

After recording return to:
Arnall Golden & Gregory
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3450
Attn: Philip C. Thompson, Esq.

STATE OF ALABAMA
COUNTY OF SHELBY

**SECOND PRIORITY MORTGAGE . . .
SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES**

THIS SECOND PRIORITY MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES (the "Mortgage") dated as of July 11, 1997, is executed and delivered by INTOWN SUITES SOUTHPARK, LLC, a Georgia LLC ("Grantor"), in favor of TUCKER FEDERAL BANK, a federally chartered savings and loan association ("Grantee"). Capitalized terms used but not defined in the following recitals shall have the meaning set forth in Article I hereof.

WITNESSETH:

WHEREAS, Grantor seeks to develop a 124 room extended stay apartment motel project known as "Intown Suites" located in Hoover, Shelby County, Alabama (the "Project");

WHEREAS, Grantor is financing the Project in part with loan proceeds to be advanced under a construction loan in the original principal amount of \$2,682,000.00 from Bank United, a national banking association; and

WHEREAS, at the request of Grantor, Grantee is willing to lend Grantor \$894,000.00 pursuant to the Promissory Note (as hereinafter defined) executed in accordance with the terms of the Loan Agreement, only if Grantor executes and delivers this Mortgage as security for the payment of all sums of any nature whatsoever which may or shall become due and payable by Grantor to Grantee in accordance with the provisions of the Promissory Note and the Loan Agreement and as security for the observance and performance by Grantor of the terms, covenants and provisions of the Promissory Note and the Loan Agreement on the part of Grantor to be observed and performed.

This conveyance is made subject to that certain Mortgage, Assignment and Security Agreement executed by Intown Suites SouthPark, LLC, a Georgia LLC in favor of Bank United, a national banking association, dated July 11, in securing, an indebtedness evidenced by a Real Estate Note in the original amount of \$2,682,000.00 and recorded in Book _____, Page _____, Records of Shelby County, Alabama: Grantor agrees that in the event of any default in the performance of any of the obligations secured by the prior Mortgage, the Grantee and assigns may make any payments or perform any act necessary to remedy said default and the cost thereof shall be added to the indebtedness hereby secured. Any such default in said prior Mortgage and the Note secured thereby may at the option of the Grantee be deemed a default under this document.

NOW, THEREFORE, to secure the performance and observance by the person or entity obligated thereon of all covenants and conditions contained in the Promissory Note, in any

07/14/1997-22114
02:03 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 MEL 1442.00

Inst # 1997-22114

renewal, extension or modification thereof in this Mortgage, Security Agreement and Assignment of Leases, and in all other instruments securing the Promissory Note; to secure in accordance with Section 7-9-204, as amended, Code of Laws of Alabama (1993) all future advances and re-advances that may subsequently be made to the Grantor by the Grantee, evidenced by the aforesaid Promissory Note or any other promissory notes, and to secure all obligations of Grantor under the "Loan Documents" as herein defined; any and all other indebtedness now or hereafter owing by Grantor to Grantee, 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, modifications, consolidations, replacements and extensions thereof, all indebtedness and obligations secured by this Mortgage being herein sometimes referred to as the "Indebtedness"; provided, however, that nothing contained herein shall create an obligation on the part of the Grantee to make future advances or re-advances to the Grantor the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by the Grantee, including court costs and reasonable attorneys' fees; to charge the properties, interests and rights hereinafter described with such payment, performance and observance; and for and in consideration of the sum of One and No/100 (US\$1.00) Dollar paid by the Grantee to the Grantor this date, and of other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor covenants, and agrees with Grantee, as follows:

ARTICLE I - Certain Definitions; Granting Clauses; Secured Indebtedness

Section 1.1 Certain Definitions and Reference Terms. In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it:

"Affiliate" shall mean a person, partnership, corporation, limited liability company, trust or other entity, directly or indirectly, through one or more intermediaries, which controls, is controlled by or is under common control with the person in question. The term "control," as used in the immediately preceding sentence, means the right to exercise, directly or indirectly, the majority of the voting rights attributable to such partnership, corporation, limited liability company, trust or other entity.

"Grantee" shall mean Tucker Federal Bank, a federally chartered savings and loan association, 2355 Main Street, Tucker, Georgia 30084.

"Grantor" shall mean Intown Suites SouthPark, LLC, a Georgia LLC, having an office and place of business located at 2102 Piedmont Road, Atlanta, Georgia 30324.

"Loan Agreement" shall mean the Second Priority Loan Agreement between Grantor and Grantee of even date herewith, as the same may be modified or amended from time to time.

"Promissory Note" shall mean the Second Priority Loan Promissory Note" executed by Grantor in favor of Grantee of even date herewith, as the same may be modified or amended from time to time.

"Project" shall mean that certain extended stay apartment development with 124 rental apartment units and parking facilities to be known as "Intown Suites" and to be constructed on the Land, which is in Hoover, Alabama.

"Bank United" shall mean Bank United, a national banking association, with offices located at 3200 Southwest Freeway, Suite 2000, Houston, Texas 77251-1370.

Section 1.2 Property. Grantor has GRANTED, BARGAINED, SOLD, CONVEYED, TRANSFERRED, ASSIGNED and SET OVER, and by these presents, does hereby GRANT, BARGAIN, SELL, CONVEY, TRANSFER, ASSIGN and SET OVER to Grantee the following: (a) all of Grantor's right, title, interest in and to the real estate (herein called the "Land"), described in Exhibit A attached hereto and incorporated herein by reference, together with (i) all improvements now or hereafter situated or to be situated on the Land (herein together called the "Improvements"), and (ii) all right, title and interest of Grantor, now owned or hereafter acquired, in and to (A) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements, (B) any strips or gores between the Land and abutting or adjacent properties, (C) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements, (D) all claims, actions and causes of action, both in law and in equity, with respect to the Land or the Improvements, and (E) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); and (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, now owned or hereafter acquired by Grantor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); and (c) all (i) plans and specifications for the Improvements, (ii) Grantor's rights, but not liability for any breach by Grantor, under all commitments (including any commitment for financing to pay any of the "secured indebtedness," (as hereinafter defined)), insurance policies, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to trademarks, trade names, goodwill and symbols) related to the Premises or the Accessories or the operation thereof, (iii) deposits (including but not limited to Grantor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories, (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories, (v) leases, rents,

royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article III hereof), (vi) fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities of the Premises, (vii) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof, and (viii) engineering, accounting, title, legal, and other technical or business data concerning the Property which are in the possession of Grantor or in which Grantor can otherwise grant a security interest; and (d) all (i) proceeds of or arising from the properties, rights, titles and interests referred to above in this Section 1.2, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto, and (ii) other interests of every kind and character which Grantor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.2 and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests, and if the estate of Grantor in any of the property referred to above in this Section 1.2 is a leasehold estate, this conveyance shall include, and the lien and interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Grantor in or to the property demised under the lease creating the leasehold estate.

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "**Property**"), to the use, benefit and behoof of Grantee, forever, subject to the "Permitted Encumbrances" (as hereinafter defined).

Section 1.3 Security Interest. Grantor hereby grants to Grantee a security interest in all of the Property which constitutes personal property or fixtures (herein sometimes collectively called the "**Collateral**"). In addition to its rights hereunder or otherwise, Grantee shall have all of the rights of a secured party under the Uniform Commercial Code of Alabama, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law.

Section 1.4 Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following obligations, indebtedness and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time: (a) the principal of, interest on, and all other amounts, payments, and premiums due under or secured by the Promissory Note, the Loan Agreement, this Mortgage and any and all other documents now or hereafter executed by Grantor, or any other person or party in connection with the obligations and undertakings evidenced by the Promissory Note and the Loan Agreement (the Promissory Note, the Loan Agreement, this Mortgage and such other documents being sometimes referred to herein as the "**Loan Documents**"); and (b) any and all of the covenants, conditions, warranties, representations (other than to repay the indebtedness described in the preceding clause (a)) made or undertaken by Grantor to Grantee, as set forth in this Mortgage, the Promissory Note, the Loan Agreement and any other Loan Documents,

and in any deed, lease, sublease or other form of conveyance or any other agreement pursuant to which Grantor is granted a possessory interest in the Property; and (c) all other loans and future advances made by Grantee to Grantor and all other debts, obligations and liabilities of Grantor of every kind and character now or hereafter existing in favor of Grantee, however and whenever incurred, whether direct or indirect, primary or secondary, joint or several, fixed or contingent, secured or unsecured, and whether originally payable to Grantee or to a third party and subsequently acquired by Grantee; provided, however, and notwithstanding the foregoing provisions of this clause (c), this Mortgage shall not secure any such other loan, advance, debt, obligation or liability with respect to which Grantee is by applicable law prohibited from obtaining a lien or security title on real estate nor shall this clause (c) operate or be effective to constitute or require any assumption or payment by any person, in any way, of any debt of any other person to the extent that the same would violate or exceed the limit provided in any applicable usury or other law. The indebtedness and obligations referred to in this Section 1.4 are hereinafter sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby."

ARTICLE II - Representations, Warranties and Covenants

Section 2.1 Grantor represents, warrants and covenants as follows:

(a) **Payment and Performance.** Grantor will make due and punctual payment of the secured indebtedness. Grantor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Deed and the other Loan Documents and will not permit a default to occur hereunder or thereunder. Time shall be of the essence in this Mortgage.

(b) **Title and Permitted Encumbrances.** Grantor has, in Grantor's own right, and Grantor covenants to maintain lawful, good and marketable title in and to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, interests, and encumbrances except for (i) the matters, if any, set forth under the heading "Permitted Exceptions" in Exhibit B attached hereto and incorporated herein by reference, which are Permitted Exceptions only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) other liens and security interests (if any) in favor of Grantee (the matters described in the foregoing clauses (i), (ii) and (iii) being herein called the "Permitted Encumbrances"). Grantor, and Grantor's successors and assigns, will warrant and forever defend title to the Property, subject as aforesaid, to Grantee and its successors and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof, except for claims arising by, through and under Grantee. Grantor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Grantee. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Grantee of any existing or future violation or other breach thereof by Grantor, by the Property or otherwise. No part of the Property constitutes all or any part of the principal residence of Grantor if Grantor is an individual. If any right or interest of Grantee in the Property or any part thereof shall be

endangered or questioned or shall be attacked directly or indirectly, Grantee (whether or not named as the party to legal proceedings with respect thereto), is hereby authorized and empowered to take such steps as in its discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Grantee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Grantee, and Grantee shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Grantor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all ad valorem taxes assessed against the Property or any part thereof, and shall deliver promptly to Grantee such evidence of the payment thereof as Grantee may require.

(d) Insurance. Grantor shall obtain and maintain at Grantor's sole expense: (i) mortgagee title insurance issued to Grantee covering the Premises as required by Grantee; and (ii) all-risk insurance with respect to all insurable Property, against loss or damage by fire, lightning, windstorm, explosion, hail, tornado and such hazards as are presently included in so-called "all-risk" coverage and against such other insurable hazards as Grantee may require, in an amount not less than 100% of the full replacement cost, including the cost of debris removal, without deduction for depreciation and sufficient to prevent Grantor and Grantee from becoming a co-insurer, such insurance to be in builder's risk (non-reporting) form during and with respect to any construction on the Premises; and (iii) if and to the extent any portion of the Improvements is in a special flood hazard area, a flood insurance policy in an amount equal to the principal amount of the Promissory Note or the maximum amount available; and (iv) commercial general public liability insurance, on an "occurrence" basis, for the benefit of Grantor and Grantee as named insureds; and (v) statutory workers' compensation insurance with respect to any work on or about the Property; and (vi) such other insurance on the Property as may from time to time be required by Grantee (including but not limited to rental loss or business interruption insurance, boiler and machinery insurance, earthquake insurance, and war risk insurance) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height, type, construction, location, use and occupancy of buildings and improvements. All insurance policies shall be issued and maintained by insurers, in amounts, with deductibles, and in form satisfactory to Grantee, and shall require not less than thirty (30) days' prior written notice to Grantee of any cancellation or change of coverage. All insurance policies maintained, or caused to be maintained, by Grantor with respect to the Property, except for public liability insurance, shall provide that each such policy shall be primary without right of contribution from any other insurance that may be carried by Grantor or Grantee and that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured. If any insurer which has issued a policy of title, hazard, liability or other insurance required pursuant to this Mortgage or any other Loan Document becomes insolvent or the subject of any bankruptcy, receivership or similar proceeding or if in Grantee's reasonable

opinion the financial responsibility of such insurer is or becomes inadequate, Grantor shall, in each instance promptly upon the request of Grantee and at Grantor's expense, obtain and deliver to Grantee a like policy (or, if and to the extent permitted by Grantee, a certificate of insurance) issued by another insurer, which insurer and policy meet the requirements of this Deed or such other Loan Document, as the case may be. Without limiting the discretion of Grantee with respect to required endorsements to insurance policies, all such policies for loss of or damage to the Property shall contain a standard mortgagee clause (without contribution) naming Grantee as additional insured as mortgagee notwithstanding (i) any act, failure to act or negligence of or violation of any warranty, declaration or condition contained in any such policy by any named insured, (ii) the occupation or use of the Property for purposes more hazardous than permitted by the terms of any such policy, (iii) any foreclosure or other action by Grantee under the Loan Documents, or (iv) any change in title to or ownership of the Property or any portion thereof, such proceeds to be held for application as provided in the Loan Documents. The originals or duplicates of each initial insurance policy (or to the extent permitted by Grantee, a copy of the original policy and a satisfactory binder of insurance) shall be delivered to Grantee at the time of execution of this Mortgage, with premiums fully paid, and each renewal or substitute policy (or certificate) shall be delivered to Grantee, with premiums fully paid, at least ten (10) days before the termination of the policy it renews or replaces. Grantor shall pay all premiums on policies required hereunder as they become due and payable and promptly deliver to Grantee evidence satisfactory to Grantee of the timely payment thereof. If any loss occurs at any time when Grantor has failed to perform Grantor's covenants and agreements in this paragraph, Grantee shall nevertheless be entitled to the benefit of all insurance covering the loss and held by or for Grantor, to the same extent as if it had been made payable to Grantee subject to the rights of Bank United or its successor in interest as first lien priority lender to include its right to elect to apply all or a portion of such insurance proceeds to repair or restore the Property so damaged. Upon any foreclosure hereof or transfer of title to the Property in extinguishment of the whole or any part of the secured indebtedness, all of Grantor's right, title and interest in and to the insurance policies referred to in this Section (including unearned premiums) and all proceeds payable thereunder shall thereupon vest in the purchaser at foreclosure or other such transferee, to the extent permissible under such policies. Grantee shall have the right (but not the obligation) to make proof of loss for, settle and adjust any claim under, and receive the proceeds of, all insurance for loss of or damage to the Property, subject to the rights of Bank United or its successor in interest as first lien priority lender to include its right to elect to apply all or a portion of such insurance proceeds to repair or restore the Property so damaged, and the expenses incurred by Grantee in the adjustment and collection of insurance proceeds shall be a part of the secured indebtedness and shall be due and payable to Grantee on demand. Grantee shall not be, under any circumstances, liable or responsible for failure to collect or exercise diligence in the collection of any of such proceeds or for the obtaining, maintaining or adequacy of any insurance or for failure to see to the proper application of any amount paid over to Grantor. Any such proceeds received by Grantee shall, after deduction therefrom of all reasonable expenses actually incurred by Grantee, including attorneys' fees, at Grantee's option be (1) released to Grantor, or (2) applied (upon compliance with such terms and conditions as may be required by Grantee) to repair or restoration, either partly or entirely, of the Property so damaged, or (3) applied to the payment of the secured indebtedness in such order and manner as Grantee, in its sole discretion, may elect, whether or not due. In any event, the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof

shall not be excused. Grantor shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Property.

(e) Reserve for Insurance, Taxes and Assessments. Upon the occurrence of a default hereunder, to secure certain of Grantor's obligations in paragraphs (c) and (d) above, but not in lieu of such obligations, Grantor will, at the request of Grantee, deposit with Grantee a sum equal to ad valorem taxes, assessments and charges (which charges for the purpose of this paragraph shall include without limitation any recurring charge which could result in a lien against the Property) against the Property for the current year and the premiums for such policies of insurance for the current year, all as estimated by Grantee and prorated to the end of the calendar month following the month during which Grantee's request is made, and thereafter will deposit with Grantee, on the first day of each month, sufficient funds (as estimated from time to time by Grantee) to permit Grantee to pay at least fifteen (15) days prior to the delinquency date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance, except to the extent that such funds are deposited for such purposes with Bank United or its successor in interest as first lien priority lender. Grantee shall have the right to rely upon tax information furnished by applicable taxing authorities in the payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by Grantee for future use, applied to any secured indebtedness or refunded to Grantor, at Grantee's option, and any deficiency in such funds so deposited shall be made up by Grantor upon demand of Grantee. All such funds so deposited shall bear no interest, may be mingled with the general funds of Grantee and shall be applied by Grantee toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to Grantee by Grantor (which statements shall be presented by Grantor to Grantee a reasonable time before the applicable amount is delinquent); provided, however, that, if a default shall have occurred hereunder, such funds may at Grantee's option be applied to the payment of the secured indebtedness in the order determined by Grantee in its sole discretion, and that Grantee may (but shall have no obligation) at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Grantor's interest in the Property for any reason (including without limitation the foreclosure of a superior or subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Grantor's interest in and rights to such funds held by Grantee under this paragraph but subject to the rights of Grantee hereunder.

(f) Condemnation. Grantor shall notify Grantee immediately of any threatened or pending proceeding for condemnation affecting the Property or arising out of damage to the Property, and Grantor shall, at Grantor's expense, diligently prosecute any such proceedings. Grantee shall have the right (but not the obligation) to participate in any such proceeding and to be represented by counsel of its own choice. Subject to the rights of Bank United or its successor in interest as first lien priority lender, Grantee shall be entitled to receive all sums which may be awarded or become payable to Grantor for the condemnation of the Property, or any part thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for injury or damage to the

Property. Grantor shall, promptly upon request of Grantee, execute such additional assignments and other documents as may be necessary from time to time to permit such participation and to enable Grantee to collect and receipt for any such sums. All such sums are hereby assigned to Grantee, and shall, after deduction therefrom of all reasonable expenses actually incurred by Grantee, including attorneys' fees, at Grantee's option, be (i) released to Grantor, or (ii) applied (upon compliance with such terms and conditions as may be required by Grantee) to repair or restoration of the Property so affected, or (iii) applied to the payment of the secured indebtedness in such order and manner as Grantee, in its sole discretion, may elect, whether or not due. In any event the unpaid portion of the secured indebtedness shall remain in full force and effect and the payment thereof shall not be excused. Grantee shall not be, under any circumstances, liable or responsible for failure to collect or to exercise diligence in the collection of any such sum or for failure to see to the proper application of any amount paid over to Grantor. Grantee is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. All costs and expenses (including but not limited to attorneys' fees) incurred by Grantee in connection with any condemnation shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Grantee pursuant to this Mortgage.

(g) Compliance with Legal Requirements. The Property and the use, operation and maintenance thereof and all activities thereon do and shall at all times comply with all applicable "Legal Requirements" (as defined below). The Property is not, and shall not be, dependent on any other property or premises or any interest therein other than the Property to fulfill any requirement of any Legal Requirement. Grantor shall not, by act or omission, permit any building or other improvement not subject to the lien and interest of this Deed to rely on the Property or any interest therein to fulfill any requirement of any Legal Requirement. No part of the Property constitutes a nonconforming use under any zoning law or similar law or ordinance. Grantor has obtained and shall preserve in force all requisite zoning, utility, building, health, environmental and operating permits from the governmental authorities having jurisdiction over the Property. If Grantor receives a notice or claim from any person that the Property, or any use, activity, operation or maintenance thereof or thereon, is not in compliance with any Legal Requirement, Grantor will promptly furnish a copy of such notice or claim to Grantee. Grantor has received no notice and has no knowledge of any such noncompliance. As used in this Mortgage: (i) the term "**Legal Requirement**" means any "**Law**" (as defined below), agreement, covenant, restriction, easement or condition (including, without limitation of the foregoing, any condition or requirement imposed by any insurance or surety company), as any of the same now exists or may be changed or amended or come into effect in the future; and (ii) the term "**Law**" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, permit, authorization, decision, order, injunction or decree, domestic or foreign.

(h) Maintenance, Repair and Restoration. Grantor will keep the Property in first class order, repair, operating condition and appearance, causing all necessary repairs, renewals, replacements, additions and improvements to be promptly made, and will not allow any of the Property to be misused, abused or wasted or to deteriorate. Notwithstanding the foregoing, Grantor will not, without the prior written consent of Grantee, (i) remove from the Property any fixtures or personal property conveyed or encumbered by this Mortgage except such as is replaced by Grantor by an article of equal suitability and value, owned by Grantor, free and

clear of any lien or security interest (except that created by this Mortgage), or (ii) make any structural alteration to the Property or any other alteration thereto which impairs the value thereof. If any act or occurrence of any kind or nature (including any condemnation or any casualty for which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Property, Grantor shall give prompt notice thereof to Grantee and Grantor shall promptly, at Grantor's sole cost and expense and regardless of whether insurance or condemnation proceeds (if any) shall be available or sufficient for the purpose, commence and continue diligently to completion to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to the damage, loss or destruction.

(i) No Other Liens. With the exception of that certain Mortgage, Assignment and Security Agreement dated as of July 11, 1997, executed by Grantor in favor of Bank United (the "Bank United Mortgage"), which is expressly superior and prior to this Deed, Grantor will not, without the prior written consent of Grantee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed to secure debt, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security title, interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Grantee, Grantor will cause the same to be promptly discharged and released. Grantor will own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Grantee. If Grantee consents to the voluntary grant by Grantor of any lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") conveying or encumbering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (i) the Subordinate Lien is unconditionally subordinate to this Mortgage and all "Leases" (as hereinafter defined); and (ii) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases shall be named as a party-defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Grantee; and (iii) "Rents" (as hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the secured indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Grantee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; and (iv) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Grantee with or immediately after the occurrence of any such default or commencement; and (v) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone

claiming by, through or under any of them shall succeed to any of Grantor's rights hereunder without the prior written consent of Grantee.

(j) Operation of Property. Grantor will operate the Property in a good and workmanlike manner and in accordance with all Legal Requirements and will pay all fees or charges of any kind in connection therewith. Grantor will keep the Property occupied so as not to impair the insurance carried thereon. Grantor will not use or occupy or conduct any activity on, or allow the use or occupancy of or the conduct of any activity on, the Property in any manner which violates any Legal Requirement or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. Grantor will not initiate or permit (unless such action is initiated by Grantee) any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a nonconforming use under applicable zoning ordinances or other Legal Requirement. Grantor will not impose any easement, restrictive covenant or encumbrance upon the Property, execute or file any subdivision plat or condominium declaration affecting the Property or consent to the annexation of the Property to any municipality, without the prior written consent of Grantee. Grantor will not do or suffer to be done any act whereby the value of any part of the Property may be lessened. Grantor will preserve, protect, renew, extend and retain all material rights and privileges granted for or applicable to the Property. Without the prior written consent of Grantee, there shall be no drilling or exploration for or extraction, removal or production of any mineral, hydrocarbon, gas, natural element, compound or substance (including sand and gravel) from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof. Grantor will cause all debts and liabilities of any character (including without limitation all debts and liabilities for labor, material and equipment and all debts and charges for utilities servicing the Property) incurred in the construction, maintenance, operation and development of the Property to be promptly paid.

(k) Financial Matters. Grantor is solvent after giving effect to all borrowings contemplated by the Loan Documents and no proceeding under any "Debtor Relief Law" (as hereinafter defined) is pending (or, to Grantor's knowledge, threatened) by or against Grantor, or any affiliate of Grantor, as a debtor. All reports, statements, plans, budgets, applications, agreements and other data and information heretofore furnished or hereafter to be furnished by or on behalf of Grantor to Grantee in connection with the loan or loans evidenced by the Loan Documents (including, without limitation, all financial statements and financial information) are and will be true, correct and complete in all material respects as of their respective dates and do not and will not omit to state any fact or circumstance necessary to make the statements contained therein not misleading. No material adverse change has occurred since the dates of such reports, statements and other data in the financial condition of Grantor or, to Grantor's knowledge, of any tenant under any lease described therein. For the purposes of this paragraph, "Grantor" shall also include any person liable directly or indirectly for the secured indebtedness or any part thereof specifically a guarantor and any joint venturer or general partner of Grantor.

(l) Status of Grantor; Suits and Claims; Loan Documents. If Grantor is a corporation, partnership, or other legal entity, Grantor is and will continue to be (i) duly

organized, validly existing and in good standing under the laws of its state of organization, (ii) authorized to do business in, and in good standing in, each state in which the Property is located, and (iii) possessed of all requisite power and authority to carry on its business and to own and operate the Property. Each Loan Document executed by Grantor has been duly authorized, executed and delivered by Grantor, and the obligations thereunder and the performance thereof by Grantor in accordance with their terms are and will continue to be within Grantor's power and authority (without the necessity of joinder or consent of any other person), are not and will not be in contravention of any Legal Requirement to which Grantor or the Property is subject, and do not and will not result in the creation of any encumbrance against any assets or properties of Grantor, or any other person liable, directly or indirectly, for any of the secured indebtedness, except as expressly contemplated by the Loan Documents. There is no suit, action, claim, investigation, inquiry, proceeding or demand pending (or, to Grantor's knowledge, threatened) against Grantor or against any other person liable directly or indirectly for the secured indebtedness or which affects the Property (including, without limitation, any which challenges or otherwise pertains to Grantor's title to the Property) or the validity, enforceability or priority of any of the Loan Documents. There is no judicial or administrative action, suit or proceeding pending (or, to Grantor's knowledge, threatened) against Grantor, or against any other person liable directly or indirectly for the secured indebtedness, except as has been disclosed in writing to Grantee in connection with the transaction evidenced by this Deed and the other Loan Documents. The Loan Documents constitute legal, valid and binding obligations of Grantor (and of each guarantor, if any) enforceable in accordance with their terms, except as the enforceability thereof may be limited by Debtor Relief Laws and except as the availability of certain remedies may be limited by general principles of equity. Grantor is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., Grantor is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined therein and in any regulations promulgated thereunder). The secured indebtedness incurred by Grantor is solely for business purposes, and is not for personal, family, household or agricultural purposes. Grantor will not cause or permit any change to be made in its name, identity, or corporate or partnership structure, unless Grantor shall have notified Grantee of such change prior to the effective date of such change, and shall have first taken all action required by Grantee for the purpose of further perfecting or protecting the lien and security interest of Grantee in the Property. Grantor's principal place of business and chief executive office, and the place where Grantor keeps its books and records concerning the Property, has for the preceding four months been and will continue to be (unless Grantor notifies Grantee of any change in writing prior to the date of such change) the address of Grantor set forth at the end of this Mortgage.

(m) Certain Environmental Matters.

(i) Definitions. As used in this Mortgage: (A) "Environmental Claim" means any investigative, enforcement, cleanup, removal, containment, remedial or other governmental or regulatory action at any time threatened, instituted or completed pursuant to any applicable "Environmental Requirement" (as defined below) against Grantor or against or with respect to the Property or any use or activity on the Property, and any claim at any time threatened or made by any person against Grantor or against or with respect to the Property or any use or activity on the Property, relating to damage, contribution, cost recovery,

compensation, loss or injury resulting from any Hazardous Substance; (B) **"Environmental Requirement"** means any Legal Requirement which pertains to ground or air or water or noise pollution or contamination, underground or aboveground tanks, health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), the Georgia Air Quality Act, the Georgia Underground Storage Tank Act, the Georgia Water Quality Control Act, the Georgia Comprehensive Solid Waste Management Act, the Georgia Oil or Hazardous Material Spill or Release Act, the Georgia Hazardous Waste Management Act, and the Georgia Hazardous Site Response Act; and (C) **"Hazardous Substance"** means any substance, whether solid, liquid or gaseous: (1) which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Requirement; or (2) which is or contains asbestos, radon, any polychlorinated biphenyl, urea formaldehyde foam insulation, or explosive or radioactive material; or (3) which causes or poses a threat to cause a contamination or nuisance on the Property or on any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. As used in this subsection (m), the word "on" when used with respect to the Property or adjacent property means "on, in, under, above or about".

(ii) **Representations and Warranties.** Grantor represents and warrants to Grantee, without regard to whether Grantee has or hereafter obtains any knowledge or report of the environmental condition of the Property and except as set forth in that certain Report of Phase I Environmental Site Assessment, Project No. _____, dated _____, 1996, prepared by EnviroAssessments, Inc., as updated and revised, as follows: (A) during the period of Grantor's ownership of the Property, the Property has not been used for industrial or manufacturing purposes, for landfill, dumping or other waste disposal activity or operation, for generation, storage, use, sale, treatment, processing, recycling or disposal of any Hazardous Substance, or for any other use that would give rise to the release of any Hazardous Substance on the Property; (B) to the best of Grantor's knowledge after inquiry in accordance with good commercial or customary practices, no use of the Property described in the preceding clause (A) occurred at any time prior to the period of Grantor's ownership of the Property nor did any such use on any adjacent property occur during or at any time prior to the period of Grantor's ownership of the Property, and there is no Hazardous Substance, storage tank (or similar vessel), sump or well on the Property; (C) Grantor has received no notice and has no knowledge of any Environmental Claim or any completed, pending, proposed or threatened investigation or inquiry concerning the presence or release of any Hazardous Substance on the Property or on any adjacent property or concerning whether any condition, use or activity on the Property or on any adjacent property is in violation of any Environmental Requirement; (D) the present conditions, uses and activities on the Property do not violate any Environmental Requirement and the use of the Property which Grantor (and each tenant and subtenant, if any) makes and intends to make of the Property complies and will comply with all applicable Environmental Requirements; (E) the Property is not currently on, and to the best of Grantor's knowledge after inquiry in accordance with good commercial or customary practices, has never been on, any federal or state "superfund" or "superlien" list; and (F) neither Grantor, nor to Grantor's knowledge any tenant or subtenant, has obtained or is required to obtain any permit or other authorization to

construct, occupy, operate, use or conduct any activity on any of the Property by reason of any Environmental Requirement.

(iii) Violations. Grantor will not cause, commit, permit or allow to continue any violation of any Environmental Requirement by Grantor or by or with respect to the Property or any use or activity on the Property, or the attachment of any environmental lien to the Property. Grantor will not place, install, dispose of or release, or cause, permit or allow the placing, installation, disposal or release of, any Hazardous Substance or storage tank (or similar vessel) on the Property and will keep the Property free of any Hazardous Substance.

(iv) Notice to Grantee. Grantor will promptly advise Grantee in writing of any Environmental Claim or of the discovery of any Hazardous Substance on the Property, as soon as Grantor first obtains knowledge thereof, including a full description of the nature and extent of the Environmental Claim and/or Hazardous Substance and all relevant circumstances.

(v) Site Assessments and Information. If Grantee shall ever have reason to believe that any Hazardous Substance affects the Property, or if any Environmental Claim is made or threatened, or if a default shall have occurred, Grantor will at its expense provide to Grantee from time to time, in each case within 30 days of Grantee's request, a report (including all drafts thereof if requested by Grantee) of an environmental assessment of the Property made after the date of Grantee's request and of such scope (including but not limited to the taking of soil borings, air and groundwater samples and other above and below ground testing) as Grantee may request and by a consulting firm acceptable to Grantee. Grantor will cooperate with each consulting firm making any such assessment and will supply to the consulting firm, from time to time and promptly on request, all information available to Grantor to facilitate the completion of the assessment and report.

(vi) Remedial Actions. Without limitation of Grantee's rights to declare a default and to exercise all remedies available by reason thereof, if any Hazardous Substance is discovered on the Property at any time and regardless of the cause, Grantor shall: (A) promptly at Grantor's sole risk and expense remove, treat and dispose of the Hazardous Substance in compliance with all applicable Environmental Requirements and solely under Grantor's name (or if removal is prohibited by any Environmental Requirement, take whatever action is required by applicable Environmental Requirements), in addition to taking such other action as is necessary to have the full use and benefit of the Property as contemplated by the Loan Documents, and provide Grantee with satisfactory evidence thereof; and (B) if requested by Grantee, provide to Grantee within 30 days of Grantee's request a bond, letter of credit or other financial assurance evidencing to Grantee's satisfaction that all necessary funds are readily available to pay the costs and expenses of the actions required by the preceding clause (A) and to discharge any assessments or liens established against the Property as a result of the presence of the Hazardous Substance on the Property.

(n) Further Assurances. Grantor will, promptly on request of Grantee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage or any other Loan Document; and (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further deeds to

secure debt, security agreements, financing statements, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Grantee to protect the lien or the interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Grantee to enable Grantee to comply with the requirements or requests of any agency having jurisdiction over Grantee or any examiners of such agencies with respect to the indebtedness secured hereby, Grantor or the Property. Grantor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Grantee pursuant to this Mortgage.

(o) Fees and Expenses. Without limitation of any other provision of this Mortgage or of any other Loan Document and to the extent not prohibited by applicable law, Grantor will pay, and will reimburse to Grantee on demand to the extent paid by Grantee: (i) all appraisal fees, filing and recording fees, taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, escrow fees, reasonable attorneys' fees, architect fees, construction consultant fees, environmental inspection fees, survey fees, and all other out-of-pocket costs and expenses of every character incurred by Grantor or Grantee in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Mortgage or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Grantor as owner of the Property; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the enforcement of any obligation of Grantor, hereunder or under any other Loan Document.

(p) Indemnification.

(i) Grantor will indemnify and hold harmless Grantee from and against, and reimburse Grantee on demand for, any and all "Indemnified Matters" (as defined below). For purposes of this subsection (p), the term "Grantee" shall include the directors, officers, partners, employees and agents of Grantee, and any persons owned or controlled by, owning or controlling, or under common control or affiliated with Grantee. Without limitation, the foregoing indemnities shall apply to each indemnified person with respect to matters which in whole or in part are caused by or arise out of the negligence of such (and/or any other) indemnified person. However, such indemnities shall not apply to a particular indemnified person to the extent that the subject of the indemnification is caused by or arises out of the gross negligence or willful misconduct of that indemnified person. Any amount to be paid under this subsection (p) by Grantor to Grantee shall be a demand obligation owing by Grantor (which Grantor hereby promises to pay) to Grantee pursuant to this Mortgage. Nothing in this paragraph, elsewhere in this Mortgage or in any other Loan Document shall limit or impair any

rights or remedies of Grantee (including without limitation any rights of contribution or indemnification) against Grantor or any other person under any other provision of this Mortgage, any other Loan Document, any other agreement or any applicable Legal Requirement.

(ii) As used herein, the term "**Indemnified Matters**" means any and all claims, demands, liabilities (including strict liability), losses, damages, causes of action, judgments, penalties, costs and expenses (including without limitation, reasonable fees and expenses of attorneys and other professional consultants and experts, and of the investigation and defense of any claim, whether or not such claim is ultimately defeated, and the settlement of any claim or judgment including all value paid or given in settlement) of every kind, known or unknown, foreseeable or unforeseeable, which may be imposed upon, asserted against or incurred or paid by Grantee at any time and from time to time, whenever imposed, asserted or incurred, because of, resulting from, in connection with, or arising out of any transaction, act, omission, event or circumstance in any way connected with the Property or with this Mortgage or any other Loan Document, including but not limited to any bodily injury or death or property damage occurring in or upon or in the vicinity of the Property through any cause whatsoever at any time on or before the "Release Date" (as defined below), any act performed or omitted to be performed hereunder or under any other Loan Document, any breach by Grantor of any representation, warranty, covenant, agreement or condition contained in this Mortgage or in any other Loan Document, any default as defined herein or any claim under or with respect to any Lease, excluding, however, any such claim, demand, liability, loss, damage, cause of action, judgment, penalty, cost or expenses as to which Grantor has indemnified Grantee under the Environmental Agreement. The term "**Release Date**" as used herein means the earlier of the following two dates: (A) the date on which the indebtedness and obligations secured hereby have been paid and performed in full and this Mortgage has been cancelled and satisfied of record, or (B) the date on which this Mortgage is fully and finally foreclosed or a conveyance by deed in lieu of such foreclosure is fully and finally effective, and possession of the Property has been given to the purchaser or grantee free of occupancy and claims to occupancy by Grantor and Grantor's heirs, devisees, representatives, successors and assigns; provided, that if such payment, performance, release, foreclosure or conveyance is challenged, in bankruptcy proceedings or otherwise, the Release Date shall be deemed not to have occurred until such challenge is rejected, dismissed or withdrawn with prejudice. The indemnities in this subsection (p) shall not terminate upon the Release Date or upon the cancellation, satisfaction, foreclosure or other termination of this Mortgage but will survive the Release Date, foreclosure of this Mortgage or conveyance in lieu of foreclosure, the repayment of the secured indebtedness, the discharge, cancellation and satisfaction of this Mortgage and the other Loan Documents, any bankruptcy or other debtor relief proceeding, and any other event whatsoever.

(q) Records and Financial Reports. Grantor will keep accurate books and records in accordance with sound accounting principles in which full, true and correct entries shall be promptly made with respect to the Property and the operation thereof, and will permit all such books and records to be inspected and copied, and the Property to be inspected and photographed, by Grantee and its representatives during normal business hours and at any other reasonable times. Without limitation of other or additional requirements in any of the other Loan Documents, Grantor will furnish to Grantee: (i) current operating statements itemizing all income and expenses of the Property, for each month (and for the fiscal year through the end

of such month) as soon as reasonably practicable but in any event within thirty (30) days after the end of such month and for each fiscal year of Grantor within ninety (90) days after the end thereof including also a projection of such operations for the next fiscal year; and (ii) a balance sheet (including disclosure of all contingent liabilities) and an income statement of Grantor, for each fiscal year of Grantor as soon as reasonably practicable following the end of such fiscal year, but in any event within ninety (90) days after the end thereof. Each financial statement submitted pursuant to this paragraph shall be certified in writing as true and correct by Grantor (or if Grantor is not a natural person, by a representative of Grantor acceptable to Grantee). Grantor will furnish to Grantee at Grantor's expense all evidence which Grantee may from time to time reasonably request as to compliance with all provisions of the Loan Documents. Any inspection or audit of the Property or the books and records of Grantor, or the procuring of documents and financial and other information, by or on behalf of Grantee shall be for Grantee's protection only, and shall not constitute any assumption of responsibility to Grantor or anyone else with regard to the condition, construction, maintenance or operation of the Property nor Grantee's approval of any certification given to Grantee nor relieve Grantor of any of Grantor's obligations. Grantee may from time to time assign the secured indebtedness to Affiliates of Grantee and Grantor consents to the delivery by Grantee to any such acquirer or prospective acquirer of any interest in or with respect to all or part of the secured indebtedness such information as Grantee now or hereafter has relating to the Property, Grantor, any party obligated for payment of any part of the secured indebtedness, any tenant or guarantor under any lease affecting any part of the Property, and any agent or guarantor under any management agreement affecting any part of the Property.

(r) Taxes. Grantor will promptly pay all income, franchise and other taxes owing by Grantor and any stamp taxes or other taxes (unless such payment by Grantor is prohibited by law) which may be required to be paid with respect to the Promissory Note, this Mortgage or any other instrument evidencing or securing any of the secured indebtedness. In the event of the enactment after this date of any law of any governmental entity applicable to Grantee, the Promissory Note, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or interest thereon, or imposing upon Grantee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Grantor, or changing in any way the laws relating to the taxation of deeds to secure debt or mortgages or security agreements or debts secured by deeds to secure debt or mortgages or security agreements or the interest of the grantee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the indebtedness secured hereby or Grantee, then, and in any such event, Grantor, upon demand by Grantee, shall pay such taxes, assessments, charges or liens, or reimburse Grantee therefor; provided, however, that if in the opinion of counsel for Grantee (i) it might be unlawful to require Grantor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Grantee may elect, by notice in writing given to Grantor, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

(s) Statement Concerning Promissory Note or Mortgage. Grantor shall at any time and from time to time furnish, within seven (7) days of request by Grantee, a written statement in such form as may be required by Grantee stating that (i) the Promissory Note, this Mortgage

and the other Loan Documents are valid and binding obligations of Grantor, enforceable against Grantor in accordance with their terms, (ii) the unpaid principal balance and accrued interest, if any, under the Promissory Note, (iii) the Promissory Note, this Mortgage and the other Loan Documents have not been released, subordinated or modified, and (iv) there are no offsets or defenses against the enforcement of the Promissory Note, this Mortgage or any other Loan Document. If any of the foregoing statements are untrue, Grantor shall, alternatively, specify the reasons therefor.

Section 2.2 Performance by Grantee on Grantor's Behalf. Grantor agrees that, if Grantor fails to perform any act or to take any action which under any Loan Document Grantor is required to perform or take, or to pay any money which under any Loan Document Grantor is required to pay, and whether or not the failure then constitutes a default hereunder or thereunder, and whether or not there has occurred any default or defaults hereunder or the secured indebtedness has been accelerated, Grantee, in Grantor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by Grantee and any money so paid by Grantee shall be a demand obligation owing by Grantor to Grantee (which obligation Grantor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Grantee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Grantee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Grantee shall waive or cure any default or waive any right, remedy or recourse of Grantee. Any such payment may be made by Grantee in reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Grantor to Grantee pursuant to this Mortgage shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Grantee hereunder and the time when paid shall be fully established by the certificate of Grantee or any of Grantee's officers or agents.

Section 2.3 Absence of Obligations of Grantee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article III hereof, (i) to the extent permitted by applicable law, the Property is composed of Grantor's rights, title and interests therein but not Grantor's obligations, duties or liabilities pertaining thereto, (ii) except for obligations as lessor under the Ground Lease, Grantee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Grantee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Grantee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto.

ARTICLE III - Collateral Assignment of Leases and Rents

Section 3.1 Assignment. As additional security for the indebtedness secured hereby, Grantor hereby assigns to Grantee all Rents and all of Grantor's rights in and under all Leases. Upon the occurrence of a default hereunder, Grantee shall have the right, power and privilege (but shall be under no duty) to demand possession of the Rents, which demand shall to the fullest extent permitted by applicable law be sufficient action by Grantee to entitle Grantee to immediate and direct payment of the Rents (including delivery to Grantee of Rents collected for the period in which the demand occurs and for any subsequent period), for application as provided in this Mortgage, all without the necessity of any further action by Grantee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property. Grantor hereby authorizes and directs the tenants under the Leases to pay Rents to Grantee upon written demand by Grantee, without further consent of Grantor, without any obligation to determine whether a default has in fact occurred and regardless of whether Grantee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Grantee to the tenants. Any such payment to Grantee shall constitute payment to Grantor under the Leases, and Grantor hereby appoints Grantee as Grantor's lawful attorney-in-fact for giving, and Grantee is hereby empowered to give, acquittances to any tenants for such payments to Grantee after a default. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease(s)" means each existing or future lease, sublease (to the extent of Grantor's rights thereunder), usufruct or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, usufruct, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Grantor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law, together with any sums of money that may now or at any time hereafter be or become due and payable to Grantor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Grantor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2 Covenants, Representations and Warranties Concerning Leases and Rents. Grantor covenants, represents and warrants that: (i) Grantor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents hereby assigned and authority to assign them; (ii) all Leases are valid and enforceable, and in full force and effect, and are unmodified except as stated therein; (iii) unless otherwise stated in a Permitted Encumbrance, no Rents or Leases have been or will be assigned, mortgaged, pledged or otherwise encumbered and no other

person has or will acquire any right, title or interest in such Rents or Leases; (iv) no Rents have been waived, released, discounted, set off or compromised; (v) except as stated in the Leases, Grantor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (vi) Grantor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (vii) Grantor will not without the prior written consent of Grantee, enter into any Lease after the date hereof (except in accordance with the standard form lease approved by Grantee), or waive, release, discount, set off, compromise, reduce or defer any Rent, receive or collect Rents more than one (1) month in advance, grant any rent-free period to any tenant, reduce any Lease term or waive, release or otherwise modify any other material obligation under any Lease, renew or extend any Lease except in accordance with a right of the tenant thereto in such Lease, approve or consent to an assignment of a Lease or a subletting of any part of the premises covered by a Lease, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (viii) Grantor will not, except in good faith where the tenant is in material default thereunder, terminate or consent to the cancellation or surrender of any Lease having an unexpired term of one year or more unless promptly after the cancellation or surrender a new Lease of such premises is made with a new tenant having a credit standing, in Grantee's judgment, at least equivalent to that of the tenant whose Lease was cancelled, on substantially the same terms as the terminated or cancelled Lease; (ix) Grantor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (x) Grantor shall give prompt notice to Grantee, as soon as Grantor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of the Lease, or constructive eviction, excluding, however, notices of default under residential Leases, and Grantor shall defend, at Grantor's expense, any proceeding pertaining to any Lease, including, if Grantee so requests, any such proceeding to which Grantee is a party; (xi) Grantor shall as often as requested by Grantee, within ten (10) days of each request, deliver to Grantee a complete rent roll of the Property in such detail as Grantee may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Grantor, and deliver to such of the tenants and others obligated under the Leases specified by Grantee written notice of the assignment in Section 3.1 hereof in form and content satisfactory to Grantee; (xii) promptly upon request by Grantee, Grantor shall deliver to Grantee executed originals of all Leases and copies of all records relating thereto; and (xiii) Grantee may at any time and from time to time by specific written instrument intended for the purpose, unilaterally subordinate the lien of this Mortgage to any Lease, without joinder or consent of, or notice to, Grantor, any tenant or any other person, and notice is hereby given to each tenant under a Lease of such right to subordinate.

Section 3.3 No Liability of Grantee. Grantee's acceptance of this assignment shall not be deemed to constitute Grantee a "mortgagee in possession," nor obligate Grantee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Grantor by any tenant and not as such delivered to and accepted by Grantee. Grantee shall not be liable for any injury or damage to person or property in or about the Property, or for Grantee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall

actually receive. Neither the assignment of Leases and Rents nor enforcement of Grantee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Grantee nor Grantee's consent to or approval of any Lease (nor all of the same), shall render Grantee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Grantee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Grantee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Grantee under this Article III shall be cumulative of all other rights of Grantee under the Loan Documents or otherwise.

ARTICLE IV - Default

Section 4.1 Events of Default. The occurrence of any one of the following shall be a default under this Deed ("**Default**"):

(a) Failure to Pay Indebtedness. Any of the secured indebtedness is not paid when due, regardless of how such amount may have become due, and such failure is not cured within five (5) days of receipt of written notice of non-payment thereof.

(b) Nonperformance of Covenants. Any covenant, agreement or condition herein, in the Promissory Note, Loan Agreement, or any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section, such as covenants to pay the secured indebtedness) is not fully and timely performed, observed or kept; provided, however, that Borrower shall have thirty (30) days from notice by Lender in which to cure the circumstances which render such representation or warranty inaccurate or misleading in any material respect; provided, further, that if such cure cannot be achieved in thirty (30) days but can be achieved within an additional sixty (60) days, in Lender's reasonable judgment, Borrower shall have an additional sixty (60) days in which to achieve such cure provided that Borrower commences such cure within such thirty (30) day period and diligently pursues such cure to completion; provided, further, that if such circumstances were not caused by Borrower and cannot be cured within such period but do not adversely affect the value of the Property, the economic condition of Borrower or Guarantor or the likelihood of the Obligations being paid and performed as and when due, then such circumstances shall not constitute default hereunder.

(c) Default under Bank United Mortgage or Other Default. If a Default or Event of Default shall have occurred under the Bank United Mortgage, or a default shall have occurred under any document evidencing, securing or otherwise relating to any other indebtedness owing by Mortgagor or any Affiliate of Mortgagor to Mortgagee, or for which David M. Vickers is liable, whether as maker, endorser, guarantor or otherwise, subject to any applicable notice, grace and cure periods thereunder.

(d) Representations. Any statement, representation or warranty in any of the Loan Documents, or in any financial statement or any other writing heretofore or hereafter delivered to Grantee in connection with the secured indebtedness is false, misleading or erroneous in any

material respect on the date hereof or on the date as of which such statement, representation or warranty is made.

(e) Bankruptcy or Insolvency. The owner of the Property or any person liable, directly or indirectly, for any of the secured indebtedness (or any general partner or joint venturer of such owner or other person):

(1) (i) executes an assignment for the benefit of creditors, or takes any action in furtherance thereof; or (ii) admits in writing its inability to pay, or fails to pay, its debts generally as they become due; or (iii) as a debtor, files a petition, case, proceeding or other action pursuant to, or voluntarily seeks the benefit or benefits of, Title 11 of the United States Code as now or hereafter in effect or any other law, domestic or foreign, as now or hereafter in effect relating to bankruptcy, insolvency, liquidation, receivership, reorganization, arrangement, composition, extension or adjustment of debts, or similar laws affecting the rights of creditors (Title 11 of the United States Code and such other laws being herein called "**Debtor Relief Laws**"), or takes any action in furtherance thereof; or (iv) seeks the appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property; or

(2) suffers the filing of a petition, case, proceeding or other action against it as a debtor under any Debtor Relief Law or seeking appointment of a receiver, trustee, custodian or liquidator of the Property or any part thereof or of any significant portion of its other property, and admits, acquiesces in or fails to contest diligently the material allegations thereof, or (ii) the petition, case, proceeding or other action results in entry of any order for relief or order granting relief sought against it, or (iii) in a proceeding under the Federal Bankruptcy Code, the case is converted from one chapter to another, or (iv) fails to have the petition, case, proceeding or other action permanently dismissed or discharged on or before the earlier of trial thereon or sixty (60) days next following the date of its filing; or

(3) conceals, removes, or permits to be concealed or removed, any part of its property, with intent to hinder, delay or defraud its creditors or any of them, or makes or suffers a transfer of any of its property which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or makes any transfer of its property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or suffers or permits, while insolvent, any creditor to obtain a lien (other than as described in subparagraph (4) below) upon any of its property through legal proceedings which are not vacated and such lien discharged prior to enforcement thereof and in any event within sixty (60) days from the date thereof; or

(4) fails to have discharged within a period of ten (10) days any attachment, sequestration, or similar writ levied upon any of its property; or

(5) fails to pay immediately any final money judgment against it.

(f) Transfer of the Property. There occurs any sale, lease, conveyance, assignment, pledge, encumbrance, or transfer of all or any part of the Property or any interest therein, other than the Bank United Mortgage, voluntarily or involuntarily, whether by operation of law or otherwise, except: (i) sales or transfers of items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes, owned by Grantor, having a value equal to or greater than the replaced items when new; and (ii) the grant, in the ordinary course of business, of a usufruct interest in a part of the Improvements to a tenant for occupancy, not containing a right or option to purchase and not in contravention of any provision of this Mortgage or of any other Loan Document.

(g) Transfer of Ownership of Grantor. There occurs any sale, pledge, encumbrance, assignment or transfer, voluntarily or involuntarily, whether by operation of law or otherwise, of any interest in Grantor (if Grantor is not a natural person but is a corporation, partnership, trust or other legal entity), without the prior written consent of Grantee (including, without limitation, if Grantor is a partnership or joint venture, the withdrawal from or admission into it of any general partner or joint venturer).

(h) Grant of Easement, Etc. Without the prior written consent of Grantee, Grantor grants any easement or dedication, files any plat, condominium declaration, or restriction, or otherwise encumbers the Property, or seeks or permits any zoning reclassification or variance, unless such action is expressly permitted by the Loan Documents or does not affect the Property.

(i) Default Under Other Lien. A default or event of default occurs under any lien, security interest, assignment, covenant, trust or restriction affecting the Property or any part thereof (whether or not Grantee has consented, and without hereby implying Grantee's consent, to any such lien, security interest or assignment not created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(j) Destruction. The Property is so demolished, destroyed or damaged that, in the reasonable opinion of Grantee, it cannot be restored or rebuilt with available funds to substantially the same condition as existed prior to such damage or destruction within a reasonable period of time.

(k) Condemnation. (i) Any governmental authority shall require, or commence any proceeding for, the demolition of any building or structure comprising a part of the Premises, or (ii) there is commenced any proceeding to condemn or otherwise take pursuant to the power of eminent domain, or a contract for sale or a conveyance in lieu of such a taking is executed which provides for the transfer of, a material portion of the Premises, including but not limited to the taking (or transfer in lieu thereof) of any portion which would result in the blockage or substantial impairment of access or utility service to the Improvements or which would cause the Premises to fail to comply with any Legal Requirement.

(l) Liquidation, Etc. There occurs a liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in the State of Alabama (or in the case of an

individual, the death or legal incapacity) of the owner of the Property or any person obligated to pay any part of the secured indebtedness.

(m) Enforceability; Priority. Any Loan Document shall for any reason without Grantee's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by any party thereto other than Grantee; or the liens, interests, mortgages or security interests of Grantee in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person obligated to pay any part of the secured indebtedness.

(n) Other Loan Documents. A default or event of default occurs under any Loan Document, other than this Mortgage, and the same is not remedied within the applicable period of grace (if any) provided in such Loan Document.

ARTICLE V - Remedies

Section 5.1 Certain Remedies. If a default shall occur, Grantee may (but shall have no obligation to) exercise any one or more of the following remedies, without notice (unless notice is required by applicable statute):

(a) Acceleration. Grantee may at any time and from time to time declare any or all of the secured indebtedness immediately due and payable and such secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, notice of acceleration or of intention to accelerate or any other notice or declaration of any kind, all of which are hereby expressly waived by Grantor. Without limitation of the foregoing, upon the occurrence of a default described in clauses (i), (iii) or (iv) of subparagraph (1) of subsection (h) of Section 4.1, hereof, all of the secured indebtedness shall thereupon be immediately due and payable, without presentment, demand, protest, notice of protest, declaration or notice of acceleration or intention to accelerate, or any other notice, declaration or act of any kind, all of which are hereby expressly waived by Grantor.

(b) Enforcement of Assignment of Rents. Prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Grantee may: (i) collect and/or sue for the Rents in Grantee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the secured indebtedness in such manner and order as Grantee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (ii) require Grantor to transfer all security deposits and records thereof to Grantee together with original counterparts of the Leases.

(c) Foreclosure. Grantee may institute an action of foreclosure or take such other action as the law may allow, at law or in equity, for the enforcement thereof and realization on the Collateral or any other security which is herein or elsewhere provided for, and proceed

thereon to final judgment and indebtedness, with interest at the rate stipulated in the Promissory Note to the date of default and thereafter at the Default Rate, together with all other sums secured by this Mortgage, all costs of suit, interest at the Default Rate on any judgment obtained by Grantee from and after the date of any sheriff's sale of the Premises (which may be sold in one parcel or in such parcels, manner or order as Grantee shall elect) until actual payment is made by the sheriff of the full amount due Grantee, and reasonable attorney's fees, without further stay, any law, usage or custom to the contrary notwithstanding.

(d) Uniform Commercial Code. Without limitation of Grantee's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Grantee may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Uniform Commercial Code of Alabama (or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (i) Grantee may enter upon Grantor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (ii) Grantee may require Grantor to assemble the Collateral and make it available at a place Grantee designates which is mutually convenient to allow Grantee to take possession or dispose of the Collateral; (iii) written notice mailed to Grantor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (iv) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in subsection (c) above in this Section 5.1; (v) in the event of a foreclosure sale, whether made by Grantee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Grantee, be sold as a whole; (vi) it shall not be necessary that Grantee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (vii) with respect to application of proceeds of disposition of the Collateral under Section 5.2 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Grantee; (viii) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any default, or as to Grantee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Grantee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (ix) Grantee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Grantee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Grantee.

(e) Lawsuits. Grantee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(f) Entry on Property. Grantee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records relating thereto, and to exercise without interference from Grantor any and all rights which Grantor has with respect to the management, possession, operation, protection or preservation of the Property. Grantee shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Grantee in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Grantor (which obligation Grantor hereby promises to pay) to Grantee pursuant to this Mortgage. If necessary to obtain the possession provided for above, Grantee may invoke any and all legal remedies to dispossess Grantor. In connection with any action taken by Grantee pursuant to this Section, Grantee shall not be liable for any loss sustained by Grantor resulting from any failure to let the Property or any part thereof, or from any act or omission of Grantee in managing the Property unless such loss is caused by the willful misconduct and bad faith of Grantee, nor shall Grantee be obligated to perform or discharge any obligation, duty or liability of Grantor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Grantor hereby assents to, ratifies and confirms any and all actions of Grantee with respect to the Property taken under this Section.

(g) Receiver. Grantee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed sale (or sales) of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness secured hereby, and Grantor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Grantee, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Grantee to application of Rents as provided in this Deed. Nothing herein is to be construed to deprive Grantee of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Grantee in connection with any such receivership shall be a demand obligation (which obligation Grantor hereby promises to pay) owing by Grantor to Grantee pursuant to this Mortgage.

(h) Termination of Commitment to Lend. Grantee may terminate any commitment or obligation to lend or disburse funds under any Loan Document.

(i) Other Rights and Remedies. Grantee may exercise any and all other rights and remedies which Grantee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2 Proceeds of Foreclosure. The proceeds of any sale held by Grantee or any receiver of the liens and interests evidenced hereby shall be applied: **FIRST**, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all reasonable attorneys' fees and legal expenses, all court costs and charges of every character, and publication fees and costs, and to the payment of the secured indebtedness, including specifically without limitation the principal, accrued interest, if any, and attorneys' fees due and unpaid under the Promissory Note and the Loan Agreement and the amounts due and unpaid and owed to Grantee under this Mortgage, the order and manner of application to the items in this clause **FIRST** to be in Grantee's sole discretion; and **SECOND**, the remainder, if any there shall be, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Grantee is uncertain which person or persons are so entitled, Grantee may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the secured indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3 Grantee as Purchaser. Grantee shall have the right to become the purchaser at any sale held by Grantee or substitute or successor or by any receiver or at any public sale, and Grantee shall have the right to credit upon the amount of Grantee's successful bid, to the extent necessary to satisfy such bid, all or any part of the secured indebtedness in such manner and order as Grantee may elect.

Section 5.4 Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Grantee shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.5 Grantee's Discretion as to Security. Grantee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Grantee in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens or interests evidenced by this Mortgage.

Section 5.6 Grantor's Waiver of Certain Rights. To the full extent Grantor may do so, Grantor agrees that Grantor 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 appraisement, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and

assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, reinstatement, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Grantor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Grantor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Grantee under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Grantee under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. Grantor waives any right or remedy which Grantor may have or be able to assert, pursuant to any provision of Georgia law, pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Grantor or Grantor's heirs, devisees, representatives, successors or assigns or any other persons claiming any interest in the Property 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.

ARTICLE VI - Miscellaneous

Section 6.1 Scope of Mortgage. This Mortgage is a mortgage, a security agreement, a financing statement and a collateral assignment, and also covers proceeds and fixtures.

Section 6.2 Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Grantee may at any time notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Grantee directly.

Section 6.3 Waiver by Grantee. Grantee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Grantor with any covenant herein made by Grantor to the extent and in the manner specified in such writing; (b) consent to Grantor's doing any act which hereunder Grantor is prohibited from doing, or to Grantor's failing to do any act which hereunder Grantor is required to do, to the extent and in the manner specified in such writing; (c) release any part of the Property or any interest therein from the lien and security interest of this Deed; or (d) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Grantee hereunder except to the extent specifically agreed to by Grantee in such writing.

Section 6.4 No Impairment of Security. The lien, interest and other security rights of Grantee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Grantee including, but not limited to, any renewal, extension or modification which Grantee may grant with respect to any secured indebtedness, or any

surrender, compromise, release, renewal, extension, exchange or substitution which Grantee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Grantee shall not release or impair the lien, interest or other security rights of Grantee hereunder or affect the liability of Grantor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Grantee's consent to any junior lien).

Section 6.5 Acts Not Constituting Waiver by Grantee. Grantee may waive any default without waiving any other prior or subsequent default. Grantee may remedy any default without waiving the default remedied. Neither failure by Grantee to exercise, nor delay by Grantee in exercising, nor discontinuance of the exercise of any right, power or remedy (including but not limited to the right to accelerate the maturity of the secured indebtedness or any part thereof) upon or after any default shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Grantee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Grantor therefrom shall in any event be effective unless the same shall be in writing and signed by Grantee and then such waiver or consent shall be effective only in the specific instance, for the purpose for which given and to the extent therein specified. No notice to nor demand on Grantor in any case shall of itself entitle Grantor to any other or further notice or demand in similar or other circumstances. Remittances in payment of any part of the secured indebtedness other than in the required amount in immediately available U.S. funds shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Grantee in immediately available U.S. funds and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Grantee of any payment in an amount less than the amount then due on any secured indebtedness shall be deemed an acceptance on account only and shall not in any way excuse the existence of a default hereunder.

Section 6.6 Grantor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Grantor, Grantee may, without notice to Grantor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Grantor, without in any way vitiating or discharging Grantor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Grantee, and no extension of the time for the payment of the indebtedness secured hereby given by Grantee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Grantor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Each Grantor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Grantee and any subsequent owner of the Property, with or without notice to such Grantor, and no such modifications shall impair the obligations of such Grantor under this Mortgage or any other Loan

Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Grantee's consent to any transfer of the Property.

Section 6.7 Place of Payment; Forum. All secured indebtedness which may be owing hereunder at any time by Grantor shall be payable at the place designated in the Promissory Note (or if no such designation is made, at the address of Grantee indicated at the end of this Mortgage). Grantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any Georgia state court, or any United States federal court, sitting in the county in which the secured indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Mortgage or the secured indebtedness. Grantor hereby agrees and consents 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 in any Georgia state court, or any United States federal court, sitting in the county in which the secured indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Grantor at its address stated in this Mortgage, or at a subsequent address of Grantor of which Grantee received actual notice from Grantor in accordance with this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed.

Section 6.8 Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds under the Promissory Note are used to pay indebtedness secured by any outstanding lien, interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Grantee at Grantor's request, and Grantee shall be subrogated to any and all rights, interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the secured indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Grantee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Grantee, Grantor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Grantee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Grantee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.9 Application of Payments to Certain Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.10 Compliance with Usury Laws. It is the intent of Grantor and Grantee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Grantee and Grantor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Promissory Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "**Maximum Amount**"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Grantee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the secured indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Grantor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate payment of the secured indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Grantee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Grantee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Georgia or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.11 Cancellation of Mortgage. If all of the secured indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all obligations, if any, of Grantee for further advances have been terminated, then, and in that event only, this Mortgage shall be canceled by Grantee in due form at Grantor's cost. Without limitation, all provisions herein for indemnity of Grantee shall survive discharge of the secured indebtedness and any foreclosure, release or termination of this Mortgage.

Section 6.12 Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified on the cover sheet of this Deed (unless changed by

similar notice in writing given by the particular party whose address is to be changed) or by telegram, telex, or facsimile. Any such notice or communication shall be deemed to have been given and to be effective either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.13 Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.14 Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.15 Reporting Compliance. Grantor agrees to comply with any and all reporting requirements applicable to the transaction evidenced by the Loan Documents which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Grantee to furnish Grantee with evidence of such compliance.

Section 6.16 Grantee's Consent. Except where otherwise expressly provided herein, in any instance hereunder where the approval, consent or the exercise of judgment of Grantee is required or requested, (i) the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Grantee, and Grantee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the reasonableness of either the request or Grantee's judgment, and (ii) no approval or consent of Grantee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Grantee.

Section 6.17 Grantor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Grantor" means the grantor named in Section 1.1 hereof. The obligations of Grantor hereunder shall be joint and several. If any Grantor, or any signatory who signs on behalf of any Grantor, is a corporation, partnership or other legal entity, Grantor and any such signatory, and the person or persons signing for it, represent and warrant to Grantee that this instrument is executed, acknowledged and delivered by Grantor's duly authorized representatives. If Grantor is an individual, no power of attorney granted by Grantor herein shall terminate on Grantor's disability.

Section 6.18 Execution; Recording. This Mortgage may have been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Grantor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Grantee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.19 Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Grantor, and the heirs, devisees, representatives, successors and assigns of Grantor, and shall inure to the benefit of Grantee and the successors and assigns of Grantee and shall constitute covenants running with the Land. All references in this Mortgage to Grantor shall be deemed to include all such heirs, devisees, representatives, successors and assigns of Grantor, and all references in this Mortgage to Grantee shall be deemed to include all such successors and assigns of Grantee. Grantee may, from time to time, sell or offer to sell the secured indebtedness, or interests therein, to an Affiliate of Grantee or to one or more assignees and is hereby authorized to disseminate any information Grantee now has or hereafter obtains pertaining to the secured indebtedness and the Property, including, without limitation, credit or other information on the Property, Grantor, any of Grantor's principals, any tenant or guarantor under any lease affecting any part of the Property and property manager, to any assignee or participant or prospective assignee or prospective participant, Grantee's affiliates, any regulatory body having jurisdiction over Grantee and to any other parties as necessary or appropriate in Grantee's reasonable judgment. Grantor shall execute, acknowledge and deliver any and all instruments reasonably requested by the Grantee in connection therewith and to the extent, if any, specified in any such assignment or participation, such companies, assignees or participants shall have the rights and benefits of this Mortgage as such person would have if such persons were the Lender hereunder.

Section 6.20 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

Section 6.21 No Partnership, Etc.. The relationship between Grantee and Grantor hereunder is solely that of lender and borrower. Grantee has no fiduciary or other special relationship with Grantor. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Grantor and Grantee or in any way make Grantee a co-principal with Grantor with reference to the Property. All agreed contractual duties between or among Grantor and Grantee are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

Section 6.22 Applicable Law. THIS MORTGAGE, AND ITS VALIDITY, ENFORCEMENT AND INTERPRETATION, SHALL BE GOVERNED BY GEORGIA LAW (WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES) AND APPLICABLE UNITED STATES FEDERAL LAW, EXCEPT WITH RESPECT TO THE LAWS OF ALABAMA GOVERNING THE RECORDATION OF THE MORTGAGE AND THE VALIDITY OF THE LIEN CREATED HEREBY AND THE PERFECTION OF THE SECURITY INTEREST IN THE COLLATERAL AND THE ENFORCEMENT OF THE RIGHTS OF GRANTEE AND GRANTOR IN THE COLLATERAL.

Section 6.23 Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Grantor and Grantee with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Grantor and Grantee with respect to the matters addressed in the Loan Documents. Grantor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Grantee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

IN WITNESS WHEREOF, this Mortgage has been executed and sealed by Grantor as of the date first written on page one hereof.

GRANTOR:

Signed and sealed before me,
this ____ day of July, 1997.

M. S. Simmons
Unofficial Witness

Mark Fischer
Unofficial Witness

William C. McFee Jr.
Notary Public

My Commission Expires:

[NOTARY SEAL]

INTOWN SUITES SOUTHPARK, LLC
a Georgia limited liability company

By:

David M. Vickers
Name: David M. Vickers
Title: Member

[CORPORATE SEAL]



PREPARED BY:

Philip Thomson
Arnall, Golden & Gregory
2800 One Atlantic Center
1201 West Peachtree Street
Atlanta, Georgia 30309-3450

**STATE OF GEORGIA
COUNTY OF FULTON**

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David M. Vickers, whose name as Authorized Member of INTOWN SUITES SOUTHPARK, LLC, a Georgia Limited Liability Company is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such authorized member, and with full authority, executed the same voluntarily, as an act of said limited liability company, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 9 day of July, 1997.



NOTARY PUBLIC
My Commission Expires: 8/6/2000



EXHIBIT "A"

TO

**FINANCING STATEMENTS
SECOND PRIORITY MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF LEASES, . . .
BORROWER'S AFFIDAVIT
ACCESSIBILITY INDEMNITY AGREEMENT
SECOND PRIORITY LOAN AGREEMENT
ENVIRONMENTAL INDEMNITY AGREEMENT**

Lot 9-A, according to a Resurvey of Lots 9 and 10, Southpark, as recorded in Map Book 22, page 17, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT "B"

to

SECOND PRIORITY MORTGAGE SECURITY AGREEMENT AND ASSIGNMENT OF LEASES . . .

PERMITTED EXCEPTIONS

- i) taxes and assessments for 1997, a lien but not yet payable;
- ii) mineral and mining rights and all rights incident thereto including any release of damages as set forth in Deed Book 127, page 140 as to the Northwest quarter of the Southwest quarter of Section 30, Township 19 South, Range 2 West;
- iii) Easements rights and obligations reserved by Sunlink Corporation in deed to EES Joint Venture set forth in Book 285, page 203;
- iv) Agreement between the Harbert-Equitable Joint Venture and EES Joint Venture dated February 15, 1990 as referred to in deed to EES Joint Venture recorded in Book 285, page 207, and recorded as Instrument #1996-744 and Instrument #1996-745;
- v) all rights of parties concerning that certain Temporary Construction and Grading Easement Agreement dated March 30, 1990 among Sunlink Corporation; Bell South Services, Incorporated and others recorded in Real Book 285, page 207;
- vi) transmission line permits to Alabama Power Company as recorded in Deed Book 101, page 523, Deed Book 139, page 157, Deed Book 292, page 356, and as shown on survey by Sain Associates, Inc. dated 12-2-96 and revised 2-21-97.
- vii) Right of way in favor of Shelby County Alabama in Deed Book 153, page 212 (as to Highway 31) and as shown on survey by Sain Associates, Inc. dated 12-2-96 and revised 2-21-97;
- viii) Building set-back lines and all easements shown on the plat of South Park Map Book 20, page 100 and Map Book 14, page 25, and Map Book 22, page 17;
- ix) utility and drainage easement as set out in Map Book 22, page 17 and as shown on survey by Sain Associates, Inc. dated 12-2-96 and revised 2-21-97;
- x) landscape area defined on record Map Book 22, page 17; and
- xi) Yard inlets located along Northwest side and Southwest side and fire hydrant located along northwest side as shown on survey by Sain Associates, Inc. dated 12-2-96 and revised 2-21-97.
- xii) Mortgage, Assignments and Security Interest granted by Grantor to BANK UNITED.

Inst # 1997-22114

07/14/1997-22114
02:03 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 MEL 1442.00