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STATE OF ALABAMA)
SHELBY COUNTY)

THIS IS A FUTURE
ADVANCE MORTGAGE.

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

This mortgage, security agreement and assignment of rents and leases (hereinafter, together with all amendments hereto called this "Mortgage") dated January 30, 1992 is made and entered into by and between BWA DEVELOPMENT CORP. (hereinafter called the "Borrower," whether one or more), a corporation, whose address is 200 Union Hill Drive, Birmingham, Alabama 35209, and NATIONAL BANK OF COMMERCE OF BIRMINGHAM, a national banking association (the "Lender"), whose address is 1927 First Avenue North, Birmingham, Alabama 35203.

Recitals

A. The Borrower and the Lender have entered into a construction loan agreement dated of even date herewith (the "Construction Loan Agreement"), pursuant to which the Lender has agreed to make a construction loan (the "Loan") to the Borrower in the maximum principal amount of \$750,000 to provide financing for the construction of a certain Project to be located on the Land (both as hereinafter defined).

B. The Loan is to be evidenced by the Borrower's promissory note in said principal amount (the "Note") dated of even date herewith, which Note bears interest as provided therein and is payable in full two years from the date hereof.

C. This is a FUTURE ADVANCE MORTGAGE, and the Loan is to be advanced by the Lender to the Borrower in installments from time to time pursuant to the terms and conditions of the Construction Loan Agreement.

D. To secure the Note and to induce the Lender to extend credit to the Borrower under the Construction Loan Agreement on the strength of the security provided by this Mortgage, the Borrower has agreed to execute and deliver this Mortgage to the Lender.

Agreement

NOW, THEREFORE, in consideration of the premises, and to induce the Lender to extend credit to the Borrower under the Construction Loan Agreement, the Borrower hereby agrees with the Lender as follows:

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I. DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.01. Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

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

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

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

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

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

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

SECTION 1.02. Definitions. As used in this Mortgage the following terms shall have the respective meanings attributed to them as follows:

Architects shall mean the Engineer and any architects for the Project, or any portion thereof, each of which must be an architect or architectural firm satisfactory to the Lender.

Architect Contracts shall mean the contracts between the Architects and the Borrower providing for the design of the Project, the preparation of the Plans, the supervision of construction of the Project and the provision of any other architectural services related to the Project.

CERCLA shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq.

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Collateral shall mean all property, real and personal, that is conveyed or assigned to the Lender, or which respect to which the Lender is granted a Lien, pursuant to the Loan Documents.

Construction Contracts shall mean the contracts between the Contractors and the Borrower providing for the construction of the Project, or any portion thereof.

Construction Documents shall mean (i) all plans and specifications for the Project, or any portion thereof (including the Plans); (ii) all contracts with architects (including the Architect Contracts) and engineers (including the Architects and the Engineers) responsible for the design of any of the Project, the preparation or evaluation of any of such plans and specifications or the supervision of the construction of any of the Project; (iii) all construction contracts to which the Borrower is a party (including the Construction Contracts) providing for the construction of any of the Project or the furnishing of labor or material in connection therewith; (iv) all contracts to which the Borrower is a party providing for the management of the construction of any of the Project; (v) all rights of the Borrower as a third party beneficiary under all contracts pertaining to the design, construction and development of any of the Project as to which the Borrower is not a signatory party; and (vi) all other contracts and agreements related to the design, construction and development of any of the Project.

Contractors shall mean Brigham-Williams & Associates, Inc. and any other contractors for the Project, or any portion thereof, each of which must be a contractor or contracting firm satisfactory to the Lender.

Default Interest Rate shall have the meaning attributed to that term in the Construction Loan Agreement.

Engineers shall mean Walter Schoel Engineering Company, Inc. and any other engineers for the Project, or any portion thereof, each of which must be an engineer or engineering firm satisfactory to the Lender.

Environmental Indemnity Agreement shall mean the Environmental Indemnity Agreement of even date herewith executed by the Borrower and the Guarantors (as defined in the Construction Loan Agreement) in favor of the Lender.

Environmental Law shall mean and include any Governmental Requirement (including CERCLA) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances.

Existing Tenant Leases shall have the meaning attributed to that term in Section 2.02.

Governmental Authority shall mean any federal, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

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Governmental Requirements shall mean all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, decrees, injunctions, notices and demand letters of any Governmental Authority.

Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by any Environmental Law, or even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

Impositions shall mean all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

Improvements shall have the meaning attributed to that term in Section 2.02.

Land shall have the meaning attributed to that term in Section 2.02.

Liabilities shall mean (i) the principal indebtedness evidenced by the Note, all interest thereon and all other fees and charges payable thereunder; (ii) all sums becoming due and payable by the Borrower under the terms of this Mortgage or any of the other Loan Documents, including sums advanced by the Lender pursuant to the terms of this Mortgage or any of the other Loan Documents; (iii) all other indebtedness, obligations and liabilities of the Borrower to the Lender (including obligations of performance) of every kind and description whatsoever, arising directly between the Borrower and the Lender or acquired outright, as a participation or as collateral security from another by the Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same; (iv) any and all extensions, renewals and modifications of any of the items described in (i) through (iii) above; and (v) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in the Loan Documents.

Lien shall mean any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement of any kind or nature whatsoever.

Loan Documents shall mean the Construction Loan Agreement, the Note, this Mortgage and the other Security Documents, the Guaranty Agreements, the Commitment Letter described

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in the Construction Loan Agreement, the Environmental Indemnity Agreement, and all other documents now or hereafter executed or delivered in connection with the Loan or any of the foregoing documents, or to evidence or secure the Loan, and all amendments, renewals, extensions and modifications thereto or thereof.

Obligations shall have the meaning attributed to that term in Section 2.01.

Obligors shall mean and include the Borrower, the Guarantors described in the Loan Agreement and any other maker, endorser, surety or guarantor in whole or in part of the Note or the Loan, and any other person obligated under any of the Loan Documents.

Permitted Encumbrances shall mean any Liens and other matters affecting title to the Property that are described in Exhibit B.

Person (whether or not capitalized) shall include any individual, corporation, partnership, joint venture, association, trust, sole proprietorship, unincorporated organization and any Governmental Authority.

Personal Property shall have the meaning attributed to that term in Section 2.02.

Plans shall mean the final working plans and specifications for constructing and developing the Project prepared by Architects and Engineers approved by the Lender, or other persons acceptable to the Lender, and all amendments and modifications thereto.

Project shall mean a certain project consisting of Improvements to be financed in whole or in part with the proceeds of the Loan and to be constructed in accordance with the Plans on the Land, together with all related utilities, roads and other off-site Improvements, said project being generally described as follows: Development of 28 residential lots located on the ninth hole of Inverness Country Club.

Property shall have the meaning attributed to that term in Section 2.02.

Real Property shall have the meaning attributed to that term in Section 2.02.

Rents shall have the meaning attributed to that term in Section 2.02.

Security Documents shall mean this Mortgage and any other documents now or hereafter executed by the Borrower or any other person in favor of the Lender as security for the Loan.

Tenant Leases shall have the meaning attributed to that term in Section 2.02.

UCC Property shall have the meaning attributed to that terms in Section 5.03(e).

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II. OBLIGATIONS, GRANTING CLAUSES, ASSIGNMENTS, ETC.

SECTION 2.01. Obligations. This Mortgage is given to secure and shall secure the following (collectively, the "Obligations"): (i) the payment of all advances against the Loan now or hereafter evidenced by the Note, and all interest thereon and all other fees, charges and costs (including reasonable attorneys' fees) payable in connection therewith; (ii) the payment of any and all other fees, charges and other sums now or hereafter becoming due and payable by the Borrower to the Lender under the terms of the other Loan Documents; (iii) the payment of all other Liabilities of the Borrower to the Lender of every kind and description whatsoever; (iv) the payment of any and all sums now or hereafter becoming due and payable by the Borrower under the terms of this Mortgage, including advancements made by the Lender pursuant to the terms and conditions of this Mortgage; (v) all renewals, extensions, modifications and amendments of any or all of the obligations described in clauses (i) through (iv) of this Section 2.01, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith; (vi) the full and complete performance of and compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage and the other Loan Documents; and (vii) all sums advanced or paid by the Lender in exercising any of its remedies under this Mortgage or any of the other Loan Documents, and all interest thereon.

SECTION 2.02. Granting Clauses. As security for the Obligations the Borrower does hereby grant, bargain, sell, mortgage, assign and convey unto the Lender, its successors and assigns, and does grant to the Lender, its successors and assigns, a security interest in, the following property and interests in property (collectively, the "Property"):

(a) **Land.** All those certain lot(s), piece(s) or parcel(s) of land located in Shelby County, Alabama more particularly described in Exhibit A, as the description of the same may be amended or supplemented from time to time, and all and singular the reversions and remainders in and to said land and the tenements, hereditaments, easements, rights-of-way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, and all claims or demands of the Borrower either at law or in equity, in possession or expectancy of, in or to the same (all of the foregoing hereinafter collectively called the "Land").

(b) **Improvements.** All buildings, structures, facilities and other improvements (including the Project) now or hereafter located on the Land, and all building material, building equipment and fixtures of every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, owned by the Borrower or in which the Borrower has

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or shall acquire an interest (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) **Personal Property.** All chattels and other articles of personal property and fixtures, both tangible and intangible (including appurtenances, additions and accessions thereto and replacements, substitutions, betterments and renewals thereof), of every kind or character now owned or hereafter constructed, created or acquired by the Borrower and attached to the Real Property; or placed on the Real Property and used or useful in connection with, or in any way appertaining or relating to, the Real Property (or the operations of the Borrower thereon) though not attached to the Real Property; or for which the proceeds of the Loan have been or may be advanced, wherever the same may be located; including: (i) all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, wires, wiring and other building materials; and (ii) all machinery, equipment, appliances and fixtures for generating or distributing air, water, heat, electricity, light, fuel or refrigeration, or for incinerating or compacting plants, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage, or garbage, and all furniture, furnishings, decorations, art, mirrors, wall-beds, wall-safes, built-in furniture, appliances and installations, linens, towels, cutlery, dishes, shelving, partitions, screens, doorstops, vaults, elevators, escalators, dumbwaiters, awnings, window shades, venetian blinds, curtains, window treatments, light fixtures, bathroom fixtures, fire hoses and brackets and boxes for same, fire sprinklers, alarm systems, drapery rods and brackets, screens, storm doors and windows, linoleum, carpets, rugs, wall coverings, plumbing, laundry and drying equipment, vacuum and other cleaning systems and equipment, call systems, switchboards, iceboxes, refrigerators, heating units, dishwashing equipment, stoves, ovens, water heaters, generators, tanks, motors, engines, boilers, furnaces, incinerators, garbage disposers, video and audio equipment, entertainment equipment and systems, recreation equipment, communication systems, and signage and graphics (all of the foregoing hereinafter collectively called the "Personal Property").

(d) **Tenant Leases and Rents.** (i) All leases, subleases, lettings and licenses, and other use and occupancy agreements, written or oral, covering any of the Real Property or Personal Property with respect to which the Borrower is the lessor, licensor or sublessor, including any of the same now in existence (all of the foregoing hereinafter collectively called the "Existing Tenant Leases"), and any and all other such agreements hereafter made or entered into (all of the foregoing hereinafter collectively called the "Tenant Leases"); (ii) any and all guaranties of the performance of the lessee, licensee, sublessee or occupant (all of the foregoing hereinafter collectively called the "Tenants") under any of the Tenant Leases; (iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or that may become due or to which the Borrower may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Tenant Leases, the Real Property, the Personal Property, or any part thereof, including minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any Tenant upon the exercise of any cancellation privilege provided for in any of the Tenant Leases, and all proceeds payable under

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any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Property or Personal Property, together with any and all rights and claims of any kind that the Borrower may have against any Tenant (all such moneys, rights and claims described in this Section 2.02(d)(iii) hereinafter collectively referred to as the "Rents"); provided, however, that so long as no Event of Default has occurred, the Borrower shall have the right under a license granted hereby (but limited as set forth in Section 5.03(f)(1)(A) hereof) to collect, receive and retain the Rents, but no Rents shall be collected prior to the due date thereof; and (iv) any award, dividend or other payment made hereafter to the Borrower in any court procedure involving any of the Tenants in any bankruptcy, insolvency or reorganization proceedings before any Governmental Authority and any and all payments made by Tenants in lieu of rent. The Borrower hereby appoints the Lender as the Borrower's irrevocable attorney-in-fact to appear in any action and to collect any such award, dividend or other payment.

(e) Insurance Policies. Each and every policy of hazard insurance now or hereafter in effect which insures the Improvements, the Personal Property, or any part thereof, together with all right, title and interest of the Borrower in and to each and every such policy, including any premiums paid on each such policy and rights to returned premiums.

(f) Condemnation Awards. Any and all judgments, damages, settlements, awards, payments and compensation, including all interest thereon, together with the right to receive the same, that may be made to the Borrower or any subsequent owner of any of the Real Property, the Personal Property or any other property or rights conveyed or encumbered hereby, as a result of (i) the exercise of the right of eminent domain or condemnation, (ii) the alteration of the grade of any street or (iii) any other injury to or decrease in value of the Real Property or the Personal Property.

(g) General Intangibles and Agreements. (i) All general intangibles relating to the development or use of the Real Property, the Personal Property, or any other property or rights conveyed or encumbered hereby, or the management and operation of any business of the Borrower thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets and the rights of Borrower as Developer under any declaration of restrictive covenants affecting the Real Property; (ii) the good will of any business conducted or operated on the Real Property, all governmental permits relating to the construction, renovation or operation thereof, and all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant thereof; and (iii) and all contracts and agreements (including leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into;

(h) Construction Documents. The Construction Contracts, the Architect Contracts, the Plans and the other Construction Documents.

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(i) Loan Funds, Permits, etc. (i) All Loan funds held by the Lender, whether or not disbursed, (ii) all funds from time to time on deposit in the construction account, (iii) all licenses and permits obtained from any Governmental Authority for the construction or development of the Project, (iv) all reserves, deferred payments, deposits, escrows, refunds, cost savings and payments of any kind related to the Project, and (v) all loan commitments and loan insurance related to the Project and all approvals, deposits, fees, applications and documents, related thereto.

(j) Supplemental Documents. All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for, any agreement or instrument included in the foregoing.

(k) Proceeds. All proceeds (including insurance proceeds) of any of the foregoing, or of any part thereof.

(l) Other Property. Any and all other real or personal property, rights, titles and interests from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Lender, or in which the Lender is granted a security interest, as and for additional security hereunder by the Borrower, or by anyone on behalf of, or with the written consent of, the Borrower.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

III. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender that:

SECTION 3.01. Valid Title, etc. (i) The Borrower is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the Personal Property and the remainder of the Property and has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (ii) the Property is free of all Liens other than Permitted Encumbrances; (iii) the Borrower has and will have full power and lawful authority to encumber and convey the Property as provided herein; (iv) this Mortgage is and will remain a valid and enforceable first priority lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (v) the Borrower will forever warrant and defend the title to the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 3.02. Rents and Tenant Leases. (i) The Borrower has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Tenant Leases on the Borrower's part to be kept, observed and performed; (ii) except for

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Permitted Encumbrances, the Borrower has not previously sold, assigned or transferred or granted or permitted any Lien on the Tenant Leases or the Rents, whether now due or hereafter to become due; (iii) no Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised; (iv) the Borrower has not received any funds or deposits from any Tenant in excess of one month's rent for which credit has not already been made on account of accrued rents; and (v) to the best of the Borrower's knowledge, the Tenants under the Existing Tenant Leases are not in default under any of the terms thereof.

SECTION 3.03. Environmental Compliance. To the best knowledge of the Borrower, (i) the Property has not been used by the Borrower, and has never been used by any other person, to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substance; (ii) the Property is not now, and has never been, in violation of any applicable Environmental Law; (iii) the Property does not contain, and has never contained, any Hazardous Substance; (iv) there are no pending investigations, claims or threats of claims with respect to the Property by any Governmental Authority or other person relating to any Environmental Law; (v) there are no Hazardous Substances present on property adjacent to the Property that could migrate to, through or under the Property; (vi) the past, current and intended uses of the Property comply and will comply with all Environmental Laws; and (vii) the Borrower has obtained all certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities required by Environmental Laws.

SECTION 3.04. Other Governmental Compliance, etc. (i) The Property, the Project and the use and operation thereof contemplated by the Construction Loan Agreement comply with all applicable Governmental Requirements; and (ii) no Lien exists on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 3.05. Construction Documents. The Borrower warrants to the Lender that: (i) There is in effect no other assignment to any other person of any of the Lender's rights under the Construction Documents, nor any Lien thereon; (ii) the Borrower has done no act nor omitted to do any act that might prevent the Lender from, or limit the Lender in, acting under any of the provisions of this Mortgage with respect to the Construction Documents; (iii) there exists no default under the terms of any of the Construction Documents; (iv) the Borrower is not prohibited under any agreement with any other person or any Governmental Requirement from the granting of the Liens hereunder on the Construction Documents, the performance of each and every covenant of the Borrower hereunder and in the Construction Documents, and the meeting of each and every condition herein and therein contained.

SECTION 3.06. Bankruptcy. The Borrower is, and after giving effect to the transactions contemplated under the Construction Loan Agreement will be, solvent, and no bankruptcy, insolvency or similar proceeding is pending or contemplated by or against the Borrower.

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SECTION 3.07. Certificates and Permits. (i) The Borrower has obtained all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property, the conduct of the Borrower's business at the Real Property, and the construction of the Project, including all required zoning, building, land use, environmental, occupancy, fire and other approvals, (ii) the present and contemplated use and occupancy of the Property do not conflict with or violate any of the same, and (iii) the Borrower, promptly upon request by the Lender, shall deliver to the Lender copies of all of the same.

IV. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Borrower covenants and agrees that, until the Obligations are paid and this Mortgage is satisfied in writing by the Lender:

SECTION 4.01. Payment of Impositions. Unless the Borrower is making monthly deposits pursuant to Section 4.06 hereof, the Borrower will pay or cause to be paid all Impositions and will deliver receipts therefor to the Lender at least ten days before the Impositions are due, or at the Lender's request will pay to the Lender an amount equal to such Impositions. The Borrower may, at the Borrower's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed.

SECTION 4.02. Insurance. The Borrower shall at all times maintain and pay all premiums and costs related to insurance. At least ten days prior to the date the premiums on each required insurance policy becomes due and payable, the Borrower shall furnish to the Lender evidence of the payment of such premiums. The Borrower agrees that the Borrower will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by the Lender and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

SECTION 4.03. Damage and Destruction.

(a) **Borrower's Obligations.** In the event of any damage to or loss or destruction of the Property, the Borrower shall (i) promptly notify the Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property and (ii) unless otherwise instructed by the Lender shall promptly, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose or shall be otherwise applied by the Lender as provided herein, commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications

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reasonably approved, and with other reasonable provisions for the preservation of the security hereunder established, by the Lender.

(b) **Lender's Rights; Application of Proceeds.** If any portion of the Property is so damaged, destroyed or lost, and such damage, destruction or loss is covered, in whole or in part, by insurance described in Section 4.02, then (i) the Lender may, but shall not be obligated to, make proof of loss if proof of loss is not made promptly by the Borrower, and is hereby authorized and empowered by the Borrower to settle, adjust or compromise any claims for damage, destruction or loss thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to the Lender, and (iii) the Lender shall have the right to apply the insurance proceeds, first, to reimburse the Lender for all reasonable costs and expenses, including all attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and second, the remainder of such proceeds shall be applied, at the Lender's option, (A) in payment of all or any part of the Obligations in the order and manner determined by the Lender in its sole discretion (provided that the remainder of the Obligations shall continue in full force and effect and the Borrower shall not be excused in the payment thereof), (B) to the cure of any then-current default hereunder, or (C) to the repair, restoration, or replacement, in whole or in part, of the portion of the Property so damaged, destroyed or lost. The Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.

SECTION 4.04. Condemnation.

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(a) **Borrower's Obligations; Proceedings.** The Borrower, immediately upon obtaining knowledge thereof, will notify the Lender of any pending or threatened proceedings for the condemnation of the Property or any part thereof or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to the Property or any part thereof. The Lender may participate in any such proceedings, and the Borrower from time to time will execute and deliver to the Lender all instruments requested by the Lender to permit such participation. The Borrower shall, at its expense, diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defense of any such proceedings, provided that no settlement of any such proceedings shall be made by the Borrower without the Lender's consent, not to be unreasonably withheld.

(b) **Lender's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to the Lender. The Borrower authorizes the Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Lender shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any of the same.

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(c) **Application of Proceeds.** The Lender shall have the right to apply any proceeds, judgments, decrees or awards referred to in subsection (b) of this Section 4.04 first, to reimburse the Lender for all reasonable costs and expenses, including attorneys' fees, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof in the same manner as provided in Section 4.03(b) with respect to insurance proceeds held by the Lender.

SECTION 4.05. Liens and Liabilities.

(a) **Discharge of Liens.** The Borrower will pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property, or any part thereof, and in general, the Borrower shall do, or cause to be done, at the Borrower's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage.

(b) **Creation of Liens.** The Borrower will not, without the Lender's consent, create, place or permit to be created or placed, or through any act or failure to act acquiesce in the placing of, or allow to remain, any voluntary or involuntary Lien, whether statutory, constitutional or contractual, against or covering the Property, prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances. If any such Lien becomes attached to the Property without such consent, the Borrower will promptly commence and diligently proceed to cause the same to be discharged and released.

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

SECTION 4.06. Tax and Insurance Deposits. At any time during the term of this Mortgage after an Event of Default shall have occurred and be continuing, upon demand by the Lender, the Borrower shall deposit with the Lender a sum that bears the same relation to the annual insurance premiums for all insurance required by the terms hereof and Impositions assessed against the Property for the insurance period or tax year then in effect, as the case may be, as the number of months elapsed as of the date of such demand since the last preceding installment of said premiums or Impositions shall have become due and payable bears to twelve (12). For the purpose of this computation, the month in which such last preceding installment of premiums or Impositions became due and payable and the month in which such demand is given shall be included and deemed to have elapsed. On the first day of the month next succeeding the month in which such demand is given, and thereafter on the first day of each and every month during the term of this Mortgage, the Borrower shall deposit with the Lender a sum equal to one-twelfth of such insurance premiums and such Impositions for the then-current annual insurance period and tax year, so that as each installment of such premiums and

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Impositions shall become due and payable, the Borrower shall have deposited with the Lender a sum sufficient to pay the same. All such deposits shall be received and held by the Lender, and shall be applied to the payment of each installment of such premiums and Impositions as they shall become due and payable. The Lender shall, upon demand, furnish evidence to the Borrower of the making of each such payment. If the amount of such premiums and Impositions has not been definitely ascertained at the time when any such monthly deposits are required to be made, the Borrower shall make such deposits based upon the amount of such premiums and Impositions for the preceding year, subject to adjustment as and when the amount of such premiums and Impositions are ascertained. If at any time when any installment of such premiums and such Impositions becomes due and payable the Borrower shall not have deposited a sum sufficient to pay the same, the Borrower shall, within ten days after demand, deposit any deficiency with the Lender. Upon payment in full of the Obligations secured by this Mortgage, any remaining amount on deposit with the Lender shall be repaid to the Borrower. The Borrower shall deliver to the Lender all insurance and tax bills promptly following receipt during any period when such monthly deposits are to be made with the Lender in such order as the Lender in its sole discretion may elect. If the Obligations shall be accelerated as herein provided, all funds so deposited may, at the Lender's option, be applied to the Obligations in the order determined by the Lender or to cure said Event of Default or to the payment of insurance premiums and Impositions as provided in this Section.

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SECTION 4.07. Operations; Utilities; Waste, Demolition, Alteration or Replacement. The Borrower will continuously operate any existing Improvements, and upon completion will continuously operate the Project, in accordance with sound business practices, and will not engage in any activity that would diminish the value of the Property or decrease the income from the Property. The Borrower shall pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property. The Borrower shall cause the Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition; shall not commit or permit waste thereon; except as contemplated by the Plans, shall not remove, demolish or alter the design or structural character of any Improvements erected on the Land without the express prior written consent of the Lender; and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. The Borrower agrees not to remove any of the fixtures or Personal Property included in the Property without the express prior written consent of the Lender and unless the same are immediately replaced with like property of at least equal value and utility.

SECTION 4.08. Rents and Tenant Leases. The Borrower shall: (i) observe and perform each obligation and condition provided for under the terms of the Tenant Leases to be observed and performed by the Borrower, and shall give prompt notice to the Lender in the event the Borrower fails to observe and perform the same; (ii) enforce or secure in the name of the Lender the observance and performance of each and every obligation and condition to be observed and performed by any Tenant under the terms of the Tenant Leases; (iii) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Tenant Leases or the obligations, duties or liabilities of the Borrower and any Tenant thereunder, and, upon request by the Lender to do so in the name and on behalf of the Lender

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but at the expense of the Borrower, and to pay all costs and expenses of the Lender, including reasonable attorneys' fees, in any action or proceeding in which the Lender may appear; (iv) not receive or collect any Rents from any present or future Tenant for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise grant or permit any Lien on future payments of the Rents; (v) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any Tenant of and from any obligations and conditions by said Tenant to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Tenant Lease; (vi) not enter into any Tenant Leases except on a form approved by the Lender, nor cancel, terminate or consent to any surrender of any Tenant Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Lender; (vii) not renew or otherwise extend the term of the Existing Tenant Leases; provided, however, that nothing herein contained shall prevent the Borrower, upon expiration of the now-current term (or other expiration or termination) of the Existing Tenant Leases, from leasing the property covered thereby to the Tenant thereunder by a lease or leases expressly subject and fully subordinate to the Liens of this Mortgage; (viii) promptly upon the execution by the Borrower of any future Tenant Lease, (A) furnish the Lender with the name and address of the Tenant thereunder, the term of such Tenant Lease and a description of the premises covered thereby and, upon request of the Lender, a copy of such Tenant Lease, and (B) execute all such further assignments of such Tenant Lease and the Rents therefrom as the Lender may require; (ix) not, without the prior written approval of the Lender, execute any management or leasing agreements affecting any of the Property; and (x) if required by the Lender, cause each Tenant Lease to provide, in a manner approved by the Lender, that the Tenant Lease is junior and subordinate to the Liens of this Mortgage and that the Tenant will recognize, as lessor, the Lender or any person succeeding to the interest of the Lender upon any foreclosure of this Mortgage.

SECTION 4.09. Sale, Lease or Transfer, etc. The Borrower covenants and agrees that neither the Real Property, nor any part thereof, nor any ~~interest~~ therein, shall be (i) sold, assigned, transferred, conveyed, leased with an option to purchase, exchanged or otherwise disposed of, nor shall the Borrower contract with any person for any of the foregoing, without the Lender's prior written consent; or (ii) subject to any additional Lien, either voluntarily or involuntarily, without the Lender's prior written consent. Upon the occurrence of any such sale, assignment, transfer, conveyance, lease with an option to purchase, exchange, other disposition, contract or Lien, this Mortgage shall be deemed to be in default at the option of the Lender and the Lender may, at its sole option: (A) declare the Obligations immediately due and payable in full and exercise the remedies on default hereunder; or (B) require the payment, after the date of such occurrence, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations and other remedies, whether such rights and remedies be exercised by the Lender to obtain a higher rate of interest on the Obligations or to protect the security of this Mortgage. The Borrower further covenants and agrees that without the prior written consent of the Lender, the Borrower (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise. Any such dissolution, liquidation or termination, without the Lender's prior written consent, shall constitute a default hereunder. The Borrower (if a partnership or corporation) expressly covenants and agrees, and acknowledges the Lender's express reliance hereon, that

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any sale, pledge, encumbrance, contract to sell, assignment or other transfer of any equity interest in the Borrower, or any other transaction whereby the legal or beneficial ownership of the Borrower is changed, including the sale of additional stock or other equity interests, the liquidation or dissolution of the Borrower, or the merger or consolidation of the Borrower with any other person, shall be treated as a transfer of the Real Property for purposes of this section.

SECTION 4.10. Use, Governmental Compliance, etc. The Borrower will use the Property solely as residential property and for no other purpose. The Borrower shall maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the operation of any of the Property, the conduct of the Borrower's business at the Real Property, and the construction, completion and occupancy of the Project, including all required zoning, building, land use, environmental, occupancy, fire and other approvals. The Borrower shall comply with and make all payments required under all Governmental Requirements now or hereafter affecting the Property or any part thereof or the business or activity conducted or to be conducted thereon. The Borrower shall not commit, suffer, permit or allow any act to be done in or on the Property in violation of any such Governmental Requirements or that constitutes a public or private nuisance, or that makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto. The Borrower shall not permit any Lien to exist on the Property, or any part thereof, in favor of any Governmental Authority or other person under any Governmental Requirement that might have priority over this Mortgage.

SECTION 4.11. Zoning; Title Matters. The Borrower will not, without the Lender's consent, (i) initiate or support any zoning reclassification of the Property, seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or violate, applicable zoning ordinances, (ii) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Borrower or adversely affect the rights of the Lender under the Loan Documents; (iii) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality or (iv) permit or suffer the Property to be used by the public or any person in such manner as might make possible a claim of adverse usage or possession or of any implied dedication easement or easement by prescription.

SECTION 4.12. Environmental Compliance. The Borrower shall (i) not, and shall not permit any Tenant or other person to, bring any Hazardous Substances on to the Property; (ii) if any Hazardous Substances are brought or found on the Property, immediately remove and properly dispose thereof in accordance with applicable Environmental Laws; (iii) cause the Property and the operations conducted thereon (including all operations conducted thereon by Tenants and other persons) to comply with all Environmental Laws; (iv) permit the Lender from time to time to inspect the Property and observe the Borrower's operations thereon and to perform tests (including soil and ground water tests) for Hazardous Substances on the Property; (v) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by any

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applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Property), personal injury or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Property or the operations of the Borrower on the Property; (vi) promptly give notice to the Lender in writing if the Borrower should become aware of (A) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Property, in connection with the operations on the Property, or at any adjacent property that could migrate to, through or under the Property, (B) any violation of Environmental Laws regarding the Property or operations on the Property, and (C) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the Borrower or the Property; and (vii) deliver to the Lender, at the Lender's request, copies of any and all documents in the Borrower's possession or to which the Borrower has access relating to Hazardous Substances or Environmental Laws and the Property, and the operations on the Property, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports. If the Lender at any time reasonably believes that the Borrower is not complying with all applicable Environmental Laws or the requirements of this Mortgage regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Property, the Lender may require the Borrower to furnish to the Lender an environmental audit or site assessment reasonably satisfactory to the Lender with respect to the matters of concern to the Lender. Such audit or assessment shall be performed at the Borrower's expense by a qualified consultant approved by the Lender.

SECTION 4.13. Maintenance of Lien Priority. The Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property created hereby. The Borrower shall execute, acknowledge, deliver, file and record such additional instruments as the Lender may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property of the Borrower or proceeds to such Liens. If the Liens, validity or priority of this Mortgage, or if title to any of the rights of the Borrower or the Lender in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Borrower or the Lender with respect thereto, the Borrower will promptly notify the Lender thereof and will diligently endeavor to cure any defect that may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Lender's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Lender (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Mortgage or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, and the removal of prior Liens. The Borrower shall, on demand, reimburse the Lender for all expenses

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(including attorneys' fees and disbursements) reasonably incurred by the Lender in connection with any of the foregoing matters.

SECTION 4.14. Construction Documents. (i) The Borrower shall (A) perform and observe each and every condition and obligation of the Borrower contained in the Construction Documents; (B) give prompt notice to the Lender of any claim of default under the Construction Documents given to the Borrower or by the Borrower, together with a complete copy of any such claim; (C) at the sole cost and expense of the Borrower, enforce the performance and observance of each and every obligation and condition of the Construction Documents to be performed or observed by any other person thereunder, and (D) appear in, and defend any action growing out of, or in any manner connected with, the Construction Documents or the obligations or liabilities of the Borrower, or any guarantor thereunder; and (ii) the Borrower shall not (A) modify the terms of the Construction Documents unless required so to do by the terms of the Construction Documents; or (B) waive or release the observance or performance of any obligation or condition of the Construction Documents or any liability on account of any warranty given by them.

SECTION 4.15. Certificates. The Borrower, within ten days after request therefor by the Lender, shall furnish to the Lender a written statement, duly acknowledged, certifying to the Lender or the Lender's designee as to (i) the amount of the Obligations then owing under this Mortgage, (ii) the terms of payment and maturity date of the Obligations, (iii) the date to which interest has been paid under this Mortgage, (iv) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, (v) the representations and warranties of the Borrower set forth herein being true and correct on the date of such certification, (vi) the Loan Documents being valid, in full force and effect and unmodified (except as may be specifically noted therein) on the date of such certification, and (vii) whether there are any defaults under the Loan Documents, and to the best knowledge of the Borrower, whether any event has occurred or any condition or state of facts exist which constitute, or with the giving of notice or the lapse of time or both would constitute a default under the Loan Documents. Such certificate shall be binding upon the Borrower and its successors and assigns, and may be relied upon by any prospective assignee of the Loan Documents.

V. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 5.01. Defeasance. This Mortgage is made upon the condition that if the Borrower pays the Obligations, as defined in this Mortgage (which Obligations include all of the debt described in Section 2.01 of this Mortgage, including (i) the payment of all advances against the Loan now or hereafter evidenced by the Note, and all interest thereon and all other fees, charges and costs (including reasonable attorneys' fees), payable in connection therewith, (ii) the payment of any and all other fees, charges, costs (including attorneys' fees as provided therein)

and other sums now or hereafter becoming due and payable by the Borrower to the Lender under the terms of the Construction Loan Agreement, this Mortgage and the other Loan Documents, and (iii) the payment of all other Liabilities of the Borrower to the Lender of every kind and

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description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), and reimburses the Lender for any amounts the Lender has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, keeping the Property in repair, performing the Borrower's obligations under any Tenant Lease or Construction Document, complying with Environmental Laws or the other provisions of Section 4.12 hereof, and any other advancements hereunder, and interest thereon, and fulfills all of its other obligations under this Mortgage, and if the Lender has no obligation to extend any further credit to or for the account of the Borrower, and if there is in existence no contingent liability of the Borrower that is secured by this Mortgage, this conveyance shall be null and void.

SECTION 5.02. Events of Default. The happening of any one or more of the following events, or the happening of any other event of default as specified elsewhere in this Mortgage (collectively, "Events of Default"), shall constitute a default under this Mortgage:

(a) if the Borrower fails to pay to the Lender when due any principal or interest on the Loan or any other of the Obligations and such default continues unremedied for ten (10) days after written notice thereof has been given by the Lender to the Borrower; provided, however, that the Lender shall have no obligation to give any such notice of default more often than twice during any twelve-month period, and if a third such default shall occur within any twelve-month period and continue unremedied for ten (10) days, such default shall constitute an Event of Default without any such notice; or

(b) if the Borrower defaults in the observance or performance of any provision of this Mortgage or the Construction Loan Agreement not otherwise specifically provided for in this Section 5.02 or if an Event of Default under the Construction Loan Agreement occurs (after giving effect to any applicable notice, grace and cure periods provided therein); or

(c) if any guarantor of any of the Obligations fails to comply with any of the provisions of such guarantor's guaranty agreement (after giving effect to any applicable notice, grace and cure periods provided for therein); or

(d) if the Lender determines that any statement, certification, representation or warranty contained herein or in any of the other Loan Documents, or any report, financial statement, certificate or other instrument delivered to Lender was misleading or untrue in any material respect at the time it was made; or

(e) if default is made in the payment of any indebtedness (other than the Obligations) of the Borrower or any guarantor of the Obligations when due, or if any other default occurs in connection with any such indebtedness if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or

(f) if any Obligor fails to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy or under any insolvency law is filed by

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or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, or makes any transfer in fraud of, creditors; or

(g) if any Obligor dies, if an individual; or dissolves, if a corporation or a partnership; or if a partnership, any general partner becomes insolvent, dies or is replaced or withdraws; or if a corporation, any principal officer thereof becomes insolvent, dies or ceases to be employed by any such Obligor; or

(h) if final judgment for the payment of money is rendered against any Obligor, and the same remains undischarged for a period of 30 days during which execution is not effectively stayed; or

(i) if any of the material provisions contained in any Loan Document is declared invalid or inoperative by any court of competent jurisdiction; or

(j) if any other default, event of default or other event that would permit the Lender to accelerate any of the Obligations occurs under any of the other Loan Documents (after giving effect to any applicable notice, grace and cure periods provided for therein); or

(k) if an order of a court of competent jurisdiction is entered permanently enjoining the construction of the Project or operation of the Collateral and all rights of appeal therefrom are exhausted; or

(l) if any action is taken for the enforcement of any Lien on any prior Lien on any of the Collateral;

(m) if the Borrower at any time prior to completion of the Project abandons the Project, or ceases to work thereon for a period of more than 10 consecutive calendar days, or fails diligently to prosecute the work on the Project; or

(n) if in the judgment of the Lender the proceeds of the Loan or any part thereof are being or at any time have been diverted to a purpose other than the reimbursement for or payment of costs of construction of the Project that have been approved by the Lender; or

(o) if the Borrower conveys or further encumbers all or part of the Property as prohibited by Section 4.09 hereof; or

(p) if any Lien, statement of Lien or suit to enforce a Lien is filed against any of the Property and the Borrower fails to have such Lien satisfied or suit dismissed or to secure the payment of the amount claimed by such Lien, statement of Lien or suit by a bond, letter of credit or other security satisfactory to the Lender within ten days of the day such Lien, statement of Lien or suit is filed; or

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(q) if any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, Lien or assessment upon the Property shall be chargeable against the owner of this Mortgage.

SECTION 5.03. Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** Upon the occurrence of an Event of Default or at any time thereafter, time being of the essence, the Lender may at its option and without demand or notice to the Borrower, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and the Lender may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, any of the other Loan Documents and applicable law. The Borrower also waives any and all rights the Borrower may have to a hearing before any Governmental Authority prior to the exercise by the Lender of any of its rights under this Mortgage or any of the other Loan Documents and applicable law.

(b) **Operation of Property by Lender.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Lender, the Lender (or any person designated by the Lender) may, but will not be obligated to, (i) enter upon and take possession of any or all of the Property, exclude the Borrower therefrom, and hold, use, administer, manage and operate the same to the extent that the Borrower could do so, without any liability to the Borrower resulting therefrom; (ii) perform any and all obligations of the Borrower under the Construction Documents and exercise any and all rights of the Borrower thereunder as fully as the Borrower could; (iii) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (iv) make repairs and purchase needed additional property; (v) insure or reinsure the Property; (vi) maintain and restore the Property; (vii) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (viii) exercise every power, right and privilege of the Borrower with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Borrower for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Lender shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Borrower or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided

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by law in case of past due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under this power of sale, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold under this Mortgage in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full.

(e) Personal Property and Fixtures. On the happening of any Event of Default or at any time thereafter, the Lender shall have and may exercise with ~~respect~~ to the Personal Property and all other personal property and fixtures included in the Property (the "UCC Property") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the UCC Property and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the UCC Property or its value and without the necessity of a court order. The Lender shall have, among other rights, the right to take possession of the UCC Property and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Lender, at its option and its sole discretion, to repair, restore or otherwise prepare the UCC Property for sale, lease or other use or disposition. At the Lender's request, the Borrower shall assemble the UCC Property and make the UCC Property available to the Lender at any place designated by the Lender. To the extent permitted by law, the Borrower expressly waives any notice of, and any other formalities prescribed by law with respect to, any sale or other disposition of the UCC Property or to the exercise of any other right or remedy of the Lender after default. To the extent that such notice is required and cannot be waived, the Borrower

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agrees that if such notice is given to the Borrower in accordance with the provisions of Section 6.14 below, at least five days before the time of the sale or other disposition of UCC Property or exercise of such other right or remedy, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Borrower agrees that the Lender may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Borrower hereby grants the Lender the right, at its option after default hereunder, to transfer at any time to itself or its nominee the UCC Property or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as UCC Property or to apply it on the Obligations in such order and amounts and manner as the Lender may elect. The Borrower covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the UCC Property or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Lender and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

The Lender may, at its option, use any of the Property (including that described in Section 2.02(i) for any purpose for which the Borrower could have used such Property, including the construction or financing of the Project and any other lawful purpose, or the Lender may apply such Property to the Liabilities in such order and proportions as the Lender, in its sole discretion, may elect.

(f) Rents and Tenant Leases. Upon the occurrence of an Event of Default or at any time thereafter:

(1) The Lender, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Tenant Leases:

(A) to terminate the license granted to the Borrower in Section 2.02(d)(iii) hereof to collect the Rents, and, without taking possession, in the Lender's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.03(h);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Borrower, make, modify, enforce, cancel or accept surrender of any Tenant Lease, remove and evict any Tenant, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Lender shall deem proper to protect the security hereof, as fully and to the same extent as the Borrower could do if in possession, and in such event to apply any funds so collected to the operation and management of the

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Property (including payment of reasonable management, brokerage and attorney's fees) and as set forth in Section 5.03(h);

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Borrower under this Mortgage.

(2) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Lender, once exercised, shall continue for so long as the Lender shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Lender shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) Foreclosure Deeds. The Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) Order of Application of Proceeds. All payments received by the Lender as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Lender as follows: (i) to the payment of all necessary expenses incident to the execution of any remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the other Loan Documents, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the other Loan Documents, all in such order as the Lender may elect in its sole discretion, (iii) to a cash collateral reserve fund to be held by the Lender in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (iv) the remainder, if any, shall be paid to the Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the Lender shall have the option to proceed with foreclosure, either through the courts or by power of sale foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations

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whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(j) **Waiver of Appraisement Laws.** The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.03, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

SECTION 5.04. Construction Documents. Upon the occurrence of an Event of Default or at any time thereafter, the Lender may exercise any or all of the rights and remedies of the Borrower under the Construction Documents, to the same extent as the Borrower could in the absence of such Event of Default, including the completion of the construction of the Project pursuant to the Construction Documents and in the course of such construction the making of such changes in the Plans and other Construction Documents as the Lender in its sole discretion may deem advisable. The Lender may, but without obligation so to do and without notice to or demand on the Borrower or releasing the Borrower from its obligations so to do, perform any covenant or condition of the Borrower under the Construction Documents and, to the extent that the Lender shall incur any costs or pay any monies in connection therewith, including any costs or expenses of litigation, then such costs, expense or payment shall be included in the Obligations and shall bear interest from the incurring or payment thereof at the Default Interest Rate. The Lender shall have the right to call on the Architects, the Contractors, the Engineers and any other party to the Construction Documents, to advise and consult with the Lender concerning construction of the Project and other matters relating thereto, and to furnish to the Lender information concerning the Project. If the Lender calls on the Architects, the Contractors, the Engineers or any other person for such services, the Borrower agrees to pay all charges thereof for performing such services.

VI. MISCELLANEOUS

SECTION 6.01. Collection Costs. The Borrower agrees to pay all costs, including reasonable attorneys' fees, incurred by the Lender in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property (unless this Mortgage is herein

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expressly made subject to any such Lien) and all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Lender shall be a part of the Obligations.

SECTION 6.02. No Obligations of Lender; Indemnification. The Lender shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to any Tenant Lease, the Improvements, the Personal Property, the Land, the Construction Documents or any of the other Property (unless expressly assumed by the Lender under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Lender any duties or obligations that would make the Lender directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Borrower agrees to defend, indemnify and save harmless the Lender from and against any and all claims, causes of action, judgments and other loss, cost and expense (collectively called "claims and losses") relating to or arising out of any default in the Borrower's performance of its representations, warranties, covenants, agreements, duties, responsibilities and obligations under this Mortgage or any of the other Loan Documents and with respect to any of the Property. The provisions of this Section 6.02 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage with respect to claims and losses asserted against or suffered by the Lender. Without limiting the generality of the foregoing, the Borrower agrees that the Borrower's obligation to defend, indemnify and save harmless the Lender set forth in this Section shall specifically include all claims and losses asserted against or suffered by the Lender that are related to or arise out of (i) any representations or warranties set forth in Section 3.03 hereof that shall prove to be false or untrue in any material respect, (ii) any default in the performance of nonperformance of the Borrower's covenants and agreements set forth in Section 4.07 hereof, and (iii) any clean up or removal of, or other remedial action with respect to, any Hazardous Substances now or hereafter located on or included in the Property, or any part thereof, that may be required by any Environmental Law or Governmental Authority.

SECTION 6.03. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

SECTION 6.04. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Lender shall inure to the benefit of the Lender's successors and assigns.

SECTION 6.05. Waiver and Election. The exercise by the Lender of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the Liens granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later

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or simultaneous suit to collect the Obligations or foreclose the Liens granted by this Mortgage. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Lender, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.06. Landlord-Tenant Relationship. Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Borrower.

SECTION 6.07. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Lender to effectuate the provisions hereof.

SECTION 6.08. Application of Payments. If the Liens created by this Mortgage are invalid or unenforceable as to any part of the Obligations or are invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Obligations that are not secured or not fully secured by said Liens created hereby.

SECTION 6.09. Other Mortgages Encumbering the Land. The Borrower hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to the Lender from time to time and at any time the following information: (i) the amount of debt secured by such mortgage; (ii) the amount of such debt that is unpaid; (iii) whether such debt is or has been in arrears; (iv) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (v) any other information regarding such mortgage or the debt secured thereby that the Lender may request from time to time.

The Borrower expressly agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of the Lender. The Borrower further agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering any of the Real Property, the Lender may (but shall

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not be required to) pay all or any part of such amount in default, without notice to the Borrower. The Borrower agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the Default Interest Rate, and any sum so advanced with interest shall be a part of the Obligations.

SECTION 6.10. Meaning of Particular Terms. The words "Borrower" and "Lender" shall include their respective successors and assigns. The term "Borrower" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, corporations, associations, trusts, partnerships or other entities or organizations.

SECTION 6.11. Advances by the Lender. If the Borrower shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens or Impositions, the keeping of the Property in repair, the performance of the Borrower's obligations under any Tenant Lease or any Construction Document, the payment or performance of any prior mortgages, the compliance with Environmental Laws or the other provisions of Section 4.12 hereof, or the performance of any other term or covenant herein contained, the Lender may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. The Borrower agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the Default Interest Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Lender of any Event of Default resulting from the Borrower's failure to pay the amounts paid.

SECTION 6.12. Release or Extension by the Lender. The Lender, without notice to the Borrower and without in any way affecting the rights of the Lender hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Note or any of the other Loan Documents.

SECTION 6.13. Partial Payments. Acceptance by the Lender of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Borrower to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Lender shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

SECTION 6.14. Notices. Any notice provided with respect to this Mortgage shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as a party shall specify to the other party in writing) or if sent by registered or certified mail, on the third business day after the day on which mailed to such address:

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(a) If to the Borrower, at: BWA Development Corp., 200 Union Hill Drive, Birmingham, Alabama 35209 and

(b) If to the Lender, at: National Bank of Commerce of Birmingham, 1927 First Avenue North, Birmingham, Alabama 35203.

SECTION 6.15. Submission to Jurisdiction, etc. The Borrower irrevocably (a) acknowledges that this Mortgage will be executed by the Borrower and by the Lender in the State of Alabama (which is the state in which the Lender's main office is located) and that the Loan will be closed and performed in that state in reliance on the security afforded by this Mortgage and the other Loan Documents; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson Shelby County, Alabama (collectively, the "Courts"), over any suit, action or proceeding arising out of or relating to this Mortgage or any of the other Loan Documents to enforce the arbitration provisions of this Mortgage or, if notwithstanding the intent of the parties such arbitration provisions are unenforceable, to address the merits of any dispute (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection that the Borrower may now or hereafter have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon the Borrower and may be enforced in any other court to the jurisdiction of which the Borrower is subject, by a suit upon such judgment; (e) designates and appoints Thomas H. Brigham, Jr., the address of which is 200 Union Hill Drive, Birmingham, Alabama 35209 as the Borrower's authorized agent to accept and acknowledge on such Borrower's behalf service of any and all process that may be served in any Agreement Action in any of the Courts; (f) agrees, if such agent shall cease so to act, irrevocably to designate and appoint without delay another such agent in the State of Alabama satisfactory to the Lender; (g) consents to the service of process on the Borrower in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to (i) the Borrower at the Borrower's address designated in or pursuant to Section 9.01 or (ii) the agent for service of process appointed by the Borrower under this Section; (h) agrees that service in either manner specified in clause (g) next above shall in every respect be effective and binding on the Borrower to the same extent as though such service of process were served on the Borrower in person by a person duly authorized to serve such process; and (i) AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE BORROWER TO THE JURISDICTION OF THE COURTS OF THE STATE OF ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE BORROWER THAT THE BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF THE COURTS OF THE STATE OF ALABAMA AND MAY BE SUED IN THAT STATE IN ANY AGREEMENT ACTIONS. Nothing in this Section shall affect the Lender's right to serve process or bring Agreement Actions in manners and in courts other than as herein provided.

SECTION 6.16 Arbitration; Dispute Resolution; Preservation of Foreclosure Remedies

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The Borrower represents to the Lender that its business and affairs constitute substantial interstate commerce and that it contemplates using the proceeds of the Note in substantial interstate commerce. Except as otherwise specifically set forth below, any action, dispute, claim, counterclaim or controversy ("Dispute" or "Disputes"), between or among the Lender, the Borrower or any other Obligor, including without limitation any claim based on or arising from an alleged tort, shall be resolved by arbitration as set forth below. As used herein, Disputes shall include all actions, disputes, claims, counterclaims or controversies arising in connection with the Note, any extension of or commitment to extend credit by the Lender, any collection of any indebtedness owed to the Lender, any security or collateral given to the Lender, any action taken (or any omission to take any action) in connection with any of the foregoing, any past, present and future agreement between or among the Lender, the Borrower or any other Obligor (including without limitation the Note and any Loan Document), and any past, present or future transactions between or among the Lender, the Borrower or any other Obligor. Without limiting the generality of the foregoing, Disputes shall include actions commonly referred to as lender liability actions. All Disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Commercial Arbitration Rules of the AAA. Defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in any such arbitration proceeding, and the commencement of an arbitration proceeding with respect to this Mortgage shall be deemed the commencement of an action for such purposes. Notwithstanding the foregoing, the Borrower and each other Obligor agrees that the Lender shall have the option, but not the obligation, to submit to and pursue in a court of law any claim against the Borrower or any other Obligor for a debt due. The Borrower and each other Obligor agrees that, if the Lender pursues such a claim in a court of law, (i) failure of the Lender to assert any additional claim in such proceeding shall not be deemed a waiver of, or estoppel to pursue, such claim as a claim or counterclaim in arbitration as set forth above, and (ii) the institution or maintenance of a judicial action hereunder shall not constitute a waiver of the right of any party to submit any other action, dispute, claim or controversy as described above, even though arising out of the same transaction or occurrence, to binding arbitration as set forth herein. If the Borrower asserts a claim against the Lender in arbitration or otherwise during the pendency of a claim brought by the Lender in a court of law, the court action shall be stayed and the parties shall submit to arbitration all claims. No provision of, nor the exercise of any rights under this Section, shall limit the right of any party (i) to foreclose against any real or personal property collateral by exercise of a power of sale under any Security Document, or by exercise of any rights of foreclosure or of sale under applicable law, (ii) to exercise self-help remedies such as set-off, or (iii) to obtain provisional or ancillary remedies such as injunctive relief, attachment or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any arbitration or referral. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff in such an action, to submit the Dispute to arbitration or, in the case of actions on a debt, to judicial resolution. Whenever an arbitration is required hereunder, the arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the AAA. The AAA shall designate a panel of ten (10) potential arbitrators knowledgeable in the subject matter of the Dispute. Each of the Lender and the Obligor shall designate, within thirty (30) days of the receipt of the list

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of potential arbitrators, one of the potential arbitrators to serve, and the two arbitrators so designated shall select a third arbitrator from the eight remaining potential arbitrators. The panel of three (3) arbitrators shall determine the resolution of the Dispute.

SECTION 6.17 Release of Lots.

So long as no Event of Default shall have occurred and be continuing and subject to the terms hereof, any of the Lots in the Project (as defined in the Loan Agreement) shall be released from the Lien of this Mortgage by the Mortgagor or any other owner of the Lots upon payment to the Lender of a sum equal to the release price for such Lots (the "Lot Release Price"). As used herein, "Lot Release Price" shall mean the greater of (a) the total proceeds from the sale (or anticipated) of such Lot(s) less the amount of customary closing costs actually expended to close the sale of such Lot(s), or (b) \$35,000 per Lot. Upon payment to the Lender of the Lot Release Price with respect to any Lot, the Lender shall promptly deliver to the party paying said price a partial release from the Lien of this Mortgage whereunder such Lot is released from the Lien of this Mortgage, and the Lender shall apply said release price to the reduction of the Liabilities secured hereby in accordance with the terms of Section 2.07 of the Loan Agreement. The right to obtain such release shall be suspended during such time as an Event of Default, or circumstance that with notice or lapse of time or both could constitute an Event of Default exists, subject to reinstatement only if the Event of Default or circumstance is cured in its entirety. The right to obtain such releases shall be extinguished by the acceleration of the due date of the Loan. Without limiting the foregoing, in no event shall the right to obtain such releases survive foreclosure.

IN WITNESS WHEREOF, the undersigned BWA Development Corp. has caused this instrument to be executed by its duly authorized officer on the date first written above.

BWA DEVELOPMENT CORP.

By: *Tom*

Its: *President*

[S E A L]

ATTEST:

C. M. Miller
Its: *Sec*

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STATE OF ALABAMA)
_____ COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Thomas N. Ingram Jr., whose name as President of BWA Development Corp., a corporation, is signed to the foregoing Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 30th day of January, 1992.

Margaret Montgomery
Notary Public

AFFIX SEAL

My commission expires: MY COMMISSION EXPIRES MAY 29, 1995

This instrument prepared by:

Deborah J. Long
MAYNARD, COOPER, FRIERSON & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

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EXHIBIT A

Land Description)

A parcel of land situated in Section 2, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of the Northeast 1/4 of the Southwest 1/4 of said Section 2, and run South along the East line of same 420.80 feet to a point; thence right $119^{\circ}24'40''$ and run Northwesterly 33.49 feet to a point; thence right $49^{\circ}13'10''$ and run Northwesterly 104.34 feet to a point; thence left $73^{\circ}15'20''$ and run Northwesterly 250.80 feet to a point; thence right $50^{\circ}15'03''$ and run Northwesterly 137.88 feet to a point on the Southwesterly right of way of the Inverness Country Club Road; thence left $91^{\circ}53'33''$ and run Southwesterly 86.40 feet to the POINT OF BEGINNING of the herein described parcel; thence run along the Northwesterly line of the 9th Fairway of the Inverness Golf Course the following courses; angle right $5^{\circ}42'33''$ and run Southwesterly 201.00 feet; angle right $19^{\circ}24'47''$ and run Southwesterly 84.40 feet; angle left $13^{\circ}42'14''$ and run Southwesterly 159.07 feet; angle left $25^{\circ}52'42''$ run Southwesterly 185.0 feet; angle left $06^{\circ}24'14''$ and run southwesterly 226.85 feet; angle right $2^{\circ}31'35''$ and run southwesterly 143.00 feet; angle right $10^{\circ}44'17''$ and run southwesterly 182.23 feet; thence right $66^{\circ}01'34''$ and leaving said northwesterly boundary of the 9th Fairway run northwesterly 106.55 feet to a point on a curve on the southeasterly right of way of the Inverness Parkway, said curve having a radius of 745.00 feet and a central angle of $2^{\circ}41'55''$; thence right $63^{\circ}09'45''$ to the tangent of said point on curve and run northerly along said right of way and arc of said curve 35.09 feet to a point of compound curve of a curve to the right, said curve having a radius of 1045.00 feet and a central angle of $42^{\circ}38'51''$; thence run northeasterly along said right of way and arc of said curve 777.83 feet to the point of compound curve of a curve to the right, said curve having a radius of 1945.00 feet and a central angle of $9^{\circ}36'36''$; thence run northeasterly along said right of way and arc of said curve 326.23 feet to the point of compound curve of a curve to the right, said curve having a radius of 25.0 feet and a central angle of $78^{\circ}54'23''$; thence run northeasterly to southeasterly along said right of way and arc of said curve 34.43 feet to the point of tangent of said curve, said point being on the southwesterly right of way of the Inverness Country Club Road; thence run southeasterly along said right of way 56.68 feet to the point of curve of a curve to the left, said curve having a radius of 262.79 feet and a central angle of $19^{\circ}25'$; thence run southeasterly along said right of way and arc of said curve 89.06 feet to a point of compound curve of a curve to the left, said curve having a radius of 822.87 feet and a central angle of $10^{\circ}46'30''$; thence run easterly along said right of way and arc of said curve 154.75 feet to the point of tangent; thence continue northeasterly along said right of way 54.77 feet to the point of curve of a curve to the right having a radius of 357.48 feet and a central angle of $28^{\circ}44'22''$; thence run southeasterly along said right of way and arc of said curve 179.31 feet to a point on curve; thence right 90° from the tangent of said point on curve and run southwesterly and radial to said point on curve 78.74 feet to the point of beginning of the herein described parcel.

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EXHIBIT B

(Permitted Encumbrances)

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.
2. The exceptions set forth in Schedule B-2 of the mortgagee's title insurance policy issued or to be issued pursuant to that certain Commitment to Issue Title Insurance No. [] prepared by [], having an effective date of [], at [] [].m., to the extent only that such exceptions refer expressly to instruments recorded against, or otherwise specifically affect, the Property and not to any general, standard or similar exceptions that may appear in said policy.

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EXHIBIT C

(Insurance Requirements)

1. General Requirements Relating to Insurance Carriers. All insurance coverages required by this Agreement must be provided by insurance companies acceptable to the Lender that are rated "A" or better by Best's Insurance Guide and Key Ratings. The aggregate amount of coverage provided by a single company must not exceed 5% of the company's policyholders' surplus. Any reinsurance endorsements must be approved by the Lender in writing. Reinsurance endorsements must stipulate that the Lender will receive 10 days' advance notice of any change in or cancellation of the reinsurance agreement. All insurance companies must be licensed and qualified to do business in the state where the insured Collateral is located.

2. Terms of Policies.

(a) The deductible amount under each insurance policy must not exceed \$1,000. The original copy of each insurance policy or, in the case of a blanket policy, a copy of the original policy certified in writing by a duly authorized agent for the insurance company as a "true and certified" copy of the policy, must be delivered to the Lender. The Borrower shall not submit a certificate of insurance, in lieu of the original policy.

(b) Each policy must provide that, insofar as the Lender's interests under the policy are concerned, the coverage afforded thereby shall not lapse or be terminated, cancelled or modified by reason of (i) any act or negligence, or breach of any condition, declaration or warranty contained in any such policy, by the Borrower or any third party, (ii) the occupation, operation or use of the Project for purposes more hazardous than those permitted by the terms of the policy, (iii) any foreclosure or other proceeding or notice of sale relating to the Project or (iv) any change in the title to or ownership of all or any portion of the Project.

(c) Each insurance policy must (i) provide primary insurance without right of contribution from any other insurance carried by the Lender, (ii) contain an express waiver by the insurer of any right of subrogation, setoff or counterclaim against any insured party thereunder, (iii) permit the Lender to pay premiums at the Lender's discretion and (iv) provide that no claims in excess of \$25,000 thereunder shall be adjusted or settled without the prior written consent of the Lender, which consent shall not be unreasonably withheld or delayed by the Lender.

3. Types of Insurance. The Borrower will at all times keep the Project insured against loss or damage from such causes as are customarily insured against, by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Borrower will obtain and maintain in effect the following amounts and types of insurance:

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(a) until such time as the construction of the Improvements has been completed, builder's risk insurance with respect to all parts of the Project affected by or involved in such construction (including any equipment or other Personal Property so affected or involved) to such extent as is necessary to provide for full payment of the costs of restoring or replacing the property damaged or destroyed or, if insurance to such extent is not available, to the extent of the full insurable value of such parts of the Project;

(b) workmen's compensation insurance covering all persons involved in the construction of the Improvements and all employees of the Borrower to the extent required by law;

(c) insurance against loss or damage to the Project (including plate glass breakage) due to fire, lightning, water, wind, theft, vandalism and malicious mischief with a uniform standard extended coverage endorsement, under which endorsement any loss is valued on a replacement cost basis, to the extent of the full insurable value of the Project, but in any event providing coverage in an amount not less than the unpaid principal amount of the Loan; provided, however, that the Borrower shall not be required to maintain such insurance with respect to Improvements fully covered by the builder's risk insurance required by subparagraph (a) of this paragraph (3); provided, further, however, that not less than 30 days before the date such builder's risk insurance will expire, the Borrower shall deliver to the Lender evidence satisfactory to the Lender that the insurance required by this subparagraph (c) will be in full force and effect when such builder's risk insurance expires;

(d) if the Project is located in a flood hazard area designated as such under the national flood insurance program, flood insurance in the amount of the lesser of (i) the unpaid principal amount of the Loan or (ii) the maximum limit of coverage made available with respect to the Project under said program;

(e) insurance against liability for bodily injury to or death of persons and for damage to or loss of property occurring on or about the Real Estate or in any way related to the condition or operation of the Project, in the minimum amounts of \$500,000 for death of or bodily injury to any one person, \$1,000,000 for all death and bodily injury claims resulting from any one accident, and \$100,000 for property damage; and

4. Special Clauses. Each policy must contain the following special clauses:

(a) Mortgagee's Clause:

National Bank of Commerce of Birmingham, its
successors and assigns
P. O. Box 10686
Birmingham, Alabama 35202-0686

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(b) Loss Payable Clause:

Loss, if any, under this policy shall be payable to National Bank of Commerce of Birmingham, its successors and assigns, as their interests may appear, P. O. Box 10686, Birmingham, Alabama 35202-0686

(c) Cancellation and Modification Clause:

The Insurer hereby agrees that this policy will not lapse or terminate, or be amended, modified or cancelled, unless and until National Bank of Commerce of Birmingham has received not less than 30 days' prior written notice thereof at the following address:

National Bank of Commerce of Birmingham
P. O. Box 10686, Birmingham, Alabama 35202-0686.

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1. Deed Tax	\$	125.00
2. Mig. Tax	\$	94.50
3. Recording Fee	\$	3.00
4. Indexing Fee	\$	1.00
5. No Tax Fee	\$	
6. Certified Fee	\$	1.00
Total	\$	224.50

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
92 FEB 24 AM 8:09
JUDGE OF PROBATE

STATE OF ALA. JEFFERSON CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON

1992 JAN 30 PM 1:28

RECORDED & INDEXED
DEED TAX HAS BEEN PD. ON THIS INSTRUMENT

Henry R. Howell
JUDGE OF PROBATE

1125.00
94.50

1219.50

