

MORTGAGE AND SECURITY AGREEMENT

BY

**RIVERCHASE CENTER ASSOCIATES,
an Alabama General Partnership,
As Mortgagor**

in favor of

**METROPOLITAN LIFE INSURANCE COMPANY,
a New York corporation,**

As Mortgagee

December 19, 1990

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STATE OF ALABAMA)
SHELBY COUNTY)

MORTGAGE
AND
SECURITY AGREEMENT

This MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 19th day of December, 1990, by RIVERCHASE CENTER ASSOCIATES, an Alabama general partnership, having its principal place of business at 2200 Woodcrest Place, Suite 200, Birmingham, Alabama 35209, ("Mortgagor") in favor of METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, having its principal place of business at One Madison Avenue, New York, New York 10010 ("Mortgagee").

W I T N E S S E T H:

WHEREAS, this Mortgage secures: (1) the full and punctual payment of the indebtedness evidenced by that certain promissory note (the "Note") of even date with this Mortgage made by Mortgagor to the order of Mortgagee in the principal face amount of Nine Million Six Hundred Thousand and No/100 DOLLARS (\$9,600,000.00), with interest thereon at the rates therein provided, together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by the Note, any and all additional advances made by Mortgagee to protect or preserve the Property (as hereinafter defined), any and all future advances as may be made by Mortgagee and any other amounts required to be paid by Mortgagor under any of the Loan Documents (as hereinafter defined), such indebtedness, advances and amounts being hereinafter collectively referred to as the "Secured Indebtedness"; and (2) the full performance by Mortgagor of all of the provisions, agreements, covenants and obligations contained herein or in any of the other Loan Documents. The Note, this Mortgage, and any and all other documents evidencing, securing or relating to the indebtedness secured by this Mortgage and all renewals, modifications, consolidations, and extensions of such documents are hereinafter collectively referred to as the "Loan Documents."

NOW, THEREFORE, IN CONSIDERATION of the sum of ONE HUNDRED DOLLARS (\$100.00), in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the Secured Indebtedness and other obligations of Mortgagor set forth in this Mortgage and the other Loan Documents, Mortgagor does hereby bargain, sell, mortgage, transfer, grant, convey, assign and warrant to Mortgagee, its successors and assigns:

(A) All of Mortgagor's present and future estate, right, title and interest in and to that certain real property located in the County and State (as defined in Exhibit "A" attached hereto and made a part hereof) and as more particularly described in Exhibit "B" attached hereto and made a part hereof, together with all right, title, interest and estate of Mortgagor, in and to all easements, rights-of-way, gaps, strips and gores of land, streets, ways, alleys, sewers, sewer rights, waters, water courses, water rights, privileges, licenses, tenements, hereditaments and appurtenances whatsoever, in any way appertaining to said real property, whether now owned or hereafter acquired by Mortgagor, and the reversion(s), remainder(s), possession(s), claims and demands of Mortgagor in and to the same, and the rights of Mortgagor in and to the benefits of any conditions, covenants and restrictions now or hereafter affecting said real property (collectively, the "Land"), together with all estate, right, title and interest that Mortgagor now has or may hereafter acquire in:

(1) all things now or hereafter affixed to the Land, including all buildings, structures and improvements of every kind and description now or hereafter erected or placed thereon, any fixtures and any and all machinery, motors, elevators, boilers, equipment (including, without limitation, all equipment for the generation or distribution of air, water, heat, electricity, light, fuel or refrigeration or for ventilating or air conditioning purposes or for sanitary or drainage purposes or for the removal of dust, refuse or garbage), partitions, appliances, furniture, furnishings, building service equipment, building materials, supplies, ranges, refrigerators, cabinets, laundry equipment, hotel, kitchen and restaurant equipment, computers and software, radios, televisions, awnings, window shades, venetian blinds, drapes and drapery rods and brackets, screens, carpeting and other floor coverings, lobby furnishings, games and recreational and swimming pool equipment, incinerators and other property of every kind and description now or hereafter placed, attached, fixed or installed in such buildings, structures, or improvements and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefor; all of such things whether now or hereafter placed thereon being hereby declared to be real property and hereinafter collectively referred to as the "Improvements";

(2) all income, rents, royalties, revenue, issues, profits, proceeds and other benefits from any and all of the Land and/or Improvements, subject, however, to the right, power and authority hereinafter conferred upon Mortgagee or reserved to Mortgagor to collect and apply such income, rents, royalties, revenue, issues, profits, proceeds and other benefits;

(3) all deposits made with respect to the Land and/or Improvements, including, but not limited to, any security given to utility companies by Mortgagor, and all advance payments of insurance premiums made by Mortgagor with respect thereto and all claims or

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demands relating to such deposits, other security and/or such insurance;

(4) all damages, royalties and revenue of every kind, nature and description whatsoever that Mortgagor may be entitled to receive, either before or after any Event of Default (as hereinafter defined), from any person or entity owning or having or hereafter acquiring a right to the oil, gas or mineral rights and reservations of the Land, with the right in Mortgagee to receive and apply the same to the Secured Indebtedness;

(5) all proceeds and claims arising on account of any damage to, or Condemnation (as hereinafter defined) of, the Land and/or Improvements or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land and/or Improvements;

(6) all licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, guaranties, warranties, franchise agreements, permits, authorities or certificates required or relating to the ownership, use, operation or maintenance of the Land and/or Improvements; and

(7) all names under or by which the Land and/or Improvements may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents pending and goodwill relating to the Land and/or Improvements.

All of the property described in paragraph (A) above is hereinafter collectively referred to as the "Real Property."

(B) As a secured party, a security interest in, Mortgagor's interest in, any portion of the Real Property which may be construed to be personal property and in all other personal property of every kind and description, whether now existing or hereafter acquired, now or at any time hereafter attached to, erected upon, situated in or upon, forming a part of, appurtenant to, used or useful in the construction or operation of or in connection with, or arising from the use or enjoyment of all or any portion of, or from any lease or agreement pertaining to, the Real Property, including:

(1) all water rights appurtenant to the Real Property together with all pumping plants, pipes, flumes and ditches, all rights to the use of water, all rights in ditches for irrigation, all water stock, shares of stock or other evidence of ownership of any part of the Real Property that is owned by Mortgagor in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property;

(2) all plans and specifications prepared for construction of the Improvements and all studies, data and drawings related thereto; and all contracts and agreements of Mortgagor relating to the aforesaid plans and specifications or to the aforesaid studies, data and drawings, or to the construction of the Improvements;

(3) all equipment, machinery, fixtures, goods, accounts, general intangibles, documents, instruments and chattel paper;

(4) all substitutions and replacements of, and accessions and additions to, any of the foregoing;

(5) all sales agreements, deposit receipts, escrow agreements and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Real Property, together with all deposits and other proceeds of the sale thereof; and

(6) all proceeds of any of the foregoing, including, without limitation, proceeds of any voluntary or involuntary disposition or claim respecting any of the foregoing (pursuant to judgment, condemnation award or otherwise) and all goods, documents, general intangibles, chattel paper and accounts, wherever located, acquired with cash proceeds of any of the foregoing or proceeds thereof.

All of the property described in paragraph (B) above is hereinafter collectively referred to as the "Personal Property." All of the Real Property and the Personal Property is herein collectively referred to as the "Property."

TO HAVE AND TO HOLD the Property, for the benefit of Mortgagee, its successors and assigns, subject, however, to the terms, covenants and conditions contained herein.

PROVIDED, HOWEVER, if Mortgagor shall pay or cause to be paid to Mortgagee in full the Secured Indebtedness, at the times and in the manner stipulated in the Loan Documents, and shall keep, perform and observe all and singular the covenants and promises of Mortgagor in the Loan Documents, then this Mortgage and all the properties, interests and rights hereby granted, encumbered, transferred or assigned shall be released by Mortgagee in accordance with the laws of the State.

MORTGAGOR HEREBY COVENANTS AND AGREES FOR THE BENEFIT OF MORTGAGEE AS FOLLOWS:

ARTICLE I
COVENANTS

1.01 PERFORMANCE BY MORTGAGOR. Mortgagor shall pay the Secured Indebtedness to Mortgagee and shall keep and perform each and every other obligation, covenant and agreement of the Loan Documents.

1.02 WARRANTY OF TITLE. Mortgagor warrants that it is lawfully seized of that portion of the Property which constitutes real property, that it holds marketable and indefeasible fee simple absolute title to same, and that it has good right and is lawfully authorized to sell, convey or encumber the Property subject only to those matters set forth in Exhibit "C" attached hereto and made a part hereof (the "Permitted Exceptions"). Mortgagor further covenants to warrant and forever defend all and singular the Property unto Mortgagee forever from and against all persons whomsoever claiming the same or any part thereof.

1.03 TAXES, LIENS AND OTHER CHARGES. Unless sums sufficient to pay the same shall have been fully paid to Mortgagee as provided in Section 1.06 hereof, Mortgagor shall pay all real estate and other taxes, assessments, water and sewer charges, vault and other license or permit fees, levies, fines, penalties, interest, impositions, and other similar claims, general and special, public and private, of any kind whatsoever which may be assessed, levied, confirmed, imposed upon or arise out of or become due and payable out of, or become a lien on or against the Property or any part thereof (all of the foregoing, together with utility and refuse removal charges, being hereinafter collectively referred to as the "Imposition(s)") not later than ten (10) days before the dates on which such Impositions would become delinquent. Not later than the date when any Impositions would become delinquent, Mortgagor shall produce to Mortgagee official receipts of the appropriate imposing authority, or other evidence reasonably satisfactory to Mortgagee evidencing the payment thereof in full. If Mortgagor shall in good faith, and by proper legal action, contest any Impositions, and shall have deposited cash with Mortgagee (or as Mortgagee may direct) as a reserve for the payment thereof plus all fines, interest, penalties and costs which may become due pending the determination of such contest, in such amount as Mortgagee may require, then Mortgagor shall not be required to pay the same during the maintenance of said deposit and as long as such contest operates to prevent enforcement or collection of such Impositions against, or the sale or forfeiture of, the Property for non-payment thereof, and is prosecuted with due diligence and continuity, and shall not have been terminated or discontinued adversely to Mortgagor. Upon termination of any such proceeding or contest, Mortgagor shall pay the amount of such Impositions or part thereof as finally determined in such proceeding or contest; however, if monies have been deposited

with Mortgagee pursuant to this Section 1.03, said funds shall be applied toward such payment and the excess, if any, shall be returned to Mortgagor.

1.04 FURTHER TAXES. In the event of the passage, after the date of this Mortgage, of any law deducting from the value of the Property, for the purposes of taxation, any lien thereon or security interest therein, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust and/or security agreements or debts secured by mortgages, deeds of trust and/or security agreements, or the manner of the collection of any such taxes, which has the effect of imposing payment of the whole or any portion of any taxes, assessments or other similar charges against the Property upon Mortgagee, the Secured Indebtedness shall immediately become due and payable at the option of Mortgagee; provided, however, that such election by Mortgagee shall be ineffective if prior to the due date thereof: (1) Mortgagor is permitted by law (including, without limitation, applicable interest rate laws) to, and actually does, pay such tax or the increased portion thereof (in addition to continuing to pay the Secured Indebtedness as and when due and payable); and (2) Mortgagor agrees with Mortgagee in writing to pay, or reimburse Mortgagee for the payment of any such tax or increased portion thereof when thereafter levied or assessed against the Property or any portion thereof. Any money paid by Mortgagee under this Section 1.04 shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.05 INSURANCE.

(a) Mortgagor, at its sole cost and expense, shall at all times, unless otherwise indicated, provide, maintain and keep in force:

(1) property insurance covering the Improvements and Personal Property against loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "All Risks" or "Open Perils" property insurance on a replacement cost basis with an Agreed Value Endorsement waiving co-insurance, all in an amount not less than one hundred percent (100%) of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) and Personal Property, without deduction for physical depreciation thereof. Such property insurance shall include a Demolition and Increased Cost of Construction Endorsement as well as such other insurance as Mortgagee may from time to time designate to cover other risks and hazards affecting the Property;

(2) business income insurance insuring against loss of business or rental income of the Property, in an amount equal to not less than one year's gross "business income" of the Property. "Business income" as used herein is defined as the sum of (i) the total anticipated gross income from occupancy of the Property as

furnished and equipped by Mortgagor and (ii) the amount of all charges (such as, but not limited to, operating expenses and taxes) which are the legal obligation of tenants or occupants to Mortgagor pursuant to leases or other occupancy agreements, (iii) the fair rental value of any portion of the Property which is occupied by Mortgagor, and (iv) and any other amounts payable to Mortgagor pursuant to leases or other occupancy agreements;

(3) flood insurance in an amount equal to the lesser of 100% of the full replacement cost of the Improvements, or the maximum amount of insurance obtainable; provided, however, that such insurance shall be required only when all or any portion of the Land is located within a 100-year flood plain or area designated as subject to flood by the Federal Emergency Management Agency or any other governmental agency, or when required by any federal, state or local law, statute, regulation or ordinance;

(4) boiler and machinery insurance insuring against loss or damage to the Property and to the major components of any heating, air conditioning or other ventilation systems and/or such other machinery or apparatus as may be now or hereafter installed in the Improvements, in such amounts as Mortgagee may, from time to time, require;

(5) war risk insurance upon the Property as and when such insurance is obtainable from the United States of America or any agency or instrumentality thereof at a reasonable premium, in an amount not less than 100% of the then full replacement cost of the Improvements (exclusive of the cost of excavations, foundations and footings below the lowest basement floor) without deduction for physical depreciation, to the extent obtainable, and if not so obtainable, in the maximum amount obtainable;

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(6) builder's risk insurance insuring against loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "Builder's Risks" property insurance (written on an "all risk" or "open perils" basis), including, without limitation, fire and extended coverage, collapse of the improvements and earthquake coverage to agreed limits, all in form and substance acceptable to Mortgagee and (i) as to property then subject to Restoration (as defined in Section 1.07(b)) or any restoration accomplished in connection with a Condemnation, in an amount not less than the full replacement cost of such property and (ii) as to any additional improvements then being constructed, in an amount not less than the completed value on a nonreporting form, of the additional improvements then being constructed; provided, however, that such insurance shall be required only during any period of Restoration or any restoration accomplished in connection with a Condemnation or any period of construction of any additional improvements;

(7) general liability insurance insuring against claims for personal injury (including, without limitation, bodily

injury or death), property damage liability and such other loss or damage from such causes of loss as are embraced by insurance policies of the type now known as "Commercial General Liability" insurance, all in such amounts as Mortgagee may require from time to time. Such insurance coverage shall be issued and maintained on an "occurrence" basis; and

(8) such other insurance and in such amounts, as may, from time to time, be required by Mortgagee against other insurable hazards or risks, including, but not limited to, environmental impairment liability coverage, nuclear reaction or radioactive contamination coverage and/or earthquake coverage, which hazards or risks at the time are commonly insured against, and provided such insurance is generally available, for property similarly situated, due regard being given to the height and type of building, its construction, use and occupancy.

(b) Except as herein expressly provided otherwise, all policies of insurance required under this Section 1.05 shall be issued by companies, and be in form, amount, and content and have an expiration date, approved by Mortgagee and as to the policies of insurance required under subparagraphs (1), (3) and (6) of Section 1.05(a), shall contain a Standard Non-Contributory Mortgagee Clause or Lender's Loss Payable Endorsement, or equivalents thereof, in form, scope and substance satisfactory to Mortgagee, in favor of Mortgagee, and as to policies of insurance required under subparagraphs (1), (2), (3), (4), (5) and (6) of Section 1.05(a), shall provide that the proceeds thereof ("Insurance Proceeds") shall be payable to Mortgagee. Any Insurance Proceeds received by Mortgagee pursuant to Section 1.05(a)(2) shall be held and applied by Mortgagee toward payment of that portion of the Secured Indebtedness then due and payable, or which will become due and payable for the period for which such Insurance Proceeds are received by Mortgagee, and the remainder, if any, shall be paid to Mortgagor. Mortgagor hereby authorizes and empowers Mortgagee to settle, adjust or compromise any claims for loss, damage or destruction to the Property, regardless of whether there are Insurance Proceeds available or whether any such proceeds are sufficient in amount to fully compensate for such loss or damage. Mortgagee shall be furnished with the original or certified copy of each policy required hereunder, which policy shall provide that it shall not be modified or cancelled without thirty (30) days' prior written notice to Mortgagee. At least thirty (30) days prior to expiration of any policy required hereunder, Mortgagor shall furnish Mortgagee appropriate proof of issuance of a policy continuing in force the insurance covered by the policy so expiring. Mortgagor shall furnish Mortgagee receipts for the payment of premiums on such insurance policies or other evidence of such payment reasonably satisfactory to Mortgagee in the event that such premiums have not been paid to Mortgagee pursuant to Section 1.06 hereof. In the event that Mortgagor does not deposit with Mortgagee a new policy of insurance with evidence of payment of premiums thereon at least thirty (30) days prior to the expiration of any policy, then Mortgagee may,

but shall not be obligated to, procure such insurance and pay the premiums therefor and any money paid by Mortgagee for such premiums shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

(c) In the event of the foreclosure of this Mortgage or other transfer of the title to the Property in extinguishment, in whole or in part, of the Secured Indebtedness, all right, title and interest of Mortgagor in and to any insurance policy, or Premiums (as hereinafter defined) or payments in satisfaction of claims or any other rights thereunder then in force, shall pass to the purchaser or grantee. Nothing contained herein shall prevent accrual of interest as provided in the Note on any portion of the Secured Indebtedness to which the Insurance Proceeds are to be applied until such time as the Insurance Proceeds are actually received by Mortgagee and applied by Mortgagee to reduce the Secured Indebtedness.

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1.06 ESCROW DEPOSITS. Without limiting the effect of Sections 1.03, 1.04 and 1.05 hereof, Mortgagor shall pay to Mortgagee monthly at the time when the monthly installment of interest, principal or principal and interest is payable, an amount equal to 1/12th of what Mortgagee estimates is necessary to pay, on an annualized basis, all (1) Impositions and (2) such premiums for the insurance policies required under Section 1.05(a) hereof ("Premiums") to enable Mortgagee to pay same at least thirty (30) days before the Impositions would become delinquent and the Premiums are due, and, on demand, from time to time shall pay to Mortgagee additional sums necessary to pay the Premiums and Impositions. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable thereon. In the event that Mortgagor does not pay such sums for Premiums and Impositions, then Mortgagee may, but shall not be obligated to, pay such Premiums and Impositions and any money so paid by Mortgagee shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. If an Event of Default occurs, Mortgagee shall have the right, at its election, to apply any amounts so held under this Section 1.06 against all or any part of the Secured Indebtedness, or in payment of the Premiums or Impositions for which the amounts were deposited. Mortgagor will furnish to Mortgagee bills for Impositions and Premiums thirty (30) days before Impositions become delinquent and such Premiums become due. The foregoing obligations of Mortgagor are subject to the condition that Mortgagor shall not be required to pay such items unless and until (i) an Event of Default occurs or (ii) Mortgagee requests such payments, which request may be made in Mortgagee's sole discretion.

1.07 RESTORATION.

(a) After the happening of any casualty to the Property, whether or not required to be insured against under the insurance policies to be provided by Mortgagor hereunder, Mortgagor shall give prompt written notice thereof to Mortgagee generally

describing the nature and cause of such casualty and the extent of the damage to or destruction of the Property.

(b) Mortgagor hereby assigns to Mortgagee all Insurance Proceeds which Mortgagor may be entitled to receive. In the event of any damage to or destruction of the Property, and provided (1) an Event of Default does not currently exist, and (2) Mortgagee has determined that (i) its security has not been impaired, and (ii) the repair, restoration and rebuilding of any portion of the Property that has been partially damaged or destroyed can be accomplished in full compliance with all Requirements (as defined in Exhibit "A") to the same condition, character and general utility as nearly as possible to that existing prior to such damage or destruction and at least equal value as that existing prior to such damage or destruction (the "Restoration"), then Mortgagor shall commence and diligently pursue to completion the Restoration. Such Insurance Proceeds shall also be made available for Restoration in accordance with the provisions of this Section 1.07 in instances in which tenant leases are superior to the lien of this Mortgage and such prior leases require the rebuilding, repair or restoration of such tenant space following damage or destruction to such Property. Mortgagee shall hold and disburse the Insurance Proceeds less (x) the cost, if any, to Mortgagee of recovering such proceeds including, without limitation, attorneys' fees and expenses, adjusters' fees and fees incurred in Mortgagee's performance of its obligations hereunder, and (y) any insurance proceeds received by Mortgagee pursuant to Section 1.05(a)(2) (the "Net Insurance Proceeds") in the manner hereinafter provided, to the Restoration. In the event that the above conditions for Restoration have not been met, Mortgagee may, at its option, apply the Net Insurance Proceeds to the reduction of the Secured Indebtedness in such order as Mortgagee may determine and Mortgagee may declare the entire Secured Indebtedness immediately due and payable.

(c) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall comply with Mortgagee's Requirements For Restoration as set forth in Exhibit "D" attached hereto and made a part hereof. Upon Mortgagee's receipt of a final certificate of occupancy or other evidence of approval of appropriate governmental authorities for the use and occupancy of the Improvements and other evidence requested by Mortgagee that the Restoration has been completed and the costs thereof have been paid in full, and satisfactory evidence that no mechanic's or similar liens for labor or material supplied in connection with the Restoration are outstanding against the Property and provided that an Event of Default does not currently exist, Mortgagee shall pay any remaining Restoration Funds (as defined in Exhibit "D") then held by Mortgagee to Mortgagor; provided, however, nothing contained herein shall prevent Mortgagee from applying at any time the whole or any part of the Restoration Funds to the curing of any Event of Default.

(d) In the event that Mortgagee applies all or any portion of the Restoration Funds to repay the unpaid Secured Indebtedness as provided in this Section 1.07, after payment in full of the Secured Indebtedness, any remaining Restoration Funds shall be paid to Mortgagor.

1.08 CONDEMNATION. Should the Property or any part thereof be taken by reason of any condemnation or similar eminent domain proceeding, or a grant or conveyance in lieu thereof ("Condemnation"), Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceeding or to make any compromise or settlement in connection with such Condemnation. Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact, and such appointment is coupled with an interest, to commence, appear in and prosecute any action or proceeding or to make any compromise or settlement in connection with any such Condemnation. All such compensation, awards, damages, rights of action and proceeds (collectively, the "Condemnation Proceeds") are hereby assigned to Mortgagee, who shall, after deducting therefrom all its reasonable expenses, including attorneys' fees ("Condemnation Expenses"), apply the remaining Condemnation Proceeds to repair any damage to, and to restore the Improvements remaining on the portion of, the Property not taken in the manner provided in Section 1.07 with respect to disposition of Net Insurance Proceeds; provided, however, that at the time of application of the remaining Condemnation Proceeds: (1) there shall not exist an Event of Default; (2) Mortgagor shall have paid to Mortgagee all sums in excess of available Condemnation Proceeds, necessary to repair any damage to and restore the Improvements remaining on the portion of the Property not taken; and (3) Mortgagee shall have determined that its security is not impaired. After restoration of the remaining Improvements, or in the event the conditions precedent for such restoration are not met, Mortgagee shall have the right, after deducting therefrom the Condemnation Expenses, to apply the balance of the Condemnation Proceeds to the Secured Indebtedness, in such manner and such order as Mortgagee in its sole discretion shall determine, without adjustment in the dollar amount of the installments due under the Note. Nothing contained herein shall prevent the accrual of interest as provided in the Note on any portion of the Secured Indebtedness to which the Condemnation Proceeds are to be applied until such Condemnation Proceeds are actually received by Mortgagee and so applied to reduce the Secured Indebtedness.

1.09 CARE AND USE OF THE PROPERTY.

(a) Mortgagor, at its sole cost and expense, shall keep the Property in good order, condition, and repair, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. Mortgagor shall abstain from, and not permit, the commission of waste in or about the Property and shall not remove or

demolish, or alter in any substantial manner, the structure or character of any Improvements without the prior written consent of Mortgagee.

(b) Mortgagor shall at all times comply with all present or future Requirements affecting or relating or pertaining in any way to the Property and/or the use, operation and/or the maintenance thereof, and shall furnish Mortgagee, on request, proof of such compliance. Mortgagor shall not use or permit the use of the Property, or any part thereof, for any illegal purpose.

(c) Mortgagee and Mortgagee's representatives and designees shall have the right, but not the duty, to enter the Property at reasonable times to inspect the same. Mortgagee shall not be liable to Mortgagor or any person in possession of the Property with respect to any matter arising out of such entry to the Property.

(d) Mortgagor shall, from time to time, if and when required by Mortgagee (1) perform a site investigation of the Property to determine the existence and levels of Hazardous Substances (as defined in Exhibit "A") on the Property, (2) issue a report certifying the results of such inspection to Mortgagee, and (3) take such remedial action as may be required by Mortgagee based upon such report.

(e) Mortgagor shall use, or cause to be used, the Property continuously as and for first class property of its type and kind at the time of the execution of this Mortgage. Mortgagor shall not use, or permit the use of the Property for any other use without the prior written consent of Mortgagee. To the extent the Property is used as a residential apartment complex, Mortgagor shall at no time file or record a Declaration of Condominium, Mortgage or any other similar document evidencing the imposition of a so-called "condominium regime" whether superior or subordinate to this Mortgage. Mortgagor shall at no time permit any part of the Property to be converted to, or operated as, a so-called "cooperative apartment house" (or on a like cooperative basis) whereby the tenants or occupants thereof participate in the ownership, management or control of any part of the Property, as tenants, stockholders or otherwise.

(f) Mortgagor shall not initiate or acquiesce in a change in the zoning classification of and/or restrictive covenants affecting the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in such a manner which would result in such use becoming a non-conforming use under applicable zoning ordinances or other applicable laws, ordinances, rules or regulations or subject the Property to restrictive covenants without Mortgagee's prior written consent.

1.10 LEASES AND OTHER AGREEMENTS AFFECTING THE PROPERTY.

(a) In order to further secure payment of the Secured Indebtedness and the observance, performance and discharge of Mortgagor's obligations under the Loan Documents, Mortgagor hereby assigns to Mortgagee all of Mortgagor's right, title, interest and estate in, to and under all of the leases now or hereafter affecting the Property or any part thereof and in and to all of the Rents and Profits (as defined in Exhibit "A"). Unless and until an Event of Default occurs, Mortgagor shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Mortgagee shall be liable to account only for the Rents and Profits of the Property actually received by Mortgagee pursuant to any provision of any Loan Document.

(b) Mortgagor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it or the Property under any lease or any other agreement or instrument of any nature whatsoever which involves or affects the Property or any part thereof. Mortgagor represents that it has heretofore furnished Mortgagee true and complete copies of all executed leases existing on the date of this Mortgage. Upon request of Mortgagee, Mortgagor agrees to furnish Mortgagee with executed copies of all leases hereafter entered into with respect to all or any part of the Property. Mortgagor shall not, without the express written consent of Mortgagee, enter into any new lease or modify, extend or renew, either orally or in writing, any lease now existing or hereafter created upon the Property, or any part thereof, unless such lease shall be in compliance with the Leasing Guidelines (as defined in Exhibit "A"). Mortgagor shall not, without the express written consent of Mortgagee, terminate or surrender any lease now existing or hereafter created upon the Property, or any part thereof, unless Mortgagor has entered into a new lease covering all of the leased premises to be terminated or surrendered, which new lease shall either have been approved by Mortgagee as provided herein, or shall be in compliance with the Leasing Guidelines. Mortgagor shall not permit an assignment or sublease of any lease now existing or hereafter created upon the Property, or any part thereof, without the express written consent of Mortgagee unless such lease shall be in compliance with the Leasing Guidelines.

(c) Each lease of any portion of the Property shall be absolutely subordinate to the lien of this Mortgage, but shall also contain a provision, satisfactory to Mortgagee, that in the event of the exercise of the power of sale hereunder or a sale pursuant to a judgment of foreclosure, such lease, at the sole and exclusive option of the purchaser at such sale, shall not be terminated and the tenant thereunder shall attorn to such purchaser and, if requested to do so, shall enter into a new lease for the balance of the term of such lease then remaining, upon the same terms and conditions. If Mortgagee so requests, Mortgagor shall cause the tenant under each or any of such leases to enter into subordination and attornment agreements with Mortgagee which are satisfactory in form, scope and substance to Mortgagee.

(d) Mortgagor shall not accept payment of advance rents or security deposits equal, in the aggregate, to more than two (2) months' rent.

(e) Mortgagor covenants and agrees that all contracts and agreements relating to the Property to pay leasing commissions, management fees or other compensation shall (1) provide that the obligation to pay such commissions, fees and other compensation will not be enforceable against any party other than the party who entered into such agreement; (2) be subordinate and inferior to the lien of this Mortgage; and (3) not be enforceable against Mortgagee. Mortgagor shall promptly furnish Mortgagee with evidence of Mortgagor's compliance with this paragraph upon the execution of each such contract or agreement.

1.11 BOOKS, RECORDS AND ACCOUNTS. Mortgagor shall keep and maintain or shall cause to be kept and maintained on a calendar year basis, in accordance with generally accepted accounting principles, consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of Mortgagor with respect to all items of income and expense in connection with the operation of the Property, whether such income or expense be realized by Mortgagor or by any other person whatsoever (excepting lessees unrelated to and unaffiliated with Mortgagor who have leased from Mortgagor portions of the Property for the purpose of occupying same). Mortgagee or its representatives or designees shall have the right from time to time at all times during normal business hours to examine, with respect to the Property, such books, records and accounts at the office of Mortgagor or other person maintaining such books, records and accounts and to make copies or extracts thereof as Mortgagee shall desire. Mortgagee shall also have the right to discuss Mortgagor's affairs, finances and accounts with representatives of Mortgagor, at such reasonable times as may be requested by Mortgagee. Mortgagor shall deliver to Mortgagee within one hundred twenty (120) days after the close of each calendar year, financial statements prepared by an independent certified public accountant satisfactory to Mortgagee, containing a balance sheet, profit and loss statements and income and expense statements with such detailed supporting schedules covering the operation of the Property as Mortgagee shall require and certified by the chief financial officer of Mortgagor, if Mortgagor is a corporation, by a general partner of Mortgagor, if Mortgagor is a partnership, or by Mortgagor, if Mortgagor is an individual. Mortgagor shall also furnish at such time a rent roll certified by Mortgagor to be correct showing each tenant, the term of the lease, the rentable area demised thereunder and the fixed annual rent, percentage rent, other charges, if any, payable thereunder, date of last rental payment, amount of security deposit, nature and amounts of defaults (if any) and such other matters as Mortgagee may require.

1.12 SUBROGATION. As additional security hereunder, Mortgagee shall be subrogated to the lien, although released of record, of any and all encumbrances paid out of the proceeds of the loan evidenced by the Note and secured by this Mortgage and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, corporation or body politic receiving such payment.

1.13 COLLATERAL SECURITY INSTRUMENTS. Mortgagor covenants and agrees that if Mortgagee at any time holds additional security for any obligations secured hereby, it may enforce the terms thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder, and may apply the proceeds to the Secured Indebtedness in such order as Mortgagee may determine, without affecting the status of or waiving any right to exhaust all or any other security, including the security hereunder, and without waiving any breach or default or any right or power whether exercised hereunder or under any of the other Loan Documents, or contained herein or therein, or in any such other security.

1.14 SUITS AND OTHER ACTS TO PROTECT THE PROPERTY.

(a) Mortgagor covenants and agrees to appear in and defend any action or proceeding purporting to affect the Property, any other security afforded by any of the Loan Documents and/or the interest of Mortgagee thereunder. Mortgagor shall immediately notify Mortgagee of the commencement, or receipt of notice, of any such action or proceeding or other matter or claim purporting to, or which could, affect the Property, any other security afforded by any of the Loan Documents and/or the interest of Mortgagee thereunder.

(b) Mortgagee shall have the right, at the cost and expense of Mortgagor, to institute and maintain such suits and proceedings and take such other action, as it may deem expedient to preserve or protect the Property, any other security afforded by any of the Loan Documents and/or Mortgagee's interest therein. Any money paid by Mortgagee under this Section 1.14(b) shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.15 MORTGAGEE'S RIGHT TO PERFORM MORTGAGOR'S OBLIGATIONS. Mortgagor agrees that, if Mortgagor fails to perform any act or to pay any money which Mortgagor is required to perform or pay under the Loan Documents, Mortgagee, at the cost and expense of Mortgagor and in Mortgagor's name or in its own name, may (but shall not be obligated to) perform or cause to be performed such act or take such action or pay any money. Any money paid by Mortgagee under this Section 1.15 shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

1.16 LIENS AND ENCUMBRANCES. Mortgagor shall not, without the prior written consent of Mortgagee, create, place or suffer to be created or placed, or through any act or failure to act, allow to remain, any deed of trust, mortgage, security interest, or other lien,

encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Exceptions and the lien for ad valorem taxes on the Property not yet delinquent, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property, Mortgagor shall cause the same to be promptly discharged and released. Mortgagor shall own all parts of the Property and, except as expressly approved in writing by Mortgagee, shall not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, title retention document or similar agreement.

1.17 LIABILITY OF MORTGAGOR. Notwithstanding anything to the contrary contained in this Mortgage or in any of the other Loan Documents, but without in any manner releasing, impairing or otherwise affecting the Note or any of the other Loan Documents, or the validity hereof or thereof, or the lien of this Mortgage, upon the occurrence of an Event of Default, except as expressly set forth in this Section 1.17, the liability of Mortgagor and/or the general partners of Mortgagor, if any, to Mortgagee for any and all such Events of Default shall be limited to and satisfied out of the Property. Notwithstanding any of the foregoing, nothing contained in this Section 1.17 shall be deemed to prejudice the rights of Mortgagee to (1) proceed against any entity or person whatsoever, including Mortgagor and/or the general partners of Mortgagor, if any, with respect to the enforcement of any leases, guarantees, bonds, policies of insurance or other agreements for compliance with any of the terms, covenants and conditions of the Loan Documents; or (2) recover damages against Mortgagor and the general partners of Mortgagor, if any, for fraud, breach of trust, breach of warranty, material misrepresentation or waste; or (3) recover any Condemnation Proceeds or Insurance Proceeds or other similar funds or payments attributable to the Property, which under the terms of the Loan Documents should have been paid to Mortgagee; or (4) recover any tenant security deposits, prepaid rents or other similar sums paid to or held by Mortgagor or any other entity or person in connection with the Property; or (5) recover the Rents and Profits, accruing from and after the occurrence of an Event of Default, which have not been applied to pay any portion of the Secured Indebtedness, operating and maintenance expenses of the Property, Premiums, Impositions, deposits into a reserve for replacement or other sums required by the Loan Documents; or (6) recover damages against Mortgagor and/or the general partners of Mortgagor, if any, arising from, or in connection with, the covenants, obligations, liabilities, warranties and representations contained in Section 3.08 hereof. Mortgagor and the general partners of Mortgagor, if any, shall be personally liable for Mortgagor's obligations arising in connection with the matters set forth in the foregoing clauses (1) to (6) inclusive.

**ARTICLE II
DEFAULTS AND REMEDIES**

2.01 EVENTS OF DEFAULT. Any of the following shall be deemed to be a material breach of Mortgagor's covenants herein and shall constitute a default hereunder ("Event of Default"):

(a) The failure of Mortgagor to pay any installment of principal, interest or principal and interest, any required escrow deposit or any other sum required to be paid under any Loan Document, whether to Mortgagee or otherwise, when the same shall become due and payable;

(b) The failure of Mortgagor to perform or observe any other term, provision, covenant, condition or agreement under any Loan Document;

(c) The filing by Mortgagor of a voluntary petition or application for relief in bankruptcy or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescing in the appointment of any trustee, custodian, conservator, receiver or liquidator of Mortgagor or of all or any substantial part of the Property or of any or all of the Rents and Profits thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due;

(d) If any warranty, representation, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Loan Documents or otherwise, by Mortgagor, or by any person or entity otherwise liable under any Loan Document shall be materially false or misleading or furnished with knowledge of the false nature thereof; or

(e) If Mortgagor shall suffer or permit the Property, on any part thereof, to be used in such manner as might tend to (1) impair Mortgagor's title to the Property, or any part thereof; or (2) create rights of adverse use or possession; or (3) constitute an implied dedication of the Property, or any part thereof.

2.02 REMEDIES UPON DEFAULT. Upon (1) seven (7) days after the happening of an Event of Default described in Section 2.01(a) or (2) thirty (30) days after the date Mortgagee sends notice of an Event of Default described in Section 2.01(b) hereof or (3) the happening of any other Event of Default, the Secured Indebtedness shall, at the option of Mortgagee, become immediately due and payable,

without further notice or demand, and Mortgagee may forthwith undertake any one or more of the following:

(a) Foreclosure. Institute an action of mortgage foreclosure in accordance with the law of the State, or take such other action as the law may allow, at law or in equity, for the enforcement of the Loan Documents and realization on the Property or any other security afforded by the Loan Documents and, in the case of a judicial proceeding, proceed to final judgment and execution thereon for the amount of the Secured Indebtedness (as of the date of such judgment) together with all costs of suit, attorneys' fees and interest on such judgment at the maximum rate permitted by law from and after the date of such judgment until actual payment is made to Mortgagee in the full amount due Mortgagee; provided, however, if Mortgagee is the purchaser at the foreclosure sale of the Property, the foreclosure sale price (Mortgagee's final bid) shall be applied against the total amount due Mortgagee; and/or

(b) Entry. Enter into possession of the Property, lease the same, collect all Rents and Profits therefrom and, after deducting all costs of collection and administration expenses, apply the remaining Rents and Profits in such order and amounts as Mortgagee, in Mortgagee's sole discretion, may elect to the payment of Impositions, operating costs, Premiums and other charges (including, but not limited to, costs of leasing the Property and fees and costs of counsel and receivers) and to the maintenance, repair, and restoration of the Property, or on account and in reduction of the Secured Indebtedness; and/or

(c) Power of Sale. Sell the Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed, lease assignment and bill of sale to the premises so purchased. Mortgagee may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.

(d) Receivership. Have a receiver appointed to enter into possession of the Property, collect the Rents and Profits therefrom and apply the same as the appropriate court may direct. Mortgagee shall be entitled to the appointment of a receiver without the necessity of proving either the inadequacy of the security or the insolvency of Mortgagor or any other person who may be legally or equitably liable to pay any portion of the Secured Indebtedness and Mortgagor and each such person shall be deemed to have waived such

proof and to have consented to the appointment of such receiver. Should Mortgagee or any receiver collect the Rents and Profits, the moneys so collected shall not be substituted for payment of the Secured Indebtedness nor can they be used to cure the Event of Default.

2.03 APPLICATION OF PROCEEDS OF SALE. In the event of a sale of the Property pursuant to Section 2.02(a) or 2.02(c) hereof, the proceeds of said sale, to the extent permitted by law, shall be applied to the following, in such order as Mortgagee shall, in its sole discretion, determine: the expenses of such sale and of all proceedings in connection therewith, including attorneys' fees and expenses; Impositions, Premiums, liens, and other charges and expenses; the outstanding principal balance of the Secured Indebtedness; any accrued interest; and any other unpaid portion of the Secured Indebtedness.

ARTICLE III GENERAL COVENANTS

3.01. SECURITY AGREEMENT.

(a) THIS MORTGAGE CREATES A LIEN ON THE PROPERTY, AND TO THE EXTENT THE PROPERTY IS PERSONAL PROPERTY UNDER APPLICABLE LAW, THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT UNDER THE UNIFORM COMMERCIAL CODE OF THE STATE WHERE THE PERSONAL PROPERTY IS SITUATED (THE "U.C.C.") AND ANY OTHER APPLICABLE LAW AND IS FILED AS A FIXTURE FILING. UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, MORTGAGEE MAY, AT ITS OPTION, PURSUE ANY AND ALL RIGHTS AND REMEDIES AVAILABLE TO A SECURED PARTY WITH RESPECT TO ANY PORTION OF THE PROPERTY, AND/OR MORTGAGEE MAY, AT ITS OPTION, PROCEED AS TO ALL OR ANY PART OF THE PROPERTY IN ACCORDANCE WITH MORTGAGEE'S RIGHTS AND REMEDIES WITH RESPECT TO THE LIEN CREATED BY THIS MORTGAGE.

(b) The grant of a security interest to Mortgagee in the granting clause of this Mortgage shall not be construed to derogate from or impair the lien or provisions of or the rights of Mortgagee under this Mortgage with respect to any property described therein which is real property or which the parties have agreed to treat as real property. The hereby stated intention of Mortgagor and Mortgagee is that everything used in connection with the production of income from such real property or adapted for use thereon is, and at all times and for all purposes and in all proceedings, both legal and equitable, shall be regarded as real property, irrespective of whether or not the same is physically attached to the Land and/or Improvements.

(c) If required by Mortgagee, at any time during the term of this Mortgage, Mortgagor will execute and deliver to Mortgagee, in form satisfactory to Mortgagee, additional security agreements, financing statements and/or other instruments covering all Personal Property or fixtures of Mortgagor which may at any time be

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furnished, placed on, or annexed or made appurtenant to the Real Property or used, useful or held for use, in the operation of the Improvements.

(d) Mortgagor hereby irrevocably constitutes and appoints Mortgagee as its attorney-in-fact and such appointment is coupled with an interest, to execute, deliver and file with the appropriate filing officer or office such security agreements, financing statements and/or other instruments as Mortgagee may request or require in order to impose and perfect the lien and security interest created hereby more specifically on the Personal Property or any fixtures.

(e) If Mortgagor enters into a separate security agreement with Mortgagee relating to any of the Personal Property or fixtures, the terms of such security agreement shall govern the rights and remedies of Mortgagee after an Event of Default thereunder.

(f) It is understood and agreed that, in order to protect Mortgagee from the effect of U.C.C. Section 9-313, as amended from time to time, in the event that Mortgagor intends to purchase any goods which may become fixtures attached to the Property, or any part thereof, and such goods will be subject to a purchase money security interest held by a seller or any other party:

(1) Mortgagor shall, before executing any security agreement or other document evidencing or perfecting such security interest, obtain the prior written approval of Mortgagee, and all requests for such written approval shall be in writing and contain the following information:

- (i) a description of the fixtures to be replaced, added to, installed or substituted;
- (ii) the address at which the fixtures will be replaced, added to, installed or substituted; and
- (iii) the name and address of the proposed holder and proposed amount of the security interest.

Mortgagor's execution of any such security agreement or other document evidencing or perfecting such security interest without Mortgagee's prior written approval shall constitute an Event of Default. No consent by Mortgagee pursuant to this subparagraph shall be deemed to constitute an agreement to subordinate any right of Mortgagee in fixtures or other property covered by this Mortgage.

(2) If at any time Mortgagor fails to make any payment on an obligation secured by a purchase money security interest

in the Personal Property or any fixtures, Mortgagee, at its option, may at any time pay the amount secured by such security interest. Any money paid by Mortgagee under this subparagraph, including any expenses, costs, charges and attorney's fees incurred by Mortgagee, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof. Mortgagee shall be subrogated to the rights of the holder of any such purchase money security interest in the Personal Property.

(3) Mortgagee shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments, or other evidence of Mortgagor's indebtedness for such Personal Property or fixtures, and, upon acquiring such interest by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the U.C.C. and in accordance with any other provisions of law.

(4) Whether or not Mortgagee has paid the indebtedness secured by, or taken an assignment of, such security interest, Mortgagor covenants to pay all sums and perform all obligations secured thereby, and if Mortgagor at any time shall be in default under such security agreement, it shall constitute an Event of Default.

(5) The provisions of subparagraphs (2) and (3) of this paragraph (f) shall not apply if the goods which may become fixtures are of at least equivalent value and quality as any property being replaced and if the rights of the party holding such security interest have been expressly subordinated, at no cost to Mortgagee, to the lien and security interest of this Mortgage in a manner satisfactory to Mortgagee, including without limitation, at the option of Mortgagee, providing to Mortgagee a satisfactory opinion of counsel to the effect that this Mortgage constitutes a valid and subsisting first lien on such fixtures which is not subordinate to the lien of such security interest under any applicable law, including without limitation, the provisions of Section 9-313 of the U.C.C.

(g) Mortgagor hereby warrants, represents and covenants as follows:

(1) Mortgagor is and has been the sole owner of the Personal Property for at least fifteen (15) days free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will protect, defend and indemnify Mortgagee against, all claims and demands of all persons at any time claiming any rights or interest therein.

(2) The Personal Property is not used or bought and shall not be used or bought for personal, family, or household purposes, but shall be bought and used solely for the purpose of carrying on Mortgagor's business.

(3) The Personal Property has been located on the Land and/or Improvements for at least fifteen (15) days and will be kept on or at the Land or the Improvements and Mortgagor will not remove the Personal Property therefrom without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor with other Personal Property of value equal to or greater than the value of the replaced Personal Property when new, and except such portions or items of Personal Property temporarily stored elsewhere to facilitate refurbishing or repair thereof or of the Improvements.

(4) Mortgagor maintains a place of business in the State and Mortgagor will immediately notify Mortgagee in writing of any change in its principal place of business as set forth in the beginning of this Mortgage.

3.02 NO WAIVER. No single or partial exercise by Mortgagee, or delay or omission in the exercise by Mortgagee, of any right or remedy under the Loan Documents shall preclude, waive or limit any other or further exercise thereof or the exercise of any other right or remedy. Mortgagee shall at all times have the right to proceed against any portion of, or interest in, the Property in such manner as Mortgagee may deem fit, without waiving any other rights or remedies with respect to any other portion of the Property.

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3.03 CONVEYANCE OF PROPERTY, CHANGE IN OWNERSHIP AND COMPOSITION.

(a) Mortgagor shall not cause, permit or suffer: (i) the Property, or any part thereof, or any interest therein, to be conveyed, transferred, assigned, encumbered, sold or otherwise disposed of; (ii) any conveyance, transfer, pledge or encumbrance of any interest in Mortgagor; or (iii) any change in the individual(s) comprising Mortgagor or in the partners, stockholders or beneficiaries of Mortgagor from those on the date hereof. The foregoing prohibitions shall not be applicable to (i) transfers of ownership as a result of the death of a natural person who is Mortgagor or (ii) transfers by a natural person to a spouse, son or daughter or descendant of either, a stepson or stepdaughter or descendant of either, or (iii) transfers by any natural person in connection with bona fide estate planning.

(b) Mortgagor agrees to submit or cause to be submitted to Mortgagee within thirty (30) days after December 31st of each calendar year during the term hereof, without further request from Mortgagee, and within ten (10) days after any written request by Mortgagee for the same, a sworn, notarized certificate, signed by an authorized (i) individual who is Mortgagor or one of the individuals comprising Mortgagor (ii) partner of Mortgagor or (iii) officer of

Mortgagor, as the case may be, stating whether the Property, or any part thereof, or any interest therein, has been conveyed, transferred, assigned, encumbered, sold or otherwise disposed of, and if so, to whom; any conveyance, transfer, pledge or encumbrance of any interest in Mortgagor has been made by Mortgagor and if so, to whom, or there has been any change in the individual(s) comprising Mortgagor or in the partners, stockholders or beneficiaries of Mortgagor from those on the date hereof, and if so, a description of such change or changes.

3.04 MORTGAGOR'S ESTOPPEL. Mortgagor shall, within ten (10) days after a request by Mortgagee, furnish a duly acknowledged written statement in form satisfactory to Mortgagee setting forth the amount of the Secured Indebtedness, stating either that no offsets or defenses exist against the Secured Indebtedness, or if such offsets or defenses are alleged to exist, the nature and extent thereof and such other matters as Mortgagee may reasonably request.

3.05 FURTHER ASSURANCES. Mortgagor shall, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, deeds of trust, assignments, security agreements, financing statements, modifications, notices of assignment, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the Property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or any of the other Loan Documents, or for filing, refiling, registering, reregistering, recording or rerecording this Mortgage. Upon any failure by Mortgagor to comply with the terms of this Section, Mortgagee may, at Mortgagor's expense, make, execute, record, file, re-record and/or refile any and all such documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact so to do and such appointment is coupled with an interest.

3.06 FEES AND EXPENSES. If Mortgagee becomes a party (by intervention or otherwise) to any action or proceeding affecting, directly or indirectly, Mortgagor, the Property or the title thereto or Mortgagee's interest under this Mortgage, or employs an attorney to collect any of the Secured Indebtedness or to enforce performance of the obligations, covenants and agreements of the Loan Documents, Mortgagor shall reimburse Mortgagee for all expenses, costs, charges and legal fees incurred by Mortgagee (including, without limitation, the fees and expenses of experts and consultants), whether or not suit be commenced, and the same shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

3.07 REPLACEMENT OF NOTE. Upon notice to Mortgagor of the loss, theft, destruction or mutilation of the Note, Mortgagor will

execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.

3.08 HAZARDOUS SUBSTANCES.

(a) Mortgagor hereby represents, warrants, covenants and agrees to and with Mortgagee that all operations or activities upon, or any use or occupancy of the Property, or any portion thereof, by Mortgagor, and any tenant, subtenant or occupant of the Property, or any portion thereof, is presently and shall hereafter be in all respects in compliance with all state, federal and local laws and regulations governing or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any Hazardous Substance; and that neither Mortgagor nor (to the best of Mortgagor's knowledge, after due inquiry) any tenant, subtenant or occupant of all or any portion of the Property, has at any time placed, suffered or permitted the presence of any such Hazardous Substances at, on, under, within or about the Property, or any portion thereof in violation of applicable law.

(b) In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively, the "Remedial Work") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, or in order to comply with any agreement entered into because of, or in connection with, any occurrence or event described in this Section, Mortgagor shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors, selected by Mortgagor and approved in advance in writing by Mortgagee, and under the supervision of a consulting engineer, selected by Mortgagor and approved in advance in writing by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and Mortgagee's reasonable attorneys', architects' and/or consultants' fees and costs incurred in connection with monitoring or review of such Remedial Work; provided, however, that Mortgagor and its general partners shall not be liable for the costs and expenses of such Remedial Work if such Hazardous Substances were placed on the Property subsequent to the Mortgagee's foreclosure or taking of title to the Property, or subsequent to any transfer of ownership to a Mortgagee approved transferee. For purposes of the foregoing sentence, in the event of a dispute concerning the party responsible for having placed Hazardous Substances on the Property, the burden of proof as to the party responsible shall be on Mortgagor and not on Mortgagee, and if Mortgagor cannot satisfy such burden of proof,

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Mortgagor shall be liable for costs and expenses of the Remedial Work as provided in this Section 3.08. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be reimbursed to Mortgagee in accordance with Section 3.10 hereof.

3.09 WAIVER OF CONSEQUENTIAL DAMAGES. Mortgagor covenants and agrees that in no event shall Mortgagee be liable for consequential damages, whatever the nature of a failure by Mortgagee to perform its obligation(s), if any, under the Loan Documents, and Mortgagor hereby expressly waives all claims that it now or may hereafter have against Mortgagee for such consequential damages.

3.10 MORTGAGEE REIMBURSEMENT. Any payments made, or funds expended or advanced by Mortgagee pursuant to the provision of any Loan Document, shall (1) become a part of the Secured Indebtedness, (2) bear interest at the Interest Rate (as such term is defined in the Note) from the date such payments are made or funds expended or advanced, (3) become due and payable by Mortgagor upon demand therefor by Mortgagee, and (4) bear interest at the Default Rate (as such term is defined in the Note) from the date of such demand. Failure to reimburse Mortgagee upon such demand shall constitute an Event of Default under Section 2.01(a) hereof.

ARTICLE IV MISCELLANEOUS COVENANTS

4.01 REMEDIES CUMULATIVE. No right, power or remedy conferred upon or reserved to Mortgagee by any of the Loan Documents is intended to be exclusive of any other right, power or remedy, but shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder or under any of the other Loan Documents or now or hereafter existing under applicable law.

4.02 NOTICES. All notices, demands and requests given or required to be given by either party hereto to the other party shall be in writing. All notices hereunder shall be deemed to have been duly given if mailed by United States registered or certified mail, with return receipt requested, postage prepaid, or by United States Express Mail or other comparable overnight courier service to the parties at the addresses set forth on Exhibit "A" (or at such other addresses as shall be given in writing by any party to the others) and shall be deemed complete upon receipt or refusal to accept delivery as indicated in the return receipt or in the receipt of such United States Express Mail or courier service.

4.03 HEIRS AND ASSIGNS; TERMINOLOGY.

(a) This Mortgage applies to, inures to the benefit of, and binds Mortgagor and Mortgagee, their heirs, legatees, devisees,

administrators, executors, successors and assigns. The term "Mortgagor" shall include both the original Mortgagor and any subsequent owner or owners of any of the Property. The term "Mortgagee" shall include the owner and holder of the Note, whether or not named as Mortgagee herein.

(b) In this Mortgage, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

4.04 SEVERABILITY. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then, Mortgagee may, at its option declare the Secured Indebtedness immediately due and payable.

4.05 APPLICABLE LAW. This Mortgage shall be construed and enforced in accordance with the laws of the State.

4.06 CAPTIONS. The captions are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope or intent of this Mortgage, nor in any way affect this Mortgage.

4.07 TIME OF THE ESSENCE. Time shall be of the essence with respect to all of Mortgagor's obligations under this Mortgage and the other Loan Documents.

4.08 NO MERGER. In the event that Mortgagee should become owner of the Property, there shall be no merger of the estate created by this Mortgage with the fee estate in the Property.

4.09 NO MODIFICATIONS. This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Mortgagor and Mortgagee.

ARTICLE V NON-UNIFORM COVENANTS

5.01 ONE TIME TRANSFER. Mortgagor hereby acknowledges to Mortgagee that (i) the identity and expertise of Mortgagor were and continue to be material circumstances upon which Mortgagee has relied in connection with, and which will constitute valuable consideration to Mortgagee for, the extending to Mortgagor of the loan secured hereby and (ii) any change in such identity or expertise would materially impair or jeopardize the security for the payment of the loan secured hereby. Notwithstanding the provisions of paragraph 3.03(a) hereof, Mortgagor shall have the one time right, which will be after the date of eighteen (18) months following the date of this

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Mortgage or after the date that Mortgagee has disbursed all funds pursuant to all escrow agreements entered into contemporaneously herewith, whichever occurs first, to convey or sell the Property or to change the composition of the Mortgagor, provided that:

(a) (1) Mortgagee has approved the identity of the transferee or purchaser of the Property or of the entities involved in the change in the composition of Mortgagor, which approval shall be conditioned upon evidence satisfactory to Mortgagee that such transferee or purchaser or Mortgagor as newly composed has a net worth and financial condition at least equal to the net worth and financial condition of Mortgagor as of the date of this Mortgage and such transferee or purchaser or Mortgagor as newly composed has demonstrated ability and previous experience of professional management for properties similar to the Property;

(2) Mortgagee shall have been paid, unless such payment would constitute a violation of any applicable law, a fee of one (1%) percent of the outstanding principal balance of the loan secured hereby at the time of such purchase, transfer, or change in composition; and

(3) The transferee or purchaser or Mortgagor as newly composed shall have entered into an agreement, prepared at Mortgagor's expense by counsel selected by Mortgagee, providing that (i) the transferee or purchaser or Mortgagor as newly composed shall assume the obligations of Mortgagor under this Mortgage and the Note secured hereby, and (ii) any further sale, conveyance or change in the composition of Mortgagor shall constitute an Event of Default hereunder; and (iii) Mortgagor, at its sole cost and expense, shall cause to be delivered to Mortgagee an endorsement to its title insurance policy updating the policy and containing no exceptions to title not found in the original Mortgagee title insurance policy delivered at the execution of this Mortgage other than those approved by Mortgagee.

(b) If, at the time of a proposed conveyance or transfer of the Property, the "Loan to Value Ratio" as hereinafter defined) as of the last day of the immediately preceding calendar month before such transfer or conveyance shall be greater than [.75] then, at Mortgagee's option and in its absolute and sole discretion, Mortgagee shall be paid, at the time for such conveyance or transfer, a repayment of principal such that the Loan to Value Ratio shall be reduced to a number equal to [.75]. As used herein, the term "Loan to Value Ratio" shall mean a number between 0 and 1 derived by dividing (i) the outstanding principal balance of the loan secured hereby by (ii) the total consideration of such conveyance or transfer.

5.02 THIRD PARTY CLAIMS. Mortgagor shall indemnify, defend and hold Mortgagee harmless from and against (i) any and all claims for brokerage, leasing, finder's or similar fees which may relate to the Property or the loan secured hereby and (ii) against any and all

liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including without limitation, attorneys' fees and disbursements at the trial and all appellate levels) of whatever kind or nature which may be imposed on or incurred by Mortgagee at any time pursuant either to a judgment or decree or other order entered into by a court or administrative agency or to a settlement reasonably approved by Mortgagor, which judgment, decree, order or settlement related in any way to or arises out of the offer, sale or lease of the Property and/or the ownership, use, occupation or operation of any portion of the Property; provided that such indemnity shall not apply to Mortgagee's own acts or omissions or those of its agents or employees acting in the scope of their agency or employment.

5.03 TRANSFERS OF PARTNERSHIP INTEREST. Notwithstanding the provisions of Section 3.03(a) hereof, transfers of partnership interests of Mortgagor (including transfers for estate planning purposes) will be permitted under the terms of the Note and this Mortgage without the consent of Mortgagee and shall not be construed as the one (1) time transfer, provided (a) Raymond D. Gotlieb individually must maintain a 30 percent (30%) interest in Mortgagor or Ingram Tynes must maintain a 20 percent (20%) interest in Mortgagor; and (b) there shall be no more than twenty (20) limited partners.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage, or has caused this Mortgage to be executed by its duly authorized representative(s) as of the day and year first written above.

RIVERCHASE CENTER ASSOCIATES

By: G-B Partnership

By:

Raymond D. Gotlieb
Raymond D. Gotlieb
General Partner

By:

Robert L. Bohorhoush
Robert L. Bohorhoush
General Partner

By:

Ingram D. Tynes
Ingram D. Tynes
General Partner

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By: Carolyn B. Nelson
General Partner

By: Irb M. Cohen
General Partner

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Parker Diane Jordan, a notary public in and for said county in said State, hereby certify that Raymond D. Gotlieb and Robert L. Bohorfoush, whose names as general partners of G-B Partnership, an Alabama general partnership, acting in its capacity as general partner of Riverchase Center Associates, an Alabama general partnership, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed as to the contents of this instrument, they, as such partners, with full authority, executed the same voluntarily for and as the act of said G-B Partnership, acting in its capacity as general partner of Riverchase Center Associates.

Given under my hand and seal of office this 19th day of Dec, 1990.

Parker Diane Jordan
Notary Public

My Commission Expires: 2/7/93

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ingram D. Tynes, whose name as general partner of Riverchase Center Associates, an Alabama general 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 the instrument, he as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 19th day of Dec, 1990.

Parker Diane Jordan
NOTARY PUBLIC

My Commission Expires: 2/7/93

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Carolyn B. Nelson, whose name as general partner of Riverchase Center Associates, an Alabama general 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 the instrument, she as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 19th day of Dec., 1990.

Parker Diane Jordan
NOTARY PUBLIC

My Commission Expires: 2/7/93

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Irby M. Cohen, whose name as general partner of Riverchase Center Associates, an Alabama general 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 the instrument, he as such partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 19th day of Dec., 1990.

Parker Diane Jordan
NOTARY PUBLIC

My Commission Expires: 2/7/93

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EXHIBIT "A"
TO MORTGAGE AND SECURITY AGREEMENT

I. DEFINED TERMS

"County" shall mean Shelby County, Alabama.

The term "Hazardous Substances" shall include without limitation:

(i) Those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(ii) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto):

(iii) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §1251 et seq. (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §1317); (E) flammable explosives; or (F) radioactive materials; and

(iv) Those substances listed in the Hazardous Wastes Management and Minimization Act, Alabama Code § 22-30-1 et seq.; and

(v) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

"Leasing Guidelines" shall mean guidelines, from time to time approved in writing by Mortgagee, for the leasing of all or any part of the Property, but which in any event, unless and until further leasing guidelines are approved by Mortgagee, shall be as follows:

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- (a) leases must be in the form of the standard form of lease approved by Mortgagee in writing;
- (b) leases in excess of 4,000 square feet must have an initial term of at least 3 years, and leases of less than the 4,000 square feet must have an initial term of at least 1 year;
- (c) be a bona fide written lease to a space tenant not related to or affiliated with Mortgagee;
- (d) specify free rent of not more than one month per lease year;
- (e) contain no other material rental or different concessions not approved by Mortgagee;
- (f) provide that the tenant pays a pro rata share of, or increase in, taxes, insurance, and other operating expenses;
- (g) at the time of entering into any lease there must not currently exist an Event of Default under any of the Loan Documents; and
- (h) provide for the payment of rent at not less than \$9.00 on a gross basis, per square foot.

"Rents and Profits" shall mean all and any income, rents, royalties, revenue, issues, profits, proceeds, accounts receivable and other benefits now or hereafter arising from the Property, or any part thereof.

"Requirements" shall mean all requirements relating to land and building construction, use and maintenance, including, without limitation, planning, zoning, subdivision, environmental, air quality, flood hazard, fire safety, handicapped facilities and other governmental approvals, permits, licenses and/or certificates as may be necessary from time to time to comply with any of the foregoing, and other applicable statutes, rules, orders, regulations, laws, ordinances and covenants, conditions and restrictions, which now or hereafter pertain to and/or affect the design, construction, existence, operation or use and occupancy of the Property, or any part thereof, or any business conducted therein or thereon.

"State" shall mean Alabama, the state in which the Property is located.

II. ADDRESSES

Mortgagor's address:

Riverchase Center Associates
2200 Woodcrest Place, Suite 200
Birmingham, Alabama 35209

Mortgagee's address:

Metropolitan Life Insurance Company
One Madison Avenue
New York, New York 10010
Attention: Senior Vice-President
Real Estate Investments

and:

Metropolitan Life Insurance Company
303 Perimeter Center North, Suite 600
Atlanta, GA 30346

Attention: Vice-President or
Associate General Counsel

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EXHIBIT "A"
PAGE 3 OF 3

EXHIBIT B

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

Commence at the Southeast corner of the Southeast Quarter of the Northeast Quarter of said Section 19; thence run West and along the South boundary of said Southeast/Northeast, a distance of 2723.44 feet; thence run Southwardly and at right angles to said South boundary a distance of 84.39 feet to the point of beginning, said point of beginning lying on the South right-of-way of Parkway Office Circle; thence run Eastwardly and along said right-of-way (curving to the right and having a radius of 420.00 feet) a chord distance of 152.58 feet to the point of tangency of said curve; thence run Southeastwardly along said right-of-way a distance of 229.05 feet; thence continue Southeastwardly and along said right-of-way (curving to the left and having a radius of 930.00 feet) a chord distance of 310.16 feet to the point of tangency of said curve; thence run Eastwardly and along said right-of-way a distance of 218.73 feet; thence run Southeastwardly along said right-of-way (curving to the right and having a radius of 570.00 feet) a chord distance of 198.98 feet; thence with an interior angle left of 76 degrees 32 minutes 12 seconds run Southwestwardly a distance of 604.89 feet to the North right-of-way of Riverchase Office Road; thence run Northwestwardly and along said right-of-way (curving to the left and having a radius of 300.00 feet) chord distance of 29.99 feet to the point of tangency of said curve; thence run Westwardly and along said right-of-way a distance of 104.38 feet; thence run Northwestwardly and along said right-of-way (curving to the right and having a radius of 370.00 feet) a chord distance of 170.34 feet to the point of tangency of said curve; thence run Northwestwardly and along said right-of-way a distance of 95.64 feet; thence run Westwardly and along said right-of-way (curving to the left and having a radius of 530.00 feet) a chord distance of 471.95 feet to the point of tangency of said curve; thence run Southwestwardly and along said right-of-way a distance of 10.94 feet; thence run Northwestwardly and along said right-of-way (curving to the right and having a radius of 25.00 feet) a chord distance of 33.35 feet to the point of tangency of said curve; said point of tangency lying on the East right-of-way of Riverchase Parkway East; thence run Northwestwardly and along said East right-of-way a distance of 30.19 feet; thence run Northwestwardly and along said right-of-way (curving to the left and having a radius of 661.41 feet) a chord distance of 189.16 feet to a point being the Southwest corner of this described parcel; thence run Northeastwardly a distance of 332.82 feet to the point of beginning.

Situated in Shelby County, Alabama.

According to survey of Johnny L. Riddleberger, RLS #14284, dated November 15, 1990.

EXHIBIT C
PERMITTED ENCUMBRANCES

1. Rights of parties in possession pursuant to tenant leases affecting the Property.
2. Taxes for 1991 and subsequent years which are a lien but are not yet due and payable.
3. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities, relating thereto, as to that part of subject property lying in the NW 1/4 of SE 1/4, Section 19, Township 19 South, Range 2 West, as excepted in Deed Book 28, Page 63, in Probate Office of Shelby County, Alabama.
4. Oil, Gas, Petroleum and Sulfur rights reserved in instrument recorded in Deed Book 127, Page 140, as to that part of subject property lying in the E 1/2 of SE 1/4; SW 1/4 of SE 1/4; and NE 1/4 of SW 1/4, Section 19, Township 19 South, Range 2 West.
5. Agreement with Alabama Power Company as recorded in Misc. Book 15, Page 401, in the Probate Office of Shelby County, Alabama.
6. Agreement between Harbert-Equitable Joint Venture and Blue Cross and Blue Shield of Alabama, recorded in Misc. Book 19, Page 690, and modified in Misc. Book 43, Page 82, and Amendment to Agreement recorded in real Record 016, Page 64, in the Probate Office of Shelby County, Alabama.
7. 10-foot utility easement over the Northwesternly side designated as Easement No. 1, 20-foot drainage easement over the Northerly side designated as Easement No. 2, and 10-foot utility easement over the Northwesternly side designated as Easement No. 3, all according to the survey of Johnny L. Riddlesberger, RLS #14285, dated Dec 10, 1990. Said easements being reserved in deed recorded in Deed Book 352, Page 742.
8. Declaration of Protective Covenants, Agreements, Easement, Charges and Liens for Riverchase (Business), recorded in Misc. Book 19, Page 633, in the Probate Office of Shelby County, Alabama.
9. Restriction as to use as office and warehouse as shown in Item 6 in deeded recorded in Deed Book 352, Page 742, in the Probate Office of Shelby County, Alabama.

10. Transmission line permit to Alabama Power Company as recorded in Deed Book 357, Page 98, in the Probate Office of Shelby County, Alabama, and as shown as Easement #4 on survey of Johnny L. Riddlesberger, RLS #14284, dated Dec 10, 1990.
11. 15-foot utility easement over Southeast side of caption lands as shown on survey of Riverchase Office Park, Phase II, as recorded in Map Book 14, Page 77, in the Probate Office of Shelby County, Alabama.

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EXHIBIT "C"
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EXHIBIT "D"
TO MORTGAGE AND SECURITY AGREEMENT

REQUIREMENTS FOR RESTORATION

Unless otherwise expressly agreed in a writing signed by Mortgagee for such purpose, the Requirements For Restoration shall be as follows:

(a) In the event the Net Insurance Proceeds are to be used for the Restoration, Mortgagor shall, prior to the commencement of any work or services in connection with the Restoration (the "Work"), deliver or furnish to Mortgagee (i) complete plans and specifications for the Work which (A) have been approved by all governmental authorities whose approval is required, (B) bear the signed approval of an architect satisfactory to Mortgagee (the "Architect") and (C) are accompanied by Architect's signed estimate of the total estimated cost of the Work which plans and specifications shall be subject to Mortgagee's prior approval (the "Approved Plans and Specifications"); (ii) the amount of money which, as determined by Mortgagee, will be sufficient when added to the Net Insurance Proceeds, if any, to pay the entire cost of the Restoration (all such money as held by Mortgagee being herein collectively referred to as the "Restoration Funds"); (iii) copies of all permits and approvals required by law in connection with the commencement and conduct of the Work; (iv) a contract for construction executed by Mortgagor and a contractor satisfactory to Mortgagee (the "Contractor") in form, scope and substance satisfactory to Mortgagee (including a provision for retainage) for performance of the Work; and (v) a surety bond for and/or guarantee of payment for and completion of, the Work, which bond or guarantee shall be (A) in form, scope and substance satisfactory to Mortgagee, (B) signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and (C) in an amount not less than Architect's total estimated cost of completing the Work.

(b) Mortgagor shall not commence any portion of the Work, other than temporary work to protect the Property or prevent interference with business, until Mortgagor shall have complied with the requirements of subparagraph (a) above. After commencing the Work, Mortgagor shall perform or cause Contractor to perform the Work diligently and in good faith in accordance with the Approved Plans and Specifications. So long as there does not currently exist an Event of Default under any of the Loan Documents, Mortgagee shall disburse the

Restoration Funds in increments to Mortgagor, from time to time as the Work progresses, to pay (or reimburse Mortgagor for) the costs of the Work, but subject to the following conditions, any of which Mortgagee may waive in its sole discretion:

(i) Architect shall be in charge of the Work;

(ii) Mortgagee shall make such payments directly or through escrow with a title company selected by Mortgagor and approved by Mortgagee, only upon not less than ten (10) days' prior written notice from Mortgagor to Mortgagee and Mortgagor's delivery to Mortgagee of (A) Mortgagor's written request for payment (a "Request for Payment") accompanied by a certificate by Architect in form, scope and substance satisfactory to Mortgagee which states that all of the Work completed to that date has been done in compliance with the Approved Plans and Specifications and in accordance with all provisions of law, that the amount requested has been paid or is then due and payable and is properly a part of the cost of the Work and that when added to all sums, if any, previously paid out by Mortgagee, the requested amount does not exceed the value of the Work done to the date of such certificate; (B) evidence satisfactory to Mortgagee that there are no mechanic's or similar liens for labor or material supplied in connection with the Work to date or that any such liens have been adequately provided for to Mortgagee's satisfaction; and (C) evidence satisfactory to Mortgagee that the balance of the Restoration Funds remaining after making the payments shall be sufficient to pay the balance of the cost of the Work not completed to date (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion). Each Request for Payment shall be accompanied by (x) waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any, (y) a search prepared by a title company or by other evidence satisfactory to Mortgagee that no mechanic's liens or other liens or instruments for the retention of title in respect of any part of the Work have been filed against the Property and not discharged of record, and (z) an indorsement to Mortgagee's title policy insuring the Mortgagee that no encumbrance exists on or affects the Property other than the Permitted Exceptions;

(iii) No more than ten percent (10%) of the leases affecting the Property immediately prior to the damage or destruction shall have been cancelled, nor contain any still exercisable right to cancel, due to such damage or destruction; and

(iv) Any Request for Payment after the Restoration has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Improvements legal.

(c) If (i) within sixty (60) days after the occurrence of any damage or destruction to the Property requiring Restoration, Mortgagor fails to submit to Mortgagee and receive Mortgagee's approval of plans and specifications or fails to deposit with Mortgagee the additional amount necessary to accomplish the Restoration as provided in subparagraph (a) above, or (ii) after such plans and specifications are approved by all such governmental authorities and Mortgagee, Mortgagor fails to commence promptly or diligently continue to completion the Restoration, or (iii) subject to Section 1.16 hereof, Mortgagor becomes delinquent in payment to mechanics, materialmen or others for the costs incurred in connection with the Restoration, then, in addition to all of the rights herein set forth and after five (5) days' written notice of the non-fulfillment of one or more of the foregoing conditions, Mortgagee may apply the Restoration Funds then or thereafter held by Mortgagee to reduce the Secured Indebtedness in such order as Mortgagee may determine, and at Mortgagee's option and in its sole discretion, Mortgagee may declare the Secured Indebtedness immediately due and payable.

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1. Deed Tax	\$ 19,000.00
2. Mfg. Tax	\$ 100.00
3. Recording Fee	\$ 9.00
4. Indexing Fee	\$
5. No Tax Fee	\$ 1.00
6. Certified Fee	\$
Total	\$19,509.00

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

90 DEC 20 PM 2:30

JUDGE OF PROBATE

EXHIBIT "D"
PAGE 3 of 3