

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

LEASEHOLD MORTGAGE

DATE: August 12, 1998
MORTGAGOR: SPECTRUM ENTERPRISES, INC.
MORTGAGEE: SOUTHLAND BANK
POST OFFICE BOX 5676,
DOTHAN, ALABAMA 36304
**MORTGAGE
AMOUNT:** \$325,000.00
**MATURITY
DATE:** August 31, 2013
**LOCATION OF
PREMISES:** Lot 4
Oak Mountain Commerce Place
Pelham, Alabama 35124

Inst # 1998-31969
08/18/1998-31969.
10:28 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
028 CRH 563.50

WITNESSETH:

WHEREAS, it is the intent hereof to secure payment of \$325,000.00 of the indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee (the "Secured Obligations"). Mortgagor covenants and agrees that this Mortgage also secures all amounts advanced to cure any of Mortgagor's defaults hereunder, together with the specified interest thereon. Nothing contained in this paragraph shall be considered as limiting the interest payable on the indebtedness secured hereby or the amount or amounts that shall be secured herein when advanced to protect the Mortgagee's security or security interest in the leasehold estate of Mortgagor in the Premises (defined below) or the security interest of the Mortgagee in the Building Service Equipment (defined below).

THAT to secure the payment of such indebtedness and the faithful performance of each and every covenant, term, condition and agreement of the Mortgagor herein contained, and the payment by the Mortgagor to the Mortgagee of all such sums; if any, as may be expended or advanced by the Mortgagee in the performance of any obligation of the Mortgagor hereunder and any other sums or charges which may be due and payable to the Mortgagee by the Mortgagor,

THE MORTGAGOR HEREBY MORTGAGES TO THE MORTGAGEE:

I. All of the leasehold estate in and to that certain parcel of land, described on "Exhibit A" annexed hereto and made a part hereof, together with all buildings and improvements constructed

or to be constructed thereon, including all and singular the easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining thereto, and the reversion and remainder thereof, and all of the estate, right, title, interest, claim or demand whatsoever of the Mortgagor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, in front of, or adjoining or adjacent to the premises, to the center line thereof, either in law or in possession or expectancy, now or hereafter acquired (all of the foregoing collectively herein called the "Premises");

II. All the right, title and interest, now owned or hereafter acquired, of the Mortgagor in and to the Lease (as herein defined), in and to all modifications, extensions and renewals of the Lease, in and to the right to renew the Lease for a succeeding term or terms, in and to the credits, deposits, options, including purchase options, privileges and rights of the Mortgagor as tenant under the Lease, and in and to the premises demised by the Lease including but not limited to any other lease or fee title therein which the Mortgagor may hereafter acquire;

III. All of the right, title and interest of the Mortgagor in and to (i) all buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Premises or any part thereof (the "Improvements"); (ii) to the extent permitted by law, the name or names, if any, as may now or hereafter be used for each Improvement, and the good will associated therewith and (iii) all machinery, devices, fixtures, apparatus, interior improvements, appurtenances and equipment of every kind and nature whatsoever now or hereafter attached to or placed in or upon the Premises or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Premises or any business conducted thereon (except for fixtures and personal property that are at any time the property of tenants, occupants or holders of concessions on the Premises), all of the foregoing, except as aforesaid, hereinafter collectively called "Building Service Equipment";

IV. All the right, title and interest of the Mortgagor in and to all furniture, furnishings, decorations, chattels and other personal property now or hereafter in, on or at said Premises, all of the foregoing, except as aforesaid, hereinafter collectively called "Furnishings";

V. All right, title and interest of the Mortgagor in and to all insurance or other proceeds for damage done to the improvements, Building Service Equipment or Furnishings of the Mortgagor on the Premises and all awards heretofore made or hereafter to be made to or for the account of the Mortgagor for the permanent or temporary taking by eminent domain of the whole or any part of the Premises or any lesser estate in, or easement appurtenant to, the Premises (including, without limitation, any awards for change of grade of streets), all of which proceeds and awards are hereby assigned to the Mortgagee, subject to the further provisions of this Mortgage;

VI. All of the rents, issues, benefits and profits of the Mortgaged Premises (as hereinafter defined), including all leases now or hereafter entered into covering any part of the Mortgaged Premises, all of which are hereby assigned to the Mortgagee, subject, however, to the right of the Mortgagor to receive and use the same;

VII. All of the records and books of account now or hereafter maintained by the Mortgagor in connection with the operation of the Mortgaged Premises; and

VIII. All water, water rights, mineral rights, ditches, ditch rights, reservoirs and reservoir rights appurtenant to, located on or used in connection with the Premises or the Improvements, whether existing now or hereafter acquired (all of the foregoing Premises, Improvements, Building Service Equipment, Furnishings, appurtenances, estates, rights, privileges, interests and franchises hereby granted and released, assigned, transferred, set over and mortgaged, or intended so to be as enumerated in I through VII above or in any manner pertaining to Mortgagor's interest in the Premises, being hereinafter collectively referred to as the "Mortgaged Premises").

TO HAVE AND TO HOLD the Mortgaged Premises now or hereafter owned absolutely or in fee by the Mortgagor, unto the Mortgagee, its successors and assigns, forever for the uses set forth herein.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY AGREE THAT THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY IS \$325,000, AND ALL OF SUCH INDEBTEDNESS HAS BEEN PRESENTLY INCURRED.

ARTICLE 1

Certain Definitions

The following terms shall have the meanings set forth below, unless the context of this mortgage otherwise requires:

1.1 "Base Rate" shall mean a variable rate of interest per annum designated periodically by Southland Bank (the "Bank") at its principal office in Dothan, Alabama, as its base rate. Base rate is not necessarily the lowest rate charged by the Bank. Such rate which is in effect as of the close of business on each business day shall be the effective applicable rate for that day and for any succeeding non-business day. In no event to exceed the maximum rate allowed by law including the applicable conflict of laws rules in the jurisdiction in which the Mortgaged Premises shall be situated.

1.2 "Due and payable" when used with reference to the principal of, or premium or interest on, or when referring to any and all other sums secured by this Mortgage shall mean due and payable, whether at the monthly or other date of payment or at the date of maturity; or by acceleration or call for payment, or, in the case of Impositions (as defined in Section 1.4), the last day upon which any charge may be paid without penalty or interest thereon or without becoming a lien upon the Mortgaged Premises where no such lien existed prior thereto.

1.3 "Governmental Authorities" shall mean all federal, state, county, municipal and local governments and all departments, commissions, boards, bureaus and offices thereof, having or claiming jurisdiction over the Mortgaged Premises or any part thereof.

1.4 "Impositions" shall mean all duties, taxes (except income or franchise taxes or similar taxes based upon or measured by income), water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvements or benefit), charges for public utilities, excises, levies, license and permit fees and other charges, ordinary or extraordinary, whether

foreseen or unforeseen, of any kind and nature whatsoever, which prior to or during the term of this mortgage will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on the Premises, the Improvements, building Service Equipment, Furnishings or any other property or rights included in the Mortgaged Premises, or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by the Mortgagor from the Space Leases as defined in Section 1.11, by virtue of any present or future law, order or ordinance of the United States of America or of any state, county, or local government or of any department, office or bureau thereof or of any other Governmental Authority.

1.5 "Lease" means that certain Lease by and between Birmingham Realty Company, an Alabama corporation, as landlord, and Mortgagor, as tenant, dated December 5, 1998, a memorandum of which is recorded in the Office of the Judge of Probate of Shelby County, Alabama together with any related agreement granting any easement for the benefit of the premises demised under such Lease, in the form furnished to the Mortgagee on the date hereof, as it may hereafter be amended with the prior written consent of the Mortgagee (if there shall be any related easements, the grantor thereunder may be referred to herein as the "landlord" and the grantee as the "tenant"), the Mortgagee hereby agreeing to not modify or amend the Lease without the Mortgagee's prior written consent.

1.6 "Legal Requirements" shall mean all present and future laws, ordinances, rules, regulations and requirements of all Governmental Authorities, and all orders, rules and regulations of any national or local board of fire underwriters or other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to the Mortgaged Premises or any part thereof, or to the sidewalks, alleyways, passageways, curbs and vaults adjoining the same, or to the use or manner of use of any of the foregoing, or to the owners, tenants, or occupants thereof, whether or not any such law, ordinance, rule, regulation or requirement shall necessitate structural changes or improvements or shall interfere with the use or enjoyment of any of the foregoing, and shall also mean and include all requirements of the policies of public liability, fire and all other insurance at any time in force with respect to any of the foregoing.

1.7 "Loan Agreements", "Loans" or "Financing Documents" shall mean the promissory notes, this Leasehold Mortgage, the Second Leasehold Mortgage, the UCC-1 financing statements and all other notes, security agreements, guarantys, instruments or documents of whatever kind or nature evidencing or in any manner pertaining to the loans made by Mortgagee to Mortgagor in the amounts of \$325,000 and \$260,000, which are the Secured Obligations.

1.8 "Mortgage" shall mean this instrument as originally executed or, if hereafter amended, modified or supplemented, as so amended, modified or supplemented.

1.9 "Mortgagee" shall mean the Mortgagee hereinabove named or any subsequent holder or holders of this Mortgage.

1.10 "Mortgagor" shall mean the mortgagor herein named, any subsequent owner or owners of the Mortgaged Premises, and its or their respective heirs, executors, administrators, successors and assigns.

1.11 "Permitted Encumbrances" shall mean, collectively, those liens encumbrances and other matters affecting title to the Mortgaged Premises enumerated in Exhibit "B" annexed hereto and made a part hereof and such other items as the Mortgagee, in its sole discretion, may approve in writing.

1.12 "Person" shall mean and include any individual, corporation, partnership, unincorporated association, trust, governmental, quasi-governmental or other entity.

1.13 "Space Lease" shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the Mortgaged Premises, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same. "Tenant" shall mean the tenant or other user or occupant of part or all of the Mortgaged Premises under any Space Lease.

1.14 "State" shall mean the State of Alabama.

ARTICLE 2

Particular Covenants of the Mortgagor

The Mortgagor covenants and agrees as follows:

2.1 **Payment of Indebtedness.** The Mortgagor shall duly and punctually pay to the Mortgagee, as and when due and payable, the indebtedness secured hereby. As used in this Section 2.1 and elsewhere in this Mortgage, the term "indebtedness" shall mean the amount set forth at the beginning of this Mortgage (i.e. \$325,000.00) as the "Mortgage Amount" together with all interest thereon, and all costs of collection, the value of the Mortgaged Premises being equal to at least the \$325,000.00 principal amount secured by this instrument.

2.2 **Warranty of Title.** The Mortgagor represents, covenants and warrants as follows:

2.2.1 That it is lawfully seized and possessed of an indefeasible leasehold in the Premises and that it holds good title thereto and to the rest of the Mortgaged Premises, subject only to the Permitted Encumbrances;

2.2.2 That the Mortgaged Premises are now free and clear of all liens and encumbrances whatsoever, other than the Permitted Encumbrances, and that the Mortgagor has good right and lawful authority to mortgage and convey the same in the manner and form herein provided, and that it will warrant and defend title to the Mortgaged Premises against all claims and demands whatsoever;

2.2.3 That this Mortgage was lawfully executed and delivered in accordance with applicable law and in conformity with the Lease;

2.2.4 That the Lease has not been further modified and is a valid and subsisting agreement in full force and effect in accordance with its terms, all of the rent under the Lease has been paid by the tenant under the Lease to date, and none of such rents have been prepaid;

2.2.5 That there are no defaults by tenant under the Lease or circumstances which, with the giving of the notice or passage of time or both, would constitute an event of default thereunder;

2.2.6 That to the best of Mortgagor's knowledge the landlord under the Lease is not in default under any of the terms and provisions of the Lease on the part of the landlord to be observed and performed: and

2.2.7 That no ground or underlying lease affects the Mortgage Premises other than the Lease or as provided in Exhibit "B" annexed hereto.

2.3 To Pay Impositions.

2.3.1 Except as otherwise set forth below, including, without limitation, in Section 2.3.3, the Mortgagor will pay or cause to be paid, as and when due and payable, all Impositions levied upon the Mortgaged Premises or any part thereof for which the Mortgagor shall be assessed or chargeable. Notwithstanding the foregoing, if by law any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), the shall have the right, provided that no Event of Default shall then exist under this Mortgage, to exercise such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments as they fall due and before any fine, penalty, further interest or cost may be added thereto.

2.3.2 The Mortgagor will pay all taxes or other governmental charges (including, without limitation, stamp taxes), except income or franchise taxes or similar taxes based upon or measured by income, assessed by the United States government, the government of any state, or any political subdivision of either, and imposed on the Mortgagee, its successors or assigns, by reason of the ownership of this Mortgage or the whole or any portion of the indebtedness secured hereby or the receipt of the interest payable thereunder, or payable by either the Mortgagor or the Mortgagee upon any increase in the indebtedness secured hereby, or any modification, amendment, extension and/or consolidation hereof. The Mortgagor will also pay the whole of any tax imposed directly or indirectly on this Mortgage or the whole or any portion of the indebtedness secured hereby in lieu of a tax on the Mortgaged Premises or the Improvements and Building Service Equipment, whether by reason of (a) the passage after the date of this Mortgage of any law of the State deducting from the value of real property for the purposes of taxation any lien thereon; (b) any change in the laws for the taxation of mortgages or debts secured by mortgages for state or local purposes; (c) a change in the means of collection of any such tax or otherwise; or (d) any tax, whether or not now existing, assessed against, or withheld from, interest or other payments made by the or assessed against the Mortgage and which are assessed or levied by the government of any foreign nation or political subdivision thereof, provided such tax liability shall not result from the ownership of this Mortgage by a person not a citizen of, or an entity not formed under the laws of, the United States or any state. Within a reasonable time after payment of any such tax or governmental charge, the Mortgagor will deliver to the Mortgagee reasonably satisfactory proof of payment thereof, subject, however, to the right of the Mortgagor to contest Impositions as set forth in subsection 2.3.3.

2.3.3 The Mortgagor shall have the right provided that no Default or Event of Default shall then exist or would result from the contest hereinafter referred to, to contest the amount

or validity, in whole or in part, of any Imposition, or to seek a reduction in the valuation of the Mortgaged Premises, the Building Service Equipment or Furnishings as assessed for real estate or personal property tax purposes by appropriate proceedings diligently conducted in good faith so long as neither the Mortgaged Premises, the Building Service Equipment, the Furnishings, nor any material part thereof would by reason of such postponement or deferment be in imminent danger of being forfeited or lost.

2.3.4 The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition indicating the nonpayment of such Imposition shall be prima facie evidence that such Imposition is due and payable unpaid at the time of the making or issuance thereof.

2.4 To Insure.

2.4.1 The Mortgagor shall at its own expense at all times maintain or cause to be maintained on all of the Mortgaged Premises to the extent obtainable comprehensive general liability insurance, including umbrella liability insurance, covering all claims for bodily injury, including death, or property damage occurring on, in or about the Mortgaged Premises in an amount not less than \$1,000,000 combined single limit as respects bodily injury and property damage in respect to any one occurrence, such insurance to be in addition to any amounts required under any other mortgage or deed of trust now or hereafter granted by Mortgagor to the Mortgagee. The policy limits of such insurance shall be increased from time to time to reflect what a reasonably prudent owner or lessee of buildings or improvements similar in type and locality to the Mortgaged Premises would carry. during any period of substantial alterations or improvements in, on or to the Mortgaged Premises, the Mortgagor will cause the comprehensive general liability insurance, including umbrella liability insurance, endorsed to provide (a) owners and contractors protective liability coverage' including completed operations liability coverage; (b) physical damage insurance covering the Mortgaged Premises for loss or damages resulting from the perils of fire, lightning and such other risks and hazards as are provided under the current standard "Extended Coverage Endorsement" and vandalism and malicious mischief coverage for the full replacement value of the Mortgaged Premises on a stipulated and agreed-amount basis; (c) if the Mortgaged Premises is in an area identified as a flood hazard area by the Secretary of Rousing and Urban Development, flood insurance in an amount equal to the lesser of the full replacement value of the Mortgaged Premises or the maximum amount available under the Federal flood insurance program; (d) boiler and machinery insurance covering all boilers, machinery, air conditioning, pressure vessels, and similar type equipment commonly covered under a broad-form boiler and machinery policy in an amount satisfactory to the Mortgagee; and (e) insurance against such other risks of damage, hazards, casualties and contingencies in such amounts as the Mortgagee shall from time to time reasonably require, provided that insurance against such other risks, hazards, casualties or contingencies shall then be commonly carried by prudent owners of building or improvements in the local city similar in character, construction, use and occupancy to the Improvements, building Service Equipment and Furnishings on, or constituting a part of, the Mortgaged Premises; all such insurance to be payable to the Mortgagee, as its interests may appear, and to be held, applied and/or disbursed as provided in subsections 2.4.6 and 2.4.7 below.

2.4.2 All insurance required in subsection 2.4 1. above shall be evidenced by valid and enforceable policies, in form and substance, and issued by and distributed among insurers of

recognized responsibility having a Best's rating of A and a financial size category of Class VII or above, as shall reasonably be required by the Mortgagee from time to time. Such insurers shall be authorized to do business in the State and in all other respects shall be reasonably satisfactory to the Mortgagee. The originals of all such policies, or, at the option of the Mortgagor, duplicate copies or certificates thereof, shall be delivered to the Mortgagee concurrently with the execution and delivery hereof. Thereafter, all renewal or replacement policies or duplicate copies or certificates thereof, shall be so delivered to the Mortgagee not less than fifteen (15) days prior to the expiration date of the policy or policies to be renewed or replaced, in each case accompanied by evidence reasonably satisfactory to the Mortgagee that all premiums currently payable with respect to such policies have been paid in full by or at the direction of the Mortgagor.

2.4.3 All such insurance policies shall (a) except for any liability policy required hereunder, contain a standard non-contributory form of mortgagee clause satisfactory to the Mortgagee which clause shall name the Mortgagee as a loss payable party as its interests may appear; (b) provide, to the extent obtainable, that such policies may not be canceled or amended without at least thirty (30) days prior written notice to the Mortgagee; and (c) to the extent obtainable, provide that no act, omission or negligence of the Mortgagor or its agents, servants or employees, or of any Tenant under any Space Lease, which might otherwise result in a forfeiture of such insurance or any part thereof, shall in any way affect the validity or enforceability of such insurance insofar as the Mortgagee is concerned.

2.4.4 The Mortgagor, at its expense, will furnish to the Mortgagee, to the extent in the possession of the Mortgagor, within ninety (90) days after demand, proof of the then full replacement value of each of the Improvements and the Building Service Equipment and Furnishings therein.

2.4.5 If the Mortgagee shall by any manner acquire the title or estate of the Mortgagor in or to any portion of the Mortgaged Premises, it shall thereupon become the sole and absolute owner of all insurance policies affecting such portion held by or required hereunder to be delivered to the Mortgagee, with the sole right to collect and retain all unearned premiums thereon; and the Mortgagor shall be entitled only to a credit in reduction of the then outstanding indebtedness secured hereby in the amount of the short rate cancellation refund. The Mortgagor agrees immediately upon demand, to execute and deliver such assignments or other authorizations or instruments as may be necessary or desirable to effectuate the foregoing.

2.4.6 If any of the Improvements, Building Service Equipment or Furnishings shall be damaged or destroyed in whole or in part, by fire or other casualty, the Mortgagor shall give prompt notice thereof to the Mortgagee, and shall, at Mortgagor's sole options apply insurance proceeds (i) to payment of any of the Mortgagor's indebtedness and other obligations to Mortgagee in such order as the Mortgagee may elect or as Mortgagor and Mortgagee may otherwise agree or (ii) to promptly restore, replace, rebuild or alter the same, as nearly as possible to the condition existing immediately prior to such damage or destruction. If the Mortgagor elects to construct a replacement for or to alter in any material or substantial way, the damaged or destroyed or taken items, the Mortgagor shall before commencing any such work, submit copies of the plans and specifications therefor to the Mortgagee for the Mortgagee's approval, which approval shall not be unreasonably withheld or delayed and the Mortgagor's election to construct a replacement for, or to alter in any material or substantial way the damaged or destroyed items shall constitute the

Mortgagor's agreement to complete such replacement, whether or not the available insurance an/or condemnation proceeds are sufficient to pay the full cost of completing such replacement. If by reason of any such damage or destruction any sums are paid under any insurance policy hereinabove mentioned or contemplated, such sums shall be paid as follows:

(a) If the aggregate insurance proceeds received by reason of any single instance of such damage or destruction shall be \$10,000 or less, and unless Mortgagor elects to apply such funds toward the payment of the indebtedness and other obligations of Mortgagor to Mortgagee, such insurance proceeds shall be paid over to the Mortgagor, who shall hold the same as a trust fund to be used first for the payment of the entire costs of restoring, repairing, rebuilding or replacing the damaged or destroyed items (whether or not such proceeds are sufficient for such purpose), and the balance, if any, may be used by the Mortgagor for any other purpose; provided, however, that if any Event of Default or Default shall exist at the time such proceeds are to be paid over to the Mortgagor, such proceeds shall be paid over to the Insurance Fund Depository hereinafter mentioned and not be the Mortgagor.

(b) If the aggregate insurance proceeds received by reason of any single instance of such damage or destruction shall be more than \$10,000, all such proceeds shall be paid to the Mortgagee, and each such insurance company concerned is hereby authorized and directed to make payment of such loss directly to the Mortgagee instead of the Mortgagor. If the Mortgagee, by reason of such insurance, receives any money for loss or damage, such amount may, at the option of the Mortgagor, be retained and applied by the Mortgagee (i) to payment of the Secured Obligations in such order as the Mortgagee may elect or as Mortgagor and Mortgagee may otherwise agree or (ii) to the repair of the damage through the use of the Insurance Fund Depository hereafter provided for. Should the Mortgagor elect to apply such insurance proceeds to repair the damaged Improvements, Building Service Equipment or Furnishings, the insurance proceeds shall be paid to a bank or trust company designated by the Mortgagor with the approval of the Mortgagee (which approval shall not be unreasonably withheld) and having its main office within a fifty (50) mile radius of the situs of the Mortgaged Premises, for the benefit of the Mortgagor and the Mortgagee, and if the then Mortgagee shall be a bank or trust company, to the Mortgagee directly unless the Mortgagee otherwise directs (such bank or trust company so designated being herein called the "Insurance Fund Depository"). All reasonable charges and expenses (including, but not limited to, counsel fees) of the Insurance Fund Depository shall be paid by the Mortgagor. All such insurance proceeds paid to the Insurance Fund Depository, as well as any insurance proceeds paid to it pursuant to subsection 2.4.G(a) above, and any condemnation proceeds, deposited with it pursuant to Section 3.3 shall be held and disposed of as provided in subsection 2.4.7.

2.4.7 Upon receipt by the Insurance Fund Depository of:

(a) a certificate of a Responsible Officer (as defined in the Loan Agreement) of the Mortgagor (i) requesting the payment of a specified amount of such insurance and/or condemnation monies; (ii) describing in reasonable detail the work and

materials applied to the restoration or replacement of the damaged or destroyed Improvement, or Building Service Equipment and/or Furnishings located therein since the date of the last such certificate; (iii) stating that such specified amount does not exceed the cost of such work and materials; and (iv) stating that such work and materials have not previously been made the basis of any request for any withdrawal of money; accompanied by

(b) a certificate of an independent engineer or independent architect designated by the Mortgagor, who in either case shall be approved by the Mortgagee, such approval not to be unreasonably withheld, stating (i) that the work and materials described in the accompanying certificate of the Mortgagor were satisfactorily performed and furnished and were necessary, appropriate or desirable to the restoration or replacement of the damaged, destroyed or taken Improvement, or Building Service Equipment and/or Furnishings; (ii) that the amount specified in such certificate of the Mortgagor is not in excess of the reasonable cost of such work and materials; and (iii) the additional amount, if any, required to complete the restoration or replacement of the damaged, destroyed or taken Improvement, Building Service Equipment and/or Furnishings accompanied by

(c) evidence reasonably satisfactory to the Mortgagee (i) that there exists no filed or recorded lien, encumbrance or charge prior to or on a parity with the estate, rights or interests of the Mortgagee, other than the Permitted Encumbrances; and (ii) that the Building Service Equipment and Furnishings are not subject to any security agreement or interest except as may be permitted under this Mortgage including, without limitation, the Permitted Encumbrances; then, and in such event, the Insurance Fund Depository shall pay to the Mortgagor the amount of such insurance and/or condemnation monies specified in such certificate of the Mortgagor; provided, however, that the balance of insurance and/or condemnation monies deposited with the Insurance Fund Depository (which monies may include additional funds deposited by Mortgagor) shall not be reduced below the amount specified in such certificate of the independent engineer or the independent architect as the amount required to complete the restoration or replacement of the damaged, destroyed or taken Improvement, Building Service Equipment and/or Furnishings. Each such payment shall be held by the Mortgagor in trust and shall be used solely for the payment of the cost of the work and materials described in the certificate of the Mortgagor, or if such cost or any part thereof has therefore been paid by the Mortgagor out of its own funds, then for the reimbursement to the Mortgagor of any such cost or part thereof paid by it. If there shall remain on deposit with the Insurance Fund Depository any balance of insurance or condemnation monies after the damaged or destroyed Improvement, Building Service Equipment and/or Furnishings shall have been completely restored and/or replaced, as evidenced by a certificate of such independent engineer or independent architect delivered to the Insurance Fund Depository, then, provided that no Default or Event of Default shall then exist, such balance of insurance and/or condemnation monies shall be paid to the Mortgagor. Concurrently with the Mortgagor's delivery to the Insurance Fund Depository of each of the foregoing certificates and reports of title, the Mortgagor shall deliver duplicate copies thereof to the Mortgagee.

2.4.8 Nothing contained herein shall relieve the Mortgagor of its duty to pay or cause to be paid principal and interest and to make or cause to be made all indebtedness and other obligations of Mortgagor to Mortgagee with respect to the Secured Obligations, or by the Notes and this Mortgage subsequent to the occurrence of any fire or other casualty.

2.4.9 If, while any insurance proceeds or condemnation awards are being held by the Insurance Fund Depository or the Mortgagee, the Mortgagee shall be or become entitled to, and shall, accelerate any of the indebtedness and other obligations of Mortgagor to Mortgagee, then and in such event the Mortgagee shall be entitled to apply all such insurance proceeds or condemnation awards in reduction of the indebtedness and other obligations of Mortgagor to Mortgagee and the Insurance Fund Depository shall pay to the Mortgagee all insurance proceeds or condemnation awards then held by it upon certification to it by the Mortgagee that such acceleration or exercise of the right to apply such proceeds in reduction of the indebtedness and other obligations of Mortgagor to Mortgagee has occurred. The Mortgagee shall return to the Insurance Fund Depository any excess of insurance proceeds or condemnation awards held by it over the amount of indebtedness then due and payable hereunder.

2.5 Limitation on Alterations and Demolition.

2.5.1 All alterations, removals and demolitions of the Improvements performed by the Mortgagor shall be in compliance with all applicable Legal Requirements of all Governmental Authorities. Except as otherwise provided herein or unless otherwise agreed by Mortgagor and Mortgagee, no Building Service Equipment or Furnishings shall be removed from the Mortgaged Premises during the course of any work performed in accordance with this subsection without prior notification to the Mortgagee and unless provision is made for the return or replacement thereof not later than the completion of such work. The provisions of this subsection shall apply to any change, alteration or addition made or required to be made by the Mortgagor in the course of complying with the provisions of any other article or Section contained herein and shall also apply to the construction of any new or additional building, structure or improvement constituting part of or situated on the Mortgaged Premises. If plans and/or specifications shall be required by law to be filed with any Governmental Authority prior to or at any time in connection with such alterations or demolition or new construction (regardless of cost), duplicates of all sets of such plans and/or specifications shall be furnished to the Mortgagee at its request.

2.6 Limitation on Disposition of the Mortgage Premises.

2.6.1 Unless otherwise agreed by Mortgagor and Mortgagee, in writing, and notwithstanding any references herein to the Mortgagor and its successors and assigns or to Space Leases, the Mortgagor shall not, during the term hereof, sell, assign, mortgage, lease, sublease, pledge or hypothecate or otherwise transfer or dispose of the Mortgaged Premises or any part thereof or any interest therein or any of the rents, profits and income to be generated thereby (in each of the foregoing cases, either of record or beneficially), without the Mortgagee's prior written consent, which consent may be unreasonably withheld or delayed.

2.7 To Maintain Priority of Lien.

2.7.1 This Mortgage is and will be maintained as a valid first mortgage lien on the Mortgaged Premises, subject only to the Permitted Encumbrances, and the Mortgagor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Premises or any portion thereof, or against the rents, issues and profits therefrom, and will promptly discharge, any lien or charge prior to or upon a parity with or junior to the lien of this Mortgage other than the Permitted Encumbrances or those permitted with respect to new Building Service Equipment and Furnishings; provided, however, that nothing herein contained shall require the Mortgagor to pay or cause to be paid any Imposition prior to the time the same shall become due and payable or prevent the Mortgagor from contesting the validity of any such Imposition in accordance with the provisions of Section 2.3.3 above. The Mortgagor will keep and maintain the Mortgaged Premises, and every part thereof, free from all liens of persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements or of the Building Service Equipment and Furnishings. If any such liens shall be filed against the Mortgaged Premises, or any part thereof, the Mortgagor agrees to discharge the same of record, by bonding or otherwise, within thirty (30) days after the Mortgagor becomes aware of the filing thereof. The Mortgagor shall exhibit to the Mortgagee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which may cause any such lien to be filed against the Mortgaged Premises.

2.7.2 In no event shall the Mortgagor do or permit to be done, or omit to do or permit the omission of, any act or thing which, the doing or omission of which would materially impair the security of this Mortgage.

2.7.3 All Space Leases of all or any portion of the Mortgaged Premises hereafter made by the Mortgagor will be subordinated to the lien created by this Mortgage. No such Space Lease will be executed by the Mortgagor without the prior written approval of the Mortgagee which approval may be unreasonably withheld or delayed.

2.8 Maintenance of Mortgaged Premises; Covenant against Waste; Inspection by the Mortgagee.

The Mortgagor will not commit or permit waste on the Mortgaged Premises and will keep and maintain at its own expense the Improvements, the Building Service Equipment and Furnishings in good operating condition, ordinary wear and tear excepted. The Mortgagor shall do all such further maintenance and repair work as may be required under the Space Leases. The Mortgagor will neither do nor permit to be done anything to the Mortgaged Premises that will materially impair the value thereof. The Mortgagee, its authorized employees and/or its agents may, after the giving of reasonable notice, enter and inspect the Mortgaged Premises at any time during usual business hours and the Mortgagor shall within thirty (30) days after demand by the Mortgagee (or immediately upon demand in case of emergency), make such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Premises as the Mortgagee may reasonably require in order to cause the Mortgaged Premises to comply with the standards set forth in this Section 2.8.

2.9 After-Acquired Property. All right, title and interest of the Mortgagor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to the Mortgaged Premises hereafter acquired constructed, assembled or placed on the premises immediately upon such acquisition, construction assembly or placement, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of the Mortgagor, shall become subject to the lien of this Mortgage as fully and completely and with the same effect, as though now owned by the Mortgagor and specifically described in the granting clause hereof but at any time and all times the Mortgagor, on demand, will execute, acknowledge and deliver to the Mortgagee any and all such further assurance, mortgages, conveyances or assignments thereof as the Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

2.10 Further Assurances. The Mortgagor shall, at its sole cost and without expense to the Mortgage, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as the Mortgagee shall from time to time reasonably require for better assuring, conveying, assigning, transferring and confirming unto the Mortgagee the property and rights hereby Mortgaged or assigned or intended now or hereafter so to be, or which the Mortgagor may be or may hereafter become bound to convey, mortgage or assign to the Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage.

2.11 Recorded Instruments. The Mortgagor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Premises (other than non-contractual encumbrances affecting the Mortgaged Premises, the validity or enforceability of which the Mortgagor is contesting in accordance with this Mortgage) where non-compliance therewith materially adversely affects the security of this Mortgage. The Mortgagor shall do or cause to be done all things reasonably required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Premises. The Mortgagor will not, without the prior written consent of the Mortgagee, initiate, join in or consent to any private restrictive covenant or other lawful public or private restriction as to the use of the Mortgaged Premises. The Mortgagor shall, however, comply with all lawful restrictive covenants and zoning ordinances and other lawful public or private restrictions affecting the Mortgaged Premises if non-compliance would materially adversely affect the security of this Mortgage.

2.12 Concerning the Lease.

2.12.1 Mortgagor further covenants and agrees as follows:

- (a) to promptly and faithfully observe, perform and comply with all the terms, covenants and provisions of the Lease on its part to be observed, performed and complied with, at the times set forth therein without giving effect to any relevant grace periods or times to cure provided for therein;

(b) not to do, permit, suffer or refrain from doing anything, as a result of which, there could be a default under or breach of any of the terms, covenants or provisions of the Lease or constitute grounds for termination of the Lease; and to do all things necessary to preserve and keep unimpaired its rights, powers and privileges under the Lease and to prevent any termination of the Lease; provided, however, that neither this paragraph (b) nor any other provision of this Mortgage shall prohibit or prevent the termination of the Lease pursuant to Sections 2.2 or 2.4 or 3.1.2 of the Lease;

(c) not to waive, excuse or discharge any of the obligations and agreements of the landlord under the Lease, or, except for the Permitted Encumbrances, subordinate or consent to the subordination of the Lease to any mortgage or deed of trust on the landlord's or any other person's interest in the property demised by the Lease or consent to any restriction, covenant or agreement affecting the leasehold estate created by the Lease or the property demised by the Lease or any interest therein, without the prior written consent of the Mortgagee, all of such rights being hereby assigned to the Mortgagee as further collateral security for the indebtedness secured hereby, so that any action taken by Mortgagor in violation of such agreement shall be null and void and of no force or effect whatsoever: Mortgagor shall enforce the obligations of the landlord under the Lease to the end that the Mortgagor may enjoy all of the rights granted to it under the Lease and will promptly notify the Mortgagee of any default by the landlord under the Lease;

(d) to immediately notify the Mortgagee of any default by Mortgagor in the observance or performance of any of the terms, covenants and conditions to be observed or performed by Mortgagor or the landlord under the Lease, or of any notice of any such default received by Mortgagor under the Lease or other notice asserting lack of compliance by the Mortgagor with the terms and provisions of the Lease, or any notice from the landlord of termination or purported termination thereof, including, without limitation, pursuant to Sections 2.4 or 3.1.2 of the Lease, without giving effect to any grace periods or times to cure, and to promptly deliver to the Mortgagee copies of each such notice of default or notice of termination and all other notices, communications, plans, specifications and other similar instruments received or delivered by the Mortgagor in connection with the Lease; and

(e) to furnish to the Mortgagee such information and evidence as the Mortgagee may reasonably require concerning the Mortgagor's and/or the landlord's due observance, performance and compliance with the terms, covenants and provisions of the Lease. without limiting the generality of the foregoing, if the Mortgagee shall so request, the Mortgagor, within ten (10) days after such request, will furnish to the Mortgagee a certificate signed by the Mortgagor stating (a) that as of the date of such certificate the Mortgagor is in compliance with the Lease, or, if it is not, the particulars in which it is not and the steps that it has taken or is taking to effect compliance and (b) the amounts of payment of rentals paid under the Lease during the twelve (12) months immediately preceding such certificate and the times when such payments were made. Furthermore, within thirty (30) days following the date on which any additional rentals are due under the Lease, Mortgagor will furnish the Mortgagee with evidence of payment thereof reasonably satisfactory to the

Mortgagee, and evidence of receipt thereof by the landlord or by Governmental authority entitled to receive payment thereof in respect of Impositions, reasonably satisfactory to the Mortgagee, with a certificate prepared by the Mortgagor showing how the amount of such percentage rental was calculated.

2.12.2 In the event of any default by the Mortgagor in the observance or performance of any of the terms, covenants or conditions to be observed or performed by Mortgagor under the Lease, including, without limitation, any default in the payment of rental and other charges and impositions made payable by the tenant under the Lease, then, in each and every case, the Mortgagee may, if the Mortgagee reasonably believes that Mortgagor will not cure such default and that the failure to cure will materially impair the lien or value of this Mortgage, and without notice, without awaiting the expiration of any grace period or time to cure, cause the default or defaults to be remedied and otherwise exercise any and all of the rights of the Mortgagor under the Lease in the name of and on behalf of the Mortgagor, and upon receipt by the Mortgagee or Mortgagor from the landlord under the Lease of any written notice of default by the tenant thereunder, the Mortgagee may take any such action even though the existence of such default or the nature thereof may be questioned or denied by the Mortgagor, but no such action by the Mortgagee shall waive or constitute a release of any default by Mortgagor hereunder. without limiting the generality of the foregoing, if Mortgagor becomes entitled to take action under Section 4.11 of the Lease or if Mortgagee reasonably believes that the landlord will not cure any default by it referred to in such Section 4.11, then Mortgagee, without notice and without awaiting Mortgagor to take action pursuant to such Section 4.11, may exercise any or all of the rights of the Mortgagor under such Section 4.11. Mortgagor hereby expressly grants to the Mortgagee for its agents), and agrees that the Mortgagee (and its agents) shall have, the absolute and immediate right to enter upon the Mortgaged Premises to such extent and as often as Mortgagee, in its sole discretion, deems necessary or desirable for the purpose of taking any such action provided for in this Section. The Mortgagor shall, on demand, reimburse the Mortgagee for all advances made and expenses incurred by the Mortgagee in curing any such default including, without limitation, reasonable attorneys' fees and disbursements) or taking any other action provided for in this Section, together with interest thereon computed at the Involuntary Rate provided for in this Mortgage from the date that an advance is made or expense is incurred, to and including the date that same is paid to Mortgagee, and all such amounts, together with the interest thereon, shall be part of the indebtedness secured by this Mortgage.

2.12.3 For the purpose of curing any breach of Mortgagor's covenants contained in Section 2.12.1 hereof, or in order to cure any failure of compliance, default or event of default referred to in Section 2.12.2 hereof, or effecting, in whole or in part, any such cure, or in taking any other action Permitted under Section 2.12.2, the Mortgagee may do (but shall be under no obligation to do) any act or execute any document in the name of the Mortgagor or as its attorney-in-fact, as well as in the name of the Mortgagee. The Mortgagor hereby irrevocably appoints the Mortgagee with full power of substitution, its true and lawful attorney-in-fact in its name or otherwise to do any and all acts and to execute any and all documents which may be necessary or in the opinion of the Mortgagee desirable to effect any such cure, or preserve any rights of the Mortgagor under, or to effect compliance in whole or in part with, the Lease or in taking such other action. Each person who shall be an assignee of the interest of the tenant under the Lease or an interest therein or of a part of the Mortgaged Premises, by the acceptance of such an assignment, shall be deemed to have irrevocably appointed the Mortgagee, with full power of substitution, such person's true and lawful attorney-in-fact in such person's name and otherwise to do any and all acts and to execute any and

all documents which may be necessary or in the opinion of the Mortgagee desirable to effect any such cure, or preserve any rights of such person under, or to effect compliance in whole or in part with, the Lease or to take any such other action. The powers of attorney granted by or pursuant to this Section 2.12.3 and all authority hereby conferred are made, granted and conferred subject to and in consideration of the interests of the Mortgagee for the purpose of assuring repayment of the indebtedness. Accordingly, such powers of attorney shall be coupled with an interest and irrevocable prior to the payment in full of the indebtedness and shall not be terminated prior thereto or affected by any act of the Mortgagor or other person or by operation of law, including, but not limited to, the dissolution, death, disability, or incompetency of any person or the occurrence of any other event, and if any Mortgagor or other person should be dissolved or die or become disabled or incompetent or any other such event should occur before the repayment in full of the indebtedness, such attorney-in-fact is nevertheless fully authorized to act under such powers of attorney as if such dissolution, death, disability or incompetency or other event had not occurred and regardless of notice thereof.

2.12.4 So long as the indebtedness shall remain unpaid, unless the Mortgagee shall otherwise consent in writing, the fee title and the leasehold estate in the property demised by the Lease shall not merge but shall always be kept separate and distinct, notwithstanding the union of said estates in either the fee owner, the landlord under the Lease, the Mortgagee or Mortgagor or any third party, whether by purchase or otherwise.

2.12.5 If the Mortgagor owns or hereafter acquires the fee title or any other estate, title or interest in the property demised by the Lease, or any part thereof, the lien of this Mortgage shall attach to, cover and be a lien upon such acquired estate, title or interest and same shall thereupon be and become a part of the Mortgaged Premises encumbered by this Mortgage with the same force and effect as if specifically encumbered herein. The Mortgagor agrees to execute all instruments and documents which the Mortgagee may reasonably require to ratify, confirm and further evidence the Mortgagee's lien on the acquired estate, title or interest. Furthermore, the Mortgagor hereby appoints the Mortgagee its true and lawful attorney-in-fact to execute and deliver all such instruments and documents in the name and on behalf of the Mortgagor. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness secured hereby remains unpaid, with the same force and effect as is provided in Section 2.12.3 hereof.

2.12.6 If the Lease is canceled or terminated, and if the Mortgagee or its designee or nominee shall acquire an interest in any new lease of the property demised by such Lease, the Mortgagor shall have no right, title or interest in or to the new lease or the leasehold estate created thereby.

2.12.7 The Mortgagor will use its best efforts to obtain within twenty (20) days after written demand by the Mortgagee, an estoppel certificate from the landlord under the Lease setting forth (a) the name of the tenant under the Lease, (b) that the Lease has not been modified (or, if it has been modified, in compliance with this Mortgage, that there have been no further modifications) and stating the date of each modification, (c) that the Lease is in full force and effect as so modified and whether the "Acceptance Date" or the "term of this Agreement" (as such terms are defined in the Lease) has occurred, and if so, stating the date of such occurrence, (d) that all rental charges under the Lease have been paid, stating the dates to which all rental charges have been paid by the tenant under the Lease, (e) whether any notice Of default under the Lease has been given and

whether or not such default has been cured and, (f) whether there is any alleged event of default under the Lease, or any act, event or condition, which with notice or lapse of time, or both, could constitute such event of default and, if there are, setting forth the nature thereof in reasonable detail.

2.12.8 The Mortgagee shall have no liability or obligation under the Lease by reason of its acceptance of this Mortgage. Notwithstanding any provision of this Mortgage to the contrary, this Mortgage is expressly subject to all of the landlord's rights under the provisions, covenants, conditions, exceptions and reservations contained in the Lease and any rights of the Mortgagee hereunder shall be limited to the extent of such rights of the Mortgagor under the Lease.

2.12.9 The Mortgagor will promptly notify the Mortgagee of any request made by either party to the Lease for an arbitration or appraisal proceeding pursuant to the Lease, and of the institution of any arbitration or appraisal proceeding. The Mortgagor will not appoint or consent to the appointment of any arbitrator or appraiser in an arbitration or appraisal under the Lease except in accordance with the provisions of the Lease and, except upon the prior consent of the Mortgagee to the person to be appointed as the Mortgagor's arbitrator or appraiser under the Lease, the Mortgagee hereby agreeing not unreasonably to delay its response to a request for such consent, taking into account the time limitations in the Lease. If an Event of Default exists hereunder, the Mortgagee shall have, and is hereby granted, the sole and exclusive right to designate and appoint such arbitrator or appraiser on behalf of Mortgagor. The Mortgagor will, to the extent possible under the Lease, permit the Mortgagee to participate in any such arbitration or appraisal proceeding (but the Mortgagee shall not be obliged so to do). The Mortgagor will promptly deliver to the Mortgagee a copy of each notice, pleading, brief and preliminary, interim and final determination of the arbitrators and other papers received by it in each such arbitration or appraisal proceeding.

2.12.10 No provision of this Mortgage which requires the making of a payment or the performance of an act by the Mortgagor, or permits the Mortgagor to take any action, conduct any contest of any Legal Requirements or Impositions, or otherwise to do any other act or thing, which is similar to any payment, performance or act or thing which is required to be paid or performed by the tenant under the Lease or which the tenant is permitted to do under the Lease, shall be deemed to limit or restrict the generality of the Mortgagor's covenants with respect to the Lease contained in Section 2.12.1 hereof. Without limiting the generality of the foregoing, Mortgagor shall not contest any Legal requirements or Impositions or defer compliance therewith if the same could constitute or give rise to any default under the provisions of the Lease, unless Mortgagor first shall have obtained and delivered to Mortgagee a written agreement or agreements, in form and substance reasonably satisfactory to Mortgagee, signed by the landlord under the Lease, to the effect that no default will be declared thereunder by reason of such contest or deferment.

ARTICLE 3

Condemnation

3.1 Notice of Taking. The shall promptly notify the Mortgagee of notice to it of the institution of any proceeding or negotiations for the taking of the Mortgaged Premises, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such condemnation fail the foregoing herein called a "taking"); shall keep the Mortgagee currently advised, in detail, as

to the status of such proceedings or negotiations and will promptly give to the Mortgagee copies of all notices, pleadings, Judgments, determinations and other papers received or delivered by the Mortgagor therein. The Mortgagee shall have the right to appear and participate therein and may be represented by counsel, but shall have no right to bind the Mortgagor or make any settlement of its claim, except to the extent of the interest of the Mortgagee. The Mortgagor will not, without the Mortgagee's consent, which consent shall not be unreasonably withheld, enter into any agreement for the taking of the Mortgaged Premises, or any part thereof, with anyone authorized to acquire the see by eminent domain or in condemnation.

3.2 Condemnation Award. Subject to the provisions of Section 3.3, if the Mortgaged Premises, or any portion thereof, shall be taken as a result of any condemnation proceeding, the Mortgagee shall be entitled to and shall receive the total of such portion of all awards made that shall be allowed or allocated to the Mortgagor with respect to all the right, title and interest of the Mortgagor in and to the Mortgaged Premises or the portion thereof affected (herein called the "Award"), provided that the obligations of the Mortgagor to perform the terms, covenants and conditions of this Mortgage, if any, affected by such taking shall continue unimpaired until the actual vesting of title in such proceeding and the actual receipt by the Mortgagee of the entire award resulting from such taking.

3.3 Application of Award. Except as provided in Section 3.4, any Award in the manner provided in Section 2.4.6,

3.4 Temporary Taking. If any award payable to the Mortgagor on account taking for temporary use or occupancy is made in a lump sum or is payable other than in equal monthly installments, the Mortgagor shall pay over such award to the Mortgagee promptly upon receipt, and the Mortgagee at its option may apply such award to installments of principal and interest and all other charges secured by this Mortgage and the other obligations of Mortgagor to Mortgagee as and when the same become due and payable and/or to such other obligations; provided, however, that any unapplied portion of such award held by the Mortgagee when such taking ceases or expires, or after the indebtedness secured by this Mortgage shall have been paid in full, shall be paid to the Mortgagor.

3.5 Mortgagor's Obligation to Restore. If the net proceeds of the Award are applied to restore the Mortgaged Premises, the Mortgagor shall be obligated promptly to restore, replace, rebuild or alter any Improvements or Building Service Equipment affected by a taking so as to restore the Mortgaged Premises to an economically viable whole, all without regard to the adequacy of the proceeds of an award, if any, made available to the Mortgagor pursuant to Section 3.3 hereof.

ARTICLE 4

Space Leases; Assignment as Further Security; Etc.

4.1 Assignment of Space Leases, Rents, Issues and Profits. As further security for payment of the indebtedness secured hereby, the Mortgagor hereby transfers, assigns and sets over unto the Mortgagee all Space Leases, if any, now or hereafter entered into by Mortgagor with respect to all or any part of the Mortgaged Premises, end all renewals, extensions, subleases or assignments

thereof, and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the rents, income, receipts, revenues, issues and profits arising therefrom.

4.2 Mortgagor's Covenants Regarding Space Leases.

The Mortgagor shall:

4.2.1 Diligently perform and observe all of the terms, covenants and conditions of the Space Leases required to be performed and observed by it as lessor thereunder, within the grace periods provided the rein or such lesser grace periods as are provided herein, and will further do all things necessary to preserve and keep unimpaired its rights under all Space Leases

4.2.2 Require all Tenants under the Space Leases to observe, keep and perform all covenants and agreements imposed upon them under such Space Leases;

4.2.3 Unless the Mortgagee's prior written consent is obtained neither (a) collect or accept payments of rent under any Space Lease for more than one month in advance nor (b) require or permit any Tenant under any Space Lease to pay rent other than in equal monthly installments payable in advances

4.2.4 At any time, and from time to time, but not more frequently than four (4) times annually, on reasonable notice from the Mortgagee, deliver to the Mortgagee a schedule of all Space Leases then in effect, which schedule shall include the following; (a) the name of the Tenant under the Space Leases (b) a description of the space leased thereunder in form reasonably satisfactory to the Mortgagee (c) the rental rate, including any escalations, if any; (d) the term of the Space Lease; and (e) such other information as the Mortgagee may reasonably requests.

4.3 Entry Upon Default.

4.3.1 So long as no Event of Default shall have occurred and be continuing, the Mortgagor shall have the right to collect (but not more than one month in advance) all of the rents, gross receipts and other payments, if any, from the Space Leases and from the Mortgaged Premises generally and to use and enjoy the same in the manner provided herein.

4.3.2 If an Event of Default shall have occurred and be continuing and the Mortgagee shall have entered upon the Mortgaged Premises as provided in subsection 5.2.2 hereof, in addition to its rights and remedies set forth in such subsection, the Mortgagee may, as attorney-in-fact of the Mortgagor, make, enforce, or modify any of the Space Leases (provided no such modifications shall in any way increase the obligations or exposure of the Mortgagor thereunder); obtain tenants for and lawfully evict tenants from the Mortgaged Premises; demand, fix and modify the rents, gross receipts and other charges and profits from the Mortgaged Premises; institute all legal proceedings (including summary proceedings) for collection of all rents and other charges; obtain possession of the Mortgaged Premises or any part thereof, or enforce any other rights theretofore exercisable by the Mortgagor; do any and all other acts which the Mortgagee, in its sole and absolute discretion, deems proper to protect the security hereof; and, with or without taking possession of the Mortgaged Premises, in the Mortgagor's name, sue for or otherwise collect and receive all rents, gross receipts and other charges, including those past due and unpaid, and apply

the same, less the costs and expenses of operation and collection (including attorneys' fees and disbursements), to the indebtedness secured hereby, whether then matured or not, until the same shall have been paid in full; provided, however, that any balance remaining after the indebtedness secured hereby shall have been paid in full shall be turned over to the Mortgagor or such other person as may be lawfully be entitled thereto. The Mortgagee shall be liable to account only for such rents, issue and profits actually received by the Mortgagee. Neither the entry upon and taking possession of the Mortgaged Premises, nor the collection and application of the rents, gross receipts or other charges thereof as aforesaid, nor any other action taken by the Mortgagee in connection therewith, shall be deemed a cure or waiver of any default hereunder or be deemed a waiver or modification of any notice thereof or notice of acceleration of the principal sum of the Notes theretofore given by the Mortgagee.

4.3.3 A notice in writing by the Mortgagee to the Tenants under the Space Leases advising them that the Mortgagor has defaulted hereunder and requesting that all future payments of rent, additional rent or other charges under the Space leases be made to the Mortgagee for its agent) shall be construed as conclusive authority to such Tenants that such payments are to be made to the Mortgagee for its agent). Such Tenant shall be fully Protected in making such payments to the Mortgagee for its agent); and the Mortgagor hereby irrevocably constitutes and appoints the Mortgagee the attorney-in-fact and agent of the Mortgagor, coupled with an interest, for the purpose of endorsing the consent of the Mortgagor on any such notice.

ARTICLE 5

Events of Default and Remedies

5.1 "Events of Default Defined." The whole of the indebtedness secured by this Mortgage shall become due and payable, at the option of the Mortgagee, upon the occurrence of default or an Event of Default as defined in the Loan Agreements of even date herewith by and between Mortgagor and Mortgagee (herein referred to collectively as "Events of Default" and in the singular as an "Event of Default").

5.2 Remedies. During the continuance of any Event of Default, the Mortgagee, at its option:

5.2.1 Enter upon and take possession of the Mortgaged Premises and after, or without, taking such possession of the same, to sell the Mortgaged Premises en masse or in parcels, as Mortgagee may deem best, at public outcry, in front of the courthouse door of the county wherein said 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 successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, Mortgagee or the person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed or other appropriate instrument conveying the property so purchased; or the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction or otherwise as now provided by law in the case of past due mortgages; and Mortgagee, or the then holder of the indebtedness hereby secured may bid at any such sale and become the purchaser of said property if the highest bidder therefor. Mortgagee may conduct any number of sales from time to time, and the power of sale hereby granted shall not be exhausted by

any one or more of such sales as to any part of the Mortgaged Premises remaining unsold, but shall continue unimpaired until all the Mortgaged Premises shall have been sold or all indebtedness secured hereby paid.

5.2.2 Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Premises for the repayment of the indebtedness, or the solvency of any person liable for payment thereof, for appointment of a receiver of the Mortgaged Premises and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Premises upon such terms as may be approved by the court.

5.2.3 Exercise any and all other rights and remedies granted under this Mortgage or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

5.2.4 Exercise any and all other rights and remedies granted under the Loan Agreements, any of the Loans and Financing Documents or any other document or instrument securing the indebtedness, in such order and priority as Mortgagee shall determine in its sole discretion.

5.3 Foreclosure; No Marshaling of Assets; Appointment of Receiver.

5.3.1 In case of a foreclosure sale, all of the Mortgaged Premises may be sold in one parcel notwithstanding that the proceeds of such sale exceed or may exceed the indebtedness secured hereby. Moreover, the Mortgagee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time. All remedies hereunder shall be cumulative and in addition to all rights granted to the Mortgagee under law. The failure of Mortgagee to take any action in respect to the Mortgaged Premises or the taking of any action in respect to any other mortgage or deed of trust given as security for the whole or any portion of the indebtedness secured hereby shall not be viewed as a waiver of any right hereunder or an election of remedies respecting the Mortgaged Premises.

5.3.2 The Mortgagor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by the Mortgagee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, marshaling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Mortgage or any rights or remedies the Mortgagee may have hereunder or by law. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption from sale under any judgment or foreclosure of this Mortgage, on its own behalf, and on behalf of all persons acquiring any interest in or title to the Mortgaged Premises subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and of all other persons, are and shall be deemed to be hereby waived to the full extent permitted by law.

5.3.3 If there shall be an Event of Default and the Mortgagee shall elect thereunder to accelerate any or all of the indebtedness secured hereby, the Mortgagor, within five (5) days after demand, will pay over to the Mortgagee, or any receiver appointed in connection with the foreclosure of this Mortgage any and all amounts then held as security deposits under all Space Leases; provided, however, that the Mortgagee shall thereupon indemnify the Mortgagor against all claims of Tenants for the deposits so paid over.

5.3.4 Upon the happening of an Event of Default, and in addition to all of her rights of the Mortgagee provided herein or by law, the Mortgagor shall, on demand, surrender possession of the Mortgaged Premises to the Mortgagee, and the Mortgagor hereby consents that the Mortgagee may exercise any or all of the rights specified in subsection 5.2 above, and the Mortgagor hereby irrevocably appoints the Mortgagee attorney-in-fact, coupled with an interest, of the Mortgagor for such purposes. In the event that the Mortgagor is an occupant of the Mortgaged Premises, it agrees to surrender the possession of that part of the Mortgaged Premises which it occupies to the Mortgagee immediately upon any Event of Default.

5.4 Legal Expenses of Mortgagee.

5.4.1 The Mortgagor will pay to the Mortgagee, on demand, all reasonable costs, charges and expenses (including, without limitation, attorneys' fees and disbursements) incurred or paid at any time by the Mortgagee because of the failure of the Mortgagor to perform, comply with or abide by any of the agreements, conditions or covenants contained herein or in any of the other documents or instruments relating hereto, together with interest on each such payment made by the Mortgagee at the Involuntary Rate from the date each such payment is made by the Mortgagee.

5.4.2 If any action or proceeding be commenced in which the Mortgagee is made a party, or in which it becomes necessary to defend or uphold the lien of this Mortgage, all reasonable sums paid by the Mortgagee for the expense of any litigation to prosecute or defend the title, rights and lien created by this Mortgage (including, without limitation, attorneys' fees and disbursements) shall be paid by the Mortgagor, together with interest thereon at the Involuntary Rate from the date each such payment is made by the Mortgagee, and all such sums and the interest thereon shall be a lien on the Mortgaged Premises, prior to any right, title or interest in or claim upon the Mortgaged Premises attaching or accruing subsequent to the lien of this Mortgage, and shall be deemed to be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage, or to recover or collect the indebtedness secured hereby, the provisions of law respecting the recovery of costs, disbursements and allowances, if inconsistent with the foregoing, shall prevail unaffected by this covenant.

5.5 Remedies Cumulative; No Waiver; Etc.

5.5.1 No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or otherwise available to Mortgagee, or now or hereafter existing at law or in equity or by statute. No delay or omission of the Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any

acquiescence therein; and every power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time as often as may be deemed expedient by the Mortgagee.

5.5.2 A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Mortgage shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by the Mortgagee.

5.5.3 The Mortgagor hereby waives and renounces all homestead and similar exemption rights provided for by the Constitution and laws of the United States and/or the State in and to the Mortgaged Premises as against the collection of the indebtedness secured hereby, or any part thereof; and Mortgagor agrees that where, by the terms of this Mortgage or the indebtedness secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between the Mortgagor and the Mortgagee.

5.6 No Merger. It is the intention of the parties hereto that if the Mortgagee shall at any time hereafter acquire title to all or any portion of the for Mortgaged Premises, then, and until the indebtedness secured hereby has been paid in full, the interest of the Mortgagee hereunder and the lien of this Mortgage shall not merge or become merged in or with the estate and interest of the Mortgagee as the holder and owner of title to all or any portion of the Mortgaged Premises and that, until such payments the estate of Mortgagee in the Mortgaged Premises and the lien of this Mortgage and the interest of the Mortgagee hereunder shall continue in full force and effect to the same extent as if the Mortgagee had not acquired title to all or any portion of the Mortgaged Premises.

ARTICLE 6

Provisions of General Application

6.1 Modifications. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing, dated and signed by the party against whom such change, amendment, modification, cancellation or discharge is sought to be charged.

6.2 Notices. If notices are required to be sent hereunder, then said notices shall be sent to the parties at the following addresses:

If To Mortgagee:

Southland Bank
Post Office Box 5676
Dothan, Alabama 36304

If To Mortgagor:

Spectrum Enterprises, Inc.
Post Office Box 8605
Dothan, Alabama 36304

6.3 Mortgagee's Rights to Perform Mortgagor's Covenants. If the Mortgagor shall fail to make or cause to payment to Mortgagee in accordance with the terms of this Mortgage or any of the other documents or instruments relating to the whole or any portion of the indebtedness secured hereby, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by the Mortgagor under this Mortgage or any of the other instruments relating to the whole or any portion of the indebtedness secured hereby, without limiting any other provision of this mortgage or any of the other documents or other instruments relating to the whole or any portion of the indebtedness secured hereby, and without waiving or releasing the Mortgagor from any obligation or default hereunder, upon thirty (30) days notice to the Mortgagor (or without notice in case of emergency) the Mortgagee (or any receiver of the Mortgaged Premises) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without limitation, entry on the Mortgaged Premises and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be promptly performed or observed on behalf of the Mortgagor or to protect the security of this Mortgage. All monies expended by the Mortgagee in exercising its rights under this Article including, but not limited to, reasonable attorneys fees and disbursements), together with interest thereon at the Involuntary Rate from the date of each such expenditure, shall be paid by the Mortgagor to the Mortgagee upon demand by the Mortgagee and shall be secured by this Mortgage.

6.4 Captions. The captions herein are inserted only as a matter convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Mortgage nor in any way shall affect this Mortgage or the construction of any provision hereof.

6.5 Successors and Assigns. The covenants and agreements contained in this Mortgage shall run with the land and bind the Mortgagor, its successors and assigns, and all subsequent owners, encumbrances and Tenants of the Mortgaged Premises, or any part thereof, and shall inure to the benefit of the Mortgagee, its successors and assigns, and all subsequent beneficial owners of this Mortgage.

6.6 Gender and Number. Wherever the context of this Mortgage so requires, the neuter gender include the masculine and/or feminine gender and the singular number includes the plural.

6.7 Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been included.

6.8 Usury. The Mortgagor and Mortgagee agree that the total interest for the use, forbearance or detention of the Mortgaged Amount and any other sums secured by this Mortgage or payable under this Mortgage shall never exceed the amount then allowed by law for loans secured

by mortgages to persons or entities such as the Mortgagor then is and in the amounts, for the purposes and otherwise of the type hereby contemplated, evidenced and secured, and the Mortgagor shall not be bound or obligated to pay any interest or such other sum which is in excess of such amount.

6.9 Controlling Law. This Mortgage shall be governed by, and construed and enforced in accordance with, the laws of the State of Alabama.

6.10 Entire Agreement. This Mortgage together with the matters incorporated herein by reference embody the entire agreement and understanding between the parties relating to the subject matter hereof.

THIS MORTGAGE IS GIVEN ON THE CONDITION that if the its successors or assigns, shall well and truly pay the indebtedness according to tenor and shall pay all its other sums which may be due hereunder and/or secured hereby to the Mortgagee, its successors or assigns, and shall duly perform every covenant, term, condition and agreement of the Mortgagor herein and in the indebtedness and in the instruments and documents relating to the other indebtedness contained, then this Mortgage shall be void and the Mortgagor shall be entitled to receive all funds then held by the Insurance Fund Depository otherwise the same shall remain in full force and effect.

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

ATTEST:

Jana B. Rister

SPECTRUM ENTERPRISES, INC.

By James L. Rister
Title: President

STATE OF ALABAMA)

COUNTY OF HOUSTON)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that **LARRY RISTER**, President of **SPECTRUM ENTERPRISES, INC.**, an Alabama corporation, who is personally known to me, executed the foregoing instrument before me this day in person and acknowledged that he, as such officer and with full authority, signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto voluntarily as and for the free and voluntary act of said corporation on the day the same bears date.

Given under my hand and official seal this 12th day of August, 1998.

Lisa R. Bonner
Notary Public

My Commission Expires: 3-25-2001

EXHIBIT "A"

REAL PROPERTY DESCRIPTION

Lot 4, according to the Survey of the Oak Mountain Commerce Place, as recorded in Map Book 18, Page 58, in the Probate Office of Shelby County, Alabama.

Spectrum Enterprises, Inc.

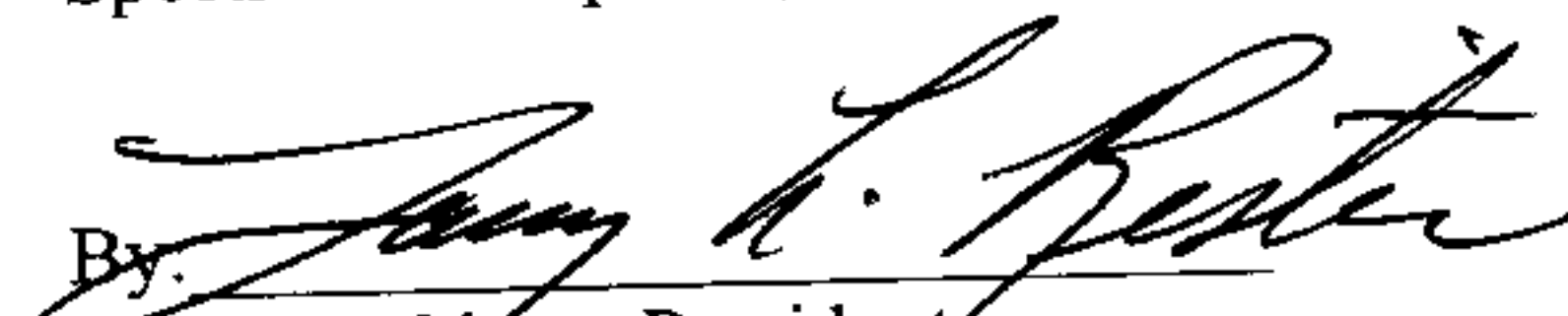
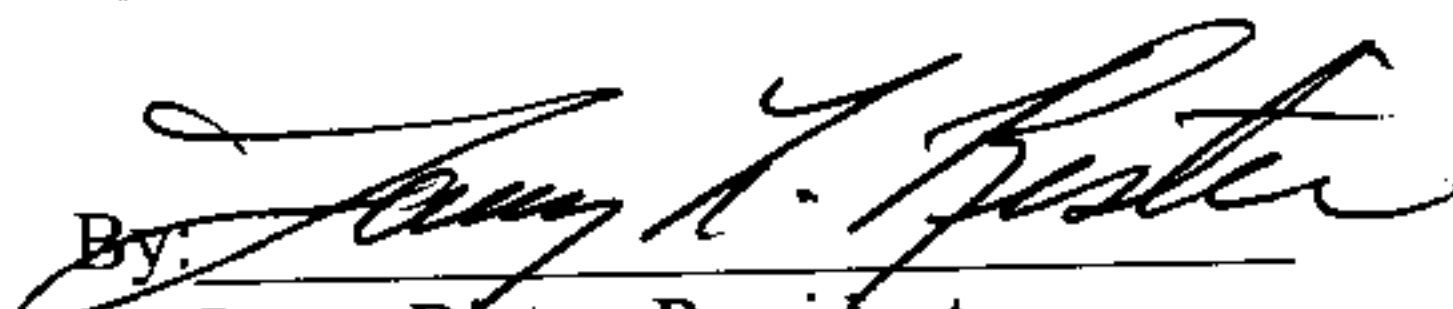
By: 
Larry Rister, President

EXHIBIT "B"

PERMITTED ENCUMBRANCES

"Permitted Encumbrances" means, as of any particular time: (i) the Second Leasehold Mortgage executed by Spectrum Enterprises, Inc., as mortgagor, and Southland Bank, as mortgagee, creating a second lien, subordinate hereto, in favor of Southland Bank, dated as of the date of the Leasehold Mortgage to which this exhibit is attached; (ii) the Lease executed by Spectrum Enterprises, Inc., as tenant, and Birmingham Realty Company, as landlord, the Lessee's leasehold interest in which is mortgaged hereby; (iii) any recorded instruments evidencing or pertaining to that certain United States Small Business Administration 504 Debenture Guaranty, Loan # 2171784010 BIR, and the twenty-year loan made by Southern Development Council, Inc. to Spectrum Enterprises, Inc. and the security interests liens which may be created therein or thereby, said Loan being scheduled to close subsequent to the date hereof and to be subordinate hereto; (iv) liens for ad valorem taxes and assessments against the Project not then delinquent; (v) rights-of-way or easements for streets, roads, avenues, lanes, ways or waterways abutting or traversing the Mortgaged Premises; (vi) easements for gas, water, electricity, sewer and telephone services for the Mortgaged Premises; (vii) easement for ingress and egress; (viii) recorded restrictions pertaining to the Mortgaged Premises; and (ix) such minor defects, irregularities, encumbrances, easements, restrictions, rights-of-way and clouds on title which, in the opinion of independent legal counsel, normally exist with respect to properties similar in character to the facilities comprising the Mortgaged Premises and do not in the aggregate materially impair the property affected thereby for the purpose for which it was acquired or is held by the Lessee.

Spectrum Enterprises, Inc.

By: 
Larry Rister, President

MORTGAGE.DOC\LEASEHOLD_MORTGAGE.SPECTRUM

Inst # 1998-31969
08/18/1998-31969
10:28 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
028 CRH 563.50