

**Riverchase Business Park  
Hoover, AL**

Prepared by and upon recordation, return to:

David C. Dwyer, Esq.  
Katten Muchin Rosenman LLP  
401 S. Tryon Street  
Suite 2600  
Charlotte, N.C. 28210

Wells Fargo Bank, N.A., as Trustee for the Registered Holders of J. P. Morgan Chase  
Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series  
2004-C1

Loan Assumption  
and  
Modification Agreement

Date: June 21<sup>st</sup>, 2007

Location of Property: 245, 255, & 265 Riverchase Parkway East  
2190, 2192, & 2194 Parkway Lake Drive  
Hoover, Alabama 35244

## LOAN ASSUMPTION AND MODIFICATION AGREEMENT

THIS LOAN ASSUMPTION AND MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of the 21<sup>st</sup> day of June, 2007 by and among Riverchase Capital, LLC, a Florida limited liability company ("Capital") having an address of 2908 Bay to Bay Boulevard, Suite 200, Tampa, Florida 33629, and Stow Riverchase, LLC, a Florida limited liability company ("Stow") having an address of 46 Tidy Island, Bradenton, Florida, 34210, Attn: Harvey W. Gleeksman, as tenants in common (collectively referred to herein as "Assuming Borrower") and RBP, L.L.C., an Alabama limited liability company, having an address of 951 18<sup>th</sup> Street, Suite 200, Birmingham, Alabama 35205 (the "Original Borrower") in favor of Wells Fargo Bank, N.A., as Trustee for the Registered Holders of J. P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series 2004-C1, having an address at c/o Capmark Finance Inc., 200 Witmer Road, Horsham, Pennsylvania 19044 ("Lender").

### Recitals

All capitalized terms not defined herein are defined on the attached and incorporated Exhibit A.

A. JPMorgan Chase Bank, a New York banking corporation (the "Original Lender") made a loan to Original Borrower in the original principal amount of EIGHT MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$8,500,000.00) (the "Loan"). The Loan is evidenced and secured by the documents executed in connection with the Loan, in favor of Original Lender by Original Borrower, including, but not limited to, those set forth on Exhibit A (the "Loan Documents").

B. Original Lender assigned, sold and transferred its interest in the Loan and all Loan Documents to Lender and Lender is the current holder of all of Original Lender's interest in the Loan and Loan Documents.

C. The above-referenced Loan is a part of a mortgage pool known as J. P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series 2004-C1, for which Wells Fargo Bank, N.A. is Trustee and Capmark Finance Inc. ("Capmark") serves as Master Servicer.

D. As of the date hereof, Original Borrower continues to be the owner of the real property and improvements thereon described in and encumbered by the Mortgage, the Assignment of Rents and the other Loan Documents. Immediately prior to the consummation of the transaction contemplated hereby, Original Borrower will transfer an undivided 12.5% of its interest in the Property to Young Investments, L.L.C., an Alabama limited liability company ("Young"), as well as an additional undivided 25.0% percent of its interest in the Property to Jernigan Master Partners, LLC, an Alabama limited liability company ("Jernigan"). In accordance with the terms hereof, Original Borrower, Young and Jernigan will then transfer a combined 100% interest in the Property to Assuming Borrower.



E. Pursuant to that certain Agreement for Purchase and Sale of Real Estate, dated as of February 6, 2007, (the "Sales Agreement"), by and between Original Borrower and Arcis Investments, Inc., a Florida corporation (the "Purchaser"), Original Borrower agreed to transfer and Purchaser agreed to acquire that certain real property more particularly described on Exhibit B attached hereto, together with all other property encumbered by the Mortgage and the other Loan Documents (collectively, the "Property"). Pursuant to those certain Assignments of Agreement for Purchase and Sale of Real Estate dated as of June \_\_, 2007, all rights and interests of Purchaser in, to and under the Sales Agreement were assigned by Purchaser to Assuming Borrower. The Sales Agreement requires that Assuming Borrower assume the Loan and the obligations of Original Borrower under the Loan Documents, and conditions the closing of the transfer of the Property upon the Lender's consent to the transfer of the Property and the assumption of the Loan.

F. Pursuant to the terms of the Mortgage and the Assignment of Rents, Original Borrower has the right to transfer the Property to a third party subject to the satisfaction of certain conditions specified therein. Original Borrower and Assuming Borrower have requested that Lender consent to the conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage, the Assignment of Rents and the other Loan Documents, each as modified herein, and to the assumption by Assuming Borrower of the Loan and the obligations of Original Borrower under the Loan Documents.

G. Lender is willing to consent to the conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage, the Assignment of Rents and the other Loan Documents, each as modified herein, and to the assumption by Assuming Borrower of the Loan and the obligations of Original Borrower under the Loan Documents, on and subject to the terms and conditions set forth in this Agreement and in the Mortgage, the Assignment of Rents and in the other Loan Documents, each as modified herein.

H. Lender, Original Borrower, and Assuming Borrower, by their respective executions hereof, evidence their consent to the transfer of the Property to Assuming Borrower and the modification and assumption of the Loan Documents, each as modified herein, as hereinafter set forth.

#### Statement of Agreement

In consideration of the mutual covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. Representations, Warranties, and Covenants of Original Borrower.

(a) Original Borrower hereby represents to Lender, as of the date hereof, that: (i) contemporaneously with the execution and delivery hereof, it (along with Young and Jernigan) has conveyed and transferred all of the Property to Assuming Borrower; (ii) contemporaneously with the execution and delivery hereof, it (along with Young and Jernigan) has assigned and transferred to Assuming Borrower all leases, tenancies, security



deposits and prorated rents of the Property in effect as of the date hereof ("Leases") retaining no rights therein or thereto; (iii) it has not received a mortgage from Assuming Borrower encumbering the Property to secure the payment of any sums due Original Borrower or obligations to be performed by Assuming Borrower; (iv) there are no defaults by it under the provisions of the Note, the Mortgage, the Assignment of Rents or the other Loan Documents; (v) to the actual knowledge of Original Borrower, there are no defenses, set-offs or rights of defense, set-off or counterclaim whether legal, equitable or otherwise to the obligations evidenced by or set forth in the Note, the Mortgage, the Assignment of Rents or the other Loan Documents; (vi) to the actual knowledge of Original Borrower, all provisions of the Note, the Mortgage, the Assignment of Rents and the other Loan Documents are in full force and effect, except as modified herein; and (vii) there are no subordinate liens of any kind covering or relating to the Property nor are there any mechanics' liens or liens for unpaid taxes or assessments encumbering the Property, nor has notice of a lien or notice of intent to file a lien been received.

(b) Original Borrower hereby covenants and agrees that: (i) from and after the date hereof, Lender may deal solely with Assuming Borrower in all matters relating to the Loan, the Loan Documents, and the Property; (ii) it shall not at any time hereafter take a mortgage encumbering the Property from Assuming Borrower to secure any sums to be paid or obligations to be performed by Assuming Borrower so long as any portion of the Loan remains unpaid; (iii) Lender has no further duty or obligation of any nature relating to this Loan or the Loan Documents to Original Borrower; and (iv) it hereby releases Lender, and each of its predecessors in interest, together with any officers, directors, partners, employees, attorneys and agents of each of the foregoing, from all claims and liabilities relating to the transaction evidenced by the Loan Documents through and including the date hereof.

Original Borrower understands and intends that Lender shall rely on the covenants contained herein.

## 2. Representations, Warranties, and Covenants of Assuming Borrower.

(a) Assuming Borrower hereby represents and warrants to Lender, as of the date hereof, that: (i) simultaneously with the execution and delivery hereof, it has acquired from Original Borrower all of the Property, and all of Original Borrower's rights in the Leases; (ii) it has assumed the performance of Original Borrower's obligations under the Leases; and (iii) it has not granted to Original Borrower a mortgage or other lien upon the Property to secure any debt or obligations owed to Original Borrower.

(b) Assuming Borrower hereby covenants and agrees that it hereby: (i) assumes the obligations contained in the Loan Documents in accordance with the terms of the Loan Documents and this Agreement; (ii) shall pay when and as due all sums due under the Note and other Loan Documents (as modified hereby); (iii) shall perform all obligations imposed upon Original Borrower under the Mortgage, the Assignment of Rents and all other Loan Documents, all as modified hereby; and (iv) releases Lender, and each of its predecessors in interest, together with any officers, directors, partners, employees, servicers, agents and attorneys of each of the foregoing, from all claims and liabilities relating to the transaction



evidenced by the Loan Documents, or in connection with the assumption, evidenced and effected hereby, through and including the date of this Agreement. Assuming Borrower shall not hereafter, without Lender's prior consent in accordance with the terms of the Loan Documents, further encumber the Property or sell or transfer the Property or any interest therein, except as may be specifically permitted in the Loan Documents. Assuming Borrower has no knowledge that any of the representations and warranties made by the Original Borrower herein are untrue, incomplete, or incorrect.

(c) Assuming Borrower is a limited liability company duly organized and validly existing under the laws of the State of its formation, and is qualified to do business in the State where the Property is located. Assuming Borrower's registered office is as set forth in its operating agreement or most recent amendment thereto. Assuming Borrower has full power and authority to enter into and carry out the terms of this Agreement and to assume and carry out the terms of the Loan Documents. Assuming Borrower is in good standing under the laws of the State of its formation.

(d) Arcis Riverchase, Inc., a Florida corporation, the managing member of Capital ("Capital Managing Member") is a corporation duly organized and validly existing, and in good standing under the laws of the State of its formation, and is authorized to transact business in each jurisdiction in which such authorization is necessary for the operation of the business or properties of Capital. Capital Managing Member is, and shall remain, the managing member of Capital and has full power and authority to enter into this Agreement on behalf of Capital, to execute this Agreement, and to carry out the terms of the Loan Documents.

(e) Harvey W. Gleeksman, an individual resident of the State of Florida ("Stow Manager") is, and shall remain, the manager of Stow and has full power and authority to enter into this Agreement on behalf of Stow, to execute this Agreement, and to carry out the terms of the Loan Documents

(f) This Agreement and the Loan Documents constitute legal, valid and binding obligations of Assuming Borrower, enforceable in accordance with their respective terms, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally or general principles of equity. Neither the entry into nor the performance of and compliance with this Agreement or any of the Loan Documents has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which Assuming Borrower or any property of Assuming Borrower is bound or any statute, rule or regulation applicable to Assuming Borrower.

(g) Neither the execution of this Agreement nor the assumption and performance of the obligations hereunder has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, mortgage, indenture, contract, agreement or lease by which the Assuming Borrower or any property of Assuming Borrower is bound or any statute, rule or regulation applicable to Assuming Borrower.



(h) There is no action, proceeding or investigation pending or threatened which questions, directly or indirectly, the validity or enforceability of this Agreement or any of the other Loan Documents, or any action taken or to be taken pursuant hereto or thereto, or which might result in any material adverse change in the condition (financial or otherwise) or business of Assuming Borrower.

(i) To Assuming Borrower's knowledge, there has been no legislative action, regulatory change, revocation of license or right to do business, fire, explosion, flood, drought, windstorm, earthquake, accident, other casualty or act of God, labor trouble, riot, civil commotion, condemnation or other action or event which has had any material adverse effect, on the business or condition (financial or otherwise) of Assuming Borrower or any of its properties or assets, whether insured against or not, since Assuming Borrower submitted to Lender its request to assume the Loan.

(j) The financial statements and other data and information supplied by Assuming Borrower in connection with Assuming Borrower's request to assume the Loan or otherwise supplied in contemplation of the assumption of the Loan by Assuming Borrower were in all material respects true and correct on the dates they were supplied, and since their dates no material adverse change in the financial condition of Assuming Borrower has occurred, and there is not any pending or threatened litigation or proceedings which might impair to a material extent the business or financial condition of Assuming Borrower.

(k) Assuming Borrower hereby represents and warrants to Lender that Assuming Borrower will not permit the transfer of any interest in Assuming Borrower to any person or entity (or any beneficial owner of such entity) who is listed on the specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of Office of Foreign Asset Control, Department of the Treasury or pursuant to any other applicable Executive Orders (such lists are collectively referred to as the "OFAC Lists"). Assuming Borrower will not knowingly enter into a lease, contract or other agreement with any party who is listed on the OFAC Lists. Assuming Borrower shall immediately notify Lender if Assuming Borrower has knowledge that any member or beneficial owner of Assuming Borrower is listed on the OFAC Lists or (A) is indicted on or (B) arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Assuming Borrower shall immediately notify Lender if Assuming Borrower knows that any tenant is listed on the OFAC Lists or (A) is convicted on, (B) pleads nolo contendere to, (C) is indicted on or (D) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Assuming Borrower further represents and warrants to Lender that it is not currently listed on the OFAC Lists.

(l) No representation or warranty of Assuming Borrower made in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make such representations and warranties not misleading in light of the circumstances under which they are made.



Assuming Borrower understands and intends that Lender shall rely on the representations, warranties and covenants contained herein.

3. Assumption of Obligations. Assuming Borrower hereby assumes the indebtedness evidenced by the Note and all of the obligations, terms, covenants, conditions and agreements of every type and nature set forth in the Note, the Mortgage, the Assignment of Rents and the other Loan Documents in accordance with their respective terms and conditions, as the same may be modified by this Agreement. Assuming Borrower further agrees to abide by and be bound by all of the terms of the Loan Documents, including but not limited to, the representations, warranties, covenants, assurances and indemnifications therein, all as though each of the Loan Documents had been made, executed, and delivered by Assuming Borrower. Assuming Borrower agrees to pay, perform, and discharge each and every obligation of payment and performance under, pursuant to and as set forth in the Note, the Mortgage, the Assignments of Rents and the other Loan Documents at the time, in the manner and otherwise in all respects as therein provided. Assuming Borrower hereby acknowledges, agrees and warrants that (i) there are no rights of set-off or counterclaim, nor any defenses of any kind, whether legal, equitable or otherwise, which would enable Assuming Borrower to avoid or delay timely performance of its obligations under the Note, the Mortgage, the Assignments of Rents or any of the Loan Documents, as applicable; (ii) there are no monetary encumbrances or liens of any kind or nature against the Property except those created by the Loan Documents, and all rights, priorities, titles, liens and equities securing the payment of the Note are expressly recognized as valid and are in all things renewed, continued and preserved in force to secure payment of the Note, except as amended herein.

4. Consent to Conveyance and Assumption; Release. Subject to the terms and conditions set forth in this Agreement, Lender consents to: (a) the conveyance, assignment and transfer of the Property by Original Borrower to Assuming Borrower, subject to the Mortgage, the Assignments of Rents and the other Loan Documents; and (b) the assumption by Assuming Borrower of the Loan and of the obligations of Original Borrower under the Loan Documents. Original Borrower is hereby released from any liability to Lender under any and all of the Note, the Mortgage, the Assignments of Rents and the other Loan Documents arising or first accruing subsequent to the transfer of the Property to Assuming Borrower and the assumption by Assuming Borrower hereunder. Lender's consent to such transfer shall, however, not constitute its consent to any subsequent transfers of the Property. Notwithstanding the foregoing sentence, Lender hereby acknowledges the "roll-up" transfer condition applicable to Assuming Borrower set forth in Section 13.5 of the TIC Agreement (as herein defined), and further acknowledges that said transfer shall be deemed a permitted Transfer (as defined in the Mortgage), and no transfer or assumption fee shall be charged by Lender in conjunction therewith, other than reasonable and customary fees associated with Lender's review. Original Borrower hereby acknowledges and agrees that the foregoing release shall not be construed to release Original Borrower from any liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the transfer of the Property to the Assuming Borrower and the assumption by Assuming Borrower of the Obligations under the Loan Documents.



5. Acknowledgment of Indebtedness. This Agreement recognizes the reduction of the principal amount of the Note and the payment of interest thereon to the extent of payments made by Original Borrower prior to the date of execution of this Agreement. The parties acknowledge and agree that, as of June 21, 2007, the principal balance of the Note is EIGHT MILLION SEVENTY SEVEN THOUSAND ONE HUNDRED EIGHTY SIX AND 37/100 DOLLARS (\$8,077,186.37) and interest on the Note is paid to May 31, 2007. Assuming Borrower acknowledges and agrees that the Loan, as evidenced and secured by the Loan Documents, is a valid and existing indebtedness payable by Assuming Borrower to Lender.

6. Consent to Transfer to Additional Seller Entities. Subject to the closing of the transaction contemplated hereby on or before June 21, 2007, Lender hereby consents to the transfers described in Recital D hereof for the sole purpose of completing the assumption of the Loan. Notwithstanding the foregoing, in the event that the assumption shall not close as currently anticipated, Lender reserves the right to invoke any remedies available to it with regard to the transfers under the Loan Documents.

7. Modifications of the Loan Documents.

(a) The Mortgage is hereby modified by the addition of the following:

Section 4.4. TENANTS IN COMMON. Assuming Borrower hereby agrees that:

(a) Assuming Borrower and each tenant-in-common comprising Assuming Borrower shall comply in all material respects with the terms and provisions of that certain Amended and Restated Tenants in Common Agreement dated effective as of April 14, 2007, by and between Capital and Stowe (the "TIC Agreement"). Neither Assuming Borrower nor any of the tenants-in-common comprising Assuming Borrower shall take any action or omit to take any action, in their capacity as tenants-in-common, the effect of which will impair or tend to impair the rights and security granted to Lender hereunder.

(b) Neither Assuming Borrower nor any of the tenants-in-common comprising Assuming Borrower shall amend the TIC Agreement without the prior written consent of Lender. Assuming Borrower and each tenant-in-common comprising Borrower declares that Lender is intended as, and shall be, a third-party beneficiary of the TIC Agreement.

(c) Assuming Borrower and each tenant-in-common comprising Assuming Borrower shall give Lender prompt (and in all events within five (5) days) written notice of any default by any party under the TIC Agreement or the receipt of any notice of such a default. Assuming Borrower and each tenant-in-common comprising Assuming Borrower will promptly (and in all events within five (5) days) furnish to Lender an exact copy of any notice, communication, or other instrument or document received or given by Assuming Borrower or any of the tenants-in-common comprising Assuming Borrower which may concern or affect the estate or interest of Assuming Borrower or any such tenant-in-common in or to the Property or under the TIC Agreement.

(d) Assuming Borrower and each tenant-in-common comprising Assuming Borrower



covenants and agrees that its rights under the TIC Agreement are and shall at all times be subject and subordinate to the lien and rights of Lender hereunder and under the Other Loan Documents. Assuming Borrower and each tenant-in-common comprising Assuming Borrower waives any lien or other rights under the TIC Agreement regarding the Property until such time, if any, as the Debt has been paid in full. Without limitation to the foregoing, Assuming Borrower and each of the tenants-in-common comprising Assuming Borrower agrees that it shall not (i) demand or sue for any payment, or commence any legal proceeding to enforce any right, under the TIC Agreement, (ii) vote or take any action in respect of any Bankruptcy Action (as defined below) without Lender's prior written consent unless and until the Debt shall have been paid in full, or (iii) accept or obtain any lien, pledge or security interest as security for its rights under the TIC Agreement except as provided in the TIC Agreement.

(e) Assuming Borrower and each tenant-in-common comprising Assuming Borrower agrees that upon any distribution of the assets or readjustment of the indebtedness of any tenant-in-common comprising Assuming Borrower, whether by reason of liquidation, composition, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding involving the readjustment of all or any of the Loan, or the application of the assets of any tenant-in-common comprising Assuming Borrower to the payment or liquidation thereof (each of the foregoing being referred to herein as a "Bankruptcy Action"), Lender shall be entitled to receive payment in full of any and all Debt prior to the payment of all or any part of any amount payable under the TIC Agreement, and in order to enable Lender to enforce Lender's rights hereunder in any such action or proceeding, Lender is hereby irrevocably authorized and empowered in its discretion (in Lender's name or in the name of any of the tenants-in-common comprising Assuming Borrower) to make and to present for and on behalf of any such tenant-in-common such proofs of claim against any other tenant-common on account of the TIC Agreement as Lender may deem expedient or proper and to receive and collect any and all distributions or other payments or disbursements made with respect to the TIC Agreement in whatever form the same may be paid or issued and to apply the same to the Debt. Assuming Borrower and each tenant-in-common comprising Assuming Borrower further agrees to execute and deliver to Lender such assignments or other instruments as may be required by Lender in order to enable Lender to enforce any and all claims, and to collect any and all payments or disbursements which may be made, on account of the TIC Agreement.

(f) Without limitation to the rights provided to Lender in this Section 4.4, Assuming Borrower and each tenant-in-common comprising Assuming Borrower irrevocably grants Lender the right (in Lender's name or in the name of such tenant-in-common) to exercise any and all rights of such tenant-in-common in any Bankruptcy Action to make elections with respect to the TIC Agreement including, without limitation, elections with respect to any proposed plan of reorganization. Assuming Borrower and each tenant-in-common comprising Assuming Borrower hereby further agrees to consent to any motion made by or on behalf of Lender in any Bankruptcy Action for relief against any stay or injunction therein against collection of the Debt, including, but not limited to, any motion made by or on behalf of Lender therein to lift such stay or injunction for the purposes of foreclosing the Security Instrument.

(g) Assuming Borrower and each tenant-in-common comprising Assuming Borrower



agrees that any payments or proceeds received by any such tenant-in-common in contravention of the terms and provisions of this Section 4.4 will be held in trust for Lender and promptly delivered to Lender.

(b) Each of the Loan Documents are hereby modified such that each Loan Document which provides addresses for Lender and Borrower, together with the addresses for the mailing of copies of any notices provided to such parties thereunder, are hereby deleted in their entirety and the following substituted in lieu thereof:

If to Borrower:

Riverchase Capital, LLC  
2908 Bay to Bay Boulevard  
Suite 200  
Tampa, Florida 33629  
(813) 805-2110  
(813) 805-2120 (fax)

Stow Riverchase, LLC  
46 Tidy Island  
Bradenton, Florida 34210  
Attn: Harvey W. Gleeksman  
(941) 795-5328 (phone)

With a copy by the same means sent simultaneously to:

Charles H. Carver, Esq.  
McNamara & Carver, P.A.  
2907 Bay to Bay Blvd., Suite 201  
Tampa, Florida 33629  
813-837-0727  
813-837-1532 fax

If to Lender:


Wells Fargo Bank, N.A., as Trustee  
for the Registered Holders of J. P. Morgan  
Chase Commercial Mortgage Securities Corp.,  
Commercial Mortgage Pass-Through  
Certificates Series 2004-C1  
c/o Capmark Finance Inc.  
200 Witmer Road  
Horsham, Pennsylvania 19044

With a copy by the same means sent simultaneously to:

Capmark Finance Inc.  
200 Witmer Road  
Horsham, Pennsylvania 19044  
Attn: Portfolio Manager – JPMCCM 2004-C1



Laureate Capital LLC  
227 West Trade Street, Suite 305  
Charlotte, North Carolina 28210  
Attn: Jodi Dodson  
704-379-6900  
704-372-0954 (fax)

  
20070622000295120 11/21 \$72.00  
Shelby Cnty Judge of Probate, AL  
06/22/2007 03:05:58PM FILED/CERT

And with a copy by the same means sent simultaneously to:

Katten Muchin Rosenman LLP  
401 S. Tryon Street  
Suite 2600  
Charlotte, NC 28202  
Attn: David C. Dwyer, Esq.

or to any other person or address in the continental United States of America, Alaska or Hawaii as either such party may designate as its address for the receipt of notices hereunder in a written notice duly given to the other parties.”

8. Interest Accrual Rate and Monthly Installment Payment Amount to Remain the Same. The interest rate and the monthly payments set forth in the Note shall remain unchanged.

9. Additional Covenants.

(a) To the knowledge of Assuming Borrower, no default or Event of Default (as defined in the Mortgage) has occurred or is continuing under any of the Loan Documents. To the knowledge of Original Borrower, no default or Event of Default (as defined in the Mortgage) has occurred or is continuing under any of the Loan Documents.

(b) Except as otherwise expressly amended or modified herein or in the documents or instruments delivered by Assuming Borrower to Lender, and except for those representations and warranties which relate to the organization of Original Borrower, to the knowledge of Assuming Borrower, the representations and warranties in the Mortgage, the Assignment of Rents, the Note and the other Loan Documents or in any other documents or instruments delivered in connection with the Loan Assumption Agreement, or other documents or instruments delivered in connection with the Loan Documents, are true, on and as of the date hereof, with the same force and effect as if made on and as of the date hereof. To the knowledge of Original Borrower, the representations and warranties made by Original Borrower in the Mortgage, the Assignments of Rents, the Note and the other Loan Documents or in any other documents or instruments delivered by Original Borrower in connection with the Loan Assumption Agreement, or any other documents or instruments delivered in connection with the Loan Documents, are true, on and as of the date hereof, with the same force and effect as if made on and as of the date hereof.



(c) Assuming Borrower acknowledges that the funds listed below as tax escrow, insurance escrow, and replacement reserve escrow constitute all of the reserve and escrow funds currently held by Lender with respect to the Loan as of April 19, 2007 and authorizes such funds to be transferred to an account controlled by Lender for the benefit of Lender and Assuming Borrower. Original Borrower agrees that it has no further interest in any of the funds retained by Lender in connection with the Loan or on behalf of Original Borrower, including those funds listed below as tax escrow, insurance escrow, and replacement reserve escrow and acknowledges that such funds are to be transferred to an account controlled by Lender for the benefit of Assuming Borrower.

Tax Escrow	\$63,163.27
Insurance Escrow	\$15,369.04
Replacement Reserve Escrow	\$59,477.24
Tenant Lease Reserve Escrow	\$414,880.97

(d) The Federal Tax Identification Number of Capital is 65-1303508.

(e) The Federal Tax Identification Number of Stow is: 20-5572783.

10. Conditions. This Agreement shall be of no force and effect until each of the following conditions has been met to the reasonable satisfaction of Lender:

(a) Fees and Expenses. Assuming Borrower shall pay, or cause to be paid to Capmark: (i) all costs and expenses incident to the preparation, execution and recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, filing fees, transfer fees, title insurance policy or endorsement premiums or other charges of Title Company and fees and expenses of legal counsel; and (ii) an assumption fee in the amount of EIGHTY THOUSAND SEVEN HUNDRED SEVENTY ONE AND 86/100 DOLLARS (\$80,771.86).

(b) On the date hereof, each Assuming Borrower shall deposit with Lender either (i) the sum of \$50,000.00 (such deposit hereinafter referred to as the "TIC Deposit") or (ii) a Letter of Credit (as defined in this subsection) in favor of Lender in the amount of \$50,000.00 (the "TIC Letter of Credit"). Lender shall deposit the TIC Deposit and any amounts drawn on the TIC Letter of Credit in an escrow account (the TIC Deposit, any amounts drawn on the TIC Letter of Credit, and all other funds deposited in said escrow account are referred to collectively as the "TIC Reserve"). The TIC Reserve shall not constitute a trust fund and may be commingled with other monies held by Lender. Lender or a designated representative of Lender shall have the sole right to make withdrawals from such account, but only in the event that an Event of Default shall then be existing. Any interest earned on the TIC Reserve shall accrue for the benefit of the appropriate Assuming Borrower, but shall remain in and constitute part of the TIC Reserve. Lender does not guaranty any particular rate of return on the TIC Reserve and shall not be responsible for any investment losses on the TIC Reserve.



As used herein, a "Letter of Credit" shall mean a freely transferable, clean, irrevocable, unconditional sight-draft letter of credit in form and substance satisfactory to Lender in its sole discretion: (a) issued by a commercial bank (the "Issuing Bank") having a rating of "A2" by Moody's and "AA" by S&P (or its equivalent) or better as determined by any two independent Rating Agencies (as defined in the Mortgage) (b) payable upon presentation of a sight draft only to the order of Lender at the principal office of the Issuing Bank; (c) having an initial expiration date not earlier than one (1) year from the date of its issuance; (d) having automatically renewable periods of not less than one (1) year; (e) providing for multiple draws; (f) the account party for which a letter of credit is issued shall be a party other than Assuming Borrower or any of the other parties required by Lender to be special purpose entities in connection with the Loan; (g) the reimbursement obligations for which letter of credit are not secured by the Property; (h) for which the Issuing Bank shall be obligated to deliver to Lender sixty (60) days' prior written notice of the expiration of any Letter of Credit to the extent that any such Letter of Credit is not renewed; and (i) for which the Assuming Borrower shall pay to the Issuing Bank all actual fees and charges of Issuing Bank with respect to the extension or transfer of, or draws upon, any Letter of Credit prior to such extension, transfer or draw.

(c) Satisfaction of all requirements under the Loan Documents, subject to the approval of Lender and Lender's counsel, in their sole discretion.

11. No Further Consents. Assuming Borrower and Original Borrower acknowledge and agree that Lender's consent herein contained is expressly limited to the conveyance, assignment and transfer herein described, that such consent shall not waive or render unnecessary Lender's consent or approval of any subsequent sale, conveyance, assignment or transfer of the Property.

12. Default.

(a) Breach. Any breach of Assuming Borrower of any of the representations, warranties and covenants of this Agreement shall constitute a default under this Agreement, the Mortgage, the Assignments of Rents and each other Loan Document.

(b) Failure to Comply. Assuming Borrower's failure to fulfill any one of the covenants, conditions and agreements set forth in this Agreement shall constitute a default under this Agreement and the Loan Documents.

13. Incorporation of Recitals. Each of the Recitals set forth above in this Agreement are incorporated herein and made a part hereof.

14. Property Remains as Security for Lender. All of the Property as described and defined in the Mortgage, as amended, shall remain in all respects subject to the lien, charge or encumbrance of the Mortgage, and, except as expressly set forth herein, nothing herein contained and nothing done pursuant hereto shall affect or be construed to release or affect the liability of any party or parties who may now or hereafter be liable under or on account of the Note, the Mortgage, the Assignments of Rents, or any of the Loan Documents, nor shall anything



herein contained or done in pursuance hereof affect or be construed to affect any other security for the Note, if any, held by Lender.

15. No Waiver by Lender. Nothing contained herein shall be deemed a waiver of any of Lender's rights or remedies under the Note or any of the other Loan Documents.

16. References. From and after the date hereof: (a) references in any of the Loan Documents to any of the other Loan Documents will be deemed to be references to such of the Loan Documents, as modified by this Agreement; and (b) references in the Mortgage and the Loan Documents to "Borrower", "Grantor" or "Maker" shall hereafter be deemed to refer to Assuming Borrower.

17. Relationship with Loan Documents. To the extent that this Agreement is inconsistent with the Loan Documents, this Agreement will control and the Loan Documents will be deemed to be amended hereby. Except as amended hereby, the Loan Documents shall remain unchanged and in full force and effect.

18. Captions. The headings to the Sections of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

19. Partial Invalidity. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement.

20. Entire Agreement. This Agreement and the documents contemplated to be executed herewith constitutes the entire agreement among the parties hereto with respect to the assumption of the Loan and shall not be amended unless such amendment is in writing and executed by each of the parties. The Agreement supersedes all prior negotiations regarding the subject matter hereof.

21. Binding Effect. This Agreement and the documents contemplated to be executed in connection herewith shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that the foregoing provisions of this Section shall not be deemed to be a consent by Lender to any further sale, conveyance, assignment or transfer of the Property by Assuming Borrower.

22. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which will be an original, but any of which, taken together, will constitute one and the same Agreement.

23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located and applicable federal law.



24. Effective Date. This Agreement shall be effective as of the date of its execution by the parties hereto and thereupon is incorporated into the terms of the Loan Documents.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

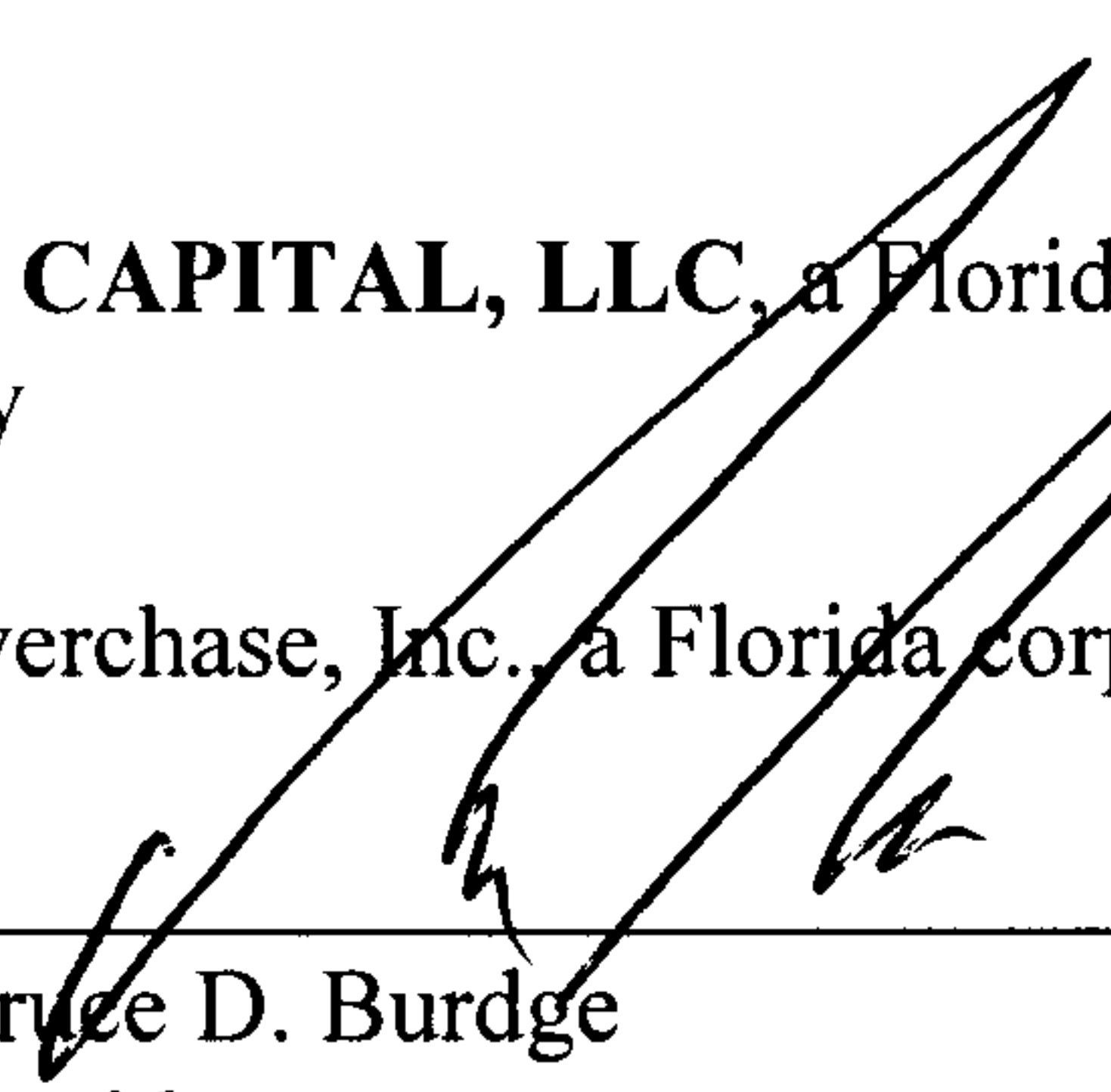


IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto have executed this Agreement to be effective as of the date first aforesaid.

ASSUMING BORROWER:

**RIVERCHASE CAPITAL, LLC**, a Florida limited liability company

By: Arcis Riverchase, Inc., a Florida corporation

By:   
Name: Bruce D. Burdge  
Title: President

STATE OF Florida )  
COUNTY OF Hillsborough )

ss:

I, K. Susan Dawson, a Notary Public, do hereby certify that Bruce D. Burdge, personally known to me to be the President \* of Riverchase Capital, LLC, a Florida limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such he signed and delivered the said document as his free and voluntary act and deed of said entity, being authorized to do so, for the use and purposes therein set forth.

Given under my hand and notarial seal, this 18<sup>th</sup> day of June, 2007.

My Commission expires:

  
Notary Public

[SEAL]

\* of Arcis Riverchase, Inc.,  
a Florida corporation, as  
Managing Member





ASSUMING BORROWER:

**STOW RIVERCHASE LLC**, a Florida limited liability company

By: Harvey W. Gleeksman  
Name: Harvey W. Gleeksman  
Title: Manager

STATE OF New Jersey )  
COUNTY OF Middlesex )

ss:

I, Siobon A. Humphrey, a Notary Public, do hereby certify that Harvey W. Gleeksman, personally known to me to be the manager of Stow Riverchase, LLC, a Florida limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such he signed and delivered the said document as his free and voluntary act and deed of said entity, being authorized to do so, for the use and purposes therein set forth.

Given under my hand and notarial seal, this 19 day of June, 2007.

My Commission expires:

Siobon A. Humphrey  
Notary Public

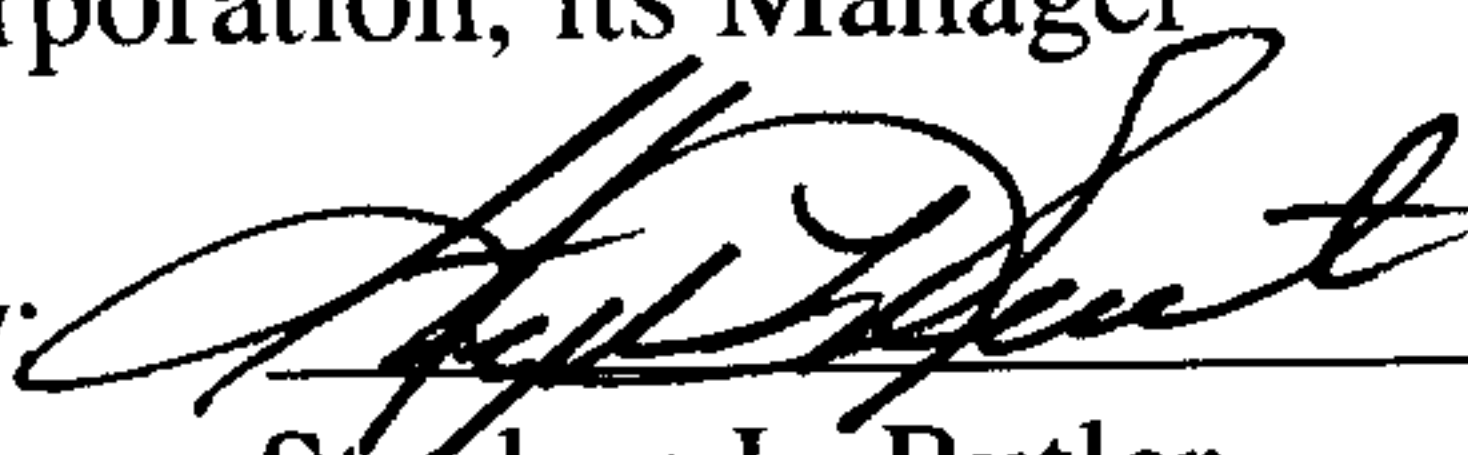
[SEAL]  
**SIOBON A. HUMPHREY**  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 28, 2011



ORIGINAL BORROWER:

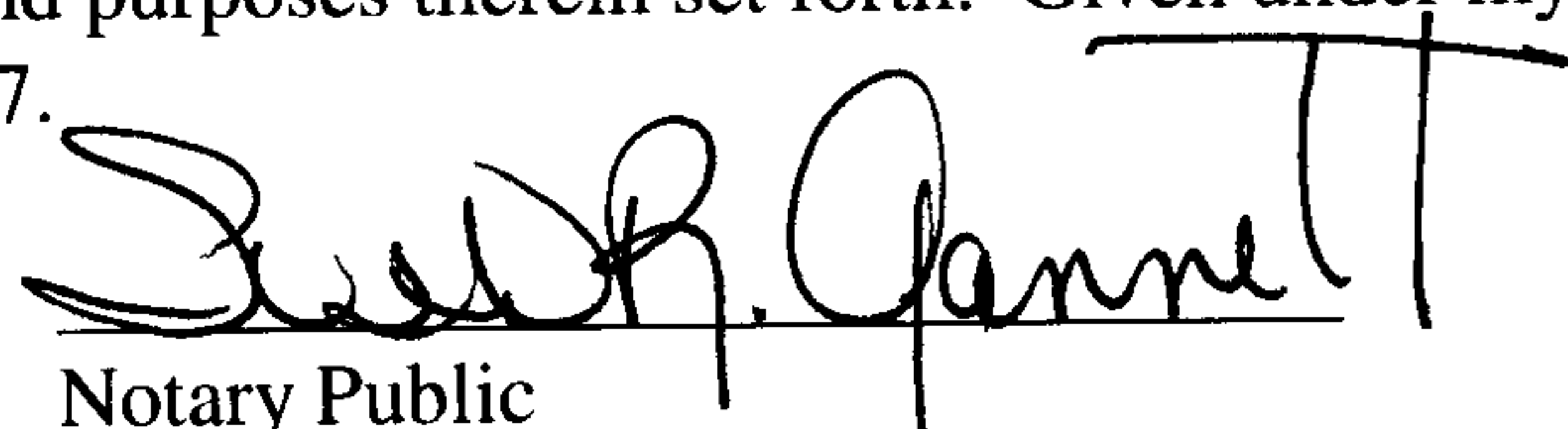
**RBP, L.L.C.**, an Alabama limited liability company

By: Engel Realty Company, Inc., an Alabama  
corporation, its Manager

By:   
Name: Stephen L. Butler  
Title: Vice President

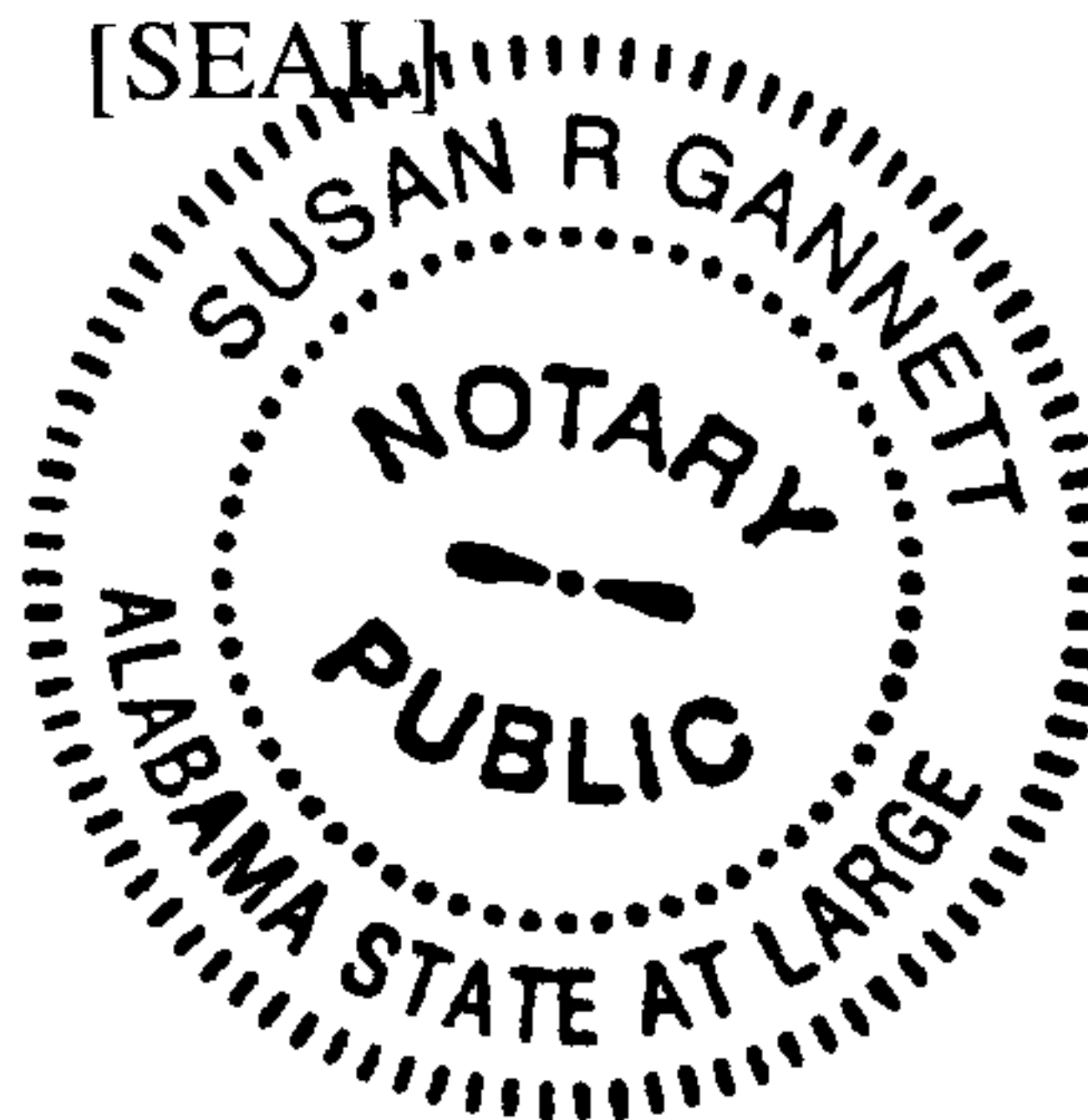
STATE OF Alabama )  
 )  
COUNTY OF Shelby ) ss:

I, Susan R. Gannett, a Notary Public, do hereby certify that Stephen L. Butler, personally known to me to be the Vice President of Engel Realty Company, Inc., an Alabama corporation, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such he signed and delivered the said document as his free and voluntary act and deed of said entity, being authorized to do so, for the use and purposes therein set forth. Given under my hand and notarial seal, this 21<sup>st</sup> day of June, 2007.

  
Notary Public

My commission expires:

MY COMMISSION EXPIRES OCTOBER 1, 2009







20070622000295120 19/21 \$72.00  
Shelby Cnty Judge of Probate, AL  
06/22/2007 03:05:58PM FILED/CERT

LENDER:

**WELLS FARGO BANK, N.A.**, as Trustee for the  
Registered Holders of J. P. Morgan Chase Commercial  
Mortgage Securities Corp., Commercial Mortgage Pass-  
Through Certificates Series 2004-C1

By: Capmark Finance Inc., a California corporation, as  
Master Servicer under the Pooling and Servicing  
Agreement

By: Laureate Capital, LLC, a North Carolina  
limited liability company, as sub-servicer

By: 

Name: Joseph A. Shaffer

Title: Senior Vice President

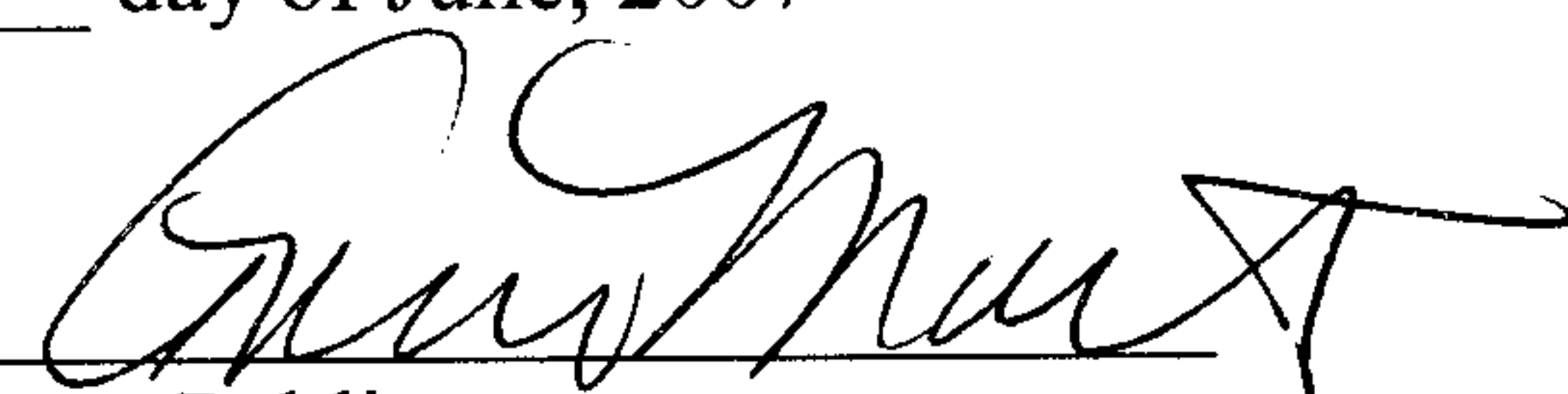
STATE OF North Carolina,  
COUNTY OF Mecklenburg, SS:

I, Ginnie Martin, a Notary Public, do hereby certify that Joseph A. Shaffer, personally known to me to be the Senior Vice President of Laureate Capital, LLC, a North Carolina limited liability company, as sub-servicer for Capmark Finance Inc., a California corporation, Master Servicer, on behalf of Wells Fargo Bank, N.A., as Trustee for the Registered Holders of J. P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates Series 2004-C1, and personally known to me to be the same person whose name is subscribed to the foregoing document, appeared before me this day in person and acknowledged that as such he/she signed and delivered the said document as his/her free and voluntary act and deed and the free and voluntary act and deed of said entity, being authorized to do so, for the use and purposes therein set forth.

Given under my hand and notarial seal, this 19 day of June, 2007

My Commission expires:

11-02-08

  
Notary Public

[SEAL]



**EXHIBIT A**

1. Fixed Rate Note, dated as of November 24, 2003, payable by Original Borrower to Original Lender in the original principal amount of 8,500,000.00 (the "Note");
2. Mortgage and Security Agreement, dated as of November 24, 2003, granted by Original Borrower for the benefit of Original Lender, recorded on November 24, 2003, at Instrument No. 20031124000770800 in the Clerk's Office of Shelby County, Alabama ("Recorder's Office") (the "Mortgage"),
3. Assignment of Leases and Rents from Original Borrower to Original Lender, dated as of November 24, 2003, and recorded at Instrument 20031124000770810 in the Recorder's Office (the "Assignment of Rents");
4. UCC-1 Financing Statement, with Original Borrower as Debtor and Original Lender as Secured Party, recorded at Instrument 20031124000770820 in the Recorder's Office (as assigned and continued from time to time, the "County UCC");
5. UCC-1 Financing Statement, with Original Borrower as Debtor and Original Lender as Secured Party, recorded in the records of the Secretary of State of the State of Alabama under File No. 03-1035895 (as assigned and continued from time to time, the "State UCC"; the County UCC and the State UCC are collectively referred to as the "UCC Financing Statements");
6. Guaranty, dated November, 2003, by Engel Realty Company, Inc., an Alabama corporation, for the benefit of Original Lender (the "Guaranty");
7. Environmental Indemnity Agreement, dated as of November, 2003, executed by Original Borrower and Original Guarantor, in favor of the Original Lender (the "Environmental Indemnity"); and
8. Other relevant documents.



EXHIBIT **AB**

Lot 2, according to the Survey of Wren Park Subdivision, as recorded in Map Book 22, page 131, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

TOGETHER WITH all beneficial easements shown on that certain Map Book 22, Page 131, including without limitation that certain 25' slope easement for the use and maintenance, repair and replacement of storm and surface water drainage, and that certain 50' slope easement for the use and maintenance, repair and replacement of storm and surface water drainage over and across the following property:

Part of the NW 1/4 of the NE 1/4 of the NE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows: Commence at the NE corner of said section; thence West along the North line of said section, 1,245.86 feet; thence 90°00'00" left, 431.26 feet; thence 111°16'33" right 127.85 feet to the beginning of a 50 foot easement lying South of and adjacent to the following described line; thence from last stated course, 27°54'00" left, 354.41 feet to the end of said 50 foot easement and the beginning of a 25 foot easement, lying South of and adjacent to said line; thence continue along last stated course, 100.00 feet; thence 20°43'00" right 482.29 feet; thence 25°31'00" left, 494.05 feet; thence 19°30'00" left 150 feet to the end of said easement, said property being part of Lot 1, Riverchase Gardens, First Sector, as recorded in Map Book 8, page 153, in the Probate Office of Shelby County, Alabama; and a part of Lots 1 and 2, Riverchase Properties Second Addition to Riverchase, as recorded in Map Book 9, page 40, in the Probate Office of Shelby County, Alabama.