.1 Successors and Assigns. Subject to Paragraph 1.9 hereof, this Deed of Trust shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, and assigns. Whenever a reference is made in this Deed of Trust to



Borrower or Lender, such reference shall be deemed to include a reference to the heirs, devisees, legal representatives, successors, and assigns of Borrower or Lender, whether so expressed or not.

4.2 Terminology. All personal pronouns used in this Deed of Trust whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of Articles are for convenience only and neither limit nor amplify the provisions of this Deed of Trust itself and all references herein to Articles, Paragraphs, or Subparagraphs shall refer to the corresponding Articles, Paragraphs, or Subparagraphs of this Deed of Trust.

4.3 Severability. If any provision of this Deed of Trust or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Deed of Trust and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.4 Applicable Law. This Deed of Trust shall be interpreted, construed and enforced according to the laws of the state in which the Land is located.

4.5 Notices, Demands, and Requests. All notices, demands or requests provided for or permitted to be given pursuant to this Deed of Trust shall be in writing and shall be delivered in person or sent by registered or certified United States mail, postage prepaid, return receipt requested, or by overnight courier, to the addresses set out below or to such other addresses as are specified by no less than ten (10) days' prior written notice delivered in accordance herewith:

If to Lender: 40/86 Mortgage Capital, Inc.  
535 North College Drive  
Carmel, IN 46032  
Attn: Mortgage Loan Servicing, Loan No. 1803.

If to Borrower: Riverbend Concord Properties I LLC  
c/o Griffin Industrial Realty, Inc.  
204 West Newberry Road  
Bloomfield, CT 06002  
Attn: Anthony Galici, Vice President

with a copy to: Griffin Industrial Realty, Inc.  
641 Lexington Avenue, 26<sup>th</sup> Floor  
New York, New York 10022  
Attn: Michael Gamzon

and: Moore & Van Allen PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202  
Attn: Evan M. Bass, Esq.

All such notices, demands and requests shall be deemed effectively given and delivered three (3) days after the postmark date of mailing by first-class United States mail, the day after delivery to

a nationally-recognized overnight courier or, if delivered personally, when received. Rejection or other refusal to accept or the inability to deliver because of a changed address of which no notice was given in accordance with the time period provided herein, shall be deemed to be receipt of the notice, demand, or request sent.

4.6 Consents and Approvals. All approvals and consents hereunder shall be in writing and no approval or consent shall be deemed to have been given hereunder unless evidenced in a writing signed by the party from whom the approval or consent is sought.

4.7 Waiver. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Deed of Trust to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or Default by Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by Borrower. If Lender [i] grants forbearance or an extension of time for the payment of any sums secured hereby; [ii] takes other or additional security for the payment of any sums secured hereby; [iii] waives or does not exercise any right granted herein or in the Note; [iv] releases any part of the Property from the lien of this Deed of Trust or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Deed of Trust; [v] consents to the filing of any map, plat or replat affecting the Property; or [vi] makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Deed of Trust or any other obligation of Borrower or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted for any Default then made or of any subsequent Default. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Indebtedness, or with reference to any of the terms, covenants, conditions or agreements hereof as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower. In no event, however shall the provisions of this paragraph be construed in derogation of Paragraph 1.9 hereof.

4.8 Assignment. Borrower acknowledges that Lender and its successors and assigns may, without the necessity for consent by Borrower or Trustee, (a) sell this Deed of Trust, the Note and other Loan Documents to one or more investors as a whole loan, (b) participate the Loan to one or more investors, (c) deposit this Deed of Trust, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets or (d) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (a) through (d) are each hereinafter referred to as a "Secondary Market Transaction"). Borrower shall, at its expense, cooperate in good faith with Lender in effecting any such Secondary



Market Transaction. Borrower shall provide such information and documents relating to Borrower, Guarantor, if any, the Property, the Leases and the tenants under the Leases as Lender may reasonably request in connection with a Secondary Market Transaction. Lender shall have the right to provide to prospective investors any information in its possession, including, without limitation, financial statements relating to Borrower, Guarantor, if any, the Property and the tenants under the Leases.

4.9 Substitute Trustee. The Trustee may resign by an instrument in writing addressed to Lender, or the Trustee may be removed at any time with or without cause by an instrument in writing executed by Lender. In case of the death, resignation, removal or disqualification of the Trustee or if for any reason Lender shall deem it desirable to appoint a substitute or successor trustee to act instead of the herein named trustee or any substitute or successor trustee, then Lender shall have the right and is hereby authorized and empowered to appoint a successor trustee, or a substitute trustee, without other formality than appointment and designation in writing executed by Lender and the authority hereby conferred shall extend to the appointment of other successor and substitute trustees successively until the indebtedness secured hereby has been paid in full or until the Property is sold hereunder. In the event the indebtedness secured hereby is owned by more than one person or entity, the holder or holders of not less than a majority in the amount of such indebtedness shall have the right and authority to make the appointment of a successor or substitute trustee provided for in the preceding sentence. Such appointment and designation by Lender or by the holder or holders of not less than a majority of the indebtedness secured hereby shall be full evidence of the right and authority to make the same and of all facts therein recited. If Lender is a corporation and such appointment is executed in its behalf by an officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Upon the making of any such appointment and designation, all of the estate and title of the Trustee in the Property shall vest in the named successor or substitute trustee and he shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee; but nevertheless, upon the written request of Lender or of the successor or substitute trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor or substitute trustee all of the estate and title in the Property of the Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon the Trustee, and shall duly assign, transfer and deliver any of the properties and moneys held by said Trustee hereunder to said successor or substitute trustee. All references herein to the Trustee shall be deemed to refer to the Trustee (including any successor or substitute trustee appointed and designated as herein provided) from time to time acting hereunder. Borrower hereby ratifies and confirms any and all acts which the herein named Trustee or her successor or successors, substitute or substitutes, in this trust, shall do lawfully by virtue hereof.

4.10 Indemnity of Trustee. THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY THE TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (INCLUDING THE TRUSTEE'S NEGLIGENCE), EXCEPT FOR THE TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. The Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by her hereunder, believed by her in good faith to be genuine. All

moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and the Trustee shall be under no liability for interest on any moneys received by her hereunder. Borrower will reimburse the Trustee for, and indemnify and save her harmless against, any and all liability and expenses (including attorneys' fees) which may be incurred by her in the performance of her duties hereunder. The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust.

4.10 Time of the Essence. TIME IS OF THE ESSENCE with respect to each and every covenant, agreement, and obligation of Borrower under this Deed of Trust, the Note and any and all other Loan Documents.

4.11 Reasonable Attorneys' Fees. The meaning of the terms "legal fees" or "Reasonable Attorneys' Fees" or any other reference to the fees of attorneys or counsel, wherever used in this Deed of Trust, shall mean fees charged by attorneys selected by Lender and based upon such attorneys' then prevailing hourly rates as opposed to any statutory presumption. Reasonable Attorneys' Fees shall be deemed to include, without limitation, all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals.

4.12 Covenants Run With the Land. All of the grants, covenants, terms, provisions and conditions herein contained shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Borrower and Lender.

4.13 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Deed of Trust to the Note shall be deemed to refer to such replacement Note.

4.14 Further Assurances; After-Acquired Property. At any time, and from time to time, at Borrower's expense and upon request by Lender, Borrower shall make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refilled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurances, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve, [i] the obligations of Borrower described in the Note and under this Deed of Trust and [ii] the lien of this Deed of Trust as a first and prior lien upon and security interest in and to all of the Property, whether now owned or hereafter acquired by Borrower, subject only to the Permitted Exceptions. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such deeds to secure debt, mortgages, deeds of trust, security agreement, financing statements, continuation statements, instruments, certificates and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien and security interest

hereof shall automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Property or any part thereof, to the extent permitted by law.

[Signatures contained on next page.]

IN WITNESS WHEREOF, Borrower has executed, sealed and delivered this Deed of Trust the day, month, and year first above written.

**BORROWER:**

**RIVERBEND CONCORD PROPERTIES I LLC,**  
a North Carolina limited liability company

By: Griffin Industrial, LLC  
a Connecticut limited liability company  
its Sole Member

By: /s/ MICHAEL GAMZON  
Michael Gamzon, President

STATE OF New York     )  
  )   ss  
COUNTY OF New York   )

The foregoing instrument was acknowledged before me this 25th day of August, 2017, by Michael Gamzon, as the President of Griffin Industrial, LLC, a Connecticut limited liability company, the Sole Member of Riverbend Concord Properties I LLC, a North Carolina limited liability company, on behalf of the company.

(Official Seal)

/s/ THERESA GORDON  
Notary Public

Print name of Notary Public: Theresa Gordon

My Commission Expires: August 23, 2021

**EXHIBIT A**

**DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

**LEGAL DESCRIPTION**

LYING AND BEING SITUATE IN CABARRUS COUNTY, NORTH CAROLINA, AND  
BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF THAT CERTAIN 17.9145 ACRE PARCEL, AS SHOWN ON PLAT  
ENTITLED "INTERNATIONAL DRIVE AT POPLAR TENT ROAD – CH REALTY V1 –  
TCA/I CHARLOTTE INTERNATIONAL, LLC (OWNER)" RECORDED IN PLAT BOOK 67  
AT PAGE 63, IN THE OFFICE OF THE REGISTER OF DEEDS OF CABARRUS COUNTY,  
NORTH CAROLINA

LESS AND EXCEPT THE LAND CONVEYED BY NORTH CAROLINA GENERAL  
WARRANTY DEED RECORDED IN BOOK 1950 AT PAGE 165, IN THE OFFICE OF THE  
REGISTER OF DEEDS OF CABARRUS COUNTY, NORTH CAROLINA

## **EXHIBIT B**

### **DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT**

#### **PERMITTED EXCEPTIONS**

1. The lien of ad valorem real estate taxes assessed against the Property but not yet due and payable (but expressly excluding any lien secured by PACE Financing), provided the same are paid as required under this Deed of Trust.
2. Rights of tenants, as tenants only, under Leases of the Property permitted under this Deed of Trust and the other Loan Documents.
3. Matters shown as exceptions on the loan policy of title insurance issued in favor of Lender insuring the lien of this Deed of Trust.

I, Michael S. Gamzon, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Griffin Industrial Realty, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 10, 2017

/s/ MICHAEL S. GAMZON

Michael S. Gamzon

President and Chief Executive Officer

I, Anthony J. Galici, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Griffin Industrial Realty, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 10, 2017

/s/ ANTHONY J. GALICI

Anthony J. Galici

Vice President, Chief Financial Officer and Secretary



**CERTIFICATION OF CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 UNITED STATES CODE SECTION 1350**

In connection with the Quarterly Report of Griffin Industrial Realty, Inc. (the “Company”) on Form 10-Q for the quarter ended August 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Periodic Report”), I, Michael S. Gamzon, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

\_\_\_\_\_/s/ MICHAEL S. GAMZON  
Michael S. Gamzon  
President and Chief Executive Officer  
October 10, 2017

**CERTIFICATION OF CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 UNITED STATES CODE SECTION 1350**

In connection with the Quarterly Report of Griffin Industrial Realty, Inc. (the “Company”) on Form 10-Q for the quarter ended August 31, 2017 as filed with the Securities and Exchange Commission on the date hereof (the “Periodic Report”), I, Anthony J. Galici, Vice President, Chief Financial Officer and Secretary of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

\_\_\_\_\_  
/s/ ANTHONY J. GALICI

Anthony J. Galici  
Vice President, Chief Financial Officer and Secretary  
October 10, 2017