

Recording Requested By and  
When Recorded Mail To:  
Oppenheimer Wolff & Donnelly  
45 South Seventh Street  
Plaza VII, Suite 3400  
Minneapolis, Minnesota 55402  
Attn: Duane L. Paulson  
FCL Loan No. 2901

Inst # 1997-41256

12/19/1997-41256  
08:29 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
046 MCD 24872.00

Inst # 1997-41256

MORTGAGE, ASSIGNMENT OF RENTS AND LEASES,  
SECURITY AGREEMENT  
AND FIXTURE FINANCING STATEMENT

STATE OF ALABAMA )  
 )SS.  
COUNTY OF SHELBY )

THIS MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is made this 16th day of December, 1997, between THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF PELHAM, a public not for profit corporation of the State of Alabama ("Fee Owner"), whose address is City Clerk, City Hall, P. O. Box 277, Pelham, Alabama 35124, PELHAM INDUSTRIAL ENTERPRISES, LLC, an Alabama limited liability company and PELHAM INDUSTRIAL ENTERPRISES VII, LLC, an Alabama limited liability company ("Borrowers"), whose address is c/o David Bunkin, 119 Hillsdale Road, Birmingham, Alabama 35213, Fee Owner and Borrowers, collectively as Mortgagor; and FIRST COLONY LIFE INSURANCE COMPANY, a Virginia corporation, as Mortgagee, whose address is P.O. Box 490, Seattle, Washington 98111-0490.

A. Fee Owner is the owner in fee simple of that certain real property more fully described in Exhibit A attached hereto except Parcel III described thereon, and Pelham Industrial Enterprises VII, LLC is the fee owner of Parcel III described in Exhibit A attached hereto.

B. Pelham Industrial Enterprises, LLC, is the lessee of Parcel I described in the attached Exhibit A under that certain Lease Agreement dated September 1, 1994, of Parcel II described in the attached Exhibit A by a Lease Agreement dated September 1, 1996, and of Parcels IV, V and VI described in the attached Exhibit A by an Amended Lease Agreement dated May 1, 1994, entered into by and between Fee Owner and Pelham Industrial Enterprises, LLC recorded as Instrument Nos. 1994-29417, 1996-38135, and 1994-16976, respectively, in the Probate Office of Shelby County, Alabama (collectively, the "Ground Lease") which Ground Lease demises to Pelham Industrial Enterprises, LLC a leasehold estate in the real property described as those parcels in Exhibit A.

C. Mortgagee is making a loan (the "Loan") in the principal amount of Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) to be secured by that

ALABAMA

certain real property (the "Realty") described in Exhibit A attached hereto. The Loan, if not sooner paid, is due and payable in full on December 31, 2017. The terms of the Loan provide for monthly payments of principal and interest.

D. As a requirement to making the Loan, the Beneficiary requires among other things that the Fee Owner execute and deliver this Mortgage as to the fee simple title to that part of the Property herein described as being so owned by it and any reversionary rights the Fee Owner has to the leasehold estates under the Ground Lease and the building, buildings and other improvements located upon the Property and that the Borrowers execute and deliver this Mortgage as to Borrowers' interest in the leasehold estates in the Property and the building, buildings and other improvements located thereon.



E. As used herein the term Mortgagor shall mean collectively the Fee Owner and Borrower, as co-mortgagors under this Mortgage.

F. The Fee Owner is executing and delivering this Mortgage as an accommodation mortgagor for the sole purpose of subjecting and subordinating all of any right, title and interest it may have in and to the Ground Lease and the Property to this Mortgage. It is expressly understood and agreed by acceptance of this Mortgage by the Mortgagee that the Fee Owner has executed this Mortgage for the sole purpose of mortgaging to the Mortgagee and, to the extent permitted by law, granting to the Mortgagee a security interest in all of any right, title and interest the Fee Owner may have in the Ground Lease and the Property as security for the performance of the obligations of Borrowers which are secured hereby, and that the Fee Owner does not hereby assume or incur any personal obligation for the payment of the obligations secured hereby or any personal obligation for the payment of any money or the performance of or compliance with any covenant or warranty as to the title to or ownership of the Property or any part thereof, and disclaims (a) any knowledge as to the truth or accuracy of any recital or statement of fact contained in the Mortgage, (b) any liability, responsibility or obligation with respect to any representation, duty, agreement, covenant or obligation (whether for the payment of money or otherwise) stated herein, and (c) any duty to aid or assist in the enforcement of any rights of the Mortgagee or the Beneficiary, or their successors or assigns, under this instrument. This paragraph states the entire personal obligation of the Fee Owner under the Mortgage and all documents and instruments referred to herein and supersedes and replaces all references in the Mortgage to the Fee Owner (other than those contained in Section 9.16 hereof) as they relate to the personal liability of the Fee Owner. It is expressly understood by the parties hereto that a condition precedent to the execution of this Mortgage by the Fee Owner is the Mortgagee's agreement that the Fee Owner is in no way personally obligated for any of the covenants of Borrowers nor is the Fee Owner a surety or guarantor of Borrowers in any respects whatsoever. Nothing contained in this paragraph shall qualify or restrict in any way the rights or remedies of Mortgagee against the Property or against the Borrowers' or Fee Owners' interest in the Property in the event of any default in the performance of the Secured Obligations. However, notwithstanding anything herein to the contrary, the Fee Owner shall pay to the Mortgagee any rents or other income from the Property which it receives and retains after an event of default has occurred under this Mortgage, other than any payments due to the City of Pelham, Alabama, under any of the Ground Leases.



In consideration of the Loan and the sum of One and No/100 Dollars (\$1.00) in hand paid by the Mortgagee, the receipt of which is hereby acknowledged, Mortgagor does hereby MORTGAGE, GRANT, BARGAIN, SELL, AND CONVEY, unto Mortgagee, its successors and assigns, forever, AND GRANT TO THE MORTGAGEE A SECURITY INTEREST IN, all of Mortgagor's estate, rights, title, claim, interest and demand, either in law or in equity, of, in and to the following property, whether the same be now owned or hereafter acquired (the "Property"):

- (a) The Realty and all rights to the land lying in alleys, streets and roads adjoining or abutting the Realty;
- (b) All buildings, improvements and tenements now or hereafter located on the Realty;
- (c) All fixtures and articles of property now or hereafter attached to, or used or adapted for use in the ownership, development, operation or maintenance of, the buildings, improvements and Realty (whether such items are leased, are owned or subject to any title retaining or security instrument, or are otherwise used or possessed), including without limitation all heating, cooling, air-conditioning, ventilating, refrigerating, plumbing, generating, power, lighting, laundry, maintenance, incinerating, lifting, cleaning, fire prevention and extinguishing, security and access control, cooking, gas, electric and communication fixtures, equipment and apparatus, all engines, motors, conduits, pipes, pumps, tanks, ducts, compressors, boilers, water heaters and furnaces, all ranges, stoves, disposers, refrigerators and other appliances, all escalators and elevators, all baths and sinks, all cabinets, partitions, mantels, built-in mirrors, window shades, blinds, screens, awnings, storm doors, windows and sash, all carpeting, underpadding, floor covering, paneling and draperies, all furnishings of public spaces, halls and lobbies, and all shrubbery and plants; all of which items shall be deemed part of the real property and not severable wholly or in part without material injury to the freehold; provided, however, that personal property and trade fixtures owned or supplied by tenants of the Property with the right of removal at the termination of their tenancies shall not be included within the scope of this paragraph;
- (d) All of the estates created by the Ground Leases together with any all further amendments, modifications, renewals and extension of the Ground Lease, and together with all of the estate, title and interest which Borrowers may now or hereafter acquire in and to the Realty, the Buildings and the personal property demised therein, if any, and to lands lying in streets, alleys and roads adjoining the Realty and all buildings, structures, improvements, access rights, easements, rights of way or use, servitudes, licenses, tenements, hereditaments and appurtenances now or hereafter belonging to or pertaining to the estates demised under the Ground Lease and together with all rights to modify, renew or extend the Ground Lease, together with any and all options to purchase or acquire the Property, the Buildings and Personal Property and together with any and all options, elections, rights, privileges and powers granted Borrower under the Ground Leases (herein the "Leasehold Estate");

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- (e) All easements, all access, air and development rights, all minerals and oil, gas and other hydrocarbon substances, all royalties, all water, water rights and water stock, and all other rights, hereditaments, privileges, permits, licenses, franchises and appurtenances now or hereafter belonging or in any way appertaining to the Realty;
- (f) All present and future contracts and policies of insurance which insure the Realty or any building, structures or improvements thereon, or any such fixtures or personal property, against casualties and theft, and all monies and proceeds and rights thereto which may be or become payable by virtue of any such insurance contracts or policies;
- (g) All of the rents, revenues, issues, profits and income of the Property, and present and future leases and other agreements for the occupancy or use of all or any part of the Realty, including without limitation all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties of tenants' or occupants' performances under such leases and agreements; SUBJECT, HOWEVER, to the assignment of rents and other property to Mortgagee herein contained;
- (h) All general intangibles relating to the development or use of the Property, including without limitation all permits, licenses and franchises, all names under or by which the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, logos and good will in any way relating to the Property;
- (i) All awards, compensation and settlements in lieu thereof made as a result of the taking by power of eminent domain of the whole or any part of the Property, including any awards for damages sustained to the Property for a temporary taking, change in grade of streets or taking of access;
- (j) All water stock relating to the Property, all shares of stock or other evidence of ownership of any part of the Property that is owned by Mortgagor in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Property; and
- (k) All products and proceeds of all of the foregoing.

TO HAVE AND TO HOLD all of the aforescribed Property and all parts, rights, members and appurtenances thereof, unto the Mortgagee, its successors and assigns, forever.

TO SECURE THE FOLLOWING (collectively the "Secured Obligations"):

- (1) Payment of the sum of Sixteen Million Five Hundred Thousand and No/100 Dollars (\$16,500,000.00) Dollars with interest thereon, according to the terms and provisions of two Promissory Notes of even date herewith, payable to Mortgagee, or order one of which is in the amount of Fourteen Million and No/100 Dollars (\$14,000,000.00) made by Pelham Industrial Enterprises, L.L.C. and one of which is in the amount of Two Million Five Hundred Thousand and No/100 Dollars (\$2,500,000.00) made by Pelham



Industrial Enterprises VII, L.L.C., and all modifications, extensions, renewals and replacements thereof (collectively the "Note");

- (2) Payment of all sums advanced to protect the security of this Mortgage, together with interest thereon as herein provided;
- (3) Payment of all other sums which are or which may become owing under the Loan Documents;
- (4) Performance of all of Mortgagor's other obligations under the Loan Documents; and
- (5) Payment of the principal and interest on all other future loans or advances made by Mortgagee to Mortgagor when the promissory note evidencing the loan or advance specifically states that it is secured by this Mortgage, including all modifications, extensions, renewals, and replacements of any such future loan or advance.

As used herein, the term "Loan Documents" means the Note, this Mortgage, an Assignment of Rents and Leases (the terms of which shall control in the event of any conflict with the terms of Article 6 of this Mortgage), any loan agreement and Uniform Commercial Code Financing Statements executed in connection herewith, and any other instrument or document evidencing or securing the Loan or otherwise executed in connection therewith, together with all modifications, extensions, renewals and replacements thereof.

MORTGAGOR HEREBY REPRESENTS, WARRANTS, COVENANTS AND AGREES AS FOLLOWS:

### 1. TITLE AND USE

1.1 Warranty of Title. Mortgagor represents and warrants to Mortgagee that:

- (a) except as may otherwise be expressly stated in this Mortgage, Mortgagor has good and marketable title in fee simple to the Realty and is the sole and absolute owner of all other Property;
- (b) the Property is free from liens, encumbrances, exceptions or other charges of any kind whatsoever other than non-delinquent installments of ad valorem property taxes and special assessments, the "Permitted Exceptions," if any, permitted under the policy of mortgagee's title insurance issued to Mortgagee in connection with this Mortgage and any other liens, encumbrances, exceptions or charges expressly permitted by the terms of this Mortgage, and no others, whether superior or inferior to this Mortgage, will be created or suffered to be created by Mortgagor during the life of this Mortgage without the prior written consent of Mortgagee;
- (c) no default on the part of Mortgagor or, to the best of Mortgagor's knowledge, any other person exists under any of the Permitted Exceptions and as applicable all are in full force and effect and without modification;

- (d) Mortgagor will comply with the terms of the Permitted Exceptions and will not modify the same without the Mortgagee's written consent; and
- (e) Mortgagor has the right to grant, transfer, convey and assign the Property as herein provided and will forever warrant and defend the Property unto Mortgagee against all claims and demands of any other person whomsoever, subject only to said non-delinquent installments of taxes and assessments and Permitted Exceptions.

1.2 Hazardous Substances.

- (a) Representations and Warranties. Mortgagor hereby represents and warrants to Mortgagee that:
  - (i) to the best of Mortgagor's knowledge, no asbestos has ever been used in the construction, repair or maintenance of any building, structure or other improvement now or heretofore located on the Property;
  - (ii) no Hazardous Substance (as defined below) is currently being generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or in the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws;
  - (iii) neither Mortgagor nor, to the best of Mortgagor's knowledge, any other person or entity has ever caused or permitted any Hazardous Substance to be generated, manufactured, refined, transported, treated, stored, handled or disposed of, transferred, produced or processed on, under or in the Property, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws;
  - (iv) Mortgagor has not received any notice of, nor is Mortgagor aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and
  - (v) neither Mortgagor nor the Property is subject to any governmental or judicial claim, order, judgment or lien with respect to the clean-up of Hazardous Substances at or with respect to the Property. Mortgagor further represents and warrants to Mortgagee that the foregoing representations and warranties contained in this paragraph 1.2(a) are made after and are based upon inspection of the Property by Mortgagor and due inquiry by Mortgagor as to the prior uses of the Property.
- (b) Definition. As used herein, the term "Hazardous Substance" means any hazardous, toxic or dangerous substance, waste or material which is or becomes

regulated under any federal, state or local statute, ordinance, rule, regulation or other law now or hereafter in effect pertaining to environmental protection, contamination or clean up, including without limitation any substance, waste or material which now or hereafter is:

- (i) designated as a "hazardous substance" under or pursuant to the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.),
- (ii) defined as a "hazardous waste" under or pursuant to the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), or
- (iii) defined as a "hazardous substance" in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.).

## **2. MORTGAGOR'S COVENANTS**

2.1 Payment and Performance of Secured Obligations. Mortgagor will pay when due all sums which are now or which may become owing on the Note, and will pay and perform all other Secured Obligations, in accordance with their terms.

### **2.2 Payment of Taxes, Utilities, Liens and Charges.**

- (a) Taxes and Assessments. Except as the same may otherwise be paid under Article 3 relating to reserves, Mortgagor will pay when due directly to the payee thereof all taxes and assessments (including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges, or fees, levies or charges resulting from covenants, conditions or restrictions) levied, assessed or charged against or with respect to the Property or this Mortgage. Upon request, Mortgagor shall promptly furnish to Mortgagee all notices of amounts due under this subparagraph and all receipts evidencing such payments. However, Mortgagor may contest any such taxes or assessments by appropriate proceedings duly instituted and diligently prosecuted at Mortgagor's expense. Mortgagor shall not be obligated to pay such taxes or assessments while such contest is pending if the Property is not thereby subjected to imminent loss or forfeiture and, if Mortgagor has not provided evidence that it has deposited the entire amount assessed with the applicable governmental authority, it deposits the entire amount together with projected penalties and interest with the Mortgagee or provides other security satisfactory to the Mortgagee in its sole discretion.
- (b) Utilities. Mortgagor will pay when due all utility charges and assessments for services furnished the Property.
- (c) Liens and Charges. Mortgagor will pay when due the claims of all persons supplying labor or materials to or in connection with the Property. Without waiving the restrictions of paragraph 4.1, Mortgagor will promptly discharge any



lien or other charge, whether superior or inferior to this Mortgage, which may be claimed against the Property.

### 2.3 Insurance.

- (a) Coverages Required. Mortgagor will keep the following insurance coverages in effect with respect to the Property:
- (i) Insurance against loss by fire and the hazards now or hereafter embraced by the standard "extended coverage" form of insurance, in an amount equal at all times to the full insurable value of the improvements then located on the Property. All such insurance coverage shall contain a "replacement cost endorsement" satisfactory to Mortgagee.
  - (ii) Flood risk insurance in the maximum amount of insurance coverage available or the full replacement cost of the buildings on the Realty, whichever is less, if the Realty is now or hereafter designated as being located within a special flood hazard area under the Flood Disaster Protection Act of 1973 and if flood insurance is available.
  - (iii) Loss of rental value insurance and/or business interruption insurance, as follows: If all or any portion of the Property is rented or leased, loss of rental value insurance in an amount equal to six (6) months' aggregate gross rents from the Property as is so occupied. If all or any portion of the Property is occupied by Mortgagor, business interruption insurance in an amount equal to six (6) months' net income from such portion of the Property as is so occupied. The amount(s) of such coverage(s) shall be subject to adjustment, from time to time at Mortgagee's request, to reflect changes in the rental and/or income levels during the term of the Loan.
  - (iv) Comprehensive public liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Property (including coverage for elevators and escalators, if any, on the Property), with the coverage being in an amount of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single-limit liability coverage, or in such greater amount(s) as Mortgagee may reasonably require.
  - (v) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator and escalator equipment, provided the improvements contain equipment of such nature, and insurance against loss of occupancy or use arising from breakdown of any of such items, in such amounts as Mortgagee may reasonably require.
  - (vi) Building ordinance coverage endorsement including contingent liability from operation of building laws, demolition cost and increased cost of



construction, if, at any time, the Property constitutes a nonconforming but permitted use under applicable zoning or other governmental laws.

- (vii) Insurance against such similar or other hazards, casualties, liabilities and contingencies, in such forms and amounts, as Mortgagee may from time to time reasonably require, provided, however, that such additional insurance shall be customarily written with respect to real estate Projects having similar nature and characteristics of the Property.

(b) Policies. Each insurance policy will be in form acceptable to Mortgagee, and will be issued by a company acceptable to Mortgagee, which company shall, among other things, be:

- (i) duly authorized to provide such insurance in the state in which the Property is located, and
- (ii) rated "A" or better with a size rating of "V" or larger by A.M. Best Company in its most recent publication of ratings (provided, however, that if A.M. Best Company changes its designations, the basis for its ratings or ceases to provide ratings, Mortgagee shall be entitled to select replacement ratings in the exercise of its reasonable business judgment).

Each hazard insurance policy will include a Form 438BFU or equivalent mortgagee endorsement in favor of and in form acceptable to Mortgagee, and each liability insurance policy will name Mortgagee as an additional insured. All required policies will provide for at least thirty (30) days' written notice to Mortgagee prior to the effective date of any cancellation or material amendment, which term shall include any reduction in the scope or limits of coverage. Mortgagor shall furnish to Mortgagee the complete original of each required insurance policy, or a certified copy thereof together with a certificate of insurance setting forth the coverage, the limits of liability, the carrier, the policy number and the expiration date. As security for the Secured Obligations, Mortgagor hereby assigns to Mortgagee all required insurance policies, together with all proceeds thereof, rights thereto and all unearned premiums returnable upon cancellation.

- (c) Payment; Renewals. Mortgagor shall promptly furnish to Mortgagee all renewal notices relating to insurance policies. Except as the same may otherwise be paid under Article 3 relating to reserves, Mortgagor will pay all premiums on insurance policies directly to the carrier. At least thirty (30) days prior to the expiration date of each such policy, Mortgagor shall furnish to Mortgagee a renewal policy in a form acceptable to Mortgagee, together with evidence that the renewal premium has been paid.

(d) Insurance Proceeds.

- (i) In the event of any loss, Mortgagor will give prompt written notice thereof to the insurance carrier and Mortgagee. Mortgagor hereby authorizes Mortgagee as Mortgagor's attorney-in-fact to make proof of loss, to adjust and compromise any claim, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action relating to any claim, and to collect and receive insurance proceeds; provided, however, that Mortgagee shall have no obligation to do so. If an event of default is not continuing, the preceding sentence shall apply except that the Mortgagee shall not be entitled to be the Mortgagor's attorney-in-fact and the Mortgagor shall be entitled to jointly participate with the Mortgagee in adjusting any loss and appearing in any proceeding.
- (ii) Except as may otherwise be required by applicable law, Mortgagee shall apply any insurance proceeds received hereunder first to the payment of the costs and expenses incurred in the collection of the proceeds and shall then apply the balance (the "Net Proceeds"), in its absolute discretion and without regard to the adequacy of its security, to:
  - (A) The payment of indebtedness secured hereby, whether then due and payable or not. Any such application of proceeds to principal on the Note shall be without the imposition of any prepayment fee otherwise payable under the Note, but shall not extend or postpone the due dates of the installment payments under the Note, or change the amounts thereof; or
  - (B) The reimbursement of Mortgagor, under Mortgagee's prescribed disbursement control procedures, for the cost of restoration or repair of the Property. Mortgagee may, at its option, condition the reimbursement on Mortgagee's approval of the plans and specifications of the reconstruction, contractor's cost estimates, construction budget and schedule, architects' certificates, waivers of liens, sworn statements of mechanics and materialmen, and such other evidence of costs, percentage completion of construction, application of payments and satisfaction of liens as Mortgagee may reasonably require.
- (iii) Notwithstanding the provisions of paragraph 2.3(d)(ii) above, Mortgagee agrees that the Net Proceeds from a loss described in this paragraph 2.3(d) will be made available under clause (ii)(B) above to reimburse Mortgagor for the cost of restoration or repair of the Property, provided that each of the following conditions is satisfied:
  - (A) No event of default has occurred and is continuing at the time the proceeds are received;



- (B) The Net Proceeds are less than the indebtedness then secured by this Mortgage;
  - (C) The proceeds are received more than one (1) year prior to the maturity date of the Note;
  - (D) Mortgagor gives Mortgagee written notice within thirty (30) days after the proceeds are received that it intends to restore or repair the Property and requests that the Net Proceeds be made available therefor, and Mortgagor thereafter promptly commences the restoration or repair and completes the same with reasonable diligence in accordance with plans and specifications approved by Mortgagee, which approval shall not be unreasonably withheld;
  - (E) The Net Proceeds are sufficient, in Mortgagee's reasonable business judgment, to restore or repair the Property substantially to its condition prior to the damage or destruction or, if in Mortgagee's reasonable business judgment they are not, Mortgagor deposits with Mortgagee funds in an amount equal to the deficiency, which funds Mortgagee may, at its option, require be expended prior to use of the Net Proceeds; and
  - (F) Mortgagee receives evidence reasonably satisfactory to Mortgagee that, upon completion of the restoration or repair, the Property can be operated substantially as it was before and will produce substantially as much income from tenant leases as it did before the damage or destruction.
- (iv) Except to the extent, if any, that insurance proceeds are applied to payment of the Secured Obligations, Mortgagor's obligation to restore, repair and maintain the Property as provided in paragraph 2.4 shall not be excused, regardless of whether insurance proceeds are available or insufficient.
- (e) Transfer of Title. If the Property is sold pursuant to Article 8 or if Mortgagee otherwise acquires title to the Property, Mortgagee shall have all of the right, title and interest of Mortgagor in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

#### 2.4 Preservation and Maintenance of Property; Right of Entry.

- (a) Preservation and Maintenance. Mortgagor
  - (i) will not commit or suffer any waste or permit any impairment or deterioration of the Property,

- (ii) will not abandon the Property,
  - (iii) will restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Mortgagee may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair,
  - (iv) will keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon, in good condition and repair and shall replace fixtures, equipment, machinery and appliances of the Property when necessary to keep such items in good condition and repair, and
  - (v) will generally operate and maintain the Property in a commercially reasonable manner.
- (b) Alterations. No building or other improvement on the Realty will be structurally altered, removed or demolished, in whole or in part, without Mortgagee's prior written consent, nor will any fixture or chattel covered by this Mortgage and adapted to the use and enjoyment of the Property be removed at any time without like consent unless actually replaced by an article of equal suitability, owned by Mortgagor, free and clear of any lien or security interest except such as may be approved in writing by Mortgagee. However, this provision is not to be construed to prevent the Mortgagor from making non-structural alterations for leasehold improvements in connection with the leasing of the Property in the normal course of business which may result in removal, renovation and construction of leasehold improvements for new tenants under bona fide leases of the Property.
- (c) Right of Entry. Mortgagee is hereby authorized to enter the Property, including the interior of any structures, at reasonable times and after reasonable notice, for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform hereunder.

## 2.5 Hazardous Substances.

- (a) No Future Hazardous Substances. Mortgagor will not cause or permit the Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce or process any Hazardous Substance, except in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant, subtenant or other user or occupier of the Property, a releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of any Hazardous Substance onto the Property or any other property or into any waters, except in compliance with all such laws.



(b) Notification; Clean Up. Mortgagor will immediately notify Mortgagee should Mortgagor:

- (i) become aware of any Hazardous Substance or other environmental problem or liability with respect to the Property,
- (ii) receive any notice of, or become aware of, any actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances, or
- (iii) become aware of any lien or action with respect to any of the foregoing.

Mortgagor will, at its sole expense, take all actions as may be necessary or advisable for the clean-up of Hazardous Substances on or with respect to the Property, including without limitation all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Mortgagee, and shall further pay or cause to be paid all clean-up, administrative and enforcement costs of governmental agencies with respect to Hazardous Substances on or with respect to the Property if obligated to do so by contract or by law.

(c) Verification. For the purposes of inspecting the Property to ascertain the accuracy of all representations and warranties in this Mortgage relating to Hazardous Substances, and the observance of all covenants contained in this paragraph 2.5:

- (i) Mortgagee is hereby authorized to enter and inspect the Property, including the interior of any structures, at reasonable times and after reasonable notice, and
- (ii) if and at any time Hazardous Substances are being handled on the Property, Mortgagor shall furnish Mortgagee with such information and documents as may be reasonably requested by Mortgagee to confirm that such Hazardous Substances, are being handled in compliance with all applicable federal, state and local statutes, ordinances, rules, regulations and other laws.

Mortgagor shall reimburse Mortgagee upon demand for all costs and expenses, including without limitation attorneys' fees, incurred by Mortgagee in connection with any such entry and inspection and the obtaining of such information and documents.

2.6 Parking. If any part of the automobile parking areas included within the Property is taken by condemnation, or before said areas are otherwise reduced, Mortgagor will take all actions as are necessary to provide parking facilities in kind, size and location to comply with all governmental zoning and other regulations and all leases. Before making any contract for substitute parking facilities, Mortgagor will furnish to Mortgagee satisfactory assurance of

completion thereof free of liens and in conformity with all government zoning and other regulations.

2.7 Use of Property. Mortgagor will comply with all laws, ordinances, regulations and requirements of any governmental body, and all other covenants, conditions and restrictions, applicable to the Property, and pay all fees and charges in connection therewith. Unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor will not allow changes in the use for which all or any part of the Property was intended at the time this Mortgage was executed. Mortgagor will not initiate or acquiesce in a change in the zoning classification of the Property without Mortgagee's prior written consent.

2.8 Condemnation.

- (a) Proceedings. Mortgagor will promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking (including without limitation change of grade), whether direct or indirect, of the Property or part thereof or interest therein, and Mortgagor will appear in and prosecute any such action or proceeding unless otherwise directed by Mortgagee in writing. Mortgagor authorizes Mortgagee, at Mortgagee's option, as attorney-in-fact for Mortgagor, to commence, appear in and prosecute, in Mortgagee's or Mortgagor's name, any action or proceeding relating to any such condemnation or other taking, and to settle or compromise any claim in connection with such condemnation or other taking; provided, however, that Mortgagee shall have no obligation to do so. All awards, payments, damages, direct, consequential and otherwise, claims, and proceeds thereof, in connection with any such condemnation or other taking, or for conveyances in lieu of condemnation, are hereby assigned to Mortgagee, and all proceeds of any such awards, payments, damages or claims shall be paid to Mortgagee.
- (b) Application of Proceeds. Mortgagee shall apply any such proceeds in the manner and upon the terms and conditions set forth in paragraph 2.3(d)(ii) relating to the application of insurance proceeds, without regard to the provisions of paragraph 2.3(d)(iii).

2.9 Protection of Mortgagee's Security. Mortgagor will give notice to Mortgagee of and will, at its expense, appear in and defend any action or proceeding that might affect the Property or title thereto or the interests of Mortgagee therein or the rights or remedies of Mortgagee. If any such action or proceeding is commenced or if Mortgagee is made a party to any such action or proceeding by reason of this Mortgage, or if Mortgagor fails to perform any obligation on its part to be performed hereunder, then Mortgagee, in its own discretion, may make any appearances, disburse any sums, make any entries upon the Property and take any actions as may be necessary or desirable to protect or enforce the security of this Mortgage, to remedy Mortgagor's failure to perform its obligations (without, however, waiving any default by Mortgagor) or otherwise to protect Mortgagee's interests. Mortgagor agrees to pay all loss, damage, costs and expenses, including reasonable attorneys' fees, of Mortgagee thus incurred.



This paragraph shall not be construed to require Mortgagee to incur any expenses, make any appearances or take any actions.

2.10 Reimbursement of Mortgagee's Expenses. All amounts disbursed by Mortgagee pursuant to paragraph 2.9 or any other provision of this Mortgage, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. All such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the interest rate in effect on the Note from time to time, or at the maximum rate which may be collected from Mortgagor on such amounts by the payee thereof under applicable law if that is less.

2.11 Books and Records; Financial Statements. Mortgagor will keep and maintain at Mortgagor's address stated above, or such other place as Mortgagee may approve in writing, books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject to examination, inspection and copying at any reasonable time by Mortgagee. Mortgagor will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, the following documents, each certified to Mortgagee by Mortgagor as being true, correct and complete:

- (a) a copy of all leases and other agreements for the occupancy or use of all or any part of the Property,
- (b) a rent roll for the Property, showing the name of each tenant, and for each tenant, the suite occupied, the number of square feet rented, the lease expiration date, the rent payable, the date through which rent has been paid, the amount of any security deposit and the number and term of any renewal options,
- (c) a copy of the most recent real and personal property tax statements for the Property,
- (d) a copy of the most recent statements for the insurance coverages maintained under paragraph 2.3(a) of this Mortgage, and
- (e) a statement of income and expenses of the Property for the most recently ended fiscal year of Mortgagor. In addition, Mortgagor and any general partner therein and any guarantor of the Loan will furnish to Mortgagee, within twenty (20) days after Mortgagee's request therefor, a complete and current financial statement, in reasonable detail and certified as correct by Mortgagor or such partner or guarantor, together with a true and correct copy of such person's most recent federal income tax return, except that any such returns with respect to a guarantor may be limited to the first two (2) pages of such return, certified by the applicable guarantor as being true and correct.

### 3. RESERVES

3.1 Deposits. Mortgagor will, at the time of making each installment payment under the Note, deposit with Mortgagee a sum, as estimated by Mortgagee, equal to:

- (a) the rents under any ground lease,
- (b) the taxes and special assessments next due on the Property, and
- (c) the premiums that will next become due on insurance policies as may be required under this Mortgage,

less all sums already deposited therefor, divided by the number of months to elapse before two (2) months prior to the date when such rents, taxes, special assessments and premiums will become delinquent. Mortgagee may require Mortgagor to deposit with Mortgagee, in advance, such other sums for other taxes, assessments, premiums, charges and impositions in connection with Mortgagor or the Property as Mortgagee reasonably deems necessary to protect Mortgagee's interests (herein "Other Impositions"). Such sums for Other Impositions shall be deposited in a lump sum or in periodic installments, at Mortgagee's option. If requested by Mortgagee, Mortgagor will promptly deliver to Mortgagee all bills and notices with respect to any rents, taxes, assessments, premiums and Other Impositions. All sums deposited with Mortgagee under this paragraph 3.1 are hereby pledged as additional security for the Secured Obligations.

3.2 Application of Deposits. All such deposited sums shall be held by Mortgagee and applied in such order as Mortgagee elects to pay such rents, taxes, assessments, premiums and Other Impositions or, in the event of default hereunder, may be applied in whole or in part, to indebtedness secured hereby. The arrangement provided for in this Article 3 is solely for the added protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the allowing of due credit, without interest, for the sums actually received by it. Upon any assignment of this Mortgage by Mortgagee, any funds on hand shall be turned over to the assignee and any responsibility of Mortgagee with respect thereto shall terminate. Each transfer of the Property shall automatically transfer to the grantee all rights of Mortgagor with respect to any funds accumulated hereunder. Upon payment in full of the Secured Obligations, Mortgagee shall promptly refund to Mortgagor the remaining balance of any deposits then held by Mortgagee.

3.3 Adjustments to Deposits. If the total deposits held by Mortgagee exceed the amount deemed necessary by Mortgagee to provide for the payment of such rents, taxes, assessments, premiums and Other Impositions as the same fall due, then such excess shall, provided no event of default then exists hereunder, be credited by Mortgagee on the next due installment or installments of such deposits. If at any time the total deposits held by Mortgagee is less than the amount deemed necessary by Mortgagee to provide for the payment thereof as the same fall due, then Mortgagor will deposit the deficiency with Mortgagee within thirty (30) days after written notice to Mortgagor stating the amount of the deficiency.



#### **4. RESTRICTIONS ON TRANSFER OR ENCUMBRANCE**

##### **4.1 Restrictions on Transfer or Encumbrance of the Property.**

- (a) A "Transfer" is: any sale (by contract or otherwise), encumbrance, conveyance or other transfer of all or any interest in the Property; or any change in the ownership of any stock interest in a corporate Mortgagor, in the ownership of any membership interest or in the manager of a limited liability company Mortgagor, in the ownership of any general partnership interest in any general or limited partnership Mortgagor, or in the ownership of any beneficial interest in any other Mortgagor which is not a natural person or persons (including without limitation a trust); or any change in the ownership of any stock, membership, general partnership or other beneficial interest in any corporation, limited liability company, partnership, trust or other entity, organization or association directly or indirectly owning an interest in Mortgagor, or a change in the manager of a limited liability company. A change in the ownership of a limited partnership interest in a limited partnership shall not be deemed a "Transfer."
- (b) In the event of a Transfer without Mortgagee's prior written consent, Mortgagee may at its sole option declare the Transfer an event of default under this Mortgage and invoke any remedy or remedies provided for in paragraph 8.1 hereof, or may at its sole option consent to such Transfer. Mortgagee may condition its consent to a Transfer upon the payment of a fee to Mortgagee, or an increase in the rate of interest due under the Note, or the items in paragraph 4.1(d) below, or any combination of the foregoing. Neither of the foregoing options shall apply, however, in the case of a Transfer under any will, trust or applicable law of descent arising because of the death of an individual so long as Mortgagee is given prompt notice of the Transfer and the transferee. Mortgagee's consent to a Transfer or its waiver of an event of default by reason of a Transfer shall not constitute a consent or waiver of any right, remedy or power accruing to Mortgagee by reason of any subsequent Transfer.
- (c) Mortgagee will give its written consent to Transfers of interests in Mortgagor or of interests in an entity with an ownership interest in Mortgagor to one (1) or more of the other existing members of the Borrower, the transferor's spouse or lineal descendent or to an estate planning trust whose trustees and beneficiaries are the transferor or the transferor's spouse or lineal descendant if Mortgagor gives Mortgagee prior written notice accompanied by copies of the proposed Transfer documents and a \$500 transfer review fee.
- (d) For any Transfer permitted under this Mortgage or requested by Mortgagor, Mortgagee may condition its consent upon: the Property having been and assurances that it shall continue to be well maintained and managed in a manner reasonably satisfactory to Mortgagee; Mortgagee's reasonable approval of the Transfer terms, documents and background materials; there being no uncured

event of default under this Mortgage; Mortgagor furnishing an endorsement to Mortgagee's title insurance policy insuring the continued validity and priority of the lien of this Mortgage following the Transfer and such subordination agreements and other documents as may be required by Mortgagee or its title company to issue the endorsement. Unless Mortgagee in its sole discretion otherwise agrees in writing at that time, no Transfer shall release the transferor from any liability under the Loan Documents or the environmental Indemnity. By accepting a Transfer, the transferee assumes any and all liability of the transferor under the Loan Documents and the environmental Indemnity to the extent the transferor has any personal liability. At Mortgagee's request, the parties shall execute agreements, guaranties and indemnities in form and substance acceptable to Mortgagee. Regardless whether Mortgagee consents to a Transfer request, Mortgagor agrees to pay all of Mortgagee's out-of-pocket expenses incurred in connection with any Transfer request, including without limitation title fees and attorneys' fees and costs, and Mortgagee may condition its willingness to consider a Transfer request upon a deposit to pay for Mortgagee's expenses.

4.2 Loan Assumption Provision. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee will consent to two sales of the Property and assumption by the purchaser of the indebtedness secured hereby, provided that for each of such sales:

- (a) Mortgagor is not then in default under this Mortgage;
- (b) The purchaser of the Property, the financial statements, financial strength, tax returns and credit history of the purchaser, the sale agreement and related documents, and all aspects of the sale are satisfactory to Mortgagee;
- (c) The purchaser evidences a history of property management satisfactory to Mortgagee or contracts for management of the Property with a property management firm satisfactory to Mortgagee;
- (d) If the amount then due on the Note exceeds seventy-five percent (75%) of the sale price of the Property, the balance due on the Note, at the Mortgagee's election, must be reduced, by payment thereon, to an amount which does not exceed seventy-five percent (75%) of the sale price;
- (e) Mortgagee receives in cash an assumption fee of One Hundred Sixty-Five Thousand and No/100 Dollars (\$165,000.00) plus its legal and administrative expenses, incurred in connection with such sale and assumption;
- (f) Mortgagor furnishes to Mortgagee, at Mortgagor's expense, an endorsement to Mortgagee's title insurance policy insuring the continued validity, enforceability and priority of the Mortgage following the assumption. The form and content of the endorsement shall be satisfactory to Mortgagee. If required by the Mortgagee or the title Insurer, the Mortgagor shall furnish subordination agreements from



tenants of the Property and other necessary parties in form and substance acceptable to the Mortgagee and the title insurer;

- (g) Such sale or assumption shall release Mortgagor and any guarantor or other person from liability under this Mortgage and any other documents given to secure the Secured Obligations except for acts or occurrences arising out of matters occurring prior to the closing of assumption, but as to such matters where the time when such act or occurrence took place is in dispute, the transferor shall have the burden of proof that such act or occurrence took place subsequent to the closing of the assumption;
- (h) In the event the Loan was made with a requirement imposed upon the Mortgagor to complete any specified repairs of the Property, the Mortgagor shall not be entitled to a consent by Mortgagee pursuant to the terms of this provision until such repairs have been completed to Mortgagee's satisfaction; and
- (i) The Mortgagee may, at its option, require tax reserves as referred to in paragraph 3.1 of this Mortgage, whether or not previously waived conditionally or otherwise, as a condition to its consent.
- (j) If the purchaser is a single asset entity, the Mortgagee may require full recourse against a party acceptable to the Mortgagee if the purchaser enters bankruptcy upon the filing of a bankruptcy petition signed by one or more of the purchaser's principals, such as an officer, managing member or general partner.

## **5. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT**

5.1 Grant to Mortgagee. This Mortgage constitutes a security agreement pursuant to the Uniform Commercial Code with respect to:

- (a) Any of the Property which, under applicable law, is not real property or effectively made part of the real property by the provisions of this Mortgage; and
- (b) Any and all other property now or hereafter described on any Uniform Commercial Code Financing Statement naming Mortgagor as Debtor and Mortgagee as Secured Party and affecting property in any way connected with the use and enjoyment of the Property (any and all such other property constituting "Property" for purposes of this Mortgage);

and Mortgagor hereby grants Mortgagee a security interest in all property described in clauses (a) and (b) above as additional security for the Secured Obligations. Mortgagor and Mortgagee agree, however, that neither the foregoing grant of a security interest nor the filing of any such financing statement shall ever be construed as in any way derogating from the parties' hereby stated intention that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage is and at all times shall be regarded for all purposes as part of the real property.

5.2 Mortgagee's Rights and Remedies. With respect to Property subject to the foregoing security interest, Mortgagee has all of the rights and remedies:

- (a) of a secured party under the Uniform Commercial Code,
- (b) provided herein, including without limitation the right to cause such Property to be sold under the power of sale granted by this Mortgage, and
- (c) provided by law.

In exercising its remedies, Mortgagee may proceed against the items of real property and any items of personal property separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies. Upon demand by Mortgagee following an event of default hereunder, Mortgagor will assemble any items of personal property and make them available to Mortgagee at the Property, a place which is hereby deemed to be reasonably convenient to both parties. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such Property or of the time of or after which any private sale or any other intended disposition is to be made. Any person permitted by law to purchase at any such sale may do so. Such Property may be sold at any one or more public or private sales as permitted by applicable law. All expenses incurred in realizing on such Property shall be borne by Mortgagor.

5.3 Fixture Filing. THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS WHICH ARE OR ARE TO BECOME FIXTURES RELATED TO THE PROPERTY. FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE THE FOLLOWING INFORMATION IS FURNISHED:

- (a) The name and address of the record owner of the real estate described in this instrument is:

Pelham Industrial Enterprises, LLC  
Pelham Industrial Enterprises VII, LLC  
c/o David Bunkin  
119 Hillsdale Road  
Birmingham, Alabama 35213

- (b) the name and address of the Debtor is:

Pelham Industrial Enterprises, LLC  
Pelham Industrial Enterprises VII, LLC  
c/o David Bunkin  
119 Hillsdale Road  
Birmingham, Alabama 35213



- (c) the name and address of the Secured Party is:

First Colony Life Insurance Company  
P. O. Box 490  
Seattle, Washington 98111-0490

- (d) Information concerning the security interest evidenced by this instrument may be obtained from the Secured Party at its address above.
- (e) This document covers goods which are or are to become fixtures.
- (f) Proceeds and products of collateral are also covered.

**6. ASSIGNMENT OF RENTS AND LEASES; LEASES OF PROPERTY;  
APPOINTMENT OF RECEIVER; MORTGAGEE IN POSSESSION**

**6.1 Mortgagor to Comply with Leases.** Mortgagor will, at its own cost and expense:

- (a) Faithfully abide by, perform and discharge each and every obligation, covenant and agreement under any leases or other agreements for the occupancy or use of the Property (collectively "Leases") to be performed by the landlord thereunder;
- (b) Enforce or secure the performance of each and every material obligation, covenant, condition and agreement of said Leases by the tenants thereunder to be performed;
- (c) Not borrow against, pledge or further assign any rentals due under said Leases;
- (d) Not permit the prepayment of any rents due under any of the Leases for more than one month in advance nor for more than the next accruing installment of rents, nor anticipate, discount, compromise, forgive or waive any such rents;
- (e) Not waive, excuse, condone or in any manner release or discharge any tenants of or from the obligations, covenants, conditions and agreements by said tenants to be performed under the Leases;
- (f) Not permit any tenant to assign or sublet its interest in any of the Leases unless required to do so by the terms of the Lease and then only if such assignment does not work to relieve the tenant of any liability for payment of and performance of its obligations under such Lease;
- (g) Not, without the Mortgagee's written consent, terminate any Lease or accept a surrender thereof or a discharge of the tenant providing for a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the leased premises is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property, nor shall Mortgagor terminate or

accept a surrender in any single twelve (12) month period more than twenty-five percent (25%) of the aggregate total net rentable area without the written consent of the Mortgagee;

- (h) Not consent to a subordination of the interest of any tenant to any party other than Mortgagee and then only if specifically consented to by the Mortgagee; and
- (i) Not amend or modify any Lease or alter the obligations of the parties thereunder, excepting in the ordinary and prudent course of business with due regard for the security afforded the Mortgagee by the Lease, and will not, without the Mortgagee's written consent, enter into, execute, modify, or extend any Lease now existing or hereafter made providing for a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the leased premises is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property.

6.2 Mortgagee's Right to Perform under Leases. Should the Mortgagor fail to perform, comply with or discharge any obligations of Mortgagor under any lease or should the Mortgagee become aware of or be notified by any tenant under any lease of a failure on the part of Mortgagor to so perform, comply with or discharge its obligations under said lease, Mortgagee may, but shall not be obligated to, and without further demand upon the Mortgagor, and without waiving or releasing Mortgagor from any obligation in this Mortgage contained, remedy such failure, and the Mortgagor agrees to repay upon demand all sums incurred by the Mortgagee in remedying any such failure together with interest at the then rate in effect on the Note. All such sums, together with interest as aforesaid shall become so much additional indebtedness secured by this Mortgage, but no such advance shall be deemed to relieve the Mortgagor from any default hereunder.

6.3 Assignment of Leases and Rents. The Mortgagor does hereby sell, assign and transfer unto Mortgagee all of the leases, rents, issues, income and profits now due and which may hereafter become due under or by virtue of the Leases including those, if any, described on Exhibit B attached hereto, whether written or verbal, or any agreement for the use or occupancy of the Property, it being the intention of this Mortgage to establish an absolute present transfer and assignment of the Leases and all of the rents, issues, income and profits from the Property unto the Mortgagee, and not merely the granting of a security interest, and the Mortgagor does hereby appoint irrevocably the Mortgagee its true and lawful attorney in its name and stead, which appointment is coupled with an interest, to collect all of said rents and profits; provided, Mortgagee grants the Mortgagor the privilege, revocable, to collect and retain such rents, income, and profits unless and until an event of default exists under this Mortgage. Upon an event of default and whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale of the Property or during any period of upset or redemption the Mortgagee, and without regard to waste, adequacy of the security or solvency of the Mortgagor, may revoke the privilege granted Mortgagor hereunder to collect the rents, issues and profits of the Property, and may, at its option, without notice:



- (a) in person or by agent, with or without taking possession of or entering the Property, with or without bringing any action or proceeding, give, or require Mortgagor to give, notice to any or all tenants under any lease authorizing and directing the tenant to pay such rents, issues, income and profits to Mortgagee; collect all of the rents, issues and profits; enforce the payment thereof and exercise all of the rights of the landlord under any lease and all of the rights of Mortgagee hereunder; may enter upon, take possession of, manage and operate said Property, or any part thereof; may cancel, enforce or modify any leases, and fix or modify rents, and do any acts which the Mortgagee deems proper to protect the security hereof with or without taking possession of said Property; or
- (b) apply for the appointment of a receiver in accordance with the statutes and law made and provided for, which receivership Mortgagor hereby consents to, who shall collect the rents, profits and all other income of any kind; manage the Property so as to prevent waste; and execute leases within or beyond the period of receivership.

The rents, issues, income and profits, less costs and expenses of operation and collection, including attorneys fees, may be applied to the Secured Obligations and in such order as the Mortgagee may determine. The entering upon and taking possession of the Property, the collection of such rents and profits and the application thereof as aforesaid shall not cure or waive any defaults under this Mortgage nor in any way operate to prevent the Mortgagee from pursuing any other remedy which it may now or hereafter have under the terms of this Mortgage nor shall it in any way be deemed to constitute the Mortgagee a mortgagee-in-possession. The rights and powers of the Mortgagee hereunder shall remain in full force and effect both prior to and after any foreclosure of the Mortgage and any sale pursuant thereto.

6.4 Leases of the Property. Without the Mortgagee's written consent, the Mortgagor will not enter into, execute, modify, or extend any Lease now existing or hereafter made providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the leased premises is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property. Mortgagor shall not without the Mortgagee's written consent, surrender or terminate any Lease now existing or hereafter made providing a term (assuming that all renewal options, if any, are exercised) of more than five (5) years unless the leased premises is less than twenty-five percent (25%) of the net rentable area of the building improvements at the Property, nor shall Mortgagor surrender or terminate in any single twelve-month period more than twenty-five percent (25%) of the aggregate total net rentable area without the written consent of the Mortgagee. Each lease of the Property, at the election of the Mortgagee, will be either superior or subordinate to the lien of the Mortgage, and each tenant shall execute an appropriate subordination or attornment agreement as required by the Mortgagee. Also, to the extent required by the Mortgagee, each tenant shall execute an estoppel certificate and acknowledge receipt of a notice of the assignment of its lease, all satisfactory in form and content to the Mortgagee.

## 7. EVENTS OF DEFAULT

7.1 Events of Default. Any one or more of the following is an event of default hereunder:

- (a) Failure to make any payment when due under the Note, this Mortgage or any of the other Loan Documents, followed by the failure to make such payment within ten (10) days after written notice thereof given to Mortgagor by Mortgagee; provided, however, that Mortgagee shall not be obligated to give Mortgagor written notice prior to exercising its remedies with respect to such default if Mortgagee had previously given Mortgagor during that calendar year a notice of default for failure to make a payment of similar type.
- (b) Failure to perform any other covenant, agreement or obligation under the Note, this Mortgage or any of the other Loan Documents, followed by the failure to cure such default within thirty (30) days after written notice thereof given to Mortgagor by Mortgagee (or if such cure cannot be completed within such thirty (30) day period through the exercise of diligence, the failure by Mortgagor to commence the required cure within such thirty (30) day period and thereafter to continue the cure with diligence and to complete the cure within ninety (90) days following Mortgagee's notice of default);
- (c) Mortgagor or any trustee of Mortgagor files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief; or such a petition is filed against Mortgagor or any trustee of Mortgagor and the petition is not dismissed within forty-five (45) days after filing.
- (d) A decree or order is entered for the appointment of a trustee, receiver or liquidator for Mortgagor or Mortgagor's property, and such decree or order is not vacated within forty-five (45) days after the date of entry.
- (e) Mortgagor commences any proceeding for dissolution or liquidation; or any such proceeding is commenced against Mortgagor and the proceeding is not dismissed within forty-five (45) days after the date of commencement.
- (f) Mortgagor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due.
- (g) There is an attachment, execution or other judicial seizure of any portion of Mortgagor's assets and such seizure is not discharged within ten (10) days.
- (h) Any representation or disclosure made to Mortgagee by Mortgagor or any guarantor of the Loan proves to be materially false or misleading when made, whether or not that representation or disclosure is contained herein.



## 8. REMEDIES

8.1 Acceleration Upon Default; Additional Remedies. If an event of default shall occur hereunder, Mortgagee may, at its option and without notice to or demand upon Mortgagor other than such notice provided in paragraph 7.1 above as is required to establish an event of default thereunder, take any one or more of the following actions:

- (a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately.
- (b) Bring a court action to enforce the provisions of this Mortgage or any of the indebtedness or obligations secured by this Mortgage.
- (c) Bring a court action to foreclose this Mortgage.
- (d) Foreclose this Mortgage under the power of sale granted by this Mortgage in any manner permitted by applicable law.
- (e) Exercise any or all of the rights and remedies provided for herein in the event of default hereunder.
- (f) Exercise any other right or remedy available under law or in equity.

8.2 Foreclosure; Expense of Litigation. When the Secured Obligations, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to enter upon and take possession of the Property and after, or without, taking such possession of the same, sell the Property either as a whole, with the Leasehold Estate merged into the fee simple title, or separately as to the Leasehold Estate created under the Ground Lease and as to the fee simple title, or any portion thereof at the option of the Mortgagee, at public outcry, in front of the courthouse door of the county wherein the Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the Secured Obligations appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Mortgagee, or the then holder of the Secured Obligations, may bid at any such sale and become the purchaser of the Property either as a whole, with the Leasehold Estate merged into the fee simple title, or separately as to the Leasehold Estate created under the Ground Lease and as to the fee simple title, or any portion thereof at the option of the Mortgagee, if the highest bidder therefor. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree to the extent allowed by law and as a part of the Secured Obligations all expenditures

and expenses' which may be paid or incurred by or on behalf of Mortgagee for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Property and the maintenance of the lien of this Mortgage, including the fees of any attorneys employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note, any other documents securing the Note or the Property, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at any default rate set forth in the Note, and shall be Secured Obligations secured by this Mortgage.

8.3 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Property shall be distributed and applied in the following order of priority unless otherwise provided by law:

- (a) to all costs and expenses incident to the foreclosure proceedings and in all prior efforts to effect collection of the Secured Obligations, including all such allowable items as are mentioned in the preceding paragraph hereof;
- (b) all other items which under the terms hereof constitute Secured Obligations additional to that evidenced by the Note, with interest thereon as herein provided herein or in the Note;
- (c) all interest remaining unpaid on the Note;
- (d) all principal remaining unpaid on the Note, to be applied first to principal which is not the subject of any guaranty by any third party and thereafter, after all such non-guaranteed principal has been repaid, to principal that is the subject of any such guaranty; and
- (e) the balance, if any, shall be paid over to the Mortgagor or its successors and assigns. In any event, the purchaser under any foreclosure sale shall be under no obligation to see to the proper application of the purchase money.

8.4 Appointment of Receiver and Possession. Following an event of default hereunder, either before or after the foreclosure sale, a receiver may be appointed by the court without notice, without regard to the solvency or insolvency of Mortgagor, the then value of the Property or whether it is then occupied as a homestead. The receiver shall have the power to collect the rents and income from the Property during the pendency of the foreclosure sale and, in the case of a sale and a deficiency, during the full statutory period of redemption (if any), whether there be redemption or not. The receiver shall have all other powers for the protection, possession, management and operation of the Property which an absolute owner would have, but the net rents in the hands of the receiver shall be applied to all the Secured Obligations in such order as the Mortgagee shall determine and to such expenses of the receivership or foreclosure suit as the



court may direct. In the event of such event of default, irrespective of whether the right to foreclose this Mortgage has accrued to Mortgagee, whether the entire debt has then been accelerated or whether foreclosure proceedings have been commenced, the Mortgagee may, without notice to or demand upon Mortgagor, take possession of the Property. While in possession of the Property, Mortgagee shall have the following rights and powers:

- (a) To collect the rents and manage, lease, alter and repair the Property, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and
- (b) To pay out of the rents so collected any management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the Secured Obligations in such order as the Mortgagee may determine.

To the extent allowed by law, Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or set-off as a result of, any action taken while Mortgagee is in possession of the mortgaged premises, except only for Mortgagee's own gross negligence or willful misconduct. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists a default.

8.5 Waiver of Order of Sale and Marshaling. Mortgagor waives all rights to direct the order in which any of the Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Property marshaled upon any sale.

8.6 Non-Waiver of Defaults. The entering upon and taking possession of the Property, the collection of Rents or the proceeds of fire and other insurance policies or compensation or awards for any taking or damage of the Property, and the application or release thereof as herein provided, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

8.7 Foreclosure Subject to Tenancies. Mortgagee shall have the right at its option to foreclose this Mortgage subject to the rights of any tenant or tenants of the Property. However, the Mortgagee will not elect to terminate any lease of the Property, unless such lease is in default at the time of such foreclosure, if the Mortgagee specifically approved such lease in writing and did not, at the time of such approval, state that such approval was conditioned upon that lease remaining subordinate to this Mortgage.

8.8 Evasion of Prepayment Terms. If an event of default hereunder has occurred and is continuing, a tender of payment of the amount necessary to satisfy the entire indebtedness secured hereby made at any time prior to foreclosure sale (including sale under power of sale) by Mortgagor, its successors or assigns or by anyone in behalf of Mortgagor, its successors or assigns, shall constitute an evasion of the prepayment terms of the Note and be deemed to be a voluntary prepayment thereunder and any such payment to the extent permitted by law, will, therefore, include the additional payment required under the prepayment privilege, if any, contained in the Note.

8.9 Remedies Cumulative. To the extent permitted by law, every right and remedy provided in this Mortgage is distinct and cumulative to all other rights or remedies under this Mortgage or afforded by law or equity or any other agreement between Mortgagee and Mortgagor, and may be exercised concurrently, independently or successively, in any order whatsoever. Mortgagee may exercise any of its rights and remedies at its option without regard to the adequacy of its security.

8.10 Mortgagee's Expenses. Mortgagor will pay all of Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any suit is filed, including without limitation reasonable legal fees and disbursements, foreclosure costs and title charges. All such sums, with interest thereon, shall be additional indebtedness of Mortgagor secured by this Mortgage. Such sums shall be immediately due and payable and shall bear interest from the date of disbursement at the default rate of interest stated in the Note, or the maximum rate which may be collected from Mortgagor under applicable law if that is less.

8.11 Right to Discontinue Proceedings. In the event Mortgagee shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage and shall thereafter elect to discontinue or abandon the same for any reason, Mortgagee shall have the unqualified right to do so and in such event Mortgagor and Mortgagee shall be restored to their former positions with respect to the indebtedness secured by this Mortgage. This Mortgage, the Property and all rights, remedies and recourse of the Mortgagee shall continue as if the same had not been invoked.

## 9. GENERAL

9.1 Application of Payments. Except as applicable law or this Mortgage may otherwise provide, all payments received by Mortgagee under the Note or this Mortgage shall be applied by Mortgagee in the following order of priority:

- (a) Mortgagee's expenses incurred in any efforts to enforce any terms of this Mortgage;
- (b) amounts payable to Mortgagee by Mortgagor under Article 3 for reserves;
- (c) interest and late charges payable on the Note;
- (d) principal of the Note;
- (e) interest payable on advances made to protect the security of this Mortgage;
- (f) principal of such advances; and
- (g) any other sums secured by this Mortgage in such order as Mortgagee, at its option, may determine; provided, however, that Mortgagee may, at its option, apply any such payments received to interest on and principal of advances made to protect the security of this Mortgage prior to applying such payments to interest on or principal of the Note.



9.2 Release of Mortgage. Upon payment of all sums secured by this Mortgage, this Mortgage and all assignments contained herein shall be void, and this Mortgage shall be released by the Mortgagee at the cost and expense of the Mortgagor, otherwise to remain in full force and effect.

9.3 Mortgagee's Powers. Without affecting the liability of any person for payment or performance of the Secured Obligations, Mortgagee, at its option, may extend the time for payment of the indebtedness secured hereby or any part thereof, reduce payment thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of the indebtedness, release the lien of this Mortgage on any part of the Property, take or release other or additional security, release or cause to be released all or any part of the Property, or consent to the making of any map or plat of the Property, consent to the granting of any easement or creating any restriction on the Property, or join in any subordination or other agreement affecting this Mortgage or the lien or charge hereof. Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

9.4 Subrogation. Mortgagee shall be subrogated for further security to the lien, although released of record, of any and all encumbrances discharged, in whole or in part, by the proceeds of the Loan or any other indebtedness secured hereby.

9.5 No Violation of Usury Laws. Interest, fees and charges collected or to be collected in connection with the indebtedness secured hereby shall not exceed the maximum, if any, permitted by any applicable law. If any such law is interpreted so that said interest, fees and/or charges would exceed any such maximum and Mortgagor is entitled to the benefit of such law, then:

- (a) such interest, fees and/or charges shall be reduced by the amount necessary to reduce the same to the permitted maximum; and
- (b) any sums already paid to Mortgagee which exceeded the permitted maximum will be refunded. Mortgagee may choose to make the refund either by treating the payments, to the extent of the excess, as prepayments of principal or by making a direct payment to the person(s) entitled thereto. No prepayment premium shall be assessed on prepayments under this paragraph. The provisions of this paragraph shall control over any inconsistent provision of this Mortgage or the Note or any other Loan Documents.

9.6 Additional Documents; Power of Attorney. Mortgagor, from time to time, will execute, acknowledge and deliver to Mortgagee upon request, and hereby irrevocably appoints Mortgagee its attorney-in-fact to execute, acknowledge, deliver and if appropriate file and record, such security agreements, assignments for security purposes, assignments absolute, financing statements, affidavits, certificates and other documents, in form and substance satisfactory to Mortgagee, as Mortgagee may request in order to perfect, preserve, continue, extend or maintain the assignments herein contained, the lien and security interest under this Mortgage, and the

priority thereof. Mortgagor will pay to Mortgagee upon request therefor all costs and expenses incurred in connection with the preparation, execution, recording and filing of any such document.

9.7 Waiver of Statute of Limitations. To the full extent Mortgagor may do so, Mortgagor hereby waives the right to assert any statute of limitations as a defense to the enforcement of the lien of this Mortgage or to any action brought to enforce the Note or any other obligation secured by this Mortgage.

9.8 Forbearance by Mortgagee Not a Waiver. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy, and no waiver by Mortgagee of any particular default by Mortgagor shall constitute a waiver of any other default or of any similar default in the future. Without limiting the generality of the foregoing, the acceptance by Mortgagee of payment of any sum secured by this Mortgage after the due date thereof shall not be a waiver of Mortgagee's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this Mortgage, nor shall Mortgagee's receipt of any awards, proceeds or damages under paragraphs 2.3 and 2.8 hereof operate to cure or waive Mortgagor's default in payment of sums secured by this Mortgage.

9.9 Modifications and Waivers. This Mortgage cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

9.10 Notice. Except as applicable law may otherwise require, all notices and other communications shall be in writing and shall be deemed given when delivered by personal service or when mailed, by certified or registered mail, postage prepaid, addressed to the address set forth at the beginning of this Mortgage. Any party may at any time change its address for such purposes by delivering or mailing to the other parties hereto as aforesaid a notice of such change.

9.11 Governing Law; Severability; Captions. This Mortgage shall be governed by the laws of the State of Alabama. If any provision or clause of this Mortgage conflicts with applicable law, such conflicts shall not affect other provisions or clauses hereof which can be given effect without the conflicting provision, and to this end the provisions hereof are declared to be severable. The captions and headings of the paragraphs and articles of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

9.12 Definitions. As used herein: the term "Mortgagor" means the Mortgagor herein named, together with any subsequent owner of the Property or any part thereof or interest therein, and the term "Mortgagee" means the Mortgagee herein named, together with any subsequent owner or holder of the Note or any interest therein, including pledgees, assignees and participants.



9.13 Successors and Assigns Bound; Joint and Several Liability; Agents. This Mortgage shall bind and inure to the benefit of the parties hereto and their respective heirs, devisees, legatees, administrators, executors, successors and assigns, subject to the provisions of Article 4 hereof. All obligations of Mortgagor hereunder are joint and several. In exercising any rights hereunder or taking actions provided for herein, Mortgagee may act through its employees, agents or independent contractors as authorized by Mortgagee.

9.14 Number; Gender. This Mortgage shall be construed so that wherever applicable the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall be applicable to all genders.

9.15 Time. Time is of the essence in connection with all obligations of Mortgagor herein.

9.16 Exculpation of Fee Owner. It is understood and agreed that the Fee Owner, its officers, directors, successors or assigns, shall not be personally liable for the payment of the Secured Obligations or performance of the terms and conditions of this Mortgage, or any representations, warranties or covenants contained in the Mortgage, and no personal money judgments shall be asserted against the Fee Owner, its officers, directors, successors and assigns, provided this limitation of liability shall not prejudice the right of the Mortgagee to enforce this Mortgage or any other security given for the payment of the Secured Obligations or to enforce its remedies hereunder including joining the Fee Owner in any legal proceedings to enforce this Mortgage or sell the property or to enforce its remedies at law, provided such joinder is for the purpose of enforcing this Mortgage or enforcing the remedies hereunder and not for the purpose of seeking a personal money judgment against the Fee Owner, its officers, directors, successors and assigns except that the Fee Owner shall be liable to the Mortgagee and shall pay to the Mortgagee any rents or other income it receives and retains after an event of default has occurred under this Mortgage.

9.17 Limited Recourse Debt. The terms of this Mortgage, as it relates to the Borrowers, is subject to the terms and provisions as to limitations on personal obligations set forth in paragraph 11 of the Note entitled Limited Recourse Debt.

## 10. THE GROUND LEASE

10.1 Perform Ground Lease. Borrowers shall at all times keep and perform all of the terms, covenants and conditions of the Ground Lease to be performed by the tenants thereunder and shall not suffer, cause or permit to exist any default on their part as lessee under the Ground Lease.

10.2 Greater Title to Property. If Borrowers shall, at any time before payment in full of the Secured Obligations, acquire fee title to the Property or any greater estate in the Property, this Mortgage shall extend to, create a lien against and be a conveyance of such fee title or greater estate.

10.3 Not to Surrender Ground Lease. Borrowers will not surrender the Ground Lease, nor terminate or cancel the Ground lease, and will not without the express written consent of Mortgagee, exercise any option granted Borrowers under the Ground Lease or modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, and as further security for the repayment of the Secured Obligations and for the performance of the covenants herein and in the Ground Lease contained, Borrowers hereby assign to Mortgagee all of their rights, privileges and prerogatives as tenants under the Ground Lease to exercise such options, terminate, cancel, modify, change, supplement or amend the Ground Lease. Provided there shall be no default under any of the covenants or agreements herein contained to be performed by Borrowers or in the performance by Borrowers of any of the terms, covenants and conditions in the Ground Lease contained, Mortgagee shall have no right to exercise any such options, terminate, cancel, modify, change, supplement, alter or amend this Ground Lease. The parties constituting the Mortgagor acknowledge that no exercise of any option of the Borrowers to purchase the Fee Owner's interest in the Property pursuant to the terms of the Ground Lease or otherwise shall be effective without the Mortgagee's written consent, but the Mortgagee will give its written consent to such purchase at such time as it will not result in any increase in the real estate taxes and assessments payable or to be paid in the future with respect to the Property.

10.4 Estoppel and Certification. Mortgagor hereby certifies that the Ground Lease contains the entire agreement between the parties thereto with respect to the leasing of the Property and is in full force effect; that Borrowers have full right and authority under the Ground Lease to mortgage and grant or security interest in the Leasehold Estate; that rent and all other charges required to be paid under the Ground Lease are current; no notice has been sent to Borrowers thereunder of any default under the Ground Lease which remains uncured and Borrowers are not now in default under the Ground Lease.

10.5 Estoppel and Certification. The execution of this Mortgage shall constitute an affirmation to Mortgagee by the Mortgagor that notwithstanding any provisions in the Ground Lease to the contrary, all conditions contained in the Ground Lease precedent to the execution and deliverance of this Mortgage have been conclusively performed and discharged or waived by the party to whose benefit said conditions inure, and no provisions of this Mortgage are contrary to the provisions of the Ground Lease regarding the subordination of the lessor's interest in the Ground Lease and the mortgaging of the Leasehold Estate or if they are the provisions of the Mortgage shall govern.

10.6 Right of Mortgagee to Cure Default Under Ground Lease. If Borrowers shall at anytime fail to fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it as tenant under the Ground Lease, Mortgagee may, but shall not be obligated to, take any action Mortgagee deems necessary or desirable to prevent or to cure any such default by the Borrowers under the Ground Lease. Upon receipt by Mortgagee of any notice of default under the Ground Lease or knowledge thereof, Mortgagee may rely thereon and take any action to cure such default even though the existence or nature of such default shall be questioned or denied by Borrowers or by any party on behalf of Borrowers. Borrowers hereby expressly grant to Mortgagee and agree that Mortgagee shall have the absolute and immediate right to enter in and upon the Property or any part thereof to such extent and as often as



Mortgagee, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Borrowers. Mortgagee may pay and expend such sums of money as Mortgagee, in its sole discretion, deems necessary for any such purposes, and Borrowers hereby agree to pay to Mortgagee immediately and without demand, all such sums so paid and expended by the Mortgagee, together with interest thereon from the date of each such payment at the rate then in effect on the Note. All sums so paid and expended by Mortgagee, and the interest thereon, shall be added to and be secured by this Mortgage and shall be so much additional Secured Obligations.

10.7 Bankruptcy Election to Terminate. Borrowers shall not, without Mortgagee's prior written consent, elect to treat the Ground Lease as terminated under Subsection 365(h)(1) of the Bankruptcy Code, 11 U.S.C. Section 365(h)(91). Any such election made without Mortgagee's prior written consent shall be void.

10.8 Assignment of Claim in Bankruptcy. Borrowers hereby unconditionally assign, transfer and set over to Mortgagee, all of Borrower's claims and rights to the payment of damages arising from any rejection by the lessor of the Ground Lease under the Bankruptcy Code, 11 U.S.C. Section 101 et seq. (the "Bankruptcy Code"). Mortgagee shall have the right to proceed in its own name or in the name of Borrowers in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrowers, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessor under the Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and remedies, and shall continue in full effect until all of the Secured Obligations shall have been satisfied and discharged in full. Any amounts received by Mortgagee as damages arising out of the rejection of the Ground Lease as aforesaid shall be applied first to all costs and expenses of Mortgagee (including, without limitation, attorneys' fees) incurred in connection with the exercise of any of its rights or remedies under this paragraph and then to the Secured Obligations.

10.9 Right to Assume Ground Lease. If there shall be filed by or against the Borrowers a petition under the Bankruptcy Code, and the Borrowers, as tenant under the Ground Lease shall determine to reject either or both of the Ground Leases pursuant to Section 365(a) of the Bankruptcy Code, the Borrowers shall give the Mortgagee not less than ten (10) days' prior notice of the date on which the Mortgagee shall apply to the Bankruptcy Court for authority to reject the Ground Lease. The Mortgagee shall have the right, but not the obligation, to serve upon the Borrowers within such ten (10) day period a notice stating that (a) the Mortgagee demands that the Borrowers assume and assign the Ground Lease to the Mortgagee pursuant to Section 365 of the Bankruptcy Code and (b) the Mortgagee covenants to cure or provide adequate assurance or prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If the Mortgagee serves upon the Borrowers the notice described in the preceding sentence, the Borrowers shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (a) of the preceding sentence within thirty (30) days after the notice shall have been given subject to the performance by the Mortgagee of the covenant provided for in clause (b) of the preceding sentence.

10.10 Subordination of Rights of Borrowers. Borrowers hereby subordinate to the interest of Mortgagee hereunder any rights they may have against the lessor under the Ground Lease.

10.11 Nondisturbance of Tenants. The Fee Owner further agrees that in the event of the expiration or termination for any reason of the Ground Lease the Fee Owner shall recognize the rights of any tenants of Borrowers in the Property and agrees not to disturb said interests as created by leases and subleases between Borrowers and such tenants.

10.12 No Control Over Property. Fee Owner represents and warrants to Mortgagee that in the event the Mortgagee elects to foreclose or sell the Leasehold Estate only, i) neither it nor the Ground Lease has or creates any control over the use of the Property or the improvements constructed thereon except for any restriction on use referred to in the Ground Lease and that the Fee Owner will not unreasonably withhold its consent to a change in use; ii) the lessee's interest under the Ground Lease may be assigned to Mortgagee without the consent of the Fee Owner required and that there are no restrictions on such assignment; and iii) there shall be no fee to the Mortgagee as a result of a transfer of the Leasehold Estate from the Borrowers to the Mortgagee.

10.13 Notices and Defaults Under Ground Lease. Fee Owner represents, warrants and agrees with respect to the Ground Lease that:

- (a) No known default exists on the part of the Borrowers under the terms of the Ground Lease, no notice has been sent to the Borrowers of any default under the Ground Lease which remains uncured and Fee Owner has no defense to the enforcement of the Ground Lease in accordance with its terms nor any rights of set-off or counterclaim with respect thereto.
- (b) The Fee Owner acknowledges that Mortgagee shall be entitled to all the rights of the Borrowers under the provisions of the Ground Lease to cure any default by Borrowers under the Ground Lease.
- (c) The Fee Owner acknowledges that pursuant to this Mortgage, the Borrowers have mortgaged, granted and assigned to Mortgagee all of the Borrowers' right to amend, cancel, modify, alter or surrender the Ground Lease and agrees that the Ground Lease will not be amended, altered, cancelled, modified or surrendered while the Loan remains in effect without the written consent of Mortgagee, or its successors or assigns.
- (d) In case of any default under the Ground Lease, the Fee Owner agrees it shall take no action to terminate the Ground Lease, accelerate the rentals due thereunder, re-enter the Property or avail itself of any remedies available under the Ground Lease without first providing to the Mortgagee as set forth above, a notice of default in writing setting forth the claimed default. In each such case and upon such notice, the Mortgagee shall have the right but not the obligation to cure such default, whether the same consists of the failure to pay any required payments of rentals due on the Ground Lease or the failure to perform any other matter or thing which



is required to be performed under the Ground Lease, and the Fee Owner shall accept performance on the part of Mortgagee and not exercise such remedies unless:

- (i) If such default be in the failure to make any required payments of rentals or any other required monetary payments under the Ground Lease, including payment of taxes and insurance premiums, such default is not cured by Mortgagee within thirty (30) days after such notice of default;
- (ii) If such default shall consists of a failure to comply with or perform any other obligation on the part of the Borrowers under the Ground Lease, the Mortgagee shall not within thirty (30) days after such notice of default cure the same provided the time to cure shall be extended by such additional time as may be reasonably required to cure such default if the default is not susceptible of cure within thirty (30) days so long as the Mortgagee gives the Fee Owner reasonable assurances that it is promptly and expeditiously taking such steps as may be necessary to cure such default and continues such curative actions in good faith, and the Fee Owner continues to be paid the required installments of rentals due on the Ground Lease and any other amounts due Fee Owner under the Ground Lease;

If a default is of a nature that it is not susceptible of cure by the Mortgagee Fee Owner will not, without the written consent of Mortgagee, terminate the Ground Lease so long as Mortgagee continues to pay the required rentals and other amounts due Fee Owner under the Ground Lease and diligently proceeds to cure other curable defaults as provided herein.

IN WITNESS WHEREOF, Mortgagor and Mortgagee have executed this Mortgage as of the day and year first above written.

PELHAM INDUSTRIAL ENTERPRISES, LLC,  
an Alabama limited liability company.

By: 

Marc A. Eason

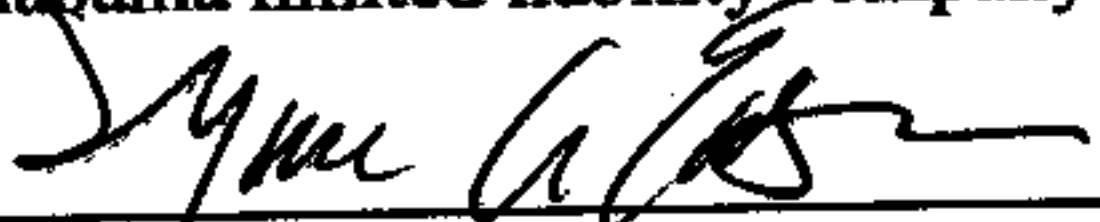
Its: Managing Member

By: 

David Bunkin

Its: Managing Member

PELHAM INDUSTRIAL ENTERPRISES VII,  
LLC, an Alabama limited liability company

By: 

Marc A. Eason

Its: Managing Member

By: 

David Bunkin

Its: Managing Member



THE INDUSTRIAL DEVELOPMENT BOARD  
OF THE CITY OF PELHAM, a public not for  
profit corporation of the State of Alabama

By: Tellur T. Egan

Its: Chairman

STATE OF ALABAMA     )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marc A. Eason, whose name as Managing Member of Pelham Industrial Enterprises, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me to be such Managing Member acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such Managing Member of Pelham Industrial Enterprises, LLC, on the day the same bears date.

Given under my hand and official seal this 16 day of Dec, 1997.

Stella M. Ezykied  
Notary Public

My Commission Expires Sept 9, 2000

STATE OF ALABAMA     )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that David Bunkin, whose name as Managing Member of Pelham Industrial Enterprises, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me to be such Managing Member acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such Managing Member of Pelham Industrial Enterprises, LLC on the day the same bears date.

Given under my hand and official seal this 16 day of Dec, 1997.

Stella M. Ezykied  
Notary Public

My Commission Expires Sept 9, 2000



STATE OF ALABAMA     )  
                                      ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Marc A. Eason, whose name as Managing Member of Pelham Industrial Enterprises VII, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me to be such Managing Member acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such Managing Member of Pelham Industrial Enterprises VII, LLC, on the day the same bears date.

Given under my hand and official seal this 16 day of Dec, 1997.

Stella M. Ezykio  
Notary Public

My Commission Expires Sept 2000

STATE OF ALABAMA     )  
                                      ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that David Bunkin, whose name as Managing Member of Pelham Industrial Enterprises VII, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me to be such Managing Member acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such Managing Member of Pelham Industrial Enterprises VII, LLC on the day the same bears date.

Given under my hand and official seal this 16 day of Dec, 1997.

Stella M. Ezykio  
Notary Public

My Commission Expires Sept 2000

STATE OF ALABAMA     )  
  ) SS  
COUNTY OF \_\_\_\_\_)

I, the undersigned, a Public Notary in and for County in said State, hereby certify that Tellman, whose name as Chairman of The Industrial Development Board Of The City Of Pelham, a public not for profit corporation of the State of Alabama, is signed to the foregoing instrument and who is known to me to be such Chairman acknowledged that (s)he, being informed of the contents of the instrument, executed the same voluntarily as such Chairman of The Industrial Development Board Of The City Of Pelham, a public not for profit corporation of the State of Alabama on the day the same bears date.

Given under my hand and official seal this 16 day of Dec, 1997.

Louise Bass  
Notary Public

My Commission Expires \_\_\_\_\_  
MY COMMISSION EXPIRES  
NOVEMBER 28, 2000

THIS DOCUMENT WAS DRAFTED BY:

Duane L. Paulson  
Oppenheimer Wolff & Donnelly  
Plaza VII, Suite 3400  
45 South Seventh Street  
Minneapolis, Minnesota 55402  
(612) 607-7467



EXHIBIT A  
TO  
MORTGAGE

Property Schedule

LEGAL DESCRIPTION:

The property which is the subject of this Mortgage is situated in the County of Shelby, State of Alabama, and is legally described as follows:

Parcel I

Lot D, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel II

Lots 3 and 4, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel III

Lot 5, according to the survey of Cahaba Valley Business Park, Resurvey Number 2, as recorded in Map Book 23 page 42 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel IV

Lot O-14B, according to the Resurvey of Cahaba Valley Business Park, as recorded in Map Book 17 page 73 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel V

Lot OW-4A, according to the Resurvey of Cahaba Valley Business Park, as recorded in Map Book 17 page 73 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel VI

Lot 1, according to the survey of Valleydale Business Center Resurvey as recorded in Map Book 18 page 89 in the Office of the Judge of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

**EXHIBIT B  
TO  
MORTGAGE**

**Leases**

<b><u>Tenant</u></b>	<b><u>Lease Date</u></b>	<b><u>Expiration Date</u></b>
Pritchard Industries Southeast, Inc.	January 10, 1997	January 31, 2000
Southern States Wholesale & Distribution, LLC	July 15, 1997	July 14, 1998
Ecolab, Inc.	October 31, 1995	October 31, 1998
Pegasus Airwave, Inc.	February 7, 1996	February 28, 1999
Moody-Price, Incorporated	July 7, 1993, amended May 10, 1996	December 31, 1999
Prosoft Automation		August 31, 1999
Centimark Corporation	December 1, 1995	December 30, 1999
Culligan Water Systems Of Birmingham	March 27, 1997	March 31, 2000
Omega Pharmaceutical, Inc.	November 14, 1996, amended June 19, 1997	December 31, 1997
Adwise Marketing Corporation	July 18, 1997	August 1, 2000
Lake Shore Incorporated	June 12, 1990, amended July 13, 1993	January 31, 1999
I.C.E., Inc.	September 24, 1990, amended October 13, 1995	October 31, 1998
Carolina Handling, LLC	May 13, 1997	June 14, 2000
Kraft Pizza Company	March 21, 1996	March 31, 1999

Execuprint, Inc.	June 12, 1996	June 30, 2001
Sullivan Communications, Inc.	May 12, 1995	May 31, 1998
Digital Equipment Corporation	April 4, 1996	July 14, 2001
Bellsouth Mobility Inc.	February 8, 1993, amended July 9, 1997	March 31, 2003
Patterson Dental Company	September 25, 1995	February 28, 2002
Berney Financial Systems, Inc.	May 2, 1990, amended June 15, 1992, September 23, 1992 and June 23, 1995	June 30, 1998
Heritage Kitchen & Bath, Inc., D/B/A Cabinet Classics	February 23, 1997	March 31, 2000
Philip Morris USA, A Division Of Philip Morris Incorporated	May 2, 1995	May 31, 1998
Hydromag International, Ltd.	April 18, 1990, amended February 12, 1993	May 31, 1998
Community Bio-Resources, Inc.	July 15, 1997	August 14, 2002
The Lincoln Electric Company, Inc.	July 20, 1993	October 31, 2003
Computer Resources, Inc.	May 28, 1992, amended May 22, 1997	June 30, 2002
Pitney Bowes, Inc.	September 27, 1995, amended November 14, 1995	November 30, 2000
Snap-On Tool Company	March 22, 1995	June 30, 2005
NCR Corporation	December 12, 1995, amended July 26, 1996	December 31, 2000



Prosoft Automation	December 20, 1994, amended December 11, 1995 and August 4, 1997	January 31, 1999
Windsor Door, A Division Of United Dominion Industries, Inc.	December 23, 1996, amended June 12, 1997	February 10, 2000
Great Barrier Insulation Company	September 27, 1994, amended May 8, 1996	April 30, 1999
Landis & Staefa, Inc.	June 3, 1997, amended June 9, 1997	July 31, 2004
Office Depot, Inc.	December 18, 1996	January 31, 2005
SSI Medical Services, Inc.	September 27, 1994	December 31, 1999
Canac Kitchens U.S., Ltd.	August 13, 1996, as amended October 30, 1997	September 30, 2001
Blue Cross And Blue Shield Of Alabama	July 27, 1989, amended June 21, 1990, February 10, 1993, June 21, 1993 and May 12, 1997	December 31, 2000
Davis Service Supply, Inc.	January 28, 1991, amended September 13, 1995	March 14, 1999
UCB Pharma, Inc.		August 31, 1997
Caretenders Infusion Of Birmingham, Inc.	January 22, 1997	February 28, 2003
Physician Sales & Service, Inc.	December 28, 1993, amended July 21, 1997	June 30, 1999

Digiorno Foods Company	December 14, 1989, amended November 7, 1990, August 5, 1993 and May 31, 1995	June 30, 1998
Ericsson, Inc.	March 13, 1996	March 31, 2001
Major Video Concepts, Inc.	August 16, 1991, amended April 7, 1997	May 31, 2002
Haverty Furniture Companies, Inc.	September 8, 1997	December 31, 2002
Diagnostic Imaging, Inc.	March 6, 1997	June 30, 2002
Communication Test Design, Inc.	September 27, 1996	October 10, 1999
Office Furniture USA, Inc.	July 6, 1994, amended May 6, 1996, April 24, 1997, and September 5, 1997	November 30, 2001
UCB Pharma, Inc.	October 3, 1988, amended January 18, 1989, April 8, 1991, March 3, 1992, September 13, 1995, August 29, 1996, March 8, 1997 and March 19, 1997	March 31, 1999
Owens & Minor Medical, Inc.	June 20, 1994, amended February 24, 1997	October 31, 1999
Wayne J. Griffin Electric, Inc.	November 25, 1997	November 30, 2000
Piedmont Plastics, Inc.	October 22, 1997	December 31, 2002
Advanced Communication Solutions, Inc.	October 6, 1997	October 31, 2000
Pumps, Compressors & Service, Inc.	December 15, 1997	January 4, 2001

Barrow Fine Furniture, Inc.

February 22, 1995

Month to Month

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