

Prepared By and Upon Recordation Return To:

Norman S. Orr
Burr & Forman LLP
420 North 20th Street, Suite 3400
Birmingham, AL 35203
(205) 251-3000
MS Bar Number: 99218

✶ After Recording, Return to:
The McCaskill Law Firm, P.C.
P.O. Box 1608
Southaven, MS 38671
(662) 996-1112
L612027

TO THE CHANCERY CLERK OF DeSOTO COUNTY, MISSISSIPPI: The real property described herein is located as follows: Lot 9, Building D, Airport Industrial Park P.B.P, as per plat recorded in Plat Book 86, Pages 10-11, in the office of the Chancery Clerk of DeSoto County, Mississippi, *Section 24, T-1-S, R-8-W*

ASSIGNMENT OF RENTS AND LEASES

Borrower: **AIRWAYS DISTRIBUTION CENTER, LLC**
3090 Olive Street, Suite 200
Dallas, Texas 75219
(972) 201-2800

Lender: **SYNOVUS BANK**, a Georgia state banking corporation
800 Shades Creek Parkway, Suite 325
Birmingham, AL 35209
(205)8034590

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment"), dated as of December 19, 2012, by **AIRWAYS DISTRIBUTION CENTER, LLC**, a Delaware limited liability company (hereinafter called "Borrower"), whose address is c/o Mr. Robert T. Vicente, Executive Vice President, Hillwood Investment Properties, 3090 Olive Street, Suite 200, Dallas, Texas 75219, in favor of **SYNOVUS BANK**, a Georgia state banking corporation (hereinafter called "Lender"), whose address is 800 Shades Creek Parkway, Suite 325, Birmingham, Alabama 35209, Attention: Andy Hudson.

WITNESSETH

FOR VALUE RECEIVED, Borrower hereby grants, transfers, and assigns to Lender and its successors and assigns all right, title and interest of Borrower in and to the following:

- (i) all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the real estate described in Exhibit "A" attached hereto (hereinafter referred to as the "Property") (collectively, the "Leases"); and
- (ii) any and all guaranties of payment of the Leases; and
- (iii) the rents, issues, and profits and any other payment made by any and all lessees under the Leases (collectively, the "Rents"), which may hereafter become due pursuant to any of the Leases; and
- (iv) any and all moneys, awards, or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as "Damages"), which may hereafter become due pursuant to any of the Leases; and
- (v) all rights, powers, privileges, options, and other benefits of Borrower under any of the Leases.

THIS ASSIGNMENT is made as additional security for the obligations of the Borrower to the Lender pursuant to (a) that certain Promissory Note in the original stated principal amount of Fourteen Million Five Hundred Thousand and 00/100 Dollars (\$14,500,000.00) with interest (the "Note") executed and delivered by Borrower to Lender on the date thereof; (b) that certain Loan Agreement between Borrower and Lender of even date herewith (the "Loan Agreement"); (c) that certain Deed of Trust, Security Agreement and Fixture Filing of even date herewith executed and delivered by Borrower for the benefit of Lender covering the Property to secure the payment of the Note; and (d) any and all other documents executed by the Borrower or others as security for, or in connection with, the Loan evidenced by the Note and the Loan Agreement (collectively, the "Loan Documents"). *Capitalized terms used herein without definitions shall have the meanings given them in the Loan Agreement.*

This Assignment is intended to be an absolute, present assignment from Borrower to Lender. The rents, issues, and profits of the Property are hereby assigned absolutely by Borrower to Lender, contingent only upon the occurrence of an Event of Default as defined herein.

ARTICLE I
WARRANTIES AND COVENANTS

1.01. **Warranties of Borrower.** Borrower hereby warrants and represents to Lender that:

(a) Borrower is the sole owner of landlord's interest under the Leases, is entitled to receive the rents, issues, profits and security deposits under the Leases and from the Property, and has good right to sell, assign, transfer and set over the same and to grant to and confer upon Lender the rights, interests, powers and authorities herein granted and conferred.

(b) Borrower has not made or permitted to be made any assignment other than this Assignment of any of its rights under the Leases to any person or entity.

(c) Borrower has not done any act or omitted to do any act which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment.

(d) Borrower has not accepted rent under any of the Leases more than thirty (30) days in advance of its due date.

(e) Borrower is not prohibited under any agreement with any other person or entity or under any judgment or decree from the execution and delivery of this Assignment or of the Leases, from the performance of each and every covenant of Borrower hereunder and under the Leases, or from the performance and observance of each and every condition or agreement contained herein or in the Leases.

(f) No action has been brought or threatened which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations herein contained.

1.02. **Covenants of Borrower.** Borrower hereby covenants and agrees with Lender as follows:

(a) Borrower shall (i) obtain Lender's prior written approval to enter into any new Lease, except as expressly set forth in the Loan Agreement; (ii) fulfill, perform and observe each and every condition and covenant of Borrower contained in the Leases; (iii) at the sole cost and expense of Borrower, diligently seek to enforce the performance and observance of each and every covenant and condition of the Leases to be performed or observed by the lessees thereunder in accordance with management practices applicable to warehouses; and (iv) appear in and defend any action arising out of, or in any manner connected with, any of the Leases or the obligations or liabilities of Borrower thereunder, or of any of the lessees, sublessees or guarantors thereunder.

(b) Borrower shall not without the prior written consent of Lender, except as otherwise expressly permitted in the Loan Agreement, (i) modify any Lease; (ii) terminate or accept the surrender of any of the Leases; (iii) waive, or release the lessees from, the performance or observance of any obligation or condition of the Leases; (iv) permit the prepayment of rents for more than thirty (30) days prior to the accrual thereof; or (v) give any consent to any assignment by any of the lessees of any of the Leases.

(c) Upon the occurrence of an Event of Default hereunder and written demand from Lender, Borrower authorizes and directs each and every present and future lessee or sublessee under the Leases to pay rental under their Leases directly to Lender.

(d) Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to indemnify and hold Lender harmless from and against any and all liability, loss or damage which Lender may incur under any of the Leases or under or by reason of this Assignment and from and against all claims and demands whatsoever which may be asserted against it by reason of an act of Lender under this Assignment or under any of the Leases, unless such act constitutes gross negligence or willful misconduct on the part of Lender.

1.03. **Covenants of Lender.** Lender, by acceptance hereof, covenants and agrees with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits of the Property, so long as there shall exist no Event of Default as hereinafter defined, Borrower shall have the right (i) to collect, but not more than thirty (30) days prior to accrual, all such rents pursuant to the Leases, and (ii) to maintain all security deposits and other deposits in a separate, identifiable account in a bank in which funds are federally insured acceptable to Lender.

(b) Upon the payment in full of all indebtedness secured hereby, as evidenced by the recording or filing of an instrument of satisfaction or full release of the Deed of Trust without the recording of another deed of trust in favor of Lender affecting the Property, this Assignment shall become and be void and of no further effect.

ARTICLE II DEFAULT

2.01. **Event of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder:

(a) The failure by Borrower to perform or observe any covenant of Borrower contained in this Assignment after the expiration of any applicable notice and cure periods set forth herein or, if no notice or cure periods are set forth therein, for a period of thirty (30) days after notice of default is given to Borrower by Lender; or

(b) The occurrence of an "Event of Default" under (and as defined in) any of the Loan Documents.

2.02. **Remedies.** Upon the occurrence of any Event of Default, Lender may at its option, with or without notice or demand of any kind (except as may be otherwise expressly provided in any of the Loan Documents), exercise any or all of the following remedies:

- (a) All rights and remedies set forth in the Loan Agreement;
- (b) Exercise all rights of Borrower pursuant to the Leases;
- (c) Perform any and all obligations of Borrower under any or all of the Leases or this Assignment and exercise any and all rights of Borrower herein or therein as fully as Borrower itself could do, including, without limiting the generality of the foregoing: enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new Leases on the Property on any terms and conditions deemed desirable by Lender, and, to the extent Lender shall incur any costs in connection with the performance of any such obligations of Borrower, including costs of litigation, then all such costs shall become a part of the indebtedness secured by the Loan Documents, shall bear interest from the incurrence thereof at the Default Rate specified in the Note, and shall be due and payable on demand;
- (d) In Borrower's or Lender's name, institute any legal or equitable action which Lender in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein; or
- (e) Collect the rents, issues and profits and any other sums due under the Leases with respect to the Property, and apply the same in such order as Lender in its sole discretion may elect to pay (i) all costs and expenses, including attorneys' fees, in connection with the operation of the Property, the performance of Borrower's obligations under the Leases and collection of the rents thereunder; (ii) all costs and expenses, including attorneys' fees, in the collection of any or all of the indebtedness secured by the Loan Documents, including all costs, expenses and attorneys' fees in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the indebtedness secured by the Loan Documents; and (iii) any or all unpaid principal, interest or other charges due under or secured by the Loan Documents. Any amounts remaining after such application shall be applied to the payment of the indebtedness secured by the Loan Documents or to monthly payments thereof, and upon the payment in full of the indebtedness secured by the Loan Documents, then this Assignment and all rights of Lender hereunder shall cease and terminate.

Entry upon and taking possession of the Property and the collection of the rents and the application thereof as aforesaid, shall in no wise operate to cure or waive any Default or Event of Default hereunder or under any other of the Loan Documents, or prohibit the taking of any other action by Lender under any of the Loan Documents or at law or in equity to enforce the payment of such indebtedness or to realize on any other security. Lender shall have the full right to exercise any or all of the foregoing remedies without regard to the adequacy of security for any or all of the indebtedness, and with or without the commencement of any legal or equitable action or the appointment of any receiver or trustee, and shall have the full right to enter upon, take possession of, use and operate all or any portion of the Property which Lender in its sole

discretion deems desirable to effectuate any or all of the foregoing remedies. In no event shall Lender be liable to any lessee under any of the Leases for the return of any security deposit or other deposit in any amount in excess of the amount delivered to Lender by Borrower.

ARTICLE III
GENERAL PROVISIONS

3.01. **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender," such reference shall be deemed to include a reference to the successors and assigns of Borrower or Lender, except nothing herein shall be construed as a consent by Lender to any assignment by Borrower.

3.02. **Terminology and Capitalized Terms.** All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and Sections are for convenience only and neither limit nor amplify the provisions of this Assignment.

3.03. **Severability.** If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment 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.

3.04. **Applicable Law.** This Assignment shall be interpreted, construed and enforced according to the laws of the State of Mississippi.

3.05. **No Third Party Beneficiaries.** This Assignment is made solely for the benefit of Lender and its assigns. No lessee or sublessee under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.06. **No Oral Modifications.** Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.07. **Cumulative Remedies.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies vested in Lender in any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies herein provided prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue and be each and all available to Lender until the indebtedness evidenced by the Loan Documents shall have been paid in full.

3.08. **Counterparts.** This Assignment may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument.

3.09. **Further Assurances.** At any time and from time to time, upon request by Lender, Borrower will 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 refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further assignments, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment and (b) the assignment, lien and security interest created by this Assignment as a first and prior assignment of lien upon and security interest in the Leases and the rents, issues, profits and security deposits and other deposits from the Property.

3.10. **Notices.** Any and all notices, elections or demands permitted or required to be made under this Assignment shall be made and be deemed given in accordance with the provisions relating to notice set forth in the Loan Agreement.

3.11. **Modifications, etc.** Borrower hereby consents and agrees that Lender may at any time and from time to time, without notice to or further consent from Borrower, either with or without consideration, surrender any property or other security of any kind or nature whatsoever held by it or by any person, firm or corporation on its behalf or for its account securing the indebtedness evidenced by the Loan Documents; extend or renew the Note or any other of the Loan Documents for any period; grant releases, compromises and indulgences with respect to the Note or any other of the Loan Documents to any persons or entities now or hereafter liable thereunder or hereunder; release any guarantor or endorser of the Note, the Deed of Trust or any other of the Loan Documents; or take or fail to take any action of any type whatsoever; and no such action with Lender shall take or fail to take in connection with the Loan Documents, or any of them, or any security for the payment of the indebtedness evidenced by the Loan Documents or for the performance of any obligations or undertakings of Borrower, nor any course of dealing with Borrower or any other person, shall release Borrower's obligations hereunder, affect this Assignment in any way or afford Borrower any recourse against Lender. The provisions of this Assignment shall extend and be applicable to all renewals, amendments, extensions, consolidations and modifications of the Loan Documents and the Leases, and any and all references herein to the Loan Documents or the Leases shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

3.12. **Nonrecourse.** Notwithstanding anything in this Assignment or the Loan Documents to the contrary, this Assignment is subject to the non-recourse provisions set forth in Section 7.15 of the Loan Agreement, which are incorporated herein by this reference as if set forth in full herein.

3.13. **Waiver of Jury Trial.** **BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR**

RELATING TO THIS ASSIGNMENT OR OTHER LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE NOTE OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THE LOAN DOCUMENTS, OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

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IN WITNESS WHEREOF, Borrower has caused this Assignment to be executed, as of the day and year first above written.

BORROWER:

AIRWAYS DISTRIBUTION CENTER, LLC,
a Delaware limited liability company

By: [Signature]
Print Name: Robert T. Vicente
Title: Secretary and Treasurer

ACKNOWLEDGMENT

STATE OF TEXAS)
COUNTY OF DALLAS)

Personally appeared before me, the undersigned authority in and for the said county and state, on this 19th day of December, 2012, within my jurisdiction, the within named Robert T. Vicente, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed in the above and foregoing instrument and acknowledged that he/she executed the same in his/her representative capacity, and that by his/her signature on the instrument, and as the act and deed of the entity upon behalf of which he/she acted, executed the above and foregoing instrument, after first having been duly authorized so to do.

[Signature: Paige K. Myrlin]
(Notary Public)
Print Name: Paige K. Myrlin
My Commission Expires: July 22, 2014

(Seal)



EXHIBIT A

Legal Description

Lot 9, Building D, Airport Industrial Park P.B.P., situated in Section 24, Township 1 South, Range 8 West, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 86, Page 10-11, in the Office of the Chancery Clerk of DeSoto County, Mississippi.

Together with, all rights and interests granted in that certain Declaration of Protective Covenants, agreements, easements, charges and lien recorded in Book 405, Page 720, in the Office of the Chancery Clerk of DeSoto County, Mississippi, and all rights and interests granted in those certain Easement Agreements recorded in the Chancery Clerk's Office of DeSoto County, Mississippi, in Book 390, Page 30, Book 410, Page 352, Book 465, Page 421, and Book 441, Page 571, as amended in Book 450, Page 412 and Book 465, Page 421.