PREPARED BY AND
WHEN RECORDED MAIL TO:
Deborah A. Pickens
Spain, Gillon, Grooms, Blan & Nettles
2117 2nd Avenue North
Birmingham, AL 35203

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Instrument"), made this 13th day of December, 1990, by Birmingham I Associates, Ltd., a Georgia limited partnership, having its principal office and place of business at c/o Realty Development Corporation, 900 Ashwood Parkway, Suite 440, Atlanta, Georgia 30338 ("Debtor"), to THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a New Jersey corporation, having its principal office at Prudential Plaza, 745 Broad Street, Newark, New Jersey 07101 ("Secured Party").

THIS INSTRUMENT CONTAINS AFTER-ACQUIRED PROPERTY PROVISIONS AND SECURES OBLIGATIONS CONTAINING PROVISIONS FOR [CHANGES IN INTEREST RATES], EXTENSIONS OF TIME FOR PAYMENT AND OTHER MODIFICATIONS IN THE TERMS OF THE OBLIGATIONS.

A POWER OF SALE HAS BEEN GRANTED IN THIS INSTRUMENT, PURSUANT TO WHICH THE SECURED PARTY MAY TAKE THE COLLATERAL AND SELL IT WITHOUT GOING TO COURT IN A JUDICIAL FORECLOSURE ACTION UPON DEFAULT BY DEBTOR UNDER THIS INSTRUMENT.

PORTIONS OF THE COLLATERAL ARE GOODS WHICH ARE OR ARE TO BECOME AFFIXED TO OR FIXTURES ON THE LAND DESCRIBED IN EXHIBIT A HERETO.

THE COLLATERAL SECURES INDEBTEDNESS EVIDENCED BY THE NOTE SECURED HEREUNDER IN THE MAXIMUM PRINCIPAL AMOUNT OF $ 9,000,000.00 PLUS DISBURSEMENTS MADE BY SECURED PARTY PURSUANT TO THE LOAN DOCUMENTS.

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RECITALS:

1. Debtor by its promissory note of even date herewith ("Note") is indebted to Secured Party in the principal sum of $9,000,000.00 in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note, the final payment of which, if not sooner paid, is due and payable not later than December 15, 1995.

2. Debtor desires to secure the payment of and the performance of all of its obligations under the Note and certain additional Obligations (as defined in Section 1.01).

IN CONSIDERATION of the principal sum of the Note and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby:

Land Title

A. Grants, bargains, sells, conveys, assigns, transfers, pledges, mortgages, delivers, sets over, warrants and confirms to Secured Party, and grants Secured Party a security interest in, the following property (collectively, the "Collateral"), upon the terms and conditions hereof and WITH POWER OF SALE pursuant to this Instrument and applicable law:

(i) That certain tract or parcel of land of which Debtor is now seized and in possession, situate in Shelby County, Alabama, and more fully described in Exhibit A attached hereto and by this reference incorporated herein ("Premises");

(ii) Any and all buildings, constructions and improvements now or hereafter erected or located in or on the Premises, including, but not limited to, all fixtures, attachments, appliances, equipment, machinery and other articles now or hereafter attached or affixed thereto or located thereon (collectively, the "Improvements"), together with all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, all of which shall be deemed and construed to be part of the realty; provided, however, that the foregoing shall not include any personal property owned by tenants under the Leases (as hereinafter defined);

(iii) All right, title and interest of Debtor in and to all items incorporated as part of or attributed or affixed to any of the Premises, Improvements or other real property included in the Collateral or any other interest of Debtor, whether now owned or hereafter acquired, in, to or relating to the Premises, Improvements or such other real property, in such manner that such items are no longer personal property under the laws of the State of Alabama;

(iv) All rents, issues, profits, royalties, income and other benefits derived from the Premises or the Improvements or any other portion of the Collateral (collectively, the "Rents");

(v) All easements, rights-of-way and rights now owned or hereafter acquired by Debtor and used or usable in connection with the Premises and the Improvements or as a means of access thereto, including, without limiting the generality of the foregoing, all rights pursuant to any trackage agreement, all rights to the non-exclusive use of common drive entries, all water and water rights, and all mineral, mining, oil and gas rights and rights to produce or share in the production of anything related thereto, together with all tenements, hereditaments and appurtenances thereof and thereto;

(vi) All right, title and interest now owned or hereafter acquired by Debtor in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Premises, and any and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Premises or the Improvements;

(vii) All leasehold estates, right, title and interest of Debtor in and to all ground leases, leases or subleases covering the Premises, the Improvements or any portion thereof now or hereafter existing or entered into (collectively, "Leases"), and all right, title and interest of Debtor thereunder, including, without limitation, all guaranties thereof, all cash or security deposits, advance rentals, and all deposits or payments of similar nature;

(viii) All right, title and interest of Debtor in, to and under all plans, specifications, maps, surveys, studies, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Premises and/or the Improvements;

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(ix) All of the fixtures and personal property described in Exhibit B attached hereto and by this reference incorporated herein, now owned or hereafter acquired by Debtor, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof; and, if the lien and security interest granted by this Instrument is subject to any security interest in said personal property, all right, title and interest of Debtor, now or hereafter arising, in and to any and all said property is hereby assigned to Secured Party, together with the benefits of all deposits and payments now or hereafter made thereon by or on behalf of Debtor;

(x) All interests, estates or other claims or demands, in law and in equity, which Debtor now has or may hereafter acquire in the Collateral;

(xi) All right, title and interest now owned or hereafter acquired by Debtor in and to all options to purchase or lease the Premises, the Improvements or any other Collateral, or any portion thereof or interest therein, and in and to any greater estate in the Premises, the Improvements or any other Collateral; and

(xii) All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance relating thereto, which Debtor now has or may hereafter acquire in the Premises, the Improvements or any other Collateral, or any portion thereof or interest therein, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Collateral, including, without limitation, any award resulting from a change of any streets (whether as to grade, access or otherwise) and any award for severance damages; and

B. Assigns and transfers to Secured Party all of the Rents, pursuant to the provisions of the Assignment of Rents and Leases

TO HAVE AND TO HOLD the Collateral unto the Secured Party and its successors and assigns forever, subject to the matters described in Exhibit C attached hereto and by this reference incorporated herein ("Permitted Encumbrances") and to all of the terms, conditions, covenants and agreements herein set forth, for the security and benefit of Secured Party and its successors and assigns as holders of the Note or any other Obligations.

IN FURTHERANCE OF THE FOREGOING, Debtor hereby warrants, represents, covenants and agrees as follows:

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ARTICLE I

OBLIGATIONS

Section 1.01 Obligations. This Instrument is executed, acknowledged and delivered by Debtor to secure and enforce the following obligations (collectively, the "Obligations"):

(a) Payment of and performance of all obligations of Debtor under the Note;

(b) Performance of every obligation, covenant and agreement of Debtor arising under or in connection with this Instrument, that certain Assignment of Leases and Rents ("Assignment") of even date herewith, and all other Loan Documents (as defined in Section 1.02 hereof);

(c) Payment of all sums advanced pursuant to the terms of this Instrument to protect and preserve the Collateral and the lien and security interest hereby created therein;

(d) Payment of all sums advanced and costs and expenses incurred by Secured Party/as deemed necessary by Secured Party in its sole discretion to protect its security interest in the Collateral in connection with the Obligations or any part thereof, any renewal, extension or change of or substitution for the Obligations or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Debtor or Secured Party;

(e) Payment of all other indebtedness and liabilities and performance of all other obligations of Debtor to Secured Party arising pursuant to or in connection with this Instrument or any other Loan Document; and

(f) All renewals, extensions, amendments, modifications, consolidations and changes of, or substitutions or replacements for, all or any part of the items described under clauses (a) through (e) above.

Section 1.02 Loan Documents. This Instrument, the Note, the Assignment and any other deed to secure debt, deed of trust, mortgage, collateral mortgage, pledge, security deed, security agreement, guaranty, assignment of leases or rents or other agreement or instrument now or hereafter given to evidence or further secure the payment and performance of any of the Obligations are herein referred to, collectively, as the "Loan Documents."

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Debtor hereby represents and warrants to Secured Party as follows:

Section 2.01 Title. (i) Debtor has good, marketable and insurable title to the Collateral, free and clear of all liens, charges, encumbrances and security interests whatsoever, except Permitted Encumbrances; (ii) Debtor has full power and authority to grant this Instrument; and (iii) Debtor will forever warrant and defend its title to the Collateral and the validity, enforceability and priority of the lien and security interest created hereby against the claims of all persons.

Section 2.02 Legal Status and Authority. Debtor is a limited partnership duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; and is duly qualified to transact business and in good standing in the State of Alabama; and has all necessary approvals, governmental and otherwise, and full power and authority to own its properties (including the Collateral) and carry on its business as now conducted and proposed to be conducted.

Section 2.03 Validity of Loan Documents.

(a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the _____power of Debtor; (ii) have been authorized by all requisite _____ action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, or other governing instrument of Debtor, or any indenture, agreement or other

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instrument to which Debtor is a party or by which it or any of its property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its properties or assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Instrument in appropriate land records in the State of Alabama and except for Uniform Commercial Code filings relating to the security interest created hereby).

(b) The Loan Documents constitute legal, valid and binding obligations of Debtor.

Section 2.04 Litigation. There is no action, suit or proceeding, judicial, administrative or otherwise (including any condemnation or similar proceeding), pending or, to the best knowledge of Debtor, threatened or contemplated against, or affecting, Debtor or the Collateral.

Section 2.05 Status of Collateral.

(a) The Premises and Improvements are not located in an area identified by the Secretary of Housing and Urban Development or any successor thereto as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or, if located within any such area, Debtor has obtained and will maintain the insurance prescribed in Section 3.06 hereof.

(b) Debtor has all necessary certificates, licenses and other approvals, governmental and otherwise, necessary for the operation of the Premises and Improvements and the conduct of its business thereat and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture, or modification.

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(c) The Premises and Improvements and the present and contemplated use and occupancy thereof are in full compliance with all applicable zoning ordinances, building codes, land use and environmental laws and other similar laws.

(d) Neither Debtor nor, to Debtor's best knowledge, any tenant of the Premises or the Improvements or any other person has stored or discharged on the Premises or the Improvements, whether with or without a permit, any hazardous or toxic wastes or substances.

(e) The Premises and Improvements are served by all utilities required for the contemplated use thereof.

(f) All public roads and streets necessary to serve the Premises and Improvements for the contemplated use thereof have been completed, are serviceable and have been dedicated to and formally accepted by the appropriate governmental entities, and Debtor has legal access to and from the Premises and Improvements.

(g) The Collateral is free from damage caused by fire or other casualty.

(h) All costs and expenses of any and all labor, materials, supplies, and equipment used in the construction of the Improvements have been paid in full, except as otherwise contemplated by the Permitted Encumbrances.

(i) Debtor has paid in full for, and is the owner of, all furnishings, fixtures and equipment (other than tenants' property) used in connection with the operation of the Premises or the Improvements, free and clear of any and all security interests, liens or encumbrances, except the Permitted Encumbrances and the lien and security interest created hereby.

Section 2.06 Tax Status of Debtor. Debtor is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

Section 2.07 Bankruptcy. No bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceeding for the relief of debtors, has been instituted by or against Debtor or, if Debtor is a partnership, any general partner of Debtor.

ARTICLE III

COVENANTS AND AGREEMENTS

Debtor covenants and agrees with Secured Party as follows:

Section 3.01 Payment of Obligations. Debtor shall pay when due and shall perform the Obligations.

Section 3.02 Continuation of Existence. Debtor shall maintain in good standing its existence, franchises, rights and privileges under the laws of the State of Georgia and its right to transact business in the State of Alabama, and shall not (i) dissolve, terminate or otherwise dispose of, directly or indirectly or by operation of law, all or substantially all of its assets, (ii) reorganize or change its legal structure without the prior written consent of Secured Party, or (iii) change its name, the address of its principal offices or the name under which Debtor conducts its business without promptly notifying Secured Party of such change.

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Section 3.03 Taxes, Liens and Other Charges

(a) Debtor shall pay, when due, all taxes, liens, assessments, dues, fines, impositions and public charges, general and special, ordinary and extraordinary, of every character (including penalties and interest), now or hereafter levied or assessed upon or against the Collateral ("Assessments"), and, ~~subject to Section 3.03(b) and upon request by Secured Party,~~ shall provide Secured Party, within thirty (30) days after the due date of any such Imposition, with receipts evidencing such payments. Debtor shall also pay (i) all income, franchise and other taxes and governmental charges levied, assessed or imposed by the United States of America or any state, any political subdivision thereof, or any other taxing authority upon Debtor or in respect of any of the Collateral which, if unpaid, would become a lien or charge upon the Collateral or any part thereof, and (ii) all charges made by utility companies, public or private, for services furnished or used in connection with the Collateral (together with the Assessments, collectively, "Impositions").

(b) Debtor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Debtor's covenant to pay any such Imposition at the time and in the manner provided herein unless (A) Debtor has given prior written notice to Secured Party of Debtor's intent to so contest or object to an Imposition, ~~(B) Debtor shall furnish a good and sufficient bond or~~

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~~surety as requested by, and in form and amount satisfactory to, Secured Party,~~ and (~~C~~) at Secured Party's sole option, ~~(i)~~ Debtor shall demonstrate to Secured Party's reasonable satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Collateral, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; ~~or (ii)~~ Debtor shall demonstrate to Secured Party's reasonable satisfaction that Debtor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale, or (ii) Debtor shall furnish a good and sufficient bond or surety as requested by, and in form and amount satisfactory to, Secured Party.

and (C) either

(c) Debtor shall pay all taxes (excluding income, franchise and doing business taxes), assessments, charges, expenses, costs and fees (including registration and recording fees) levied on, or assessed against Secured Party, or incurred in connection with any of the Loan Documents. Debtor shall also pay all stamp and other similar taxes required to be paid in connection with the Obligations.

(d). In the event of the enactment of or change (including a change in interpretation) of any applicable law, in any manner changing or modifying the laws governing (i) the taxation of mortgages or other security instruments or the debts secured thereby, (ii) the manner of collecting such taxes, or (iii) reserve or special deposit requirements in respect of loans or other assets held by Secured Party, so as to adversely affect Secured Party, this Instrument or any other Loan Document or the indebtedness secured hereby, Debtor shall promptly pay any such tax and otherwise compensate Secured Party to the extent of such detriment; *provided, however*, that if Debtor fails to make such payment or any such law prohibits Debtor from making such payment or would penalize Secured Party in the event of such payment, then the entire principal balance of the Obligations, together with all interest accrued thereon and any and all other sums secured by this Instrument shall, without notice, become immediately due and payable at the option of Secured Party.

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Section 3.04 Defense of Title and Litigation. If the lien or security interest created by this Instrument, or the validity, enforceability or priority thereof or of this Instrument, or if title or any of the rights of Debtor or Secured Party in or to the Collateral, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Debtor or Secured Party with respect thereto, Debtor will promptly notify Secured Party thereof and will diligently endeavor to cure any defect which may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of litigation and, subject to Secured Party's approval, the compromise, release or discharge of any and all adverse claims. Secured Party (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem necessary or proper for the defense of any such action or proceeding or the protection of the lien, security interest, validity, enforceability or priority of this Instrument or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests. Debtor shall, on demand, reimburse Secured Party for all expenses (including attorneys' fees and disbursements) incurred by it in connection with the foregoing matters. All such costs and expenses of Secured Party, until reimbursed by Debtor, shall be part of the Obligations and shall be and shall be deemed to be secured by this Instrument.

Section 3.05 Operation and Maintenance of Collateral.

(a) Repair and Maintenance. Debtor will operate and maintain the Premises, the Improvements and the other Collateral in good order, repair and operating condition,

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will promptly make all necessary repairs, renewals, replacements, additions and improvements thereto, interior and exterior, structural and nonstructural, foreseen and unforeseen, or otherwise necessary to insure that the same as part of the security under this Instrument shall not in any way be diminished or impaired, and will not cause or allow any of the Premises, the Improvements or any other Collateral to be misused or wasted or to deteriorate. No part of the Improvements shall be removed, demolished or structurally or materially altered, nor shall any new building, structure, facility or other improvement be constructed on the Premises without Secured Party's prior written consent.

(b) Replacement of Collateral. Debtor will keep the Premises and the Improvements fully equipped and will replace all worn out or obsolete Collateral with fixtures or personal property comparable thereto when new, and will not, without Secured Party's prior written consent, remove from the Premises or the Improvements any fixtures or personalty covered by this Instrument unless the same is replaced by Debtor with an article of equal suitability and value when new, owned by Debtor free and clear of any lien or security interest (other than Permitted Encumbrances and the lien and security interest created by this Instrument).

(c) Compliance with Laws. Debtor will perform and comply promptly with, and cause the Collateral to be maintained, used and operated in accordance with, any and all (i) present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental or quasi-governmental authority or agency applicable to Debtor or the Collateral, (ii) similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization or other body exercising similar functions, (iii) similarly applicable duties or obligations of any kind imposed under any Permitted Encumbrance or otherwise by law, covenant, condition, agreement or easement, public or private, and (iv) policies of insurance at any time in force with respect to the Collateral. If Debtor receives any notice that Debtor or the Collateral is in default under or is not in compliance with any of the foregoing, or notice of any proceeding initiated under or with respect to any of the foregoing, Debtor will promptly furnish a copy of such notice to Secured Party.

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(d) Zoning; Title Matters. Debtor will not, without the prior written consent of Secured Party, (i) initiate or support any zoning reclassification of the Premises or the Improvements, seek any variance under existing zoning ordinances applicable to the Premises or the Improvements or use or permit the use of the Premises and Improvements in a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances, (ii) modify, amend or supplement any of the Permitted Encumbrances, (iii) impose any restrictive covenants or encumbrances upon the Collateral, execute or file any subdivision plat affecting the Premises or the Improvements or consent to the annexation of the Premises or the Improvements to any municipality, or (iv) permit or suffer the Premises and the Improvements to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication or easement.

(e) No Cooperative or Condominium. Debtor shall not operate or permit the Premises or the Improvements to be operated as a cooperative, condominium or other form of ownership in which the lessees or other occupants thereof participate in the ownership, control or management of the Premises, Improvements or any part thereof, as lessees, stockholders or otherwise.

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Section 3.06 Insurance.

(a) Casualty Insurance. Debtor shall keep the Premises, the Improvements and the other Collateral insured for the benefit of Secured Party as follows:

(i) against damage or loss by fire and such other hazards (including lightning, windstorm, hurricane, hail, explosion, riot, riot attending a strike, civil commotion, vandalism, malicious mischief, aircraft, vehicle and smoke) as are covered by the broadest form of extended coverage endorsement as is available from time to time, in an amount not less than the greater of (i) the full insurable value (as defined in subsection (h) of this Section) of the property insured and, in any case, (ii) the Obligations, or (iii) the amount sufficient to prevent Debtor from becoming a co-insurer, with a deductible amount not to exceed $5,000.00;

(ii) rent or business interruption or use and occupancy insurance on such basis and in such amounts as shall be satisfactory to Secured Party and in any event not less than an amount equal to the greater of (a) one year's rental income from the Collateral, or (b) the aggregate amount of one year's taxes, other governmental impositions, insurance premiums, other fixed charges and required monthly installments due under the Note and hereunder; ~~the original principal amount of the Note plus eighteen (18) months' Impositions required by Section 3.03 and premiums for the insurance required by this Section 3.06;~~

(iii) against damage or loss by flood if the Premises are located in an area identified by the Secretary of Housing and Urban Development or any successor as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 or the Flood Disaster Protection Act of 1973, as amended, modified, supplemented or replaced from time to time, on such basis and in such amounts as shall be required by Secured Party;

(iv) against damage or loss from (i) sprinkler system leakage and (ii) boilers, boiler tanks, heating and air conditioning equipment, pressure vessels, auxiliary piping and similar apparatus, on such basis and in such amounts as shall be required by Secured Party;

(v) during the period of any construction, repair, restoration or replacement of the Improvements and any other Collateral, a standard builder's risk policy with extended coverage for an amount at least equal to the full insurable value of such Improvements and other Collateral and worker's compensation, in statutory amounts; and

(vi) against damage or loss by earthquake on such basis and in such amounts as shall be required by Secured Party.

(b) Liability Insurance. Debtor shall also procure and maintain comprehensive general liability insurance covering Debtor and Secured Party against claims for bodily injury or death or property damage occurring in, upon or about or resulting from the Premises, the Improvements or any other Collateral, or any street, drive, sidewalk, curb or passageway adjacent thereto, in standard form and with such insurance company or companies and in such amounts as may be acceptable to Secured Party, ~~which insurance~~ and in any event not less than $1,000,000.00 per person, $1,000,000.00 per occurrence and $250,000.00 property damage, shall include blanket contractual liability coverage which insures contractual liability under the indemnification set forth in Section 4.03 of this Instrument (but such coverage or the amount thereof shall in no way limit such indemnification).

(c) Other Insurance. Debtor, at Secured Party's request, shall procure and maintain such other insurance or such additional amounts of insurance, covering Debtor or the Collateral, as Secured Party shall from time to time require, including, but not limited to, insurance against war risks, if and to the extent available.

(d) Form of Policy. All insurance required under this Section shall be fully paid for, nonassessable and the policies therefor shall contain such provisions, endorsements and expiration dates, as Secured Party shall from time to time request, and shall be in such form and amounts, and be issued by such insurance companies doing business in the jurisdiction in which the Premises are located as shall be approved by Secured Party. Without limiting the foregoing, all such policies shall have endorsed thereon, in form acceptable to Secured Party, a standard mortgagee clause, without contribution, in the name of Secured Party. All such policies shall provide that the same shall not be cancelled, amended or materially altered (including by reduction in the scope or limits of coverage) without at least ~~sixty (60)~~ thirty (30) days' prior written notice to Secured Party.

(e) Original Policies. Debtor shall deliver to Secured Party original policies evidencing the insurance required under this Section and any additional insurance on the Collateral. Debtor shall also deliver to Secured Party (i) receipts evidencing payment of all premiums on such policies and (ii) originals of any and all renewal policies with evidence satisfactory to Secured Party of the payment of all premiums due and payable thereon, at least thirty (30) days prior to the expiration of each such policy. If original policies and renewal policies are unavailable, Debtor shall deliver to Secured Party duplicate originals of such policies or, if unavailable, or if such coverage is under a blanket policy original certificates from the issuing insurance companies evidencing that such policies are in full force and effect, together with certified copies of the original policies.

(f) No Separate Insurance. Debtor shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Secured Party in accordance with the requirements of this Section and otherwise approved by Secured Party in all respects.

(g) Transfer of Title. In the event of foreclosure of this Instrument or other transfer of title or assignment of the Premises and the other Collateral in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Debtor in and to all policies of insurance required under this Section or otherwise then in force with respect thereto and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Premises and the other Collateral.

(h) Replacement Cost. For purposes of this Section, the term "full insurable value" shall mean the actual cost of replacing the property in question, without allowance for depreciation and exclusive of the cost of excavations, foundations and footings, as determined from time to time (but not less often than once every calendar year) by the insurance company or companies holding such insurance or by an appraiser, engineer, architect or contractor proposed by Debtor and approved by said company or companies and Secured Party.

(i) Approval Not Warranty. No approval by Secured Party of any insurer shall be construed to be a representation, certification or warranty of its solvency and no approval by Secured Party as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency.

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Section 3.07 Damage and Destruction of Collateral.

(a) Debtor's Obligations. In the event of any damage to or loss or destruction of the Collateral (i) Debtor shall promptly notify Secured Party of such event and take such steps as shall be necessary to preserve any undamaged portion of the Collateral and (ii) if, pursuant to Section 3.07(b), the insurance proceeds are applied to the restoration, replacement or rebuilding of such Collateral (but regardless whether such insurance proceeds, if any, shall be sufficient for the purpose), Debtor shall promptly (and, in any event, prior to the date on which any tenant under any Lease shall be entitled to cancel or terminate said Lease because of any such damage, loss or destruction) commence and diligently pursue to completion the restoration, replacement and rebuilding of the Collateral as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by Secured Party.

(b) Secured Party's Rights: Application of Proceeds. In the event that any portion of the Collateral is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 3.06, then (i) Secured Party may, but shall not be obligated to, make proof of loss if not made promptly by Debtor and is hereby authorized and empowered by Debtor to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Secured Party, and (iii) Secured Party shall have the right to apply the insurance proceeds, first, to reimburse Secured Party for all costs and expenses, including adjustors' and attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, subject to Section 3.07(c), the remainder of such proceeds shall be applied, at Secured Party's option, in payment (without premium or penalty) of all or any part of the Obligations, whether or not then due and payable, in the order and manner determined by Secured Party (provided that to the extent that any Obligation shall remain outstanding after such application, such unpaid Obligation shall continue in full force and effect and Debtor shall not be excused in the payment thereof), or to the cure of any then current default hereunder, or to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Collateral so damaged, destroyed or lost, provided that any insurance proceeds held by Secured Party to be applied to the restoration, replacement or rebuilding of the Premises shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Debtor with such provisions and requirements as may be imposed by Secured Party. In the event that Debtor shall have received all or any portion of such insurance proceeds or any other proceeds in respect of such damage or destruction, Debtor, upon demand from Secured Party, shall pay to Secured Party an amount equal to the amount so received by Debtor, to be applied as Secured Party shall have the right pursuant to clause (iii) of the immediately preceding sentence. Notwithstanding anything herein or at law or in equity to the contrary, none of the insurance proceeds or payments in lieu thereof paid to Secured Party as herein provided shall be deemed trust funds and Secured Party shall be entitled to dispose of such proceeds as provided in this Section and Section 3.06. Debtor expressly assumes all risk of loss, including a decrease in the use, enjoyment or value of the Collateral, from any casualty whatsoever, whether or not insurable or insured against. Upon any application of insurance proceeds to any partial prepayment of the Obligations, Secured Party shall provide Debtor with a revised schedule of monthly debt service payments as same have been reduced by such partial prepayment.

the insurance proceeds shall be paid directly to Secured Party and

(c) Application of Proceeds to Restoration. Anything in this Section 3.07 to the contrary notwithstanding, in the event of an insured loss, Secured Party shall permit the application of insurance proceeds to restoration of the Collateral to as good or better condition as existed prior to the damage, destruction or loss, in accordance with plans and

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specifications approved by Secured Party in its reasonable discretion, if: (i) no more than 20% of the gross area of the Improvements is directly affected by such damage, destruction or loss and the amount of the loss does not exceed $ 1,000,000.00; (ii) there is no Event of Default (as defined in Section 6.01) at the time of such application; (iii) the insurer does not deny liability to any named insured; (iv) each lessee of the Premises, identified in Exhibit D attached hereto and by this reference incorporated herein (a "Major Lessee"), or its successors, assigns or replacements, whose lease permits termination thereof ~~or abatement of rent~~ as a result of such insured loss, agrees in writing to continue its lease; ~~without abatement of rent~~; (v) rental loss insurance is available and in force and effect to offset fully any abatement of rent to which any lessee of the Premises (including, but not limited to, Major Lessees) may be entitled as a result of such loss; and (vi) in Secured Party's sole judgment, restoration can be completed within one (1) year after the damage, destruction or loss and at least ~~twelve (12)~~ three (3) months prior to the maturity of the Note.

(d) Disbursement of Proceeds. If Secured Party elects pursuant to Section 3.07(b) or is required pursuant to Section 3.07(c) to apply insurance proceeds to restoration, (i) the proceeds may at Secured Party's election be disbursed in installments by Secured Party or by a disbursing agent ("Depository") selected by Secured Party and whose fees and expenses shall be paid by Debtor, (ii) Debtor shall upon demand by Secured Party from time to time deposit with Secured Party or a Depository, in a mutually acceptable interest-bearing account, the amount of any deductible under such insurance coverage and such amounts in excess of the amount from time to time on deposit as may be necessary to complete such restoration, and (iii) the insurance proceeds shall be disbursed from time to time as restoration progresses satisfactorily in Secured Party's reasonable judgment, based upon receipt of appropriate lien waivers and a certificate of the architect or engineer in charge of the work, the form and content of such certificate to be reasonably satisfactory to Secured Party, and title insurance protection against mechanic's and materialmen's liens. If an Event of Default occurs prior to full disbursement of the insurance proceeds, any undisbursed portion may, at Secured Party's option, be applied to the Obligations, whether or not then due and in any order of priority.

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Section 3.08 Condemnation.

(a) Debtor's Obligations; Proceedings. Promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Collateral, or any part or interest therein, or of any right of eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Collateral (including any change in any street, whether as to grade, access or otherwise), or any part thereof or interest therein, Debtor will notify Secured Party of the threat or pendency thereof. Secured Party may participate in any such proceedings (but shall not be obligated to do so), and Debtor from time to time will execute and deliver to Secured Party all instruments requested by Secured Party or as may be required to permit such participation. Debtor shall, at its expense, diligently prosecute any such proceedings, shall deliver to Secured Party copies of all papers served in connection therewith and shall consult and cooperate with Secured Party, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Debtor without Secured Party's prior written consent.

(b) Secured Party's Rights to Proceeds. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Collateral are hereby assigned and shall be paid to Secured Party. Debtor agrees to execute and deliver such further assignments thereof as Secured Party may request and authorizes Secured Party to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Secured

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Party shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any of the same.

(c) Application of Proceeds. Secured Party shall have the right to apply any proceeds, judgments, decrees or awards referred to in subsection (b) of this Section, first, to reimburse Secured Party for all costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question and any appeal therefrom or in the collection of such amounts, and, second, subject to Section 3.08(d), to apply the remainder thereof as provided in Sections 3.07(b) and 3.07(d) for insurance proceeds held by Secured Party. In the event that Debtor shall have received all or any portion of such proceeds, judgments, decrees or awards, Debtor, upon demand from Secured Party, shall pay to Secured Party an amount equal to the amount so received by Debtor, to be applied as Secured Party shall have the right pursuant to this subsection. Notwithstanding anything herein or at law or in equity to the contrary, none of the proceeds, judgments, decrees or awards or payments in lieu thereof paid to Secured Party as herein provided shall be deemed trust funds and Secured Party shall be entitled to dispose of such proceeds as provided in this Section. Upon any application of condemnation award proceeds to any partial prepayment of the Obligations, Secured Party shall provide Debtor with a revised schedule of monthly debt service payments as same have been reduced by such partial prepayment.

(d) Application of Proceeds to Restoration. Anything in this Section 3.08 to the contrary notwithstanding, in the event of a limited, partial taking as hereinafter described, Secured Party shall permit the application of any condemnation award or other payment to restoration of the Collateral and all Improvements (including, but not limited to, parking, drives, sidewalks and landscaping) located thereon to substantially the same size and character as theretofore existed, and to as good or better condition, in accordance with plans and specifications approved by Secured Party in its reasonable discretion, if: (a) such taking involves less than 20% of the rentable square feet in the Improvements or less than 10% of the parking spaces, and does not affect access to the Collateral (or any part thereof) from any public right-of-way; (b) there is no Event of Default hereunder at the time of such application; (c) any and all lessees of the Premises whose leases permit termination thereof ~~or abatement of rent~~ as a result of such taking agree in writing to continue their leases; ~~without abatement of rent;~~ (d) the remaining Collateral continues at all times to comply with all applicable building, zoning and other land use laws and regulations; and (e) in Secured Party's sole judgment, restoration is practicable and can be completed within one (1) year after the taking and at least ~~twelve (12)~~ three (3) months prior to the maturity of the Note. If Secured Party elects or is required to apply such proceeds to restoration, said application shall be made pursuant to the provisions of Section 3.07(d) hereunder.

(e) Effect on the Obligations. Notwithstanding ~~any~~ condemnation, taking or other proceeding referred to in this Section causing injury to or decrease in value of the Premises (including a change in any street, whether as to grade, access or otherwise), or any interest therein, Debtor shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from such application shall be deemed to take effect only on the date of receipt by Secured Party of such proceeds, judgments, decrees or awards and application against the Obligations, provided that if prior to the receipt by Secured Party of such proceeds, judgments, decrees or awards, the Collateral shall have been sold on foreclosure of this Instrument (or pursuant to the power of sale granted hereunder), or shall have been transferred by deed in lieu of foreclosure, Secured Party shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal fees and disbursements incurred by Secured Party in connection with the collection thereof.

Section 3.09 Liens and Liabilities.

(a) Discharge of Liens. Debtor shall pay, bond or otherwise discharge, from time to time when the same shall become due, all claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation

of, a lien or encumbrance on the Collateral, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Debtor shall do, or cause to be done, at Debtor's sole cost and expense, everything necessary to fully preserve the lien and security interest created by this Instrument and the priority thereof.

(b) Creation of Liens. Debtor shall not, without Secured Party's prior written consent, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed of trust, mortgage, deed to secure debt, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for Impositions which are not yet due and payable), security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Collateral, prior to, on a parity with or subordinate to the lien of this Instrument, other than Permitted Encumbrances. (See "Rider" to the Instrument, which Rider is attached hereto and incorporated herein by reference).

(c) No Consent. Nothing in the Loan Documents shall be deemed or construed in any way as constituting the consent or request by Secured Party, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration or repair of the Collateral. Debtor further agrees that Secured Party does not stand in any fiduciary relationship to Debtor.

Section 3.10 Tax and Insurance Deposits.

(a) Amount of Deposits. Secured Party may, at any time after an Event of Default (whether or not subsequently cured), require for the balance of the term of the Note that Debtor deposit with Secured Party or any service or financial institution designated by Secured Party pursuant to Section 3.10(e) (collectively, a "Depository"), monthly, one-twelfth (1/12) of the annual ~~Impositions~~ Assessments and the premiums for insurance required under Section 3.06, and Debtor shall, accordingly, make such deposits. In addition, if required by Secured Party, Debtor shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make each of said payments of ~~Impositions~~ Assessments and premiums at least sixty (60) days before such payments are due. If the amount of any such payments is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Secured Party's estimate thereof, and, when such amount is fixed for the then-current year, Debtor shall promptly deposit any deficiency with the Depository.

(b) Use of Deposits. All funds so deposited shall, until so applied, constitute additional security for the Obligations, shall be held by the Depository without interest, may be commingled with other funds of the Depository, and, provided that no Event of Default (as defined in Section 6.01) shall have occurred and be continuing hereunder, shall be applied in payment of the aforesaid amounts prior to their becoming delinquent, but only to the extent that the Depository shall have such funds on hand, provided that the Depository shall have no obligation to use said funds to pay (i) any installment of ~~Impositions~~ Assessments prior to the last day on which payment thereof may be made without penalty or interest or to pay any insurance premium prior to the due date thereof, or (ii) any of the aforesaid amounts unless Debtor shall have furnished the Depository with the bills or invoices therefor in sufficient time to pay the same before any penalty or interest attaches and before said policies of insurance lapse, as the case may be. If an Event of Default shall have occurred and be continuing hereunder, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Secured Party's option, be applied to the Obligations in the order determined by Secured Party or to cure said Event of Default or as provided in this Section. In no event shall Debtor claim any credit against the principal and interest due hereunder for any payment or deposit for taxes or insurance.

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(c) Transfer of Instrument. Upon an assignment or other transfer of this Instrument, the Depository shall have the right to pay over the balance of such deposits in its possession to the assignee or other successor, and the Depository shall thereupon be completely released from all liability with respect to such deposits and Debtor or the owner of the Collateral shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(d) Transfer of the Premises. Subject to Article V hereof, transfer of record title to the Premises and any other Collateral shall automatically transfer to the new owner the beneficial interest in any deposits under this Section. Upon full payment and satisfaction of this Instrument or, at Secured Party's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Premises and such other Collateral, and no other party shall have any right or claim thereto in any event.

(e) Designated Depository. At Secured Party's request, Debtor agrees to make the aforesaid deposits with such service or financial institution as Secured Party may from time to time designate in lieu of Secured Party, and the fees and costs of such services of such institution shall be borne by Debtor.

(f) Tax Monitoring Service. Secured Party may, at its option, retain the services of a firm or other person to monitor the payment by Debtor of all real estate taxes and assessments on or relating to the Collateral or any part thereof, and the fees and costs of such firm or other person shall be borne by Debtor; provided, however that such fee shall not exceed $1,000.00 per year.

Section 3.11 ERISA. (See "Rider" to this Instrument)

~~(a) Debtor will not engage in any transaction which would cause any Obligation (or~~ the exercise by Secured Party of any of its rights under the Loan Documents) to be a nonexempt (under a class exemption(s)) prohibited transaction under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). To that end, at least thirty (30) days prior to engaging in any such transaction, Debtor covenants and agrees to provide Secured Party with a written certification, supported by such evidence as Secured Party may request, that any such transaction will not constitute such a nonexempt prohibited transaction. If Secured Party gives Debtor written notice, at least five (5) days prior to the date for consummation of the proposed transaction, that Secured Party believes such transaction would constitute a nonexempt prohibited transaction, then Debtor covenants and agrees that it will not engage in such transaction unless and until it obtains, at its expense, an individual ERISA exemption permitting such transaction (and the exercise by Secured Party of any of its rights under the Loan Documents) in form and substance satisfactory to Secured Party in Secured Party's sole and absolute discretion. In addition, Debtor represents and warrants that it currently complies, and will continue to comply, with ERISA and the provisions of any such class exemption(s).

(b) The (i) failure of any such representation or warranty to be true and correct in all respects, (ii) failure to timely provide Secured Party with the written certification and evidence referred to above, or (iii) consummation of a transaction which would constitute such a nonexempt prohibited transaction shall constitute a material default under this Instrument entitling Secured Party to exercise any and all remedies to which it may be entitled under the Loan Documents. Debtor shall indemnify Secured Party and defend and hold Secured Party harmless from and against all loss, liability, damage, claim, judgment, cost and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims and in obtaining any individual ERISA ~~exemption that may be required, in Secured Party's sole and absolute discretion)~~ that

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~~Secured Party may incur, directly or indirectly, as a result of any such material default.~~ This Indemnity shall survive repayment of the Note ~~and any termination~~, satisfaction or foreclosure of this Instrument ~~and shall~~ not be subject to the limitation of personal liability ~~described in Article VIII hereof~~.

Section 3.12 Environmental Matters

(a) Hazardous Waste. At its sole cost and expense, Debtor shall comply with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of hazardous or toxic wastes or substances, pay immediately when due the cost of removal of any such wastes or substances, and keep the Collateral free of any lien imposed pursuant to such laws, rules, regulations and orders. In the event Debtor fails to do so, Secured Party may declare this Instrument to be in default. In addition, Debtor hereby grants Secured Party and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Premises and the Improvements to inspect, conduct testing and, upon expiration of the applicable cure period under this Instrument, to remove the hazardous wastes or substances. The costs of such testing and removal shall immediately become due to Secured Party and shall be secured by this Instrument. Debtor shall indemnify Secured Party and hold Secured Party harmless from and against all loss, liability, damage, claim, judgment, cost and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Secured Party may suffer or incur as a result of or in connection with the assertion ~~against Secured Party~~ of any claim in relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. or failure to comply or toxic materials, contaminants from the Premises or Improvements

(b) Asbestos. Debtor shall not install or permit to be installed on the Premises or the Improvements friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. With respect to any such material currently present on the Premises or the Improvements, Debtor shall promptly comply with such federal, state or local laws, rules, regulations or orders, at Debtor's expense. If Debtor shall fail to so comply, Secured Party may declare this Instrument to be in default. In addition, Debtor hereby grants Secured Party and its employees and agents an irrevocable and non-exclusive license, subject to the rights of tenants, to enter the Premises and the Improvements to inspect, conduct testing and, upon expiration of the applicable cure period under this Instrument, to remove friable asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. The costs of such inspection, testing and removal shall immediately become due to Secured Party and shall be secured by this Instrument. Debtor shall indemnify Secured Party and hold Secured Party harmless from and against all loss, liability, damage, claim, judgment, cost and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and settlement of claims) that Secured Party may incur as a result of or in connection with the assertion against Secured Party of any claim relating to the presence or removal of any asbestos substance referred to in this paragraph, or compliance with any or failure to comply federal, state or local laws, rules, regulations or orders relating thereto.

(c) Recourse Obligation. Anything herein to the contrary notwithstanding, the indemnification obligations of Debtor under paragraphs (a) and (b) of this Section 3.12 shall be full recourse obligations of Debtor and shall survive repayment of the Note and any termination, satisfaction or foreclosure of this Instrument.

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~~Section 3.13 Note Payment Facility. All payments of principal, premium~~ (if any) and interest on the Note shall be made by Debtor by electronic ~~funds transfer~~ from a bank account established and maintained by Debtor for ~~this purpose~~. Debtor hereby covenants and agrees to establish and maintain ~~such an~~ account for so long as the Note and the indebtedness evidenced ~~thereby shall~~ be outstanding and further agrees to direct in writing the ~~depository of such~~ account to so transmit such payments on or before their ~~respective due dates~~ to the account of Secured Party as shall be designated in writing by ~~Secured Party~~.

Section 3.14 Inspection. Debtor shall allow Secured Party and its authorized representatives to enter upon and inspect the Collateral or any part thereof at all reasonable times and shall assist Secured Party and such representatives in effecting said inspection.

Section 3.15 Records, Reports and Audits.

(a) Maintenance of Records. Debtor shall keep and maintain, in accordance with sound accounting principles, complete and accurate books and records in which full and correct entries shall be made with respect to all operations of or transactions involving the Collateral.

(b) Reports; Audits. Debtor shall prepare and deliver to Secured Party such reports at such times as Secured Party shall from time to time request and, if so requested by Secured Party or otherwise required hereunder, certified by an independent certified public accountant approved by Secured Party. Without limiting the foregoing, Debtor shall prepare and deliver to Secured Party, within ninety (90) days of the close of each fiscal year of Debtor, (i) audited income and financial statements of Debtor for such fiscal year, and (ii) a statement of the income and expenses of the Collateral for such fiscal year (including an annual rents schedule and a schedule showing gross sales of each tenant paying percentage rent), such statements to be prepared in accordance with generally accepted accounting principles, consistently applied, and certified by an independent certified public accountant approved by Secured Party, and containing such additional information as Secured Party may request. Within three (3) years after Secured Party's receipt of any such statement, Secured Party may, upon at least five (5) days' prior written notice to Debtor, inspect and make copies of Debtor's books, records and income tax returns with respect to the Collateral, for the purpose of verifying such statement.

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(c) Inspection of Records. Debtor shall allow Secured Party or its authorized representatives to examine and make copies of all such books and records and all supporting data therefor at Debtor's principal place of business or at such other place where such books, records and data may be located. Debtor shall assist Secured Party or such representative in effecting such examination.

Section 3.16 Debtor's Certificates. Debtor, within ten (10) days after Secured Party's request, shall furnish to Secured Party a written statement, duly acknowledged, certifying to Secured Party and/or any proposed assignee of this Instrument, as to (a) the amount of the Obligations then owing under this Instrument, (b) the terms of payment and maturity date of the Obligations, (c) the date to which interest has been paid under the Note, (d) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, (e) that all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications), (f) the date to which the rent, additional rent and other charges thereunder have been paid, (g) whether or not, to the best knowledge of Debtor, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the

specific nature of all such defaults, and (h) as to any other matters reasonably requested by Secured Party and reasonably related to the Leases, the Obligations, the Collateral or this Instrument.

Section 3.17 Full Performance Required; Survival of Warranties. All representations, warranties and covenants of Debtor contained in any loan application or made to Secured Party in connection with the Obligations secured hereby or contained in this Instrument or any other Loan Document, or incorporated by reference herein or therein, shall survive the execution and delivery of this Instrument and, except as and to the extent otherwise provided in Sections 3.11 and 3.12, shall remain continuing obligations, warranties and representations of Debtor so long as any portion of the Obligations remains outstanding; and Debtor shall fully and faithfully satisfy and perform all such Obligations, representations, warranties and covenants.

Section 3.18 Additional Security. No other security now existing, or hereafter taken, to secure the Obligations shall be impaired or affected by the execution of this Instrument; and all additional security shall be taken, considered and held as cumulative. The taking of additional security, execution of partial releases of the security, or any extension of the time of payment of the indebtedness shall not diminish the force, effect or lien of this Instrument and shall not affect or impair the liability of any maker, surety, guarantor or endorser for the payment of said indebtedness. Neither the acceptance of this Instrument nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Secured Party's right to realize upon or enforce any other security now or hereafter held by Secured Party, it being agreed that Secured Party shall be entitled to enforce this Instrument and any other security now or hereafter held by Secured Party in such order and manner as it may in its absolute discretion determine.

Section 3.19 Further Acts. Debtor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof, to carry into effect its objective and purposes, and to protect the lawful owner of the Note and the other Obligations. Promptly upon request by Secured Party and at Debtor's expense, Debtor shall execute, acknowledge and deliver to Secured Party such other and further instruments and do such other acts as in the reasonable opinion of Secured Party may be necessary or desirable to (a) grant to Secured Party the highest available perfected lien on all of the Collateral, (b) grant to Secured Party, to the fullest extent permitted by applicable law, the right to foreclose on the Collateral nonjudicially, (c) correct any defect, error or omission which may be discovered in the contents of this Instrument or any other Loan Document, (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby any property intended by the terms hereof to be covered hereby (including, without limitation, any renewals, additions, substitutions, replacements or appurtenances to the Collateral), (e) assure the highest priority hereof and thereof, and (f) otherwise effect the intent of this Instrument. Without limiting the generality of the foregoing, Debtor shall promptly and, insofar as not contrary to applicable law, at Debtor's own expense, record, rerecord, file and refile in such offices, at such times and as often as may be necessary, this Instrument, additional mortgages and deeds of trust, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests intended to be created hereby and the rights and remedies of Secured Party hereunder. Upon request by the Secured Party, Debtor shall supply evidence of fulfillment of each of the covenants herein contained concerning which a request for such evidence has been made.

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ARTICLE IV

Additional Advances; Expenses; Indemnity

Section 4.01 Additional Advances and Disbursements. Debtor agrees that, if Debtor shall default in any of its Obligations to pay any amount or to perform any action, including its obligation under Section 3.03 to pay Impositions and under Section 3.06 to procure, maintain and pay premiums on the insurance policies referred to therein, then Secured Party shall have the right, but not the obligation, in Debtor's name or in its own name, and without notice to Debtor, to advance all or any part of such amounts or to perform any or all such actions, and, for such purpose, Debtor expressly grants to Secured Party, in addition and without prejudice to any other rights and remedies hereunder, the right to enter upon and take possession of the Collateral to such extent and as often as it may deem necessary or desirable to prevent or remedy any such default. No such advance or performance shall be deemed to have cured such default by Debtor or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Secured Party in connection with such advances or actions, and all other sums advanced or expenses incurred by Secured Party hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the rate stated in the Note for payments from and after maturity (the "Default Rate") and shall be secured by this Instrument. Secured Party, upon making any such advance, shall be subrogated to all of the rights of the person receiving such advance.

Section 4.02 Other Expenses.

(a) Debtor shall pay or, on demand, reimburse Secured Party for the payment of, all appraisal fees, recording and filing fees, taxes, brokerage fees and commissions, abstract fees, title insurance premiums and fees, Uniform Commercial Code search fees, escrow fees, attorneys' fees and disbursements and all other costs and expenses of every character incurred by Debtor or Secured Party in connection with the granting, administration, enforcement and closing (including the preparation of the Loan Documents) of the transactions contemplated hereunder or under the other Loan Documents, or otherwise attributable or chargeable to Debtor as owner of the Collateral.

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(b) Debtor shall pay or, on demand, reimburse Secured Party for the payment of any costs or expenses (including attorneys' fees and disbursements) incurred or expended in connection with or incidental to (i) any default or Event of Default by Debtor hereunder or (ii) the exercise or enforcement by or on behalf of Secured Party of any of its rights or remedies or Debtor's obligations under this Instrument or under the other Loan Documents, including the enforcement, compromise or settlement of this Instrument or the Obligations or the defense, assertion of the rights and claims of Secured Party hereunder in respect thereof, by litigation or otherwise.

Section 4.03 Indemnity.

(a) Debtor agrees to indemnify and hold harmless Secured Party and Prudential from and against any and all losses, liabilities, suits, obligations, fines, damages, judgments, penalties, claims, charges, costs and expenses (including attorneys' fees and disbursements) which may be imposed on, incurred or paid by or asserted against Secured Party or Prudential by reason or on account of, or in connection with, (i) any default or Event of Default by Debtor hereunder or under the other Loan Documents, (ii) Secured Party's exercise of any of its rights and remedies, or the performance of any of its duties, hereunder or under the other Loan Documents to which Debtor is a party, (iii) the construction, reconstruction or alteration of the Collateral or any part thereof, (iv) any

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negligence or willful misconduct of Debtor, any lessee of the Premises, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees, (v) any accident, injury, death or damage to any person or property occurring in, on or about the Premises or the Improvements or any street, drive, sidewalk, curb or passageway adjacent thereto, or (vi) any other transaction arising out of or in any way connected with the Collateral (or any part thereof) or the Loan Documents, except for the willful misconduct or gross negligence of the indemnified person. Any amount payable to Secured Party under this Section shall be deemed a demand obligation, shall be part of the Obligations, shall bear interest at the Default Rate and shall be secured by this Instrument.

(b) Debtor's obligations under this Section shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of covering insurance. If any claim, action or proceeding is made or brought against Secured Party or Prudential which is subject to the indemnity set forth in this Section, Debtor shall resist or defend against the same, if necessary in the name of Secured Party, by attorneys for Debtor's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Secured Party. Notwithstanding the foregoing, Secured Party, in its discretion, may engage its own attorneys to resist or defend, or assist therein, and Debtor shall pay, or, on demand, shall reimburse Secured Party for the payment of, the fees and disbursements of said attorneys.

Section 4.04 Interest After Default. Except as otherwise expressly provided in any Loan Document, if any payment due hereunder or under any other Loan Document is not paid in full when due, after applicable notice and cure periods whether on any stated due date, any accelerated due date or on demand or any other time specified under any of the provisions hereof or thereof, then the same shall bear interest hereunder at the Default Rate from the due date until paid, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

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ARTICLE V

Sale, Transfer or Encumbrance of the Collateral

Section 5.01 Due on Sale or Encumbrance. In the event that Debtor, without the prior written consent of Secured Party (which consent may be withheld for any reason or for no reason including, but not limited to, the failure of the prospective transferee of the Collateral to reach an agreement in writing with Secured Party increasing the interest payable on the Obligations to such rate or changing any other terms of the Obligations as Secured Party shall request), shall sell, convey, assign, transfer or otherwise dispose of or be divested of its title to, or, shall mortgage, convey security title to, or otherwise encumber or caused to be encumbered, the Collateral or any part thereof or any interest therein in any manner or way, whether voluntary or involuntary, or in the event of (a) any merger, consolidation or dissolution involving, or the sale or transfer of all or substantially all of the assets of, Debtor or any general partner of Debtor, (b) the transfer (at one time or over any period of time) of 10% or more of the voting stock of (i) a corporate Debtor, (ii) any corporate general partner of Debtor, or (iii) any corporation which is the direct or indirect owner of 10% or more of the voting stock of Debtor or any general partner of Debtor, (c) the transfer of any general partnership interest in Debtor or in any partnership which is a direct or indirect general partner of Debtor, or (d) the conversion of any such general partnership interest to a limited partnership interest, then the entire balance of the Obligations, together with any other sums secured hereby, including the prepayment premium, shall become immediately

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due and payable at the option of Secured Party. This provision shall not apply to transfers of title or interest under any will or testament or applicable law of descent. (See "Rider" to this Instrument for additional provisions).

ARTICLE VI

Defaults and Remedies

Section 6.01 Events of Default. The term "Event of Default", as used in this Instrument, shall mean the occurrence of any of the following events:

(a) if Debtor shall fail to pay, within five (5) days after the date when the same shall become due and payable, any sum required to be paid under the Note, hereunder or under any other Loan Document, whether of principal, interest, premium, fees or otherwise; *provided*, however, that ~~if Debtor, within any twelve (12) month period, shall fail to make more than one (1) such payment by its due date, said five (5) day grace period shall become null and void and of no further force and effect~~ Debtor shall be entitled to two (2) such notices in any twelve (12) month period; thereafter any failure to pay, when due, of any sum required to be paid under the Note, this Instrument or the Loan Documents shall constitute an Event of Default. written notice to Debtor by Secured Party

(f), (g), (h)

(b) except as provided in subsections (d), (e) and (l) hereof, if default shall be made in the performance or observance of any other provision contained in the Loan Documents, beyond the applicable grace period therefor or, if no such grace period is applicable, if the default has not been remedied within thirty (30) days after written notice thereof shall have been given to Debtor; *provided*, however, that if the default is, in Secured Party's reasonable judgment, of such a nature that it cannot reasonably be cured within said thirty (30) day period, Debtor shall have such additional time for cure as Secured Party may, in its sole discretion, approve in writing after receipt by Secured Party within said thirty (30) day period of a written request by Debtor therefor; or

(c) if any representation made herein or in any other Loan Document (including any mortgage loan application or any certificate delivered in connection with any of the foregoing), or otherwise made by or on behalf of Debtor in connection with the transactions contemplated under the Loan Documents, shall be false or misleading in any material respect; or

(d) the Collateral (or any part thereof), or any legal, beneficial or equitable interest therein, shall be sold, transferred or encumbered in breach of Section 5.01 hereof; or

(e) if any other event occurs which, under the terms of the Loan Documents, would permit Secured Party to accelerate the Obligations; or

(f) if Debtor shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of its creditors, or shall not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts as they become due; or

(g) if any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding, or any other proceedings for the relief of debtors, is instituted by or against Debtor, and, if instituted against Debtor, is allowed or consented to or is not dismissed within thirty (30) days after such institution; or

(h) if any of the events referred to in subsections (f) and (g) of this Section shall occur with respect to any general partner of Debtor or any guarantor of payment of any part of the Obligations or of any portion of Debtor's obligations under the Loan Documents; or

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(i) if Debtor abandons the Premises or the Improvements; or

(j) if the Collateral shall be taken, attached or sequestered on execution or other process of law in any action against Debtor; or

(k) if there shall have occurred any default, event of default or non-performance under the terms of any of the Leases by Debtor, which default, event of default or non-performance shall not have been cured within any applicable grace period therefor under the applicable Lease; or

(l) if Debtor shall fail at any time to obtain, provide, maintain, keep in force or deliver to Secured Party the insurance policies required by Section 3.06 hereof and such failure shall continue for five (5) days after written notice; or

(m) if any claim of priority (except a claim based upon a Permitted Encumbrance) to this Instrument or any other document or instrument securing the Obligations by title, lien or otherwise shall be upheld by any court of competent jurisdiction or shall be consented to by Debtor.

Section 6.02 Remedies. Upon the occurrence of any one or more Events of Default, Secured Party may (but shall not be obligated to), in addition to any rights or remedies available to it hereunder or under the other Loan Documents, take such action personally or by its agents or attorneys, with or without entry, and without notice, demand, presentment or protest (each and all of which are hereby waived), as it deems necessary or advisable to protect and enforce Secured Party's rights and remedies against Debtor and in and to the Collateral, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Secured Party may determine, in its sole discretion, without impairing or otherwise affecting its rights or remedies:

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(a) declare the entire balance of the Obligations (including the entire principal balance thereof, all accrued and unpaid interest and any premium and late charges thereon and all other such sums secured hereby) to be immediately due and payable, and upon any such declaration the entire unpaid balance of the Obligations shall become and be immediately due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Debtor, anything in the Loan Documents to the contrary notwithstanding; or

(b) institute a proceeding or proceedings, judicial or otherwise, for the complete foreclosure of this Instrument under any applicable provision of law; or

(c) cause any or all of the Collateral to be sold under the power of sale granted by this Instrument in any manner permitted by applicable law. For any sale under the power of sale granted by this Instrument, Secured Party shall advertise the time, place and terms of such sale by publishing notice thereof once a week for three (3) successive weeks in a newspaper of general circulation in the county in which the Collateral or portion thereof is situated and then, upon the expiration of such time as is required by law, may sell the Collateral, and all estate, right, title, interest, claim and demand of Debtor therein, to the highest bidder for cash, as an entirety or in parcels or lots (regardless of the manner in which the Collateral may be classified), with such elements of real and/or personal property (and, to the extent permitted by applicable law, may elect to deem all of the Collateral to be real property for purposes thereof), at the usual place for conducting sales at the courthouse in the county in which the Collateral or any part thereof may be located, during the legal hours for public sales. Upon any sale, Secured Party shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property sold, but without any

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covenant or warranty, express or implied, and the recitals in the deed or deeds of any facts affecting the regularity or validity of the sale will be conclusive against all persons. In the event of a sale, by foreclosure or otherwise, of less than all of the Collateral, this Instrument shall continue as a lien and security interest on the remaining portion of the Collateral; or

(d) institute an action, suit or proceeding in equity for the specific performance of any of the provisions contained in the Loan Documents; or

(e) apply for the appointment of a receiver, custodian, trustee, liquidator or conservator of the Collateral, to be vested with the fullest powers permitted under applicable law, as a matter of right and without regard to or the necessity to disprove the adequacy of the security for the Obligations or the solvency of Debtor or any other person liable for the payment of the Obligations, and Debtor and each other person so liable waives or shall be deemed to have waived such necessity and consents or shall be deemed to have consented to such appointment; or

(f) subject to the provisions and restrictions of any applicable law, enter upon the Premises and the Improvements, and exclude Debtor and its agents and servants wholly therefrom, without liability for trespass, damages or otherwise, and take possession of all books, records and accounts relating thereto and all other Collateral, and Debtor agrees to surrender possession of the Collateral and of such books, records and accounts to Secured Party on demand after the happening of any Event of Default; and having and holding the same may use, operate, manage, preserve, control and otherwise deal therewith and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receivers, without interference from Debtor; and upon each such entry and from time to time thereafter may, at the expense of Debtor and the Collateral, without interference by Debtor and as Secured Party may deem advisable, (i) either by purchase, repair or construction, maintain and restore the Collateral, (ii) insure or reinsure the same, (iii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements thereto and thereon, (iv) complete the construction of the Improvements and, in the course of such completion, may make such changes in the contemplated or completed Improvements as it may deem advisable, and (v) in every such case in connection with the foregoing have the right to exercise all rights and powers of Secured Party with respect to the Collateral, either in Debtor's name or otherwise, including the right to make, terminate, cancel, enforce or modify Leases, obtain and evict tenants and subtenants on such terms as Secured Party shall deem advisable and to take any actions described in subsection (i) of this Section; or

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(g) subject to the provisions and restrictions of any applicable law, may, with or without the entrance upon the Premises, collect, receive, sue for and recover in its own name all Rents and cash collateral derived from the Premises, and after deducting therefrom all costs, expenses and liabilities of every character incurred by Secured Party in collecting the same and in using, operating, managing, preserving and controlling the Premises, and otherwise in exercising Secured Party's rights under subsection (g) of this Section, including all amounts necessary to pay Impositions, insurance premiums and other charges in connection with the Premises, as well as compensation for the services of Secured Party and its attorneys, agents and employees, apply the remainder as provided in Section 6.05; or

(h) release any portion of the Collateral for such consideration as Secured Party may require without, as to the remainder of the Collateral, in any way impairing or affecting the lien or priority of this Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall

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have been reduced by the actual monetary consideration, if any, received by Secured Party for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Secured Party may require without being accountable for so doing to any other lienholder; or

(i) may take all actions permitted under the Uniform Commercial Code of the jurisdiction in which the Collateral is located; or

(j) may take any other action, or pursue any other right or remedy, as Secured Party may have under applicable law, and Debtor does hereby agree that Secured Party may so act.

In the event that Secured Party shall exercise any of the rights or remedies set forth in subsections (f) and (g) of this Section, Secured Party shall not be deemed to have entered upon or taken possession of the Collateral except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose, nor shall it be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession. Secured Party shall not be liable to account for any action taken pursuant to any such exercise other than for rents actually received by such party, nor liable for any loss sustained by Debtor resulting from any failure to let the Premises, or from any other act or omission of Secured Party except to the extent such loss is caused by the willful misconduct or bad faith of such party. Debtor hereby consents to, ratifies and confirms the exercise by Secured Party of said rights and remedies, and appoints Secured Party as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

Section 6.03 Expenses. In any proceeding, judicial or otherwise, to foreclose this Instrument or enforce any other remedy of Secured Party under the Loan Documents, there shall be allowed and included as an addition to and a part of the Obligations in the decree for sale or other judgment or decree all expenditures and expenses, including reasonable attorneys' fees, which may be paid or incurred in connection with the exercise by Secured Party of any of its rights and remedies provided or referred to in Section 6.02, or any comparable provision of any other Loan Document, together with interest thereon at the rate specified in the Note, and the same shall be part of the Obligations and shall be secured by this Instrument.

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Section 6.04 Rights Pertaining to Sales. Subject to the provisions or other requirements of law, the following provisions shall apply to any sale or sales of the Collateral under or by virtue of this Article VI, whether made under the power of sale herein granted or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale:

(a) Debtor hereby waives any right which it may have to require the Collateral (or any part thereof) to be sold as separate tracts or units in the event of foreclosure or sale. The power of sale set forth in Section 6.02(c) hereof shall not be exhausted by any sale which is not completed or is defective in Secured Party's opinion, until the Obligations shall have been paid in full.

(b) Any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice.

(c) After each sale, Secured Party, or an officer of any court empowered to do so, shall execute and deliver to the purchaser or purchasers at such sale a good and

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sufficient instrument or instruments granting, conveying, assigning and transferring all right, title and interest of Debtor in and to the property and rights sold (but without any covenant or warranty, express or implied) and shall receive the proceeds of said sale or sales and apply the same as herein provided. Secured Party is hereby appointed the true and lawful attorney-in-fact of Debtor, which appointment is irrevocable and shall be deemed to be coupled with an interest, in Debtor's name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and for that purpose Secured Party may execute all necessary instruments of conveyance, assignment, transfer and delivery, and may substitute one or more persons with like power, Debtor hereby ratifying and confirming all that said attorney or such substitute or substitutes shall lawfully do by virtue thereof. Nevertheless, Debtor, if requested by Secured Party, shall ratify and confirm any such sale or sales by executing and delivering to Secured Party or such purchaser or purchasers all such instruments as may be advisable, in Secured Party's judgment, for the purposes as may be designated in such request.

(d) Any and all statements of fact or other recitals made in any of the instruments referred to in subsection (c) of this Section given by Secured Party as to nonpayment of the Obligations, or as to the occurrence of any Event of Default, or as to Secured Party having declared all or any of the Obligations to be due and payable, or as to the request to sell, or as to notice of time, place and terms of sale and of the property or rights to be sold having been duly given, or as to the refusal, failure or inability to act of Secured Party, or as to the appointment of any substitute or successor Secured Party, or as to any other act or thing having been duly done by Debtor, Secured Party, or by such substitute or successor Secured Party, shall be taken as conclusive and binding against all persons as to evidence of the truth of the facts so stated and recited. Secured Party may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale so held, including the posting of notices and the conduct of sale, but in the name and on behalf of Secured Party.

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(e) The receipt of Secured Party for the purchase money paid at any such sale, or the receipt of any other person authorized to receive the same, shall be sufficient discharge therefor to any purchaser of any property or rights sold as aforesaid, and no such purchaser, or its representatives , grantees or assigns, after paying such purchase price and receiving such receipt, shall be bound to see to the application of such purchase price or any part thereof upon or for any trust or purpose of this Instrument or, in any manner whatsoever, be answerable for any loss, misapplication or nonapplication of any such purchase money, or part thereof, or be bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

(f) Any such sale or sales shall operate to divest all of the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Debtor in and to the properties and rights so sold (except any statutory right of redemption provided by the laws of the State of Alabama), and shall be a perpetual bar both at law and in equity against Debtor and any and all persons claiming or who may claim the same, or any part thereof of any interest therein, by, through or under Debtor to the fullest extent permitted by applicable law.

(g) Upon any such sale or sales, Secured Party may bid for and acquire the Collateral and, in lieu of paying cash therefor, may make settlement for the purchase price by crediting against the Obligations the amount of the bid made therefor, after deducting therefrom the expenses of the sale (including reasonable attorneys' fees), the cost of any enforcement proceeding hereunder and any other sums which Secured Party is authorized to deduct under the terms hereof, to the extent necessary to satisfy such bid.

(h) In the event that Debtor, or any person claiming by, through or under Debtor, shall transfer or refuse or fail to surrender possession of the Collateral after any sale thereof, then Debtor, or such person shall be deemed a tenant at sufferance of the purchaser at such sale, subject to eviction by means of forcible entry and detainer proceedings, or subject to any other right or remedy available hereunder or under applicable law.

(i) Upon any such sale, it shall not be necessary for Secured Party or any public officer acting under execution or order of court to have present at the sale or constructively in its possession any of the Collateral.

(j) In the event a foreclosure hereunder shall be commenced by Secured Party, Secured Party may at any time before the sale of the Collateral abandon the sale, and may institute suit for the collection of the Obligations and for the foreclosure of this Instrument, or in the event that Secured Party should institute a suit for collection of the Obligations and for the foreclosure of this Instrument, Secured Party may at any time before the entry of final judgment in said suit dismiss the same and sell the Collateral in accordance with the provisions of this Instrument.

Section 6.05 Application of Proceeds. The purchase money, proceeds or avails of any sale referred to in Section 6.04, together with any other sums which may be held by Secured Party hereunder, whether under the provisions of this Article VI or otherwise, shall, except as herein expressly provided to the contrary, be applied as follows:

First: To the payment of the costs and expenses of any such sale, including compensation to Secured Party, its agents and counsel, and of any judicial proceeding wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Secured Party hereunder (including reasonable attorneys' fees), together with interest thereon as provided in the Note, and all taxes, assessments and other charges, except any taxes, assessments or other charges subject to which the Collateral shall have been sold.

Second: To the payment in full of the Obligations (including principal, interest, premium and fees) in such order as Secured Party may elect.

Third: To the payment of any other sums secured hereunder or required to be paid by Debtor pursuant to any provision of the Loan Documents.

Fourth: To the extent permitted by applicable law, to be set aside by Secured Party as adequate security in its judgment for the payment of sums which would have been paid by application under clauses First through Third above to Secured Party, arising out of an obligation or liability with respect to which Debtor has agreed to indemnify Secured Party, but which sums are not yet due and payable or liquidated.

Fifth: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

Section 6.06 Additional Provisions as to Remedies.

(a) No right or remedy herein conferred upon or reserved to Secured Party is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and continuing, shall be in addition to every other right or remedy given hereunder, or under the other Loan Documents or now or hereafter existing

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at law or in equity, and may be exercised from time to time and as often as may be deemed expedient by Secured Party.

(b) No delay or omission by Secured Party to exercise any right or remedy hereunder upon any default or Event of Default shall impair such exercise, or be construed to be a waiver of any such default or Event of Default or an acquiescence therein.

(c) The failure, refusal or waiver by Secured Party of its right to assert any right or remedy hereunder upon any default or Event of Default or other occurrence shall not be construed as waiving such right or remedy upon any other or subsequent default or Event of Default or other occurrence.

(d) Secured Party shall not have any obligation to pursue any rights or remedies it may have under any other agreement prior to pursuing its rights or remedies hereunder or under the other Loan Documents.

(e) No recovery of any judgment by Secured Party and no levy of an execution upon the Collateral (or any part thereof) or any other property of Debtor shall affect, in any manner or to any extent, the lien and security interest created by this Instrument upon and in the Collateral, or any liens, security interests, rights, powers or remedies of Secured Party hereunder, and such liens, rights, powers and remedies shall continue unimpaired as before.

(f) Secured Party may resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Secured Party may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights or benefits granted hereunder.

(g) Acceptance of any payment after the occurrence of any default or Event of Default shall not be deemed a waiver or a cure of such default or Event of Default, and acceptance of any payment less than any amount then due shall be deemed an acceptance on account only.

(h) In the event that Secured Party shall have proceeded to enforce any right or remedy hereunder by foreclosure, sale, entry or otherwise, and such proceeding shall be discontinued, abandoned or determined adversely for any reason, then Debtor and Secured Party Collateral shall be restored to their former positions and rights hereunder with respect to the Collateral, subject to the lien and security interest hereof.

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Section 6.07 Waiver of Rights and Defenses. To the full extent Debtor may do so, Debtor agrees with Secured Party as follows:

(a) Debtor will not at any time, insist on, plead, claim or take the benefit or advantage of any statute or rule of law now or hereafter in force providing for any appraisement, valuation, stay, extension, moratorium or redemption, or of any statute of limitations, and Debtor, for itself and its heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming an interest in the Collateral (other than Secured Party), hereby, to the extent permitted by applicable law, waives and releases all rights of redemption, valuation, appraisement, notice of intention to mature or declare due the whole of the Obligations, and all rights to a marshaling of the assets of Debtor, including the Collateral, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created hereunder.

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(b) Debtor shall not be relieved of its obligation to pay the Obligations at the time and in the manner provided herein and in the other Loan Documents, nor shall the lien or priority of this Instrument or any other Loan Documents be impaired by any of the following actions, non-actions or indulgences by Secured Party:

(i) any failure or refusal by Secured Party to comply with any request by Debtor (X) to consent to any action by Debtor or (Y) to take any action to foreclose this Instrument or otherwise enforce any of the provisions hereof or of the other Loan Documents;

(ii) any release, regardless of consideration, of the whole or any part of the Collateral or any other security for the Obligations, or any person liable for payment of the Obligations;

(iii) any waiver by Secured Party of compliance by Debtor with any provision of this Instrument or the other Loan Documents, or consent by Secured Party to the performance by Debtor of any action which would otherwise be prohibited thereunder or to the failure by Debtor to take any action which would otherwise be required hereunder or thereunder; and

(iv) any agreement or stipulation between Secured Party and Debtor, or, with or without Debtor's consent, between Secured Party and any subsequent owner or owners of the Collateral (or any part thereof) or any other security for the Obligations, renewing, extending or modifying the time of payment or the terms of this Instrument or any of the other Loan Documents (including a modification of any interest rate), and in any such event Debtor shall continue to be obligated to pay the Obligations at the time and in the manner provided herein and in the other Loan Documents, as so renewed, extended or modified, unless expressly released and discharged by Secured Party.

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(c) Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title or interest in or to the Collateral (or any part thereof), Secured Party may release any person at any time liable for the payment of the Obligations or any portion thereof or any part of the security held for the Obligations and may extend the time of payment or otherwise modify the terms of this Instrument or of any of the Loan Documents, including a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Instrument or the lien and security interest thereof or the priority of this Instrument, as so extended and modified, as security for the Obligations over any such subordinate lien, security interest, encumbrance, right, title or interest.

ARTICLE VII

Satisfaction and Cancellation

Section 7.01 Satisfaction and Cancellation. If the Obligations shall be paid as the same become due and payable, then and in that event only all rights hereunder (except for the rights and obligations set forth in Sections 3.11, 3.12 and 4.03 hereof) shall terminate and the Collateral shall become wholly released and cleared of the liens, security interests, conveyances and assignments evidenced hereby, upon receipt by Secured Party of evidence satisfactory to it that the foregoing conditions have been satisfied, at Debtor's sole cost and expense. In such event Secured Party shall, at the request of Debtor,

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promptly deliver to Debtor, in recordable form, all such documents as shall be necessary to cause this Instrument to be satisfied and cancelled of record and to release the Collateral from the liens, security interests, conveyances and assignments created or evidenced hereby.

ARTICLE VIII

Limitation on Personal Liability

Section 8.01 Limited Recourse Liability.

(a) Except to the extent provided in Section 8.01(b), neither Debtor nor any general partner of Debtor (collectively, the "Exculpated Parties") shall be liable for any deficiency judgment with respect to any unpaid balance of principal, premium (if any) and accrued interest on the Note.

(b) Nothing contained herein shall limit any other rights and remedies of Secured Party, at law or in equity, under any of the Loan Documents nor shall the Exculpated Parties be relieved of personal liability for the performance and satisfaction of any and all covenants, agreements and undertakings under this Instrument and any other Loan Document (other than the obligation to pay principal, premium and interest on the Note), including, without limitation, liability for the payment of taxes, assessments and utility charges with respect to the Collateral or any part thereof and for sums expended by Secured Party in fulfilling Debtor's obligations, as lessor, under any leases of the Premises. Moreover, the agreement of Secured Party not to pursue recourse liability, as provided in Section 8.01(a), SHALL BECOME NULL AND VOID and shall be of no further force and effect in the event:

(i) the Collateral or any part thereof or any interest therein shall be further encumbered by a voluntary lien securing an obligation upon which any Exculpated Party shall be personally liable for repayment (provided, however, that this clause (i) shall not apply to liability which is recourse only under one or more conditions substantially similar to clauses (i) through (viii) of this paragraph); or

(ii) the Collateral or any part thereof or any interest therein shall be sold, conveyed, assigned, transferred or otherwise disposed of or the title thereto divested or shall be mortgaged or encumbered, otherwise then permitted by Section 5.01, or without the prior written consent or Secured Party except as a result of condemnation, the exercise of eminent domain or settlement in lieu thereof.

(iii) Debtor should file, or there should be filed against Debtor (and the same is not dismissed within sixty (60) days), a petition in bankruptcy or a petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the bankruptcy laws of the United States or under any other similar federal, state or other statute or law relating to relief from indebtedness, or a receiver, trustee or liquidator should be appointed with respect to Debtor or the Collateral or any part thereof; or

(iv) of actionable fraud or knowing and material misrepresentation in connection with the loan evidenced by the Note and secured hereby; or

(v) of the misapplication of (i) proceeds paid under any insurance policies by reason of damage, loss or destruction affecting any portion of the Collateral (to the full extent of such proceeds), (ii) any proceeds or awards resulting from the condemnation of all or any part of the Collateral (to the full extent of such

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proceeds or awards), or (iii) rents received after receipt by Debtor of any notice to which Debtor may be entitled, if any, of default or of foreclosure or the exercise of other remedies by Secured Party upon a default by Debtor; or

(vi) of the failure of any tenant's security deposits to be turned over to Secured Party upon foreclosure or sale pursuant to power of sale (to the full extent of such misapplied deposits); or

(vii) of any waste of the Collateral or any part thereof; or

(viii) Any violation of ~~Debtor shall become obligated to indemnify and hold Secured Party harmless pursuant to~~ Section 3.11 or 3.12 hereof.

The recourse liability resulting from subsections (v), (vi) and (vii) above shall apply only the the extent of Debtor's deficiency as a direct result of the actions outlined above.

ARTICLE IX

Additional Provisions

Section 9.01 Usury Savings Clause. All agreements in this Instrument and in the other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement or acceleration of maturity of the Obligations, or otherwise, shall the amount paid or agreed to be paid hereunder for the use, forbearance or detention of money exceed the highest lawful rate permitted under applicable usury laws. If, from any circumstance whatsoever, fulfillment of any provision of the Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if, from any circumstance whatsoever, Secured Party shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and shall be cancelled automatically or, if theretofore paid, such excess shall be credited against the principal amount of the Obligations to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be rebated to Debtor.

Section 9.02 Separability. If all or any portion of any provision of this Instrument or the other Loan Documents shall be held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein or therein.

Section 9.03 Notices. Any notice, demand, consent, approval, direction, agreement or other communication (any "Notice") required or permitted hereunder or under the other Loan Documents shall be in writing and shall be validly given if mailed by United States mail, certified mail, return receipt requested, postage prepaid, or by nationally recognized courier that obtains receipt or by receipt personal delivery, addressed as follows to the person entitled to receive the same:

(a) If to Debtor:
Birmingham I Associates, Ltd.
c/o Realty Development Corporation
900 Ashwood Parkway, Suite 440
Atlanta, Georgia 30338

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With a copy to:
Nicholas N. Sears, Esq.
Morris, Manning and Martin
3343 Peachtree Road, N.E.
1600 Atlanta Financial Center, Atlanta, Georgia 30326

(b) If to Secured Party:

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA
One Ravinia Drive
Suite 1400
Atlanta, Georgia 30346
Attention: Vice President, Real Estate Finance
Reference: Loan No. 7 503 650

With a copy to:
Deborah A. Pickens
Spain, Gillon, Grooms, Blan & Nettles
2117 Second Avenue North
Birmingham, Alabama 35203

Any Notice shall be deemed to have been validly given hereunder when so mailed; provided, however, that the period of time for performance shall commence on the date of receipt or the date of refusal to accept delivery of such Notice. Any person shall have the right to specify, from time to time, as its address or addresses for purposes of this Instrument, any other address or addresses upon giving three (3) days' notice thereof to each other person then entitled to receive notices or other instruments hereunder.

Section 9.04 Right to Deal. In the event that ownership of the Collateral (or any part thereof) becomes vested in a person other than Debtor, Secured Party may, without notice to Debtor, deal with such successor or successors in interest with reference to this Instrument or the Obligations in the same manner as with Debtor, without in any way vitiating or discharging Debtor's liability hereunder or for the payment of the Obligations or being deemed a consent to such vesting.

Section 9.05 No Merger.

(a) If both the lessor's and the lessee's interest under any Lease shall at any time become vested in any one person, this Instrument and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and, in such event, Secured Party shall continue to have and enjoy all of the rights and privileges of Secured Party hereunder as to each separate estate.

(b) Upon the sale of the Collateral (or any part thereof) under the power of sale granted herein or the foreclosure of the lien created hereby on the Collateral (or any part thereof), as herein provided, any Leases then existing shall not be destroyed or terminated by application of the doctrine of merger or as a matter of law or as a result of such sale or foreclosure unless Secured Party or any purchaser at any such sale or foreclosure shall so elect by notice to the lessee in question.

Section 9.06 Applicable Law. This Instrument shall be governed by, and construed in accordance with, the law of the State of Alabama.

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Section 9.07 Appointment of Secured Party. Debtor hereby appoints Secured Party as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgement, delivery and filing or recording for and in the name of Debtor of any of the documents or instruments referred to in Sections 3.04 and 3.18.

Section 9.08 Sole Discretion of Secured Party. Whenever Secured Party's judgment, consent or approval is required hereunder for any matter, or Secured Party shall have an option or election hereunder, such judgment, the decision as to whether or not to consent to or approve the same or the exercise of such option or election shall be in the sole discretion of Secured Party.

Section 9.09 Provisions as to Covenants and Agreements. All of Debtor's covenants and agreements hereunder shall run with the land and time is of the essence with respect thereto.

Section 9.10 Not a Future Advance or Open-End Mortgage. Certification is hereby made that this Instrument is not intended to be a future advance or open-end mortgage, and that no additional or subsequent advances will be made under this Instrument except only those which Secured Party deems necessary to protect and preserve its security, such as, but not limited to, advances for repairs, taxes or insurance premiums which Debtor fails or refuses to make or pay.

Section 9.11 Matters to be in Writing. This Instrument cannot be altered, amended, modified, terminated or discharged except in a writing signed by the party against whom enforcement of such alteration, amendment, modification, termination or discharge is sought. No waiver, release or other forbearance by Secured Party will be effective against Secured Party unless it is in a writing signed by Secured Party, and then only to the extent expressly stated.

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Section 9.12 Submission to Jurisdiction. Without limiting the right of Secured Party to bring any action or proceeding against the undersigned or its property arising out of or relating to the Obligations (an "Action") in the courts of other jurisdictions, Debtor hereby irrevocably submits to the jurisdiction of any Alabama state court or federal court sitting in the State of Alabama, and Debtor hereby irrevocably agrees that any Action may be heard and determined in such Alabama state court or in such federal court. Debtor hereby irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of any Action in such jurisdiction. Debtor hereby irrevocably agrees that the summons and complaint or any other process in any Action in any jurisdiction may be served by mailing to any of the addresses set forth herein or by hand delivery to a person of suitable age and discretion at any such address. Such service will be complete on the date such process is so mailed or delivered, and Debtor will have thirty (30) days from such completion of service in which to respond in the manner provided by law. Debtor may also be served in any other manner permitted by law, in which event Debtor's time to respond shall be as provided by law.

Section 9.13 Construction of Provisions. The following rules of construction shall be applicable for all purposes of this Instrument and all documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Instrument, unless expressly otherwise designated in context.

V.7.AL

(b) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to."

(c) The term "Collateral" shall be construed as if followed by the phrase "or any part thereof."

(d) The term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof."

(e) Words of masculine, feminine or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(f) The term "person" shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.

(g) The term "provisions", when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, conditions and/or".

(h) All Article, Section and Exhibit captions herein are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Instrument.

(i) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion thereof.

(j) The cover page of and all recitals set forth in, and all Exhibits to, this Instrument are hereby incorporated in this Instrument.

(k) All obligations of Debtor hereunder shall be performed and satisfied by or on behalf of Debtor at Debtor's sole cost and expense.

(l) The term "lease" shall mean "tenancy, subtenancy, lease, sublease or rental agreement," the term "lessor" shall mean "landlord, sublandlord, lessor and sublessor" and the term "lessee" shall mean "tenant, subtenant, lessee and sublessee."

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Section 9.14 Successors and Assigns. The provisions hereof shall be binding upon Debtor and the heirs, devisees, representatives, successors and assigns of Debtor, including successors in interest of Debtor in and to all or any part of the Collateral, and shall inure to the benefit of Secured Party and its heirs, successors, substitutes and assigns. All references in this Instrument to Debtor or Secured Party shall be construed as including all of such other persons with respect to the person referred to. Where two or more persons have executed this Instrument, the obligations of such persons shall be joint and several, except to the extent the context clearly indicates otherwise. Secured Party shall have the right in its sole discretion at any time during the term of this Instrument (a) to sell, assign, syndicate or otherwise transfer and/or dispose of all or any portion of its interest in the Note and the Obligations and (b) to submit to Secured Party's assignees the financial data and all other information being furnished by Debtor to Secured Party under the terms of this Instrument.

Section 9.15 Counterparts. This Instrument may be executed in any number of counterparts with the same effect as if all parties hereto had executed the same document. All such counterparts shall be construed together and shall constitute one

instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Instrument the day first set forth above.

DEBTOR:

Birmingham I Associates, Ltd.,
a Georgia limited partnership

Signed, sealed and delivered
in the presence of the
following witnesses:

Printed Name:
Title:

Printed Name:
Title:

By Realty Development Corporation, a
Printed Name: Georgia corporation,
Title: Its General Partner

By: _____
Gail Armstrong
Its Vice President

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STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Gail Armstrong, whose name as Vice President of Realty Development Corporation, a Georgia corporation, General Partner of Birmingham I Associates, Ltd., a Georgia limited partnership, 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, she, as such officer and with full authority, executed the same voluntarily for and on behalf of said corporation in its capacity as General Partner of Birmingham I Associates, Ltd.

Given under my hand and official seal this the 13th day of December, 1990.

Laura Lorraine Yaun
Notary Public
My Commission Expires: 10/5/92

RIDER TO MORTGAGE AND SECURITY AGREEMENT DATED DECEMBER 13, 1990

1. Section 3.09(b) continued - Notwithstanding the foregoing provisions of this subsection (b), Debtor shall be permitted to execute and deliver a second mortgage on the Premises and the Improvements in a principal sum not to exceed $1,500,000.00 to AmSouth Bank, N.A., which second mortgage must be in form and substance acceptable to Secured Party (the "AmSouth Mortgage"). In the event said AmSouth Mortgage (or the AmSouth Note which said Mortgage secures) provides for personal liability on the part of Debtor or its partners, Debtor and its partners shall be personally liable under this Instrument to the extent of said liability under the AmSouth Note or the AmSouth Mortgage. The personal liability of Debtor and its partners under this subsection shall terminate upon the termination of any personal liability of Debtor or its partners under the AmSouth Note or the AmSouth Mortgage. Further, Debtor and its partners shall be personally liable to Secured Party to the full extent of any payment made under the AmSouth Note or the AmSouth Mortgage during any period in which an Event of Default under the Note or this Instrument has occurred and is continuing.

The AmSouth Note and any other applicable AmSouth loan documents shall contain the following provisions:

(1) Debtor shall make no payment for debt service due thereunder until all operating expenses, fixed and variable, have been paid, a reasonable reserve for ad valorem taxes, insurance premiums and replacements (said reserve for replacements being not less than $100.00 per year per apartment unit of the Improvements) has been set aside and the monthly debt service due under the Note and any sums due under this Instrument have been paid to Secured Party;

(2) The accrual rate for the AmSouth Note and the AmSouth Mortgage shall be 10.50% and the payment rate shall be 3.46% in year one, 5.69% in year two, 8.28% in year three, 7.67% in year four and 10.11% in year five; in the event that cash flow from the Collateral shall not be sufficient to pay debt service on the AmSouth Note and the AmSouth Mortgage as provided in (1) above, said non-payment shall not constitute an Event of Default under the AmSouth Note and the AmSouth Mortgage;

(3) Any guarantee by Debtor or its partners to AmSouth Bank National Association shall not be secured by the Collateral;

(4) The AmSouth Note and the AmSouth Mortgage may not be assigned by AmSouth Bank, N.A.

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2. Section 3.11 ERISA.

(a) Secured Party represents and warrants to Debtor that the source of funds from which Secured Party advances the loan amount evidenced by the Note is its General Account, which is subject to the claims of its general creditors under state law. Debtor represents and warrants to Secured Party that (1) Debtor is not an "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA, (2) the assets of Debtor do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (3) Debtor is not a "governmental plan" within the meaning of Section 3(32) of ERISA and (4) transactions by or with Debtor are not subject to state statutes regulating investments of and fiduciary obligations with respect to governmental plans.

(b) Debtor covenants and agrees to deliver to Secured Party such certifications or other evidence from time to time throughout the term hereof, as requested by Secured Party in its sole discretion, that (1) Debtor is not an "employee benefit plan" or a "governmental plan"; (2) Debtor is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (3) one or more of the following circumstances is true:

(i) Equity interests in Debtor are publicly offered securities, within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(ii) Less than 25 per cent of all equity interests in Debtor are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(iii) Debtor qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e).

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(c) The occurrence of any of the following events shall constitute an Event of Default under this Instrument, entitling Secured Party to exercise any and all remedies to which it may be entitled under the Loan Documents: (1) the failure of any representation or warranty made by Debtor under this Section to be true and correct in all respects, (2) the failure of Debtor to provide Secured Party with the written certifications and evidence referred to in subsection (b) hereinabove, or (3) the consummation by Debtor of a transaction which would cause this Instrument or any exercise of Secured Party's rights under the Loan Documents to constitute a non-exempt prohibited transaction under ERISA or a violation of a state statute regulating governmental plans, subjecting Secured Party to liability for violation of ERISA or such state statute.

(d) Debtor shall indemnify and hold Secured Party harmless from and against all loss, cost, damage and expense (including, without limitation, attorney's fees and costs incurred in the investigation, defense and settlement of claims and losses incurred in correcting any prohibited transaction or in the sale of a prohibited loan, and in obtaining any individual prohibited transaction exemption under ERISA that may be required, in Secured Party's sole discretion) that Secured Party may incur, directly or indirectly, as a result of a default under subsection (c) hereinabove. This indemnity shall survive any termination, satisfaction or foreclosure of this Instrument and shall not be subject to the limitation on personal liability set forth in Section 8.01.

(e) Notwithstanding anything to the contrary contained herein, (1) no sale, assignment or transfer of any direct or indirect interest in Debtor shall be permitted which would negate Debtor's representations in this Section or cause this Instrument (or any exercise of Secured Party's rights under the Loan Documents) to constitute a violation of any provision of ERISA or of any applicable state statute regulating a governmental plan, as determined in the sole discretion of Secured Party, (2) no direct or indirect transfer of the Premises or Improvements or any interest therein including, without limitation, a junior lien or leasehold interest, shall be permitted which would cause this Instrument (or any exercise of Secured Party's rights under the Loan Documents) to constitute a violation of any provision of ERISA or of any applicable state statute regulating a governmental plan, as determined in the sole discretion of Secured Party, and (3) not less than fifteen (15) days before consummation of any permitted transfer of title to the Premises or Improvements or of an interest in Debtor, or of any direct or indirect right, title or interest in either of them, or of the placing of any lien or encumbrance on the Premises or the Improvements, Debtor shall obtain from the proposed transferee or lienholder a representation to Secured Party in form and substance satisfactory to Secured Party that the provisions of subsection (b) hereinabove shall be true and correct after said transfer, and further provided that any proposed lienholder agrees that any direct or indirect transfer of its lien or any interest therein shall be governed by this Section.

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3. **Section 5.01 continued** - Notwithstanding the foregoing, Debtor or AmSouth Bank, N.A. (should AmSouth Bank, N.A. assume the obligations of Debtor as set forth herein) may transfer the Premises and the Improvements one (1) time after the expiration of twelve (12) months from the date hereof, and after at least fifteen (15) business days' notice to Secured Party, provided that all of the following conditions have been satisfied: (a) no Event of Default has occurred and is continuing under the Loan Documents; (b) Secured Party shall have approved the proposed transferee, including but not limited to, review of creditworthiness, good character and reputation, and demonstrated ability and experience (by itself or through its manager) in the ownership, operation and

leasing of a first-class garden apartment complex; (c) (i) the proposed transfer is not in violation of Section 3.11 hereof, and (ii) Secured Party shall have received the certifications required by subsection (b) of said Section 3.11 (or, if the statements required by the certifications are not true with respect to the proposed transferee, Secured Party shall have received such evidence as it may require in its sole discretion to determine that the proposed transfer is not a prohibited transaction under such Act); (d) the proposed transferee shall have executed an assumption agreement acceptable to Secured Party with respect to the Loan Documents, subject to the same limitation on liability as is set forth in Section 8.01, but with no other required modification in any Loan Document; (e) in consideration for such transfer, Secured Party shall have been paid a transfer fee of one per cent (1%) of the then-outstanding principal balance of the Note, plus all costs and expenses incurred by Secured Party for the processing of said transfer, including attorney's fees and expenses; (f) the Premises and the Improvements shall have generated net operating income (as defined below) during the six (6) month period immediately preceding the proposed transfer of not less than one-half of the product of (i) 1.19 times (ii) 9.83% during the first thirty-six (36) months of the Loan or 10.38% during the last twenty-four (24) months of the Loan times (iii) $9,000,000.00; and (g) there is not second mortgage outstanding on the Collateral. Provided that all of the foregoing conditions are fulfilled, Secured Party shall release the original Debtor from all future obligations under the Loan simultaneously with such transfer except for such Debtor's indemnity obligations set forth in Sections 3.11 and 3.12 hereunder. Notwithstanding the foregoing, the stock of Realty Development Corporation (Debtor's general partner) may be transferred without Secured Party's prior written consent, provided that at all times at least 51% of the voting stock remains held by John Lie-Nielsen and/or George H. Lane, III and there is no violation of Section 3.11 hereunder.

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Net operating income shall be defined as the gross operating income for a six (6) consecutive month period (from any and all sources) derived from the Premises and Improvements, less all ordinary operating expenses, fixed and variable, and a reasonable reserve for ad valorem taxes and insurance premiums, but before deduction for federal, state or other income taxes, debt service, depreciation or amortization. Ordinary operating expenses shall not be prepaid or deferred, and shall reflect then-current market conditions. Operating income shall not be anticipated more than one (1) month in advance, and shall not include extraordinary collections of arrearages. The managing general partner and chief financial officer of Debtor shall document, in writing, all income and expenses and such documentation shall be subject to the approval of Secured Party.

Further, AmSouth Bank, N.A. may acquire the Note at any time prior to maturity subject to the prepayment premium provisions contained in said Note. The indebtedness evidenced by the Note and secured by this Indenture may be assumed by AmSouth Bank, N.A.

without payment of the one per cent transfer fee as provided hereinabove on the condition that Secured Party is paid an administrative processing fee of $10,000.00 plus attorney's fees and expenses incurred by Secured Party for said transfer.

Exhibit "A"

Commence at the Southeast corner of the Northwest One Quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; run thence in a Westerly direction along the South line of said Quarter Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86 degrees and run in a Northwesterly direction along the Northeasterly right of way of U.S. Highway No. 31 South for a distance of 1,096.84 feet; thence turn an angle to the right of 101 degrees, 03 minutes, 10 seconds and run in an Easterly direction for a distance of 346.16 feet to the point of beginning; from the point of beginning thus obtained thence turn an angle to the left of 71 degrees, 19 minutes, 50 seconds and run in a Northeasterly direction for a distance of 580 feet; thence turn an angle to the right of 18 degrees, 59 minutes, 22 seconds and run in a Northeasterly direction for a distance of 525.54 feet;

thence turn an angle to the right of 101 degrees, 40 minutes, 03 seconds and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31 degrees, 30 minutes and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 00 degrees, 14 minutes, 53 seconds and run in a Southeasterly direction for a distance of 60 feet; thence turn an angle to the left of 90 degrees to the tangent of the following described course; said course being situated on a curve to the left having a central angle of 15 degrees, 10 minutes, 25 seconds and a radius of 438.82 feet; thence run in a Northeasterly direction along the arc of said curve for a distance of 116.21 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 87 degrees, 12 minutes, 41 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Northeasterly, Easterly and Southeasterly direction for a distance of 38.05 feet to the end of said curve; thence run along the tangent if extended to last described course in a Southeasterly direction for a distance of 424.16 feet to the point of beginning of a curve to the right, said curve having a central angle of 19 degrees, 26 minutes, 05 seconds and a radius of 349.57 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 118.57 feet to the end of said curve; thence run along the tangent extended to said curve in a Southeasterly direction for a distance of 20.40 feet to the point of beginning of a curve to the left, said curve having a central angle of 12 degrees, 15 minutes, 04 seconds and a radius of 889.71 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 190.24 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 93 degrees, 01 minutes, 06 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Southeasterly and Southwesterly direction for a distance of 40.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 25 degrees, 18 minutes and a radius of 483.33 feet; thence run along arc of said curve in a Northwesterly direction for a distance of 213.43 feet to the end of said curve; thence run along the tangent extended to said curve in a Northwesterly direction for a distance of 35.74 feet to the point of beginning of a curve to the left, said curve having a central angle of 25 degrees, 39 minutes, 10 seconds and a radius of 271.57 feet; thence run along the arc of said curve in a Northwesterly and Southwesterly direction for a distance of 121.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 20 degrees, 18 minutes, 07 seconds and a radius of 591.13 feet; thence run along the arc of said curve in a Southwesterly, Westerly and Northwesterly direction for a distance of 209.46 feet to the end of said curve; thence turn an angle to the right from tangent of last described course of 34 degrees, 45 minutes, 04 seconds and run in a Northwesterly direction for a distance of 307.91 feet; thence turn an angle to the right of 44 degrees, 55 minutes, 56 seconds and run in a Northerly direction for a distance of 142.00 feet; thence turn an angle to the left of 84 degrees, 31 minutes, 38 seconds and run in a Northwesterly direction for a distance of 335.53 feet; thence turn an angle to the right of 40 degrees, 30 minutes, and run in a Northwesterly direction for a

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Together with a perpetual easement for sanitary sewer pipeline over, along and through the following described real estate for the benefit of the real property described hereinabove:

Description of a 20 foot wide sanitary sewer easement situated in the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, the centerline of which is more particularly described as follows: From the Southeast corner of the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, run West along the South line of said SE 1/4 of the NW 1/4 for a distance of 1170.59 feet; thence turn an angle to the right of 110 degrees, 52 minutes, 50 seconds and run in a Northeasterly direction for a distance of 32.41 feet to the center of an existing sanitary sewer manhole and the point of beginning of the centerline of the 20 foot wide sanitary sewer easement herein described, from the point of beginning, thus obtained, continue along the last described course for a distance of 175.15 feet; thence turn an angle to the left of 15 degrees, 58 minutes, 58 seconds and run in a Northeasterly direction for a distance of 178.66 feet; thence turn an angle to the right of 8 degrees, 19 minutes, 00 seconds and run in a Northeasterly direction for a distance of 160.00 feet, more or less, to a point on the Southern boundary line of the above described property, and the end of said sanitary sewer easement.

ALSO, rights to the use of an easement 15 feet in width for sanitary sewer easement over, along and through that certain property described in the easement recorded in Real Record 97, page 535 in the Probate Office of Shelby County, Alabama.

ALSO, rights to the use of an easement for enjoyment in and to all Community Facilities as set out in Section 6.2 of the Amendment No. 2 to the Declaration of protective Covenants, Agreements, Easements, Charges and Liens for Riverchase (Business) recorded in Real 19, Page 633 et seq.

ALSO, rights to the use of a 20 foot sanitary sewer easement as shown on the survey of Laurence Weygand, dated November 27, 1990, and as shown on the recorded plat of Riverchase Properties Second Additon to Riverchase, as recorded in Map Book 9, Page 40, in the Probate Office of Shelby County, Alabama.

EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY SECURITY

1. All machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by Debtor, wherever situate, and now or hereafter located on, attached to, contained in or used or usable in connection with the Premises or the Improvements, or placed on any part thereof, though not attached thereto, including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, electrical, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, hoists, stores, ranges, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, fittings and fixtures.

2. All funds, accounts, deposits, instruments, documents, contract rights, general intangibles, notes and chattel paper arising from or by virtue of any transaction related to the Premises, the Improvements or any of the personal property described in this Exhibit B.

3. All permits, licenses, franchises, certificates and other rights and privileges, now held or hereafter acquired by Debtor in connection with the Premises, the Improvements or any of the personal property described in this Exhibit B.

4. All right, title and interest of Debtor in and to the name and style by which the Premises and Improvements are known, including trademarks and trade names relating thereto.

5. The following items of tangible personal property:

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Exhibit B

To the best of my knowledge and belief, this is a true and materially correct copy of the personal property inventory at Summerchase.

George H. Lane, III
Date: 11/28/90

SUMMERCHASE
at · riverchase
Apartment Homes

RECEIVED
NOV 28 1990

Inventory of Clubhouse/Office.

*Clubhouse area:
1 RCA Colortrax 2000 Color television ser.#801220724
1 JVC Stereo receiver ser.#~~12292267~~ 81201721
2 Bernhardt love seats
1 Bernhardt sofa
12 Dining chairs
1 Glass top coffee table
2 Bar stools
2 Glass top dining tables
2 End tables
2 Lamps
2 Bose 201 stereo speakers ser.#208522 and 208735

*Outer office area
2 Desks
1 Loveseat
1 Glass top coffee table
2 End tables
5 chairs
2 Technicom International phones
3 Lamps

*Ginas office
1 Mita Copier machine#FF46000804 code#198709
3 paintings
3 chairs
1 desk
1 Technicom International telephone
1 lamp

*Kellys office
3 chairs
1 desk
2 credenzas
1 lamp
1 Technicom International telephone
1 Canon P28-D calculator ser.#258269
1 MCA super farm 1000 ser.#4970730317
1 painting
~~2 Heilum tanks~~
1 IBM CRT screen ser.~~#0945087~~ 88-99288
~~1 IBM disk drive ser.#1428917510~~
1 IBM personal computer keyboard
1 IBM proprinter ser.#X00205

*Fitness room
1 Competitor excercise bike ser.#301199
1 Monark excercise Bike

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SUMMERCHASE

Apartment Homes

*Fitness room (cont.)
1 Paramount universal weight machine
1 Avita 950 SL rowing machine

Inventory of apartment #110 (model)
3 Wicker chairs
1 Wicker loveseat
1 Bernhardt loveseat
1 glass top table
1 wooden chest
1 end table
2 brass lamps
2 table lamps
1 book shelf
6 brass pieces (pot,box,candlesticks,bookends)
1 dining table
4 dining chairs
20 pieces of china
6 pieces of chrystal
1 china cabinet
4 paintings
1 mirror (over fireplace)
1 fire screen
2 candlesticks
1 Mister meat smoker
2 chairs
1 Soundesign clock radio
2 Ceramic ducks
1 bed w/comforter
2 nightstands
1 chest of drawers
1 make-up stand
2 brass book ends
3 table lamps
2 mirrors
4 paintings
1 ceramic rabbit
2paintings in hallway
1 bed w/comforter
1 nightstand
1 dresser
1 mirror
2 desk lamps
4 paintings
1 brass shaving set

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SUMMERCHASE
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Apartment Homes

The Bedroom Model [illegible]

2 Queen Pillows
1 Queen Paisley Fitted Comforter
4 Queen Paisley Pillow Covers
1 Queen Paisley Fitted Sheet
2 Queen Paisley Top Sheets
1 Queen White Mattress Cover
1 Green Decorator Pillow
1 Blue Decorator Pillow
2 Peach Decorator Pillows
2 Multi-Color Decorator Pillows
1 Green Conair Touch Tone Phone
1 Round Crystal Bowl
1 Round Plywood Table
1 White Ceiling Fan with Light Fixture
2 Multi Colored Drapery Panels
1 Valance Multi-Colored
1 Larrow Red-31in.wide and accessories
1 Picture #5451778-Peach Mats- 2 birds and flowers
The Bombay Company-Set of 4
1 Picture #5451792- Botanica- green mat-plant
The Bombay Company
1 Picture #5451803-Botanica- green mat-plant
The Bombay Company
1 Picture #5451984-Botanica-green mat-plant
The Bombay Company
1 Picture #5451416-Flower-beige mat
The Bombay Company-set of 3
1 Picture #5451421-Flower-beige mat
The Bombay Company
1 Picture #5451984-Flower-beige mat
The bombay Company
1 Picture #5451120-Children, House and Dog- Beige Mat
The Bombay Company
4 Dining Room Chair Covers-Green
1 Table Center Strip - Green
1 Large Oval Basket

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1	Tall Square Vase [illegible]
	2 peach and 1 green and [illegible]
1	Large arrangement in decorator [illegible] bowl
	peach and green
1	Plate to match porcelain bowl and stand
1	Large greenery wreath
1	Brass pot with greenery and brass flowers
2	Large greenery plants in plain basket
1	Large sunroom valance-green
2	Sunroom floor length panels-green
1	Single sunroom window valance-green
2	Smaller floor length panels-green
1	Patio door valance
1	3 in. rod for patio door
1	3 in. rod lg. sunroom window
1	1 in. rod lg. sunroom window
1	3 in. rod single sunroom window
1	Valance-green-kitchen window
1	3 in. rod
4	Lg. peach bath towels
5	Peach wash cloths
1	Off-white shower curtain with peach flowers
1	Clear shower curtain
12	Shower Hooks
1	Beige shower rod cover
2	Lg. bath towels- beige-Martex
1	Washcloth-beige-Martex
1	Lg. Handtowel-beige-Martex
1	Sm.Handtowel-beige-Martex
1	Toilet seat cover-peach
1	Toilet rug-peach
1	bath rug-peach
1	Toilet tissue cover-beige with peach flowers
1	Towel holder-w/rings-beige w/ peach flowers
1	Handtowel-beige-w/peach flowers
1	Bath towel-beige w/peach flowers
1	Trash can-white
1	Trash can cover-beige w/ peach flowers
3	Handtowels-peach
1	sm. oval basket
1	Soap dish-peach
1	Toothbrush holder-peach
1	Tissue holder-peach
1	Swan picture-peach and beige
1	Liquid Soap Dispenser-peach

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SUMMERCHASE
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1 Frontermillen coffee maker
2 Clear sm. canisters w/ tops
1 Broyhill silverware holder
4 Coffee mugs
1 Green Liquid soap dispenser
1 Oak Paper towel holder
2 Sm. handtowels -beige
2 Lg. handtowels-beige
1 Pot holder- Beige
1 Measuring cup
1 Sm. greenery plant in sham basket
1 Sm. crystal candy bowls
2 Lg. ashtrays- glass
4 Sm. ashtrays- glass
1 Dishtowel
1 Peach trash can

2 Terracotta bookends
2 Green terracotta small rabbits
1 Sm. oval basket

240 Ceiling Fans 240 Units
240 G.E. Frostfree Refrigerators w/ icemakers
240 G.E. Stove/Ovens
240 G.E. Dishwashers
---
6 G.E. Washers
3 G.E. Stackable Dryers

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SUMMERCHASE
at · riverchase
Apartment Homes

POOL AND STORAGE AREA INVENTORY

24 LOUNGE CHAIRS
11 END TABLES
8 CHAIRS
3 TABLES
2 TRASH CANS
1 VOLLEYBALL NET AND VOLLEYBALL

---

3 TRASH CANS AT MAILBOXES
2 TRASH CANS AT TENNIS COURTS

---

1 CHRISTMAS TREE AND DECORATIONS

---

1 SAFE ; 2 TWO DRAWER FILE CABINETS

---

1 BLOWER #122684 PB400E
1 WEED EATER 520 SUPREME 910038148 MODEL #IDC-520-1

Patio Furniture

10 Chairs
3 Round end tables
1 Swing loveseat
1 Table
1 Server

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Exhibit "C"

PERMITTED EXCEPTIONS

1. All taxes for the years 1991 and subsequent years, not yet due and payable.

2. Mining and mineral rights and rights incident thereto as recorded in Volume 4, Page 464 and Volume 127, Page 140 in the Probate Office of Shelby County, Alabama, and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

3. Agreement with Blue Cross and Blue Shield as recorded in Misc. 19, Page 690 in the Probate Office of Shelby county, Alabama, and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

4. 15' Utility easement over northwest side and a triangular part of a sanitary sewer easement over east side, according to the survey of Laurence Weygand, dated November 27, 1990 and as recorded in Real 86, Page 332 in said Probate Office.

5. Declaration of Protective Covenants, Agreements, Easements, Charges and Liens as recorded in Misc. 13, Page 50, amended by Misc. 15, Page 189 and Misc. 19, Page 633 in the Probate Office of Shelby County, Alabama, and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

6. Restrictions as recorded in Volume 331, Page 757 in the Probate Office of Shelby County, Alabama, and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

7. Right of way to Alabama Power Company as recorded in Real 183, Page 233 in the Probate Office of Shelby County, Alabama, and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

8. Sanitary sewer easement recorded in Deed Book 97, Page 541 and as referenced on the survey of Laurence Weygand, dated November 27, 1990.

9. 35 foot building line along Northeast and Southeast property lines; 25 foot building line along South property line; 30 foot building line along Southwest property line; 25 foot building line along Northwest property line, all as shown on the survey of Laurence Weygand, dated November 27, 1990.

10. Right of way granted to South Central Bell by instrument recorded in Real 156, Page 983, in said Probate Office.

11. 20 foot sanitary sewer easement along Northeast property line as shown on the survey of Laurence Weygand, dated NOvember 27, 1990 and as reflected on the recorded plat of Riverchase

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Properties Second Addition to Riverchase, filed on Map Book 9, Page 40, in said Probate Office.

12. 15 foot easement for sanitary sewer easement over, along and through that certain property described in the easement recorded in Real 97, Page 535, in the Probate Office of Shelby County, Alabama.

13. Rights of tenants in possession.

EXHIBIT D

LIST OF MAJOR LESSEES

NONE

1. Deed Tax $ 13,500.00
2. Mtg. Tax $ 150.00
3. Recording Fee $ 4.00
4. Indexing Fee $
5. No Tax Fee $ 1.50
6. Certified Fee $

Total $ 13,654.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

90 DEC 13 PM 3:57

JUDGE OF PROBATE

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V.70.AL