



The above described realty shall hereinafter be referred to as "the Property".

TO HAVE AND TO HOLD, the Property unto Mortgagee and Mortgagee's successors and assigns, forever, together with all leases, rents, issues, profits, royalties, income, and other benefits derived from the Property described above (collectively referred to as the "rents"), subject to the right, power and authority hereinafter given to Mortgagee to collect and apply such rents;

TOGETHER WITH, all leasehold estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH, all right, title and interest of Mortgagor in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired;

TOGETHER WITH, all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property;

TOGETHER WITH, all permits, licenses, contracts, easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

TOGETHER WITH, all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

TOGETHER WITH, any and all structures, buildings and improvements now or hereafter erected thereon, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said structures, buildings and improvements (the "Improvements");

TOGETHER WITH, all right, title and interest of Mortgagor in and to all tangible personal property (the "Personal Property") owned by Mortgagor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to: all goods, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment; recreational, window or structural cleaning rigs, maintenance, exclusive of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies; and

TOGETHER WITH, all building permits, contracts, agreements, plans, specifications, surveys, engineering reports, materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with, the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposals, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes,

piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.

TOGETHER WITH, all right, title and interest of the Mortgagor in and to all contracts, agreements and other documents relating to the acquisition, construction and operation of the Development (the "Contract Documents"), together with all (i) changes, additions, extensions, revisions, modifications or guarantees of performance or obligations to the Mortgagor with respect to the Contract Documents and (ii) rights of the Mortgagor to modify or terminate, or waive or release performance or observance of any obligation or condition of, any of the Contract Documents.

TOGETHER WITH, all the estate, interest, right, title, other claim or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages.

The entire estate, property and interest hereby conveyed to Mortgagee may hereafter be referred to as the "Mortgaged Property".

TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

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ARTICLE I  
COVENANTS AND AGREEMENTS OF MORTGAGOR

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Mortgagor hereby covenants and agrees:

1.01 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Note, charges, fees and all other sums as provided in this Mortgage, the Note, the Agreement, any guaranty thereof, and any other instrument given to evidence or further secure the payment or performance of any obligation secured by this Mortgage, together with the principal of, and interest on, any future advances secured by this Mortgage.

1.02 Maintenance, Repair, Alterations. To keep the Mortgaged Property in good condition and repair; not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances, or regulations) any of the Improvements; to complete promptly and in good and workmanlike manner any building or other Improvement which may be constructed on the Property and promptly restore in like manner any Improvements which may be damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Property or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or deterioration of the Mortgaged Property, to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; to comply with the provisions of any lease, if this Mortgage is on a leasehold; not to commit, suffer or permit any act to be done in or upon the Mortgaged Property in violation of any law, ordinance or regulation.

1.03 Required Insurance. To at all times provide, maintain and keep in force the following policies of insurance:

(a) Insurance against loss or damage to the Improvements by fire and any of the risks covered by insurance of the type now known as "fire and extended coverage", in an amount not less than the original amount of the Note or the full replacement cost of the Improvements (exclusive of the cost of excavations, foundations, and footings below the lowest basement floor), whichever is greater; and with not more than \$1,000 deductible from the loss payable for any casualty. The policies of insurance carried in

accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement";

(b) If requested by Mortgagee, business interruption insurance and/or loss of "rental value" insurance in such amounts as are satisfactory to Mortgagee;

(c) During the course of any construction or repair of Improvements on the Property, comprehensive public liability insurance (including coverage for elevators and escalators, if any, on the Mortgaged Property and, if any construction of new Improvements occurs after execution of this Mortgage, completed operations coverage for two years after construction of the Improvements has been completed) on an "occurrence basis" against claims for "personal injury" including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than that required by Mortgagee with respect to personal injury or death of any one or more persons or damage to property;

(d) During the course of any construction or repair of Improvements on the Property, workmen's compensation insurance (including employer's liability insurance, if requested by Mortgagee) for all employees of Mortgagor engaged on or with respect to the Mortgaged Property in such amount as is reasonably satisfactory to Mortgagee, or, if such limits are established by law, in such amounts;

(e) During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles not to exceed \$1,000, in nonreporting form, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance shall contain the "permission to occupy upon completion of work or Occupancy" endorsement;

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(f) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment and escalator equipment, provided the Improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from any such breakdown, in such amounts as are reasonably satisfactory to Mortgagee;

(g) Insurance against loss or damage to the Personal Property by fire and other risks covered by insurance of the type now known as "fire and extended coverage"; and

(h) Such other insurance, and in such amounts, as may from time to time be required by Mortgagee against the same or other hazards.

(i) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against the Mortgagor.

1.04 Delivery of Policies, Payments of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee. All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of the Mortgagee in form satisfactory to the Mortgagee. Mortgagor shall furnish the Mortgagee with an original policy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, then Mortgagor shall furnish Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration of each such policy, Mortgagor shall furnish Mortgagee with

evidence satisfactory to Mortgagee of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgagee. All such policies shall contain a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least fifteen (15) days prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor the amount of all such premiums together with interest thereon at the lesser of 18% per annum or the highest legal rate of interest per annum shall be secured by this Mortgage. At the request of the Mortgagee, Mortgagor shall deposit with the Mortgagee in monthly installments, an amount equal to one-twelfth of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. Mortgagor further agrees, upon Mortgagee's request, to cause all bills, statement or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.04, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.04. Mortgagee may co-mingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereon.

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1.05 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Property or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

(a) In the event of any damage or destruction of the Improvements, Mortgagor shall have the option in its sole discretion of applying all or part of the insurance proceeds (i) to any indebtedness secured hereby and in such order as Mortgagee may determine, or (ii) to the restoration of the Improvements or (iii) to Mortgagor.

(b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

(c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Property as provided in Section 1.02 hereof or restoring all damage or destruction to the Mortgaged Property, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.06 Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Property in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagee or the purchaser or grantee of the Mortgaged Property.

1.07 Indemnification: Subrogation: Waiver of Offset.

(a) If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Property or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify, defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not any such litigation is prosecuted to judgment. If Mortgagee commences an action against Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against Mortgagor by reason of breach.

(b) Mortgagor waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives, for loss of or damage to Mortgagor, the Mortgaged Property, Mortgagor's property or the property of others under Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(c) All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Property or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

1.08 Taxes and Impositions.

(a) Mortgagor agrees to pay, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation rent or landlord or tenant taxes and assessment, utility taxes and assessment, non-governmental levys or assessments such as maintenance charges, owner association dues or charges or fees, levys or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Property, or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine,

penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Property in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby.

(c) Subject to the provisions of subparagraph (d) of this Section 1.08, Mortgagor covenants to furnish Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.

(d) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.08, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the mortgaged property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) At the request of Mortgagee, Mortgagor shall pay to Mortgagee, on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth the annual Impositions reasonably estimated by Mortgagee to pay the installment of taxes next due on the Mortgaged Property. In such event Mortgagor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.08, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.08. Mortgagee shall not be obliged to pay or allow any interest on any sums held by Mortgagee pending disbursement or application hereunder, and Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as Mortgagee may in its absolute discretion deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Should Mortgagor fail to deposit with Mortgagee (exclusive of that portion of said payments which has been applied by Mortgagee on the principal of or interest on the indebtedness secured by the Loan Instruments) sums sufficient to fully pay such Impositions at least thirty (30) days before

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delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligations so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided, or at the option of Mortgagee the latter may, without making any advance whatever, apply any sums held by it upon any obligation of the Mortgagor secured hereby. Should any default occur or exist on the part of the Mortgagor in the payment of any of Mortgagor's and/or any guarantor's obligations under the terms of the Loan Instruments, Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Mortgaged Property or otherwise, upon any indebtedness or obligation of the Mortgagor secured hereby in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums paid by Mortgagor to Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Note and this Mortgage or any of the obligations of Mortgagor and/or guarantor under this Mortgage or the Loan Agreement.

(f) Mortgagor covenants and agrees not to suffer, permit or initiate the joint assessment of the real and Personal Property, or any other procedure whereby the lien of the real property taxes and the lien of the Personal Property taxes shall be assessed, levied or charged to the Mortgaged Property as a single lien.

(g) If requested by Mortgagee, Mortgagor shall cause to be furnished to Mortgagee a tax reporting service covering the Mortgaged Property of the type, duration and with a company satisfactory to Mortgagee.

1.09 Utilities. To pay when due all utility charges which are incurred by Mortgagor for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Property or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

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1.10 Ground Leases. To pay when due all rents and other payments and perform all covenants and agreements contained in any lease, sublease or ground lease which may constitute a portion of or an interest in the Property; not to surrender, assign or sublease any such lease, sublease or ground lease, nor take any other action which would effect or permit the termination of any such lease, sublease or ground lease. Mortgagor covenants to furnish to Mortgagee within thirty (30) days after the date upon which such rents or other payments are due and payable by Mortgagor, receipts or other evidence satisfactory to Mortgagee evidencing the payment thereof.

1.11 Actions Affecting Mortgaged Property. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee or Mortgagor; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee or Mortgagor may appear.

1.12 Actions by Mortgagee to Preserve the Mortgaged Property. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in this Mortgage, the Note, the Loan Agreement or any guaranty of said instruments, Mortgagee, without obligation so to do and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation, (i) to enter upon and take possession of the Mortgaged Property; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Property which it considers necessary or proper to keep the Mortgaged Property in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of the Mortgagee; (iv) to pay, purchase, contest or compromise



any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the security of the Mortgage or to be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of of the foregoing rights, including without limitation costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

1.13 Survival of Warranties. To fully and faithfully satisfy and perform the obligations of Mortgagor contained in the Mortgagor's loan application and Mortgagee's loan commitment, and any such application and commitment between Mortgagor and any assignee of Mortgagee, and each agreement of Mortgagor incorporated by reference therein or herein, and any modification or amendment thereof. All, representation, warranties and covenants of Mortgagor contained therein or incorporated by reference shall survive the close of, escrowing and funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

1.14 Eminent Domain. That should the Mortgaged Property, or any part thereof or Interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to Mortgagee.

(a) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to Mortgagee and Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee or Mortgagor may require.

(b) In the event any portion of the Mortgaged Property is so taken or damaged, Mortgagee shall have the option, in its sole and absolute discretion, to apply all such Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by it in connection with such Proceeds, upon any indebtedness secured hereby and in such order as Mortgagee may determine, or to apply all such Proceeds, after such deductions, to the restoration of the Mortgaged Property upon such conditions as Mortgagee may determine. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.15 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.16 Successors and Assigns. That this Mortgage applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term "Mortgagee" shall mean the owner and holder of the Note, whether or not named as Mortgagee herein.

1.17 Inspections. That Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Property for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage, the Note, the Loan Agreement and any guaranty of any such instruments.

1.18 Liens. To pay and properly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property or any part thereof or interest therein. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as may be prescribed by law.

1.19 Mortgagee's Powers. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option any parcel, portion or all of the Mortgaged Property, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

1.20 Financial Statements. Mortgagor will cause to be delivered to Mortgagee as soon as practicable, but in any event within 120 days after the close of each operating year of Mortgagor, a statement of condition or balance sheet of Mortgagor as at the end of such operating year, all certified as to accuracy by an independent certified public accountant or representative of Mortgagor acceptable to Mortgagee, and an annual operating statement showing in reasonable detail all income and expenses of Mortgagor with respect to the operation of the Mortgaged Property prepared by Mortgagor and certified as to accuracy by an independent certified public accountant or officer of Mortgagor acceptable to Mortgagee.

1.21 Tradenames. At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the tradenames under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other tradenames with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said tradenames, and will, upon request of Mortgagee, execute any additional financing statements and other certificates revised to reflect the change in tradename.

## ARTICLE II

### ASSIGNMENT OF RENTS, ISSUES AND PROFITS

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2.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all the rents, issues and profits of the Mortgaged Property, and hereby gives to and confers upon the Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for any such rents, issues and profits and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such rents, issues and profits (but not more than two months in advance) prior to or at any time there is not an event of default under this Mortgage, the Note, the Loan Agreement and a guaranty of such documents and any other instruments given to evidence to further secure the payment and performance of any obligation secured by this Mortgage (which documents collectively are sometimes hereinafter referred to as "Loan Documents"). The assignment of the rents, issues and profits of the Mortgaged Property in this Article II is intended to be an absolute assignment from the Mortgagor to the Mortgagee and not merely the passing of a security interest. The rents, issue and profits

are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an event of default under any of the Loan Instruments.

2.02 Collection Upon Default. Upon any event of default under any of the Loan Instruments, Mortgagee may at any time without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name sue for or otherwise collect such rents, issues and profits, including those part due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Property, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

### ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property located on or at the Mortgaged Property, including without limitation any and all property of similar type or kind hereafter located on or at the Mortgaged Property for the purpose of securing all obligations of Mortgagor contained in any of the Loan Instruments.

3.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

(e) Mortgagor maintains a place of business in the State of Alabama and Mortgagor will immediately notify Mortgagee in writing of any change in its place of business as set forth in the beginning of this Mortgage.

(f) At the request of Mortgagee, Mortgagor will join Mortgagee in executing one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of the State of Alabama or such other state wherein the Property is located in form satisfactory to Mortgagee, and will pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

(g) All covenants and obligations of Mortgagor contained herein relating to the mortgaged property shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

(h) This Mortgage constitutes a Security Agreement as that term is used in the Uniform Commercial Code of the State of Alabama.

ARTICLE IV  
EVENTS OF AND REMEDIES UPON DEFAULT

4.01 Events of Default. Any of the following events shall be deemed an event of default hereunder:

(a) Default shall be made in the payment of any installment of principal or interest or any other sum secured hereby when due; or

(b) The making of any contract or agreement by the Mortgagor whereby anyone may acquire the right to place a lien, mortgage or other encumbrance against the Mortgaged Property; or

(c) Actual or threatened alteration, repair, addition to and demolition or removal of any building on the Mortgaged Property without the consent of the Mortgagee first having obtained in writing; or

(d) In case any act is done or suffered to be done by the Mortgagor whereby the security of this Mortgage shall be weakened, diminished or impaired; or

(e) Any transfer without the prior written consent of the Mortgagee of title of the Property, or any part thereof, whether by sale, conveyance or transfer of stock of a corporation, whether voluntary or involuntary or by operation of law, the Mortgagee may at its option declare the entire balance of the indebtedness, with interest thereon including any prepayment fee provided for herein or in the Note secured hereby, immediately due and payable. Consent to one such transaction shall not be a waiver of the right of Mortgagee to accelerate said balance on any future transfer; or

(f) Mortgagor shall file a voluntary petition in Bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangements, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statutes, law or regulations relating to bankruptcy, insolvency or other relief for debtor; or it shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(g) A Court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Mortgagor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first day of entry thereon; or any trustee, receiver or liquidator of Mortgagor or of all or any part of the Mortgaged Property, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Mortgagor and such appointment shall remain vacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(h) A Writ of Execution or attachment or any similar process shall be issued or levied against all or any part or interest in the Mortgaged Property, or any judgment involving monetary damage shall be entered against Mortgagor which shall become a lien on the Mortgaged Property or any portion thereof or interest therein and such execution, attachment or similar process of judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

(i) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in any of the Loan Documents (including, but not limited to, the Note; this Mortgage; and the Loan Agreement) or any part thereof, not referred to in this Section 4.01.

**4.02 Remedies Upon Default.** In the event of any event of default Mortgagee may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter Mortgagee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Property, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Mortgaged Property, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon any indebtedness secured hereby, all in such order as Mortgagee may determine. The entering upon and taking possession of the Mortgaged Property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Property or the collection, receipt and application of rents, issues or profits, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any event of default, including the right to exercise the power of sale;

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

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

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

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

(3) Require Mortgagor to assemble the Personal Property or any portion thereof, at a place designated by Mortgagee and reasonably convenient to both parties, and promptly to deliver such Personal Property to Mortgagee, or an agent or representative designated by it. Mortgagee, and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and property to exercise Mortgagee's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at

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

4.03 Foreclosure By Power of Sale. Mortgagee may, at its option, elect to foreclose by exercise of the power of sale herein contained.

(a) In the event of the happening of any one of the events of default enumerated in Article IV of this Mortgage, Mortgagor does hereby authorize the Mortgagee to take possession of the Mortgaged Property, and with or without taking possession of Mortgaged Property after advertising the time, place and terms of sale, for three successive weeks prior to said sale in some newspaper published in the county in which the Mortgaged Property or a part thereof is situated, proceed to sell the Mortgaged Property covered by this Mortgage in lots or parcels or in mass as the Mortgagee, its agents or assigns deem best, at the courthouse door in the county in which the Mortgaged Property or any part thereof is situated, at public outcry, to the highest bidder for cash.

(b) The proceeds of sale shall be applied first, to the payment of any liens for taxes, assessments or other prior charges against the Mortgaged Property; and second, to the payment of the expenses of sale, including the cost of advertising, and reasonable attorneys' fee, the cost of executing and recording deeds to the purchaser; and third, any balance to the payment of the indebtedness evidenced by the Note or any additional Note or advance payment, as provided for in this Mortgage and secured by this Mortgage, including interest to the date of sale and any other sum which may be a charge upon the Mortgaged Property; and fourth, any balance shall be paid to the Mortgagor.

(c) Mortgagor does hereby authorize and empower the Mortgagee to bid for and become the purchaser of the property described in this Mortgage or a portion thereof, which said sale shall be made under the power contained in this Mortgage under decree of some court of competent jurisdiction, and does hereby authorize the attorney for the Mortgagee, its agent or attorney or the auctioneer making said sale, to execute deed to the purchaser at any sale of the Property covered by this Mortgage, thereby vesting in the purchaser all right, title and interest of the Mortgagor in and to all of the Mortgaged Property, or any part thereof, of whatsoever kind, covered by this Mortgage, and undersigned agrees to pay a reasonable attorneys' fee to the Mortgagee or assigns, for the foreclosure in Chancery, should same be so foreclosed, the same to be a part of the debt hereby secured.

4.04 Appointment of Receiver. If an event of default described in Section 4.01 of this Mortgage shall have occurred and be continuing, Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Property or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgagee in case of entry as provided in Section 4.02 (a) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Property unless such receivership is sooner terminated.

4.05 Remedies Not Exclusive. Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligation secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Instrument or any agreement or any laws now or hereafter in force, notwithstanding sum or all of said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by Mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement whether by court action pursuant to the power of sale or other powers herein contained shall prejudice or in any manner affect Mortgagee's right to realize upon or enforce any other security now or hereafter held by Mortgagee, its being agreed that Mortgagee shall be

entitled to enforce this Mortgage and any other security now or hereafter held by Mortgagee in such order and manner as may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by the Loan Instruments to Mortgagee may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

#### ARTICLE V MISCELLANEOUS

5.01 Governing Law. This Mortgage shall be governed by the laws of the State of Alabama. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of the Loan Documents are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

5.02 Submission to Jurisdiction: The Mortgagor irrevocably submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (the "Courts") over any suit, action, or proceeding arising out of or relating to this Mortgage; and further, waives any objection that the Mortgagor may now or hereafter have based on improper venue, lack of jurisdiction, inconvenience of forum, in any action brought in any of the Courts.

5.03 Waiver of Jury Trial. The Mortgagor, the Guarantor, the Mortgagee, or a beneficiary or successor, or any of them, do each hereby waive all rights to a trial by jury in any suit, action, or proceeding relating to any transaction, grievance, or claim under this Mortgage, including the Loan Documents. This waiver is knowingly, voluntarily and intentionally being entered into and is part of the consideration and inducement of the parties entering into this Mortgage and the making of the Note.

5.04 Mortgagor Waiver of Rights. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property, and (ii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay or extension, and Mortgagor, for Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the secured indebtedness and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Mortgagor, Mortgagor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force such law shall not thereafter be deemed to preclude the application of this Section. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Alabama pertaining to the rights and remedies of sureties.

5.05 Limitation of Interest. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage and the Note and all other instruments securing the Note to contract in strict compliance with the

usury laws of the State of Alabama governing the loan evidenced by the Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Alabama governing the loan evidenced by the Note. Mortgagor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Alabama and the provisions of this Section shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws of the State of Alabama, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Mortgagor upon such determination.

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**5.06 Environmental Matters.** The Mortgagor represents and warrants to Mortgagee that neither the Property nor Mortgagor is in violation of or subject to any existing, pending, or threatened investigation or inquiry by any governmental authority, nor will the Improvements be maintained or used in violation of any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Mortgagor has not obtained and is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Improvements by reason of any environmental laws, rules or regulations; and no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Property. Mortgagor agrees that it will not in its use of the Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Property (the terms "Hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Mortgagor shall indemnify and hold Mortgagee harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Mortgagee in the event either the Mortgagor, the Property, or the Improvements (whether or not due to any fault of Mortgagor), is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure.

**5.07 Invalidity of Certain Provisions.** If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

**5.08 Subrogation.** To the extent that proceeds of the Note are owed to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Property, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens owed by any owner or holder of outstanding liens, charges and



prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.09 Construction Mortgage. If this Mortgage is a construction mortgage, it secures a loan incurred to finance the construction of Improvements on the Property including the acquisition cost of Property and certain costs incurred in planning, architectural and engineering studies, zoning and similar expenses. It is understood and agreed that funds to be advanced upon the Note are to be used in the construction of the Improvements on the Property in accordance with the Loan Agreement, which Loan Agreement is incorporated herein by reference to the same extent as if fully set forth herein and made a part of this Mortgage. This Mortgage secures the payment of all sums and the performance of all covenants required by Mortgagor by said Loan Agreement.

5.10 Future Advances. Upon request of Mortgagor, Mortgagee, at Mortgagee's option prior to release of Mortgage, may make future advances to Mortgagor. Such future advances, with interest thereon, shall be secured by this Mortgage when evidenced by promissory note stating that said notes are secured hereby.

5.11 No Merger. If both the Lessor's and Lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Mortgage and the Lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates. In addition, upon the foreclosure of the lien created by this Mortgage on the Mortgaged Property pursuant to the provisions hereof, any leases or subleases then existing and created by Mortgagor shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Mortgagee or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Mortgagee or any such purchaser shall constitute a termination of any lease or sublease unless Mortgagee or such purchaser shall give written notice thereof to such tenant or subtenant.

5.12 Construction Singular and Plural Words. Singular and plural words used herein to designate the undersigned Mortgagors shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a corporation.

5.13 Waiver of Homestead, Dower and Curtesy. Mortgagor hereby waives all rights of homestead exemption in the mortgaged property and relinquishes all right of dower and curtesy in the mortgaged property.

5.14 Release. Upon payment of all sums secured by this Mortgage and upon performance of all acts agreed hereunder to be done, this Mortgage shall become null and void, and Mortgagee shall release this Mortgage, without charge to Mortgagor. Mortgagor shall pay all costs of recordation, if any.

5.15 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

ARTICLE VI  
SPECIAL PROVISIONS

IN WITNESS WHEREOF, the Mortgagor has consented these presents to be executed on the date and year first above noted.

MORTGAGOR(S)

WITNESS:

William E. Connell

William E. Connell

Gayla P. Connell

Gayla P. Connell

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PAGE

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800M

STATE OF ALABAMA )

Shelby COUNTY )

On this the 15 day of March, 1989, I, the undersigned authority, a Notary Public in and for said county and in said state, hereby certify that William E. Connell and wife, Gayla P. Connell, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me that, being informed of the contents of the conveyance, they executed the same voluntarily and as their act on the day the same bears date.

Given under my hand and seal of office this the 15th day of March, 1989.

Notary Public

My Commission Expires: 9-11-91

STATE OF ALA. SHELBY  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 MAR 20 PM 3: 18

Thomas A. Swindham  
JUDGE OF PROBATE  
18

1. Deed Tax \$  
2. Mtg Tax 60.00  
3. Recording Fee 45.00  
4. Indexing Fee 1.00  
TOTAL 106.00