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THIS INSTRUMENT PREPARED BY:
Gene W. Gray, Jr.
2100 SouthBridge Parkway
Suite 638
Birmingham, AL 35209
(205) 879-3400

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, AND SECURITY AGREEMENT

THIS INDENTURE (herein called "**Mortgage**") made this 12TH day of APRIL, 2006, between **C D INVESTMENTS, LLC,an Alabama Limited Liability Company** (hereinafter called "**Borrower**"), Mortgagor, and **SERVISFIRST BANK,** a corporation Birmingham, Alabama (hereinafter called **Lender**) mortgagee.

THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9-402(6) OF THE CODE OF ALABAMA. ***THIS IS A PURCHASE MONEY MORTGAGE!!***

W I T N E S S E T H

WHEREAS, **Borrower** is Justly indebted to **Lender** on a loan in the principal sum of **THREE HUNDRED SIX THOUSAND AND NO/100 DOLLARS** (**$306,000.00**) (the "**Loan**"), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated **APRIL 12, 2006**, payable to **Lender** with interest thereon (the "**Note**") on or before APRIL 12, 2026, or such earlier maturity date as provided in the Note, or as provided in any Loan Document as defined below;

WHEREAS, Borrower may hereafter become indebted to **Lender** or to a subsequent holder of this Mortgage on loans or otherwise (the **Lender** and any subsequent holder of this Mortgage being referred to herein as "**Lender**"); and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement guaranty, pledge or otherwise (herein "**Other Indebtedness**").

NOW, THEREFORE, the Borrower, in consideration of making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by **Lender** on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan, including, without limitation, when executed, a loan agreement (the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together

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with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is herein-after sometimes referred to as the "**Mortgaged Property**") to wit:

a. All that tract or parcel or parcels of land and estates particularly described on EXHIBIT "A", attached hereto, made a part hereof and incorporated herein for all purposes, to wit:
(HEREINAFTER THE "LAND").
THIS IS A PURCHASE MONEY MORTGAGE

b. All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by the Borrower and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property are actually located on or adjacent to the Land or not and whether in storage or otherwise wheresoever the same may be located;

c. Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any

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such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

d. All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in **a.**, **b.,** or **c.** above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in **a., b. or c.** above.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall fully pay or cause to be fully paid to the Lender the principal and interest payable in respect to the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorneys' fees, and shall pay any and all Other Indebtedness of Borrower to Lender, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

GENERAL

1.01 Performance of Mortgage, Note and Loan Documents. The Borrower shall perform, observe and comply with all provisions hereof, and of the Note, and of the Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, of the Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, subject to any exceptions shown on **Exhibit A** it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of

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such other estate or interest as is described on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby granted as security and has good right, full power and lawful authority to sell, convey and mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. If required by Lender, Borrower shall pay on the first day of each month one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest, and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by the Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the Other Indebtedness, or any such other obligations.

1.05 Other Taxes, Utilities and Liens.

a. The Borrower shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

b. The Borrower promptly shall pay and will not suffer any mechanic's, laborer's, statutory or other lien to

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be created or to remain outstanding upon any of the Mortgaged Property.

c. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 <u>Insurance</u>.

a. The Borrower shall procure for, deliver to, and maintain for the benefit of the lender during the term of this Mortgage, insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender, and, unless otherwise agreed by the Lender in writing, shall provide for coverage without coinsurance and with deductibles satisfactory to Lender, and shall insure against other hazards as may be required by Lender including, without limitation, flood insurance (if the Mortgaged Property is located in a flood hazard area), earthquake insurance and business interruption and/or rent loss coverage. All policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower, or its assigns, in and to all insurance policies then in force shall pass to the purchaser or grantee.

b. The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held liable to Borrower or otherwise responsible for any failure to collect any insurance

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proceeds due under the terms of any policy regardless of the cause of such failure.

c. If required by the Lender, the Borrower shall pay on the first day of each month, in addition to the regular installment of principal and interest and monthly tax deposit (as provided by Paragraph 1.04 of Article I herein), one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts deposited by Borrower with Lender pursuant to this Paragraph 1.06 to enable the Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, any other Loan Documents, or any Other Indebtedness Instruments, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of insurance proceeds to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, the Other Indebtedness, or any such other obligations.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such money then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Borrower shall promptly notify the Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Lender shall be entitled to retain, at the expense of the Borrower, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to the Borrower or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

a. The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will note commit or suffer any waste and will not do or suffer to

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be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

b. Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars ($5,000.00) for any single transaction, or a total of Twenty Thousand Dollars ($20,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interest except those created by the Loan Documents or Other Indebtedness Instruments, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.

c. If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Lender.

d. The Lender is hereby authorized to enter upon and inspect the Mortgaged Property, and to inspect the Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

e. The Borrower will promptly comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority (including, without limitation, the Americans With Disabilities Act of 1990) affecting the Mortgaged Property or any part thereof.

f. If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor; provided, however, that if there are insurance proceeds, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender; provided, however, that if there are condemnation proceeds or awards, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.07, toward restoring the damaged improvements.

1.09 <u>Further Assurances; After Acquired Property</u>.

a. At any time, and from time to time, upon request by the Lender, the Borrower, at Borrower's expense,

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will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments or further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

b. Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Borrower by whatsoever means, including that in the event that the Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such, as for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Borrower or the Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender making the Loan as aforesaid, and to secure the same indebtedness and obligations set forth above, Borrower hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 <u>Additional Security</u>. The Lender shall also have and is hereby granted a security interest in all moneys, securities and other property of the Borrower, now or hereafter assigned, held, received, or coming into the possession, control or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower, and any and all claims of Borrower against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Lender may, in addition to any other rights provided by this Mortgage or any other of the Loan Documents, but shall not be obligated to, apply to the payment of the Note or Other Indebtedness secured hereby, and in such manner as the Lender may determine, any such moneys, securities or other property held or controlled by the Lender. No such application of funds shall, unless

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otherwise expressly agreed by the Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Note or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. The Borrower shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower will execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to further evidence the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Borrower shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Lender.

1.12 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorneys' fees, costs and expenses incurred by the Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the Loan Documents, any of the Other Indebtedness Instruments, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the Loan Documents, or of any of the Other Indebtedness Instruments, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon calculated in the manner and at the rate set forth in the Note, plus two percentage points (2%). The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others

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to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower for trespass or otherwise.

1.14 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Upon request of the Lender, the Borrower shall furnish to the Lender (I) within ninety (90) days after the end of the Borrower's fiscal year a balance sheet and a statement of income and expenses, both in reasonable detail and for satisfactory to Lender and certified by a Certified Public Accountant, and (ii) within ten (10) days after request therefor from Lender, a rent schedule of the Mortgaged Property, certified by the Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

1.15 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. The Borrower shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property, or any of the rents thereof, without obtaining the express written consent of the Lender, which consent can not be compelled. If Borrower should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part of, the Mortgaged Property, or any of the rents thereof, without such consent by Lender, then, in such event, the entire balance of the indebtedness (including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

1.17 Environmental Matters. Borrower represents, warrants and covenants as follows:

a. No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "**Hazardous Materials**" include without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to

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asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule or regulation now or hereafter in effect;

b. No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;

c. All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

d. There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions or regulatory requirements with respect the Mortgaged Property;

e. Borrower, at Borrower's expense, promptly upon the written request of Lender from time to time, shall provide Lender with an environmental audit report, or an update of such report, all in scope, form and content satisfactory to Lender;

f. In the event of any spill or disposal of Hazardous Materials on the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, and/or if Borrower shall fail to comply with any environmental law or regulation, Lender may, at its election, but without the obligation so to do, give such notices as may be required by law and/or cause any remedial work that may be necessary to be performed at the Mortgaged Property and/or take any and all other actions as Lender shall deem necessary or advisable in order to remedy said spill or disposal of Hazardous Materials or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the default rate (as specified in the Note) from the date of payment by Borrower, shall be immediately due and payable by Borrower to Lender and until paid shall be added to and become a part of the indebtedness secured hereby and shall have the benefit of the lien hereby created as a part thereof; and

g. Borrower shall give immediate oral and written notice to Bank of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Borrower hereby agrees to indemnify and hold Lender harmless form all loss, cost, damage, claim and expense incurred by Lender on account of (I) the violation of any representation, warranty or covenant set forth in this Paragraph 1.17, (ii) Borrower's failure to perform any obligations of this Paragraph 1.17, (iii) Borrower's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences.

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ARTICLE II

ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Borrower, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the Lender all leases and subleases of all or part of the Mortgaged Property, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases and agreements, and all the avails thereof, to the Lender, and the Borrower does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Borrower. The Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee In Possession; No Liability. Nothing herein contained shall be construed as constituting the Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Borrower.

2.04 Present Assignment. Although it is the intention

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Shelby Cnty Judge of Probate, AL
05/02/2006 03:29:33PM FILED/CERT

of the parties that this assignment of rents and leases shall be a present assignment, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that the Lender shall not exercise any of the rights and powers conferred upon it in this Article II until and unless an Event of Default shall occur under this Mortgage.

2.05 No Obligation of Lender Under Leases. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Borrower shall and does hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements, the Borrower agrees to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorney's fees immediately upon demand, and until the same are fully reimbursed by the Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III

SECURITY AGREEMENT

3.01 Grant of Security Interest. Borrower (the "**Debtor**" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "**Secured Party**" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the Loan Documents, and in the other Indebtedness Instruments, does hereby grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "**Collateral**").

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Shelby Cnty Judge of Probate, AL
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3.02 Definitions. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "**Uniform Commercial Code**") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein.

3.03 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Borrower and Lender. At the Lender's request, the Borrower will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Lender to be necessary or desirable. The Borrower authorizes the Lender to prepare and to file financing statements covering the Collateral signed only by the Lender and to sign the Borrower's signature to such financing statements in jurisdictions where Borrower's signature is required. The Borrower promises to pay to the Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.

3.04 Representations of Borrower (Collateral). With respect to all of the Collateral, Borrower represents and warrants that:

a. The Collateral is used or bought primarily for business purposes;

b. If the Loan is a construction loan, the Collateral is being acquired and/or installed with the proceeds of the Note which Lender may disburse directly to the seller, contractor, or subcontractor;

c. All the Collateral will be kept at the address of Borrower shown in Paragraph 5.07(a) or, if not, at the real property described in **Exhibit A** hereto. Borrower shall promptly notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Borrower's business, Borrower, its agents or employees will not remove the Collateral from said location without the prior written consent of the Lender;

d. If certificates of title are issued or outstanding with respect to any of the Collateral, the Borrower shall cause the Lender's interest to be properly noted thereon; and

e. Borrower's name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to the Lender. Borrower shall promptly advise the Lender in writing of any change in Borrower's name.

3.05 Assignment of Liabilities. If at any time or times by sale, assignment, negotiation, pledge or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transferee shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and

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Shelby Cnty Judge of Probate,AL
05/02/2006 03:29:33PM FILED/CERT

remedies herein set forth with respect thereto.

3.06 Default (Security Agreement). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "**Event of Default**", wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:

a. Failure by the Borrower to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under the Note, this Mortgage or under any other Loan Document; or

b. Failure by the Borrower to duly observe any other covenant, condition or agreement of this Mortgage, of the Note, of any of the Loan Documents, or of any of the Other Indebtedness Instruments, and the continuance of such failure for ten (10) days or more; or

c. The filing by the Borrower or any guarantor of any indebtedness secured hereby or of any of Borrower's obligations hereunder, of a voluntary petition in bankruptcy or the Borrower's or any such guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or any such guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or any such guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

d. The entry by a court of competent jurisdiction or any order, judgment, or decree approving a petition filed against the Borrower or any guarantor of any of the indebtedness secured hereby or of any of Borrower's obligations hereunder, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any such guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, without the consent or acquiescence of the Borrower and/or any such guarantor which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or

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Shelby Cnty Judge of Probate, AL
05/02/2006 03:29:33PM FILED/CERT

e. The filing or enforcement of any other mortgage, lien or encumbrance on the Mortgaged Property or any part thereof, or of any interest or estate therein; or

f. If any portion of the Mortgaged Property is a leasehold estate, the occurrence of a default under such leases or other instrument creating the estate.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Lender to Enter and Take Possession.

a. If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Borrower or then owner of the Mortgaged Property relating thereto, and may exclude the Borrower and its agents and employees wholly therefrom.

b. Upon every such entering upon or taking of possession, the Lender, as attorney-in-fact or agent of the Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (I) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Borrower to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges prior to this

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Shelby Cnty Judge of Probate, AL
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Mortgage as the Lender may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

c. Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

a. If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

b. The Borrower shall pay to the Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 2.04; and all such expenses shall be secured by this Mortgage.

4.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note; (b) to foreclose this Mortgage; © to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as the Lender may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an event of Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, the Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand, exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

a. The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;

b. The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then

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Shelby Cnty Judge of Probate,AL
05/02/2006 03:29:33PM FILED/CERT

condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;

c. The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and

d. The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Borrower does hereby irrevocably appoint Lender attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the same for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06 shall be applied as follows:

a. First, to the costs and expenses of (I) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

b. Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the Loan Documents or the Other Indebtedness Instruments, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as

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hereinabove provided, and as may be provided in the Note or the Loan Documents, such repayment to be applied in the manner determined by Lender;

c. Third, to the payment of the indebtedness (including but not limited to the Loan, and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;

d. Fourth, the balance, if any, shall be paid as provided by law.

4.09 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

4.11 Suits to Protect the Mortgaged Property. The Lender shall have power a. to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; b. to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and c. to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

4.12 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender. If default shall be made in the payment of any amount due under this Mortgage, the Note, any of the Loan Documents or any of the Other Indebtedness Instruments, or if any Event of Default shall occur under this Mortgage, then, upon demand of the Lender, the Borrower shall pay to the Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case the Borrower shall fail to pay the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys.

4.13 Delay or Omission No Wavier. No delay or omission of the Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall

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exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, the Loan Documents, or the other Indebtedness Instruments to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the Loan Documents, or under any of the Other Indebtedness Instruments shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender a. grants forbearance or an extension of time for the payment of any indebtedness secured hereby; b. takes other or additional security for the payment thereof; c. waives or does not exercise any right granted herein, in the Note, in any of the Loan Documents, or in any of the Other Indebtedness Instruments; d. releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, the Loan Documents or the Other Indebtedness Instruments; e. consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or f. makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage and the Loan Documents) is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings - Position of Parties, Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

4.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or

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Shelby Cnty Judge of Probate,AL
05/02/2006 03:29:33PM FILED/CERT

under the Note, the Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.

ARTICLE V

MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, the Borrower shall not be entitled to assign any of its rights, titles, and interest hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Lender.

5.02 Waiver of Trial by Jury. The Borrower hereby waives the right to trial by jury in any action or proceeding based upon, arising out of or in any way connected to this Mortgage, the Note, the Loan Documents, or Other Indebtedness Instruments, or the subject matter hereof or thereof.

5.03 No Joint Venture or Partnership. Nothing contained in the Note, the Loan Documents, or Other Indebtedness Instruments or this Mortgage shall be deemed or construed to create a joint venture or partnership or any other relationship between the Borrower and the Lender, or cause the Lender to be responsible in any way for the debts or obligations of the Borrower, it being the intention that the only relationship between the Borrower and the Lender is that of borrower and lender.

5.04 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof. "Herein", "hereby", "hereunder", "hereof", and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.05 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

5.06 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in the Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, the Loan Documents and the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby.

5.07 Conflict in Loan Documents. In the event of

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Shelby Cnty Judge of Probate, AL
05/02/2006 03:29:33PM FILED/CERT

conflict in the terms of any provision in this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, the terms of the provision most favorable to the Lender shall apply.

5.08 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instruments according to law.

5.09 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

A. **Name of Borrower (Debtor):**
Address of Borrower:
C D INVESTMENTS, LLC
c/o RANDY CLEMENTS
6491 HIGHWAY 51
WILSONVILLE, ALABAMA 35186

B. **Name of Lender (Secured Party):**
SERVISFIRST BANK
Address of Lender:
P.O. BOX 1508
BIRMINGHAM, ALABAMA 35201-1508
Attention of:
Bart McBride

C. **Record Owner of Real Estate described on Exhibit "A" hereto:**
C D INVESTMENTS, LLC, an Alabama Limited Liability Company

5.10 Rider. Additional provisions of this Mortgage, if any, are set forth below or on a Rider attached hereto and made a part hereof. **NONE**

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

Borrower (Mortgagor, Debtor)
C D INVESTMENTS, LLC
An Alabama Limited Liability Company

RANDY CLEMENTS, ITS MEMBER

GARY P. DEAN, ITS MEMBER

STATE OF ALABAMA
COUNTY OF JEFFERSON
I, Gene W. Gray, Jr., a notary public in and for said county in said state, hereby certify that **RANDY CLEMENTS and GARY P. DEAN** whose name as MEMBERS of **C D INVESTMENTS, LLC, an Alabama Limited Liability Company** are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such Members and with full authority executed this mortgage voluntarily on the day the same bears date for and as the act of said Limited Liability Company. Given under my hand and official seal of office this 12th day of APRIL, 2006.

NOTARY PUBLIC
Commission expires: 11/09/06

20060502000206550 23/23 $536.00
Shelby Cnty Judge of Probate, AL
05/02/2006 03:29:33PM FILED/CERT

EXHIBIT "A"

A part of the Northwest ¼ of the Southwest ¼ of Section 4, Township 20, Range 1 East and the Northeast ¼ of the Southeast ¼ of Section 5, Township 20, Range 1 East more particularly described as follows: Commence at the Southwest corner of the Northwest ¼ of the Southwest ¼ of Section 4, Township 20 South, Range 1 East; thence run East along the South line of said ¼ - ¼, 94.16 feet to its intersection with the Westerly Right of Way line of Shelby County Highway #55; thence run in a Northerly direction along said Right of Way line along a curve to the left having a central angle of 6 deg. 05 min. 20 sec. and a radius of 848.04 feet; thence run along the arc of said curve 90.12 feet; thence continue along the tangent, if extended from the last described curve and run Northerly along said Right of Way Line 171.63 feet to the point of beginning of a curve to the right having a central angle of 8 deg. 12 min. 58 sec. and a radius of 1540.52 feet; thence run along the arc of said curve 220.91 feet to the point of beginning; thence continue in a northerly direction along said curve having a central angle of 11 deg. 17 min. 41 sec. and a radius of 1540.52 feet; thence run along the arc of said curve 303.68 feet; thence run along the tangent, if extended from the last described curve 156.32 feet to its intersection with the South right of way line of Shelby County Highway #51; thence turn 106 deg. 53 min. left and run Westerly along said right of way line 460 feet; thence turn 74 deg. 12 min. 39 sec. left and run Southwesterly 514.43 feet; thence turn 111 deg. 19 min. 44 sec. left and run Northeasterly 497.82 feet to the point of beginning being the same property as Lot 4 of Westover Farms as recorded in Map Book 9 Page 139 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.