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Shelby Cnty Judge of Probate, AL  
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MERS MIN #8000101-0000006356-9

Loan #51-0906596

**THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO THE CODE OF ALABAMA (1975) SECTION 7 9 402(6), AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF BORROWER, AS DEBTOR, AND MORTGAGEE, AS SECURED PARTY.**

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DRA/CLP RIVERCHASE CENTER BIRMINGHAM LLC, as mortgagor  
(Borrower)

to

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,** as mortgagee  
(Mortgagee)

**MORTGAGE AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND  
SECURITY AGREEMENT (AND FIXTURE FILING)**

Dated: As of June 13, 2007

Location: 2100/2200/2300 Riverchase  
Center, Birmingham, AL

County: Jefferson

PREPARED BY AND UPON  
RECORDATION RETURN TO

Sidley Austin LLP  
One South Dearborn Street  
Chicago, Illinois 60603

Attention: Dennis Coghlan, Esq.

THIS MORTGAGE, AND ABSOLUTE ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT (AND FIXTURE FILING) (this "Security Instrument") is made as of the ~~30~~ day of June, 2007 by DRA/CLP RIVERCHASE CENTER BIRMINGHAM LLC, a Delaware limited liability company having an address at c/o Colonial Properties Trust, 2101 6<sup>th</sup> Avenue North, Suite 750, Birmingham, AL 35203, as mortgagor ("Borrower") to MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation, having a mailing address as MERS Commercial, P.O. Box 2300, Flint, Michigan 48501-2300 ("MERS" or "Mortgagee").


RECITALS:

This Security Instrument is given to secure a loan (the "Loan") in the principal sum of SEVEN HUNDRED FORTY ONE MILLION NINE HUNDRED SEVEN THOUSAND TWO HUNDRED FIFTY SIX AND NO/100 DOLLARS (\$741,907,256) pursuant to that certain Loan Agreement, dated as of the date hereof, between Borrower, certain other Borrowers (the "Other Borrowers") and Wells Fargo Bank, National Association ("Lender") (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Loan Agreement") and evidenced by one or more promissory notes, dated the date hereof, made by Borrower and the Other Borrowers in favor of Lender (such promissory note(s), together with all extensions, renewals, replacements, restatements, amendments, supplements, severances or modifications thereof being hereinafter collectively referred to as the "Note").

Borrower desires to secure the payment of the Debt (as defined in the Loan Agreement) and the performance of all of its obligations under the Note, the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement).

This Security Instrument is given pursuant to the Loan Agreement, and payment, fulfillment, and performance by Borrower and the Other Borrowers of their obligations thereunder and under the other Loan Documents are secured hereby, and each and every term and provision of the Loan Agreement and the Note, including the rights, remedies, obligations, covenants, conditions, agreements, indemnities, representations and warranties of the parties therein, are hereby incorporated by reference herein as though set forth in full and shall be considered a part of this Security Instrument. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

[NO FURTHER TEXT ON THIS PAGE]

  
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## ARTICLE 1 - GRANTS OF SECURITY

Section 1.1 PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to and grant a security interest to Mortgagee and its successors and assigns in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) Land. The real property described in Exhibit A attached hereto and made a part hereof (the "Land");

(b) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(d) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) Fixtures and Personal Property. All machinery, equipment, fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures, inventory and goods) and other property of every kind and nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Land and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation and occupancy of the Land and the Improvements (collectively, the "Personal Property"), and the right, title and interest of Borrower in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;



(f) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into and all extensions, amendments and modifications thereto, whether before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, any guaranties of the lessees' obligations thereunder, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, payments in connection with any termination, cancellation or surrender of any Lease, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and/or the Improvements whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code and all proceeds from the sale or other disposition of the Leases (the "Rents") and the right to receive and apply the Rents to the payment of the Debt;

(g) Condemnation Awards. All awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property;

(h) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Property;

(i) Tax Certiorari. All refunds, rebates or credits in connection with a reduction in real estate taxes and assessments charged against the Property as a result of tax certiorari or any applications or proceedings for reduction;

(j) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(k) Rights. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Mortgagee in the Property;

(l) Agreements. To the extent assignable or transferable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Borrower thereunder;



(m) Intangibles. To the extent assignable or transferable, all trade names, trademarks, servicemarks, logos, copyrights, goodwill, books and records and all other general intangibles relating to or used in connection with the operation of the Property;

(n) Accounts. All accounts, Account Collateral, reserves, escrows and deposit accounts maintained by Borrower with respect to the Property including, without limitation, the Lockbox Account and the Reserve Funds, and all complete securities, investments, property and financial assets held therein from time to time and all proceeds, products, distributions or dividends or substitutions thereon and thereof (collectively, the "Accounts");

(o) Causes of Action. All causes of action and claims (including, without limitation, all causes of action or claims arising in tort, by contract, by fraud or by concealment of material fact) against any Person for damages or injury to the Property or in connection with any transactions financed in whole or in part by the proceeds of the Loan ("Cause of Action"); and

(p) Other Rights. Any and all other rights of Borrower in and to the items set forth in Subsections (a) through (o) above.

Section 1.2 ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Mortgagee, Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only and Mortgagee's right to the Leases and Rents is not contingent upon, and may be exercised without possession of, the Property. Nevertheless, subject to the terms of this Section 1.2, Section 9.1(h) and the Loan Agreement, Mortgagee grants to Borrower a license to collect and receive the Rents and other sums due under any Lease guaranties, and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or Lease guaranties, at all times prior to Mortgagee's revocation of such license after the occurrence and during the continuation of an Event of Default. Borrower shall hold such portion of the Rents and all sums received pursuant to any Lease guaranty sufficient to discharge all current sums then due on the Loan. Upon an Event of Default which is continuing, the license shall be automatically revoked and Mortgagee may collect and apply the Rents pursuant to the terms hereof without notice and without taking possession of the Property. All Rents thereafter collected by Borrower shall be held by Borrower as trustee under a constructive trust for the benefit of Mortgagee. Borrower hereby irrevocably authorizes and directs the tenants under the Leases to rely upon and comply with any notice or demand by Mortgagee for the payment to Mortgagee of any rental or other sums which may at any time become due under the Leases, or for the performance of any of the tenants' undertakings under the Leases, and the tenants shall have no right or duty to inquire as to whether any Event of Default has actually occurred or is then existing. Borrower shall hold such portion of the Rents and all sums received pursuant to any Lease guaranty sufficient to discharge all current sums then due on the Loan. The foregoing irrevocable assignment shall not cause Mortgagee to be: (a) a mortgagee in possession in the absence of actual possession; (b) responsible or liable for the control, care, management or repair of the Property or for performing any of the terms, agreements, undertakings, obligations, representations, warranties, covenants and conditions of the Leases; (c) responsible or liable for any waste committed on the Property by the tenants under any of the Leases or by any other parties; for any dangerous or defective condition of the Property; or for any negligence in the management, upkeep, repair or



control of the Property resulting in loss or injury or death to any tenant, licensee, employee, invitee or other person; or (d) responsible for or impose upon Mortgagee any duty to produce rents or profits. Mortgagee shall not directly or indirectly be liable to Borrower or any other person as a consequence of: (e) the exercise or failure to exercise any of the rights, remedies or powers granted to Mortgagee hereunder; or (f) the failure or refusal of Mortgagee to perform or discharge any obligation, duty or liability of Borrower arising under the Leases.

Section 1.3 SECURITY AGREEMENT. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Security Instrument, Borrower hereby grants to Mortgagee, as security for the Obligations (as herein defined) a security interest in the Personal Property, the Accounts, and the Account Collateral to the full extent that the Personal Property, the Accounts and the Account Collateral may be subject to the Uniform Commercial Code (collectively, the "Collateral"). As to all of the above-described personal property which is or which hereafter becomes a "fixture" under applicable law, this Security Instrument constitutes a fixture filing under the Uniform Commercial Code of the state in which the Property is located, as amended or recodified from time to time ("UCC").

(a) Borrower agrees: (i) to execute and deliver such documents as Mortgagee deems necessary to create, perfect and continue the security interests contemplated hereby; (ii) not to change its name, and, as applicable, its chief executive offices, its principal residence or the jurisdiction in which it is organized without giving Mortgagee at least 30 days' prior written notice thereof; and (iii) to cooperate with Mortgagee in perfecting all security interests granted herein and in obtaining such agreements from third parties as Mortgagee deems necessary, proper or convenient in connection with the preservation, perfection or enforcement of any of Mortgagee's rights hereunder.

(b) In addition to Mortgagee's rights as a "Secured Party" under the UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Borrower: (i) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (ii) insure, protect, defend and preserve the Collateral or any rights or interests of Mortgagee therein; and (iii) inspect the Collateral. Notwithstanding the above, in no event shall Mortgagee be deemed to have accepted any property other than cash in satisfaction of any obligation of Borrower to Mortgagee unless Mortgagee shall make an express written election of said remedy under the UCC or other applicable law.

(c) To the fullest extent permitted by law, upon the occurrence of an Event of Default, then in addition to all of Mortgagee's rights as a "Secured Party" under the UCC or otherwise at law:

(i) Mortgagee may: (A) upon written notice, require Borrower to assemble any or all of the Collateral and make it available to Mortgagee at a place designated by Mortgagee; (B) without prior notice, enter upon the Property or other place where the Collateral may be located and take possession of, collect, sell, lease, license, and otherwise dispose of the Collateral, and store the same at locations acceptable to



Mortgagee at Borrower's expense; or (C) sell, assign and deliver the Collateral at any place or in any lawful manner and bid and become purchaser at any such sales; and

(ii) Mortgagee may, for the account of Borrower and at Borrower's expense: (A) operate, use, consume, sell, lease, license or otherwise dispose of the Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Secured Obligations; (B) enter into any agreement, compromise or settlement including insurance claims, which Mortgagee may deem desirable or proper with respect to the Collateral; and (C) endorse and deliver evidences of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Borrower in connection with or on account of the Collateral.

(d) Borrower acknowledges and agrees that a disposition of the Collateral in accordance with Mortgagee's rights and remedies as heretofore provided is a disposition thereof in a commercially reasonable manner and that 5 business days' prior notice of such disposition is commercially reasonable notice. Mortgagee shall have no obligation to process or prepare the Collateral for sale or other disposition. In disposing of the Collateral, Mortgagee may disclaim all warranties of title, possession, quiet enjoyment and the like. Any proceeds of any sale or other disposition of the Collateral may be applied by Mortgagee first to the reasonable expenses incurred by Mortgagee in connection therewith, including, without limitations, reasonable attorneys' fees and disbursements, and then to the payment of the Obligations, in such order of application as Mortgagee may from time to time elect.

(e) Borrower hereby irrevocably appoints Mortgagee as Borrower's attorney-in-fact (such agency being coupled with an interest), and as such attorney-in-fact, Mortgagee may, without the obligation to do so, in Mortgagee's name or in the name of Borrower, prepare, execute, file and record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to the Collateral, and upon an Event of Default, take any other action required of Borrower; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee.

(f) Borrower covenants as follows: (i) Borrower's chief executive office is located at the address shown on page one of this Security Instrument; (ii) Borrower is an organization organized solely under the laws of the State of Delaware; (iii) all organizational documents of Borrower delivered to Mortgagee are complete and accurate in every respect; and (iv) Borrower's legal name is exactly as shown on page one of this Security Instrument.

Section 1.4 PLEDGE OF MONIES HELD. Borrower hereby pledges to Mortgagee any and all monies now or hereafter held by Mortgagee, including, without limitation, any sums deposited in the Reserve Funds, the Accounts, Net Proceeds and Awards, as additional security for the Obligations until expended or applied as provided in the Loan Agreement or this Security Instrument.

#### CONDITIONS TO GRANT



TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Security Instrument, shall well and truly perform the Other Obligations (as herein defined) as set forth in this Security Instrument and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the Loan Agreement, these presents and the estate hereby granted shall cease, terminate and be void.

## ARTICLE 2 - DEBT AND OBLIGATIONS SECURED

Section 2.1 DEBT. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Debt, including without limitation,

(a) the payment of the indebtedness evidenced by the Note in lawful money of the United States of America;

(b) the payment of interest, default interest, late charges and other sums applicable to the indebtedness, as provided in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;

(c) the payment of the Yield Maintenance Premium, if any;

(d) the payment of all other moneys agreed or provided to be paid by Borrower in the Note, the Loan Agreement, this Security Instrument or the other Loan Documents;

(e) the payment of all sums advanced pursuant to the Loan Agreement or this Security Instrument to protect and preserve the Property and the creation, attachment, perfection and enforcement of the lien and the security interest created hereby; and

(f) the payment of all sums advanced and costs and expenses incurred by Mortgagee in connection with the Debt or any part thereof in accordance with the terms of the Loan Agreement, and any modification, amendment, renewal, extension, or change of or substitution for the Debt or any part thereof made or incurred at the request of Borrower.

Section 2.2 OTHER OBLIGATIONS. This Security Instrument and the grants, assignments and transfers made in Article 1 are also given for the purpose of securing the following (the "Other Obligations"):

(a) the performance of all other obligations of Borrower contained herein;

(b) the performance of each obligation of Borrower and the Other Borrowers contained in any other agreement given by Borrower or the Other Borrowers to Mortgagee which is for the purpose of further securing the obligations secured hereby, and any renewals, extensions, substitutions, replacements, amendments, modifications and changes thereto; and



(c) the performance of each obligation of Borrower and Other Borrowers contained in any renewal, extension, amendment, modification, consolidation, change of, or substitution or replacement for, all or any part of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

Section 2.3 DEBT AND OTHER OBLIGATIONS. Borrower's and Other Borrower's obligations, as applicable, for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively below as the "Obligations."

### **ARTICLE 3 - BORROWER COVENANTS**

Borrower covenants and agrees that:

Section 3.1 PAYMENT OF DEBT. Borrower will pay the Debt at the time and in the manner provided in the Note, the Loan Agreement and in this Security Instrument.

Section 3.2 INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in the Loan Agreement, the Note and all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3 INSURANCE. Borrower shall obtain and maintain, or cause to be maintained, insurance in full force and effect at all times with respect to Borrower and the Property as required pursuant to the Loan Agreement.

Section 3.4 PAYMENT OF TAXES, ETC. Borrower shall promptly pay all Taxes and Other Charges in accordance with the terms of the Loan Agreement.

Section 3.5 MAINTENANCE AND USE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair in accordance with the terms of the Loan Agreement. Subject to the terms of the Loan Agreement, the Improvements and the Personal Property shall not be removed, demolished or materially altered or expanded (except for normal replacement of the Personal Property) without the consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed). Subject to the terms of the Loan Agreement, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any Casualty, or become damaged, worn or dilapidated or which may be affected by any Condemnation and shall complete and pay for any structure at any time in the process of construction or repair on the Land. Subject to the terms of the Loan Agreement, Borrower shall not initiate or consent to any zoning reclassification of any portion of the Property or seek any variance under any existing zoning ordinance or use or permit the use of any portion of the Property in any manner that could reasonably be expected to result in the current use becoming a nonconforming use under any applicable zoning ordinance or any other Applicable Law, without the express written consent of Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 3.6 WASTE. Borrower shall not willfully commit or suffer any physical waste of the Property or do or willfully permit to be done thereon anything that may in any way



materially impair the value of the Property or the security of this Security Instrument. Except to the extent permitted by the Permitted Encumbrances, Borrower will not, without the prior written consent of Mortgagee, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof; provided, however, Borrower shall notify Mortgagee of such drilling or exploration.

Section 3.7 PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Encumbrances or the liens or security interests that Borrower is contesting as permitted under the Loan Agreement.

Section 3.8 PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of the Loan Agreement, any other Loan Documents and any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Mortgagee for the purpose of further securing the Obligations and any amendments, modifications or changes thereto.

Section 3.9 CHANGE OF NAME, IDENTITY OR STRUCTURE. Except as may be permitted under the Loan Agreement, Borrower will not change Borrower's name, identity (including its trade name or names) or corporate, partnership or other structure (except in connection with a transfer permitted under Section 5.2.10 of the Loan Agreement) without first obtaining the prior written consent of Mortgagee (which consent shall not be unreasonably withheld, conditioned or delayed). Borrower hereby authorizes Mortgagee, prior to or contemporaneously with the effective date of any such change, to file any financing statement or financing statement change required by Mortgagee to establish or maintain the validity, perfection and priority of the security interest granted herein. At the request of Mortgagee, Borrower shall execute a certificate in form reasonably satisfactory to Mortgagee listing the trade names under which Borrower intends to operate the Property, and representing and warranting that Borrower does business under no other trade name with respect to the Property.

Section 3.10 PROPERTY USE. The Property shall be used only for general office use and any ancillary uses relating thereto, and for no other uses without the prior written consent of Mortgagee, which consent may be withheld in Mortgagee's sole and absolute discretion.

#### **ARTICLE 4 - REPRESENTATIONS AND WARRANTIES**

Borrower represents and warrants to Mortgagee that:

Section 4.1 WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses a fee simple estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for the



Permitted Encumbrances. To the best of Borrower's knowledge, the Permitted Encumbrances do not and will not materially adversely affect or interfere with the value, or materially adversely affect or interfere with the current use or operation, of the Property, or the security intended to be provided by this Security Instrument or the ability of Borrower to repay the Note or any other amount owing under the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents or to perform its obligations thereunder in accordance with the terms of the Loan Agreement, the Note, this Security Instrument or the other Loan Documents. This Security Instrument, when properly recorded in the appropriate records, together with any Uniform Commercial Code financing statements required to be filed in connection therewith, will create (i) a valid, perfected first priority lien on the Property, subject only to Permitted Encumbrances (to the extent that a security interest may be perfected therein through such recording or filing) and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty (including the Leases), all in accordance with the terms thereof, subject only to Permitted Encumbrances (to the extent that a security interest may be perfected therein through such recording or filing). No Person other than Borrower owns any interest in any payments due under such Leases that is superior to or of equal priority with the Mortgagee's interest therein. Borrower shall forever warrant, defend and preserve the title and the validity and priority of the lien of this Security Instrument and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

## **ARTICLE 5 - OBLIGATIONS AND RELIANCES**

Section 5.1 RELATIONSHIP OF BORROWER AND MORTGAGEE. The relationship between Borrower and Mortgagee is solely that of debtor and creditor, and Mortgagee has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Borrower and Mortgagee to be other than that of debtor and creditor.

Section 5.2 NO RELIANCE ON MORTGAGEE. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Mortgagee are relying solely upon such expertise and business plan in connection with the ownership and operation of the Property. Borrower is not relying on Mortgagee's expertise, business acumen or advice in connection with the Property.

Section 5.3 NO MORTGAGEE OBLIGATIONS. (a) Notwithstanding the provisions of Section 1.1(f), (l) and (m) or Section 1.2 hereof, Mortgagee is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Mortgagee pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Mortgagee shall not be deemed to have warranted, consented to, or affirmed



the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Mortgagee.

Section 5.4 RELIANCE. Borrower recognizes and acknowledges that in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, (i) Mortgagee is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Article 4 of the Loan Agreement and Articles 3 and 4 hereof without any obligation to investigate the Property and notwithstanding any investigation of the Property by Mortgagee; (ii) that such reliance existed on the part of Mortgagee prior to the date hereof; (iii) that the warranties and representations are a material inducement to Mortgagee in accepting the Note, the Loan Agreement, this Security Instrument and the other Loan Documents; and (iv) that Mortgagee would not be willing to make the Loan and accept this Security Instrument in the absence of the warranties and representations as set forth in Article 4 of the Loan Agreement and Articles 3 and 4 hereof.

## **ARTICLE 6 - FURTHER ASSURANCES**

Section 6.1 RECORDING OF SECURITY INSTRUMENT, ETC. Borrower forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time, will cause this Security Instrument and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Mortgagee in, the Property. Borrower will pay all taxes (other than Mortgagee's income or franchise taxes), filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, the Loan Agreement, this Security Instrument, the other Loan Documents, and any instrument of further assurance, and any modification or amendment of the foregoing documents, and all federal, state, county and municipal taxes (other than Mortgagee's income or franchise taxes), duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, the other Loan Documents, or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 6.2 FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the Property and rights hereby deeded, mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Borrower, on demand, will execute and deliver and hereby authorizes Mortgagee to file one or more financing statements or execute in the name of Borrower to the extent Mortgagee may lawfully do so, one or more chattel mortgages or other instruments, to evidence more effectively the security interest



of Mortgagee in the Property or any Collateral. Upon the occurrence and continuation of an Event of Default, Borrower grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including without limitation such rights and remedies available to Mortgagee pursuant to this Section 6.2.

Section 6.3 CHANGES IN TAX, DEBT CREDIT AND DOCUMENTARY STAMP LAWS.

(a) If any law is enacted or adopted or amended after the date of this Security Instrument which deducts the Debt from the value of the Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Property, Borrower will pay the tax, with interest and penalties thereon, if any. If Mortgagee is advised by counsel chosen by it that the payment of tax by Borrower would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then Mortgagee shall have the option, exercisable by written notice of not less than one hundred twenty (120) days to declare the Debt immediately due and payable without penalty or premium, including, any Yield Maintenance Premium. In lieu of the full repayment of the Debt in accordance with the preceding sentence and during any period of time where a defeasance is permitted under the Loan Agreement (other than the period which is ninety (90) days prior to the Maturity Date, during which time, Borrower may prepay the Debt without penalty or premium, Borrower may defease the Property in accordance with Section 2.4 of the Loan Agreement.

(b) Borrower will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Property, or any part thereof, for real estate tax purposes by reason of this Security Instrument or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, exercisable by written notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable without penalty or premium, including, any Yield Maintenance Premium. In lieu of the full repayment of the Debt in accordance with the preceding sentence and during any period of time where a defeasance is permitted under the Loan Agreement (other than the period which is ninety (90) days prior to the Maturity Date, during which time, Borrower may prepay the Debt without penalty or premium, Borrower may defease the Property in accordance with Section 2.4 of the Loan Agreement.

(c) If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, the Loan Agreement, this Security Instrument, or any of the other Loan Documents or impose any other tax or charge on the same, Borrower will pay for the same, with interest and penalties thereon, if any.

Section 6.4 REPLACEMENT DOCUMENTS. Upon receipt of an affidavit of an officer of Mortgagee as to the loss, theft, destruction or mutilation of the Note or any other Loan Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other Loan Documents, Borrower, to the extent each is party to such agreement, will issue, in lieu thereof, a replacement Note or other Loan Documents, dated the



date of such lost, stolen, destroyed or mutilated Note or other Loan Documents in the same principal amount thereof and otherwise of like tenor.

Section 6.5 PERFORMANCE AT BORROWER'S EXPENSE. Borrower acknowledges and confirms that Mortgagee shall impose certain administrative processing and/or commitment fees in connection with (a) the extension, renewal, modification, amendment and termination of the Loan at Borrower's request or (b) the release or substitution of collateral therefor. Borrower further acknowledges and confirms that it shall be responsible for the payment of all costs of reappraisal of the Property or any part thereof, whether required by law, regulation, Mortgagee (to the extent required or permitted pursuant to the provisions of the Loan Documents) or any governmental or quasi-governmental authority. Borrower hereby acknowledges and agrees to pay, within five (5) days of receipt or written notice from Mortgagee, all such reasonable fees (as the same may be increased or decreased from time to time), and any reasonable additional fees of a similar type or nature which may be imposed by Mortgagee from time to time, upon the occurrence of any of the foregoing. Wherever it is provided for herein that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, all reasonable legal fees and disbursements incurred by Mortgagee.

Section 6.6 LEGAL FEES FOR ENFORCEMENT. (a) Borrower shall pay all reasonable legal fees incurred by Mortgagee in connection with the preparation of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents and (b) Borrower shall pay to Mortgagee on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Mortgagee in protecting its interest in the Property or in collecting any amount payable hereunder or in enforcing its rights hereunder with respect to the Property (including commencing any foreclosure action), whether or not any legal proceeding is commenced hereunder or thereunder, together with interest thereon at the Default Rate from the date paid or incurred by Mortgagee until such expenses are paid by Borrower.

## **ARTICLE 7 - DUE ON SALE/ENCUMBRANCE**

Section 7.1 MORTGAGEE RELIANCE. Borrower acknowledges that Mortgagee has examined and relied on the experience of Borrower and its partners, members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for repayment of the Debt and the performance of the Other Obligations. Borrower acknowledges that Mortgagee has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the repayment of the Debt or the performance of the Other Obligations, Mortgagee can recover the Debt by a sale of the Property.

Section 7.2 NO SALE/ENCUMBRANCE. Neither Borrower nor any Restricted Party shall Transfer the Property or any part thereof or any interest therein or permit or suffer the Property or any part thereof or any interest therein to be Transferred other than as expressly permitted pursuant to the terms of the Loan Agreement.



## ARTICLE 8 - PREPAYMENT

Section 8.1 PREPAYMENT. The Debt may not be prepaid in whole or in part except in accordance with the express terms and conditions of the Loan Agreement.

## ARTICLE 9 - RIGHTS AND REMEDIES

Section 9.1 REMEDIES. Upon the occurrence and continuation of any Event of Default, Borrower agrees that Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law in which case the Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by Applicable Law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Debt then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, in the Note, the Loan Agreement, or in the other Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, any Guarantor or of any person, firm or other entity liable for the payment of the Debt;
- (h) subject to any Applicable Law, the license granted to Borrower under Section 1.2 hereof shall automatically be revoked and Mortgagee may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower



and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and of such books, records and accounts to Mortgagee upon demand, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct business thereon; (ii) complete any construction on the Property in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Property and every part thereof; (v) require Borrower to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower; (vi) require Borrower to vacate and surrender possession of the Property to Mortgagee or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Mortgagee shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing: (i) the right to take possession of any Collateral (including, without limitation, the Personal Property) or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral (including without limitation, the Personal Property), and (ii) request Borrower at its expense to assemble the Collateral, including without limitation, the Personal Property, and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral, including without limitation, the Personal Property, sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) apply any sums then deposited in the Accounts and any other sums held in escrow or otherwise by Mortgagee in accordance with the terms of this Security Instrument, the Loan Agreement, or any other Loan Documents to the payment of the following items in any order in its sole discretion:

- (i) Taxes and Other Charges;
- (ii) Insurance Premiums;
- (iii) interest on the unpaid principal balance of the Note;
- (iv) amortization of the unpaid principal balance of the Note; or



(v) all other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation advances made by Mortgagee pursuant to the terms of this Security Instrument;

(k) surrender the Policies, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Mortgagee in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Mortgagee as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect such Insurance Premiums;

(l) apply the undisbursed balance of any Net Proceeds Deficiency deposit, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Mortgagee shall deem to be appropriate in its discretion;

(m) foreclose by power of sale or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 9.2 or to any deficiency under this Security Instrument;

(n) exercise all rights and remedies under any Causes of Action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt in accordance with Section 9.2 or to any deficiency under this Security Instrument; or

(o) pursue such other remedies as Mortgagee may have under Applicable Law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority.

Section 9.2 APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Mortgagee pursuant to the Note, this Security Instrument, the Loan Agreement, or the other Loan Documents, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its discretion shall deem proper.

Section 9.3 RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Security Instrument or collect the Debt. The cost and expense of any cure hereunder (including reasonable attorneys' fees to the extent permitted by law), with interest as provided below, shall constitute a portion of the Debt and shall be due and payable to Mortgagee upon demand. All such costs and expenses incurred by Mortgagee in remedying such Event of Default shall bear interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee and shall be deemed to constitute a portion of



the Debt and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Mortgagee therefor.

Section 9.4 ACTIONS AND PROCEEDINGS. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Property and, after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Mortgagee, in its discretion, decides should be brought to protect its interest in the Property.

Section 9.5 RECOVERY OF SUMS REQUIRED TO BE PAID. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a Default or Defaults by Borrower existing at the time such earlier action was commenced.

Section 9.6 OTHER RIGHTS, ETC. (a) The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Mortgagee to comply with any request of Borrower to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Loan Agreement, this Security Instrument or the other Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Mortgagee shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Mortgagee shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to the Property or any other Collateral not in Mortgagee's possession.

(c) Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Security Instrument. The rights of Mortgagee under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 9.7 RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Mortgagee may release any portion of the Property for such consideration as Mortgagee may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this



Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Mortgagee for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Mortgagee may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Property.

Section 9.8 VIOLATION OF LAWS. If the Property is not in compliance with Legal Requirements and such non-compliance is reasonably likely to have a material adverse effect on the Property and subject to Borrower's right to contest such non-compliance pursuant to the terms and conditions of the Loan Agreement, Mortgagee may impose additional reasonable requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 9.9 RIGHT OF ENTRY. Subject to the terms of the Loan Agreement and the rights of tenants under their respective Leases, Mortgagee and its agents shall have the right to enter and inspect the Property at all reasonable times and upon reasonable advance notice to Borrower (except upon the occurrence and during the continuation of an Event of Default, in which case no advance notice shall be required).

Section 9.10 SUBROGATION. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of the funds so used, Mortgagee shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property (but not against Borrower) heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Mortgagee, subject, however, to the provisions of Article 12 hereof, and are merged with the lien and security interest created herein as cumulative security for the repayment of the Debt, and the performance and discharge of the Obligations.

## **ARTICLE 10 - INDEMNIFICATIONS**

Section 10.1 GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Legal Requirements; (e) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the funding of the Loan evidenced by the Note and



secured by this Security Instrument; provided, however, that Borrower shall not be liable for the payment of any Losses to the extent same arise by reason of the gross negligence or willful misconduct of Mortgagee. Any amounts payable to Mortgagee by reason of the application of this Section 10.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid.

Section 10.2 MORTGAGE AND/OR INTANGIBLE TAX. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless the Indemnified Parties from and against any and all Losses imposed upon or incurred by or asserted against any Indemnified Parties and directly or indirectly arising out of or in any way relating to any tax (other than Mortgagee's income or franchise tax) on the making and/or recording of this Security Instrument, the Loan Agreement, the Note or any other Loan Document.

Section 10.3 ENVIRONMENTAL INDEMNITY. Simultaneously with this Security Instrument, Borrower and Other Borrowers have executed and delivered the Environmental Indemnity.

## **ARTICLE 11 - WAIVERS**

Section 11.1 WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Mortgagee arising out of or in any way connected with this Security Instrument, the Note, the Loan Agreement, any of the other Loan Documents, or the Obligations.

Section 11.2 MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Borrower, and on behalf of each Person acquiring any interest in or title to the Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by Legal Requirements.

Section 11.3 WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Mortgagee except (a) with respect to matters for which this Security Instrument, the Loan Agreement or any other Loan Document, specifically and expressly provides for the giving of notice by Mortgagee to Borrower, and (b) with respect to matters for which Mortgagee is required by any Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Mortgagee with respect to any matter for which this Security Instrument does not specifically and expressly provide for the giving of notice by Mortgagee to Borrower.

Section 11.4 INTENTIONALLY DELETED.

Section 11.5 SOLE DISCRETION OF MORTGAGEE. Wherever pursuant to this Security Instrument (a) Mortgagee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender or Mortgagee, or (c) any other decision or



determination is to be made by Lender or Mortgagee, the decision of Lender or Mortgagee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender or Mortgagee, as applicable, shall be in the sole and absolute discretion of Lender or Mortgagee, as applicable, except as may be otherwise expressly and specifically provided herein or in any of the other Loan Documents.

## **ARTICLE 12 - EXCULPATION**

Section 12.1 EXCULPATION. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower to pay the Debt and for the performance of the other agreements, covenants and obligations contained herein and in the Note, the Loan Agreement and the other Loan Documents shall be limited as set forth in Section 9.4 of the Loan Agreement.

## **ARTICLE 13 - SUBMISSION TO JURISDICTION**

Section 13.1 SUBMISSION TO JURISDICTION. With respect to any claim or action arising hereunder or under the Note or the other Loan Documents, Borrower (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York, New York, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Security Instrument brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing in this Security Instrument will be deemed to preclude Mortgagee from bringing an action or proceeding with respect hereto in any other jurisdiction.

## **ARTICLE 14 - APPLICABLE LAW**

Section 14.1 CHOICE OF LAW. THIS SECURITY INSTRUMENT SHALL BE DEEMED TO BE A CONTRACT ENTERED INTO PURSUANT TO THE LAWS OF THE STATE OF NEW YORK AND SHALL IN ALL RESPECTS BE GOVERNED, CONSTRUED, APPLIED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT, AND THE DETERMINATION OF DEFICIENCY JUDGMENTS, THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY.

Section 14.2 PROVISIONS SUBJECT TO APPLICABLE LAW. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any Legal Requirements.



## ARTICLE 15 - DEFINITIONS

Section 15.1 GENERAL DEFINITIONS. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Lender and any subsequent holder of the Note," the word "Note," shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Property" shall include any portion of the Property and any interest therein, and the phrases "legal fees", "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder.

Section 15.2 HEADINGS, ETC. The headings and captions of various Articles and Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

## ARTICLE 16 - MISCELLANEOUS PROVISIONS

Section 16.1 NO ORAL CHANGE. This Security Instrument and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 16.2 LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Security Instrument shall be binding upon and inure to the benefit of Borrower and Mortgagee and their respective successors and assigns forever.

Section 16.3 INAPPLICABLE PROVISIONS. If any term, covenant or condition of this Security Instrument or any other Loan Document, is held to be invalid, illegal or unenforceable in any respect, the Note and this Security Instrument or the other Loan Documents, as the case may be, shall be construed without such provision.

Section 16.4 DUPLICATE ORIGINALS; COUNTERPARTS. This Security Instrument may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Security Instrument may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Security Instrument. The failure of any party hereto to execute this Security Instrument, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

Section 16.5 NUMBER AND GENDER. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.



Section 16.6 NOTICES. All notices required or permitted under this Security Instrument shall be given and be effective in accordance with Section 10.6 of the Loan Agreement.

Section 16.7 DISCLAIMERS. (a) MERS serves as mortgagee of record and secured party solely as nominee, in an administrative capacity, for Lender and its successors and assigns and only holds legal title to the interests granted, assigned, and transferred herein. All payments or deposits with respect to the Obligations shall be made to Lender, all advances under the Loan Documents shall be made by Lender, and all consents, approvals, or other determinations required or permitted of MERS herein shall be made by Lender. MERS shall at all times comply with the instructions of Lender and its successors and assigns. If necessary to comply with law or custom, MERS (for the benefit of Lender and its successors and assigns) may be directed by Lender to exercise any or all of those interests, including without limitation, the right to foreclose and sell the Property, and take any action required of Lender, including without limitation, a release, discharge or reconveyance of this Security Instrument. Subject to the foregoing, all references herein to "Mortgagee" shall include Lender and its successors and assigns.

(b) The relationship of Borrower and Mortgagee under this Security Instrument and the other Loan Documents is, and shall at all times remain, solely that of borrower and lender; (the role of MERS hereunder being solely that of nominee as set forth in subsection (a) above and not that of a lender); and Mortgagee neither undertakes nor assumes any responsibility or duty to Borrower or to any third party with respect to the Property. Notwithstanding any other provisions of this Security Instrument and the other Loan Documents: (i) Mortgagee is not, and shall not be construed to be, a partner, joint venturer, member, alter ego, manager, controlling person or other business associate or participant of any kind of Borrower, and Mortgagee does not intend to ever assume such status; (ii) Mortgagee does not intend to ever assume any responsibility to any person for the quality, suitability, safety or condition of the Property; and (iii) Mortgagee shall not be deemed responsible for or a participant in any acts, omissions or decisions of Borrower.

(c) Except to the extent required by applicable law, Mortgagee shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any construction on, or occupancy or use of, the Property, whether caused by or arising from: (i) any defect in any building, structure, grading, fill, landscaping or other improvements thereon or in any on-site or off-site improvement or other facility therein or thereon; (ii) any act or omission of Borrower or any of Borrower's agents, employees, independent contractors, licensees or invitees; (iii) any accident in or on the Property or any fire, flood or other casualty or hazard thereon; (iv) the failure of Borrower or any of Borrower's licensees, employees, invitees, agents, independent contractors or other representatives to maintain the Property in a safe condition; or (v) any nuisance made or suffered on any part of the Property.

## **ARTICLE 17 - CROSS-COLLATERALIZATION**

Section 17.1 CROSS-COLLATERALIZATION. Borrower acknowledges that the Debt is secured by this Security Instrument together with those additional Security Instruments given by Borrower and/or certain Affiliates of Borrower (the "Other Borrowers") to Mortgagee, together with other Loan Documents securing or evidencing the Debt, and encumbering the other



Individual Properties, all as more specifically set forth in the Loan Agreement. Upon the occurrence and continuation of an Event of Default, Mortgagee shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Security Instrument and any or all of the other Security Instruments whether by court action, power of sale or otherwise, under any applicable provision of law, for all of the Debt or the portion of the Debt allocated to the Property in the Loan Agreement, and the lien and the security interest created by the other Security Instruments shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Debt then due and payable but still outstanding. Borrower acknowledges and agrees that the Property and the other Individual Properties are located in one or more States and counties, and therefore Mortgagee shall be permitted to enforce payment of the Debt and the performance of any term, covenant or condition of the Note, this Security Instrument, the Loan Documents or the other Security Instruments and exercise any and all rights and remedies under the Note, this Security Instrument, the other Loan Documents or the other Security Instruments, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or both, to be determined by Mortgagee, in its sole discretion, in any one or more of the States or counties in which the Property or any other Individual Property is located. Neither the acceptance of this Security Instrument, the other Loan Documents or the other Security Instruments nor the enforcement thereof in any one State or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Note, this Security Instrument, the other Loan Documents, or any other Security Instruments through one or more additional proceedings in that State or county or in any other State or county. Any and all sums received by Mortgagee under the Note, this Security Instrument, and the other Loan Documents shall be applied to the Debt in such order and priority as Mortgagee shall determine, in its sole discretion, without regard to the Allocated Loan Amount for the Property or any other Individual Property or the appraised value of the Property or any Individual Property.

## **ARTICLE 18 - [RESERVED]**

## **ARTICLE 19 - STATE SPECIFIC PROVISIONS**

Section 19.1 INCONSISTENCIES. In the event of any inconsistencies between the terms and conditions of this Article 19 and the other provisions of this Security Instrument, the terms and conditions of this Article 19 shall control and be binding.

Section 19.2 PROVIDED, ALWAYS, that if Borrower shall pay unto Lender the Debt and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note, the Loan Agreement, this Security Instrument and all of the other Loan Documents, then this Security Instrument and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise to remain in full force and effect.

Section 19.3 Foreclosure and Power of Sale. Without in any way limiting any of the other rights and remedies of Lender pursuant to this Security Instrument, the Loan Agreement or any of the other Loan Documents, if an Event of Default shall have occurred and be continuing, Lender shall be authorized to take possession of the Property by publication once a week for



three (3) consecutive weeks of the time, place, and terms of sale, by publication in some newspaper published in Jefferson County, State of Alabama, to sell the same, as a whole or in parcels, in front of the courthouse door of Jefferson County, Alabama, at public outcry, to the highest and best bidder for cash, in order to pay the Debt (including, without limitation, and accrued interest). Lender may bid and purchase at such sale. The aforesaid power of sale is granted in addition to the other remedies provided by law for collection of the Debt and shall not be exhausted by one exercise thereof but may be exercised until Lender has received full payment of the Debt. If at the time of the sale Lender shall deem it best for any reason to postpone or continue said sale for one or more days, Lender may do so, in which event notice of such postponement or continuance shall be made in such manner as the Lender may deem sufficient under the laws of the State of Alabama. At any such public sale, Lender may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple with full warranty and, to this end, Borrower hereby constitutes and appoints Lender as the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title or equity that Borrower may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales. Said appointment is coupled with an interest and shall be irrevocable. Any recitals contained in the conveyance as to the happening of any Event of Default shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with, and said recitals shall be conclusive against Borrower. Upon any public sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied as provided by law. In the event that such proceeds are insufficient to pay all costs and expenses of sale, Lender may advance such sums as it in its sole and absolute discretion shall determine for the purpose of paying all or any part of such costs and expenses, and all such sums shall be a part of the Debt, payable on demand with interest at the Default Rate. Borrower shall remain liable for any deficiency resulting if the proceeds of sale are inadequate to repay the Debt.



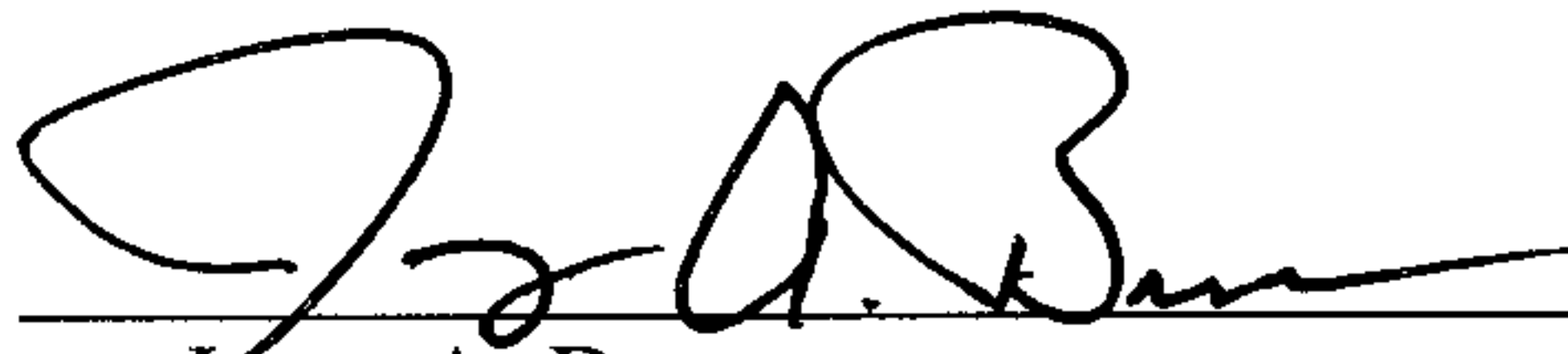
IN WITNESS WHEREOF, THIS SECURITY INSTRUMENT has been executed by  
Borrower the day and year first above written.


DRA/CLP RIVERCHASE CENTER BIRMINGHAM LLC,  
a Delaware limited liability company

By: DRA/CLP Office LLC, its sole member

By: Colonial Realty Limited Partnership, its sole member

By: Colonial Properties Trust, its General Partner

By:   
Name: Jerry A. Brewer  
Title: Senior Vice President, Corporate Treasury

  
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Shelby Cnty Judge of Probate, AL  
06/25/2007 12:27:51PM FILED/CERT

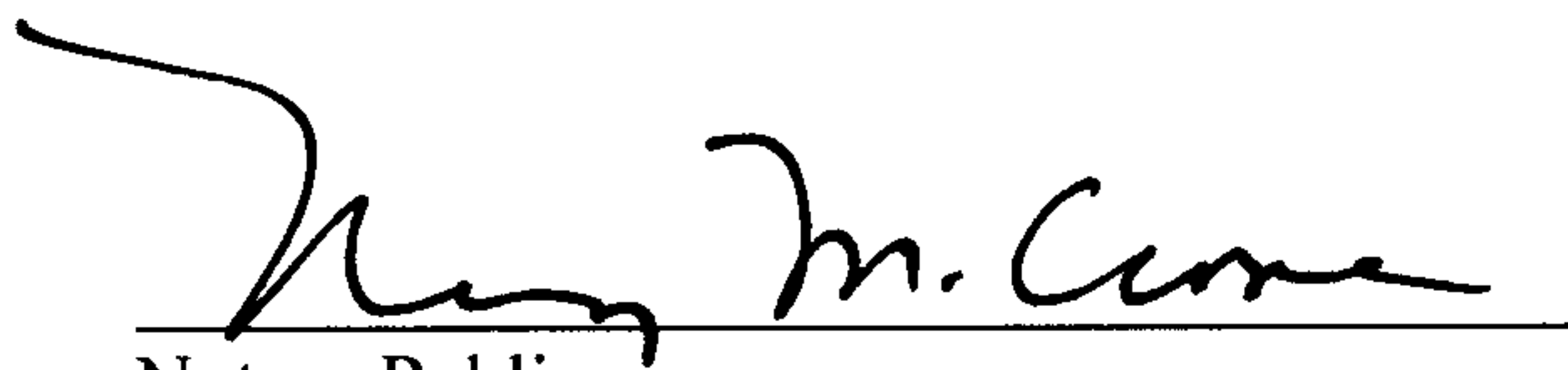


STATE OF New York )

COUNTY OF New York )


I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Jerry A. Brewer, as the Senior Vice President, Corporate Treasury of Colonial Properties Trust, the general partner of Colonial Realty Limited Partnership, the sole member of DRA/CLP Office LLC, the sole member of the Borrower, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 11<sup>th</sup> day of June, 2007.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10-6-2010

NANCY M. CROWE  
Notary Public, State of New York  
No. 01CR4872721  
Qualified in Nassau County  
Certificate Filed in New York County  
Commission Expires October 6, 2010

  
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## EXHIBIT A

A parcel of land situated in the Northeast 1/4 of the Southwest 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 19, Township 19, Range 2 West, Shelby County, Alabama, being more particularly described as follows:


Commence at the Southeast corner of the Southeast 1/4 of the Northeast 1/4 of said Section 19; thence run West and along the South boundary of said Southeast/Northeast, a distance of 2723.44 feet; thence run Southerly and at right angles to said South boundary a distance of 84.39 feet to the point of beginning, said point of beginning lying on the South right of way of Parkway Office Circle; thence run Easterly and along said right of way (curving to the right and having a radius of 420.00 feet) a chord distance of 152.58 feet to the point of tangency of said curve; thence run Southeasterly along said right of way a distance of 229.05 feet; thence continue Southeasterly and along said right of way (curving to the left and having a radius of 930.00 feet) a chord distance of 310.16 feet to the point of tangency of said curve; thence run Easterly and along said right of way a distance of 218.73 feet; thence run Southeasterly along said right of way (curving to the right and having a radius of 570.00 feet) a chord distance of 198.98 feet to the Northeast corner of this described property; thence with an interior angle of 76°52'12" run Southwesterly a distance of a distance of 604.89 feet to the North right of way of Riverchase Office Road; thence run Northwesterly and along said right of way (curving to the left and having a radius of 300 feet) chord distance of 29.99 feet to the point of tangency of said curve; thence run Westerly and along said right of way a distance of 104.38 feet; thence run Northwesterly and along said right of way (curving to the right and having a radius of 370.00 feet) a chord distance of 170.34 feet to the point of tangency of said curve; thence run Northwesterly and along said right of way a distance of 95.64 feet; thence run Westerly and along said right of way (curving to the left and having a radius of 530.00 feet) a chord distance of 471.95 feet to the point of tangency of said curve; thence run Southwesterly and along said right of way a distance of 10.94 feet; thence Northwesterly and along said right of way (curving to the right and having a radius of 25.00 feet) a chord distance of 35.35 feet to the point of tangency of said curve; said point of tangency lying on the East right of way of Riverchase Parkway East; thence run Northwesterly and along said East right of way a distance of 30.19 feet; thence run Northwesterly and along said right of way (curving to the left and having a radius of 661.41 feet) a chord distance of 189.16 feet to a point being the Southwest corner of this described parcel; thence run Northeasterly a distance of 532.82 feet to the point of beginning.

Situated in Shelby County, Alabama

### PARCEL II:

Lot 1-A, according to a Resurvey of Lot 1 of Riverchase Office Park Phase II, as recorded in Map Book 14, page 99, being a resurvey of Lot 1 of Rivechase Office Park Phase II, as recorded in Map Book 14, page 77, in the Probate Office of Shelby County, Alabama.

### PARCEL III:


  
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Lot 1-B, according to a Resurvey of Lot 1 of Riverchase Office Park Phase II, as recorded in Map Book 14, page 99, being a resurvey of Lot 1 of Riverchase Office Park Phase II, as recorded in Map Book 14, page 77, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH rights of title and interest in and to that certain easement as set out in the Declaration of Reciprocal Access, Utilities, Drainage and Parking Easement dated December 3, 1990, filed for record December 20, 1990, recorded in Book 323, page 96, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH rights of title and interest in and to that certain easement as set out in the Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business), recorded in Misc. Book 13, page 50, as amended by Misc. Book 15, page 189, further amended by Misc. Book 19, page 633, in the Probate Office of Shelby County, AL, which supersedes the first Declaration and Amendments.

  
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