

MORTGAGE AND SECURITY AGREEMENT

01/27/1999-03561
01/27/1999-03561
08:25 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 CPM 4317.25

THIS MORTGAGE AND SECURITY AGREEMENT, made effective as of the 31st day of December, 1998, between INTOWN SUITES SOUTHPARK, LLC, a Georgia limited liability company (hereinafter called the "Mortgagor"), whose address is 2102 Piedmont Road, Atlanta, Georgia 30324, and BANK UNITED a federal savings bank and BANK UNITED, as Agent, (hereinafter together with any subsequent transferee, assignee, holder or owner of the Notes, collectively called the "Lenders"), Mortgagee, whose address is 3200 Southwest Freeway, Houston, Texas 77027, Attention: Rick McKinnerney

W I T N E S S E T H:

WHEREAS, Lenders have made or have agreed to make a loan to INTOWN SUITES MANAGEMENT, INC. ("Borrower") in the aggregate principal sum of ONE HUNDRED MILLION AND NO/100 DOLLARS (\$100,000,000.00), described in that certain Revolving Credit Loan Agreement of even date herewith, executed by Borrower, Bank United, as Agent (the "Agent") and Lenders (the "Loan Agreement"), such loan to be evidenced by (i) that certain Note of even date herewith, payable to the order of BANK UNITED, a federal savings bank in the original principal sum of SEVENTY-FIVE MILLION AND NO/100 DOLLARS (\$75,000,000.00) and (ii) those certain five (5) Promissory Notes of even date herewith, payable to BANK UNITED, as Agent, each in the original principal sum of FIVE MILLION AND NO/100 DOLLARS (\$5,000,000.00) (said Notes, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Notes").

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned and hereinafter described, and to secure the obligations, covenants, agreements and undertakings hereinafter described, have bargained and sold and do hereby grant, bargain, sell, alien, and convey unto the Lenders, their successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Mortgagor and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures,

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The maximum amount that will be advanced under the Notes evidencing the Indebtedness that is attributable to the Mortgaged Property is \$2,827,500.00.

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machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by the Mortgagor and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of being used or useful in connection with the improvements located or to be located on the property described in Exhibit A, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said property or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

(d) All licenses, permits, general intangibles, accounts, trade names, trademarks, contract rights and other intangible property, now owned or hereafter acquired, relating to the foregoing real property or the business now or hereafter conducted thereat.

(e) All drawings, plans and specifications for any buildings and other improvements to be constructed or placed upon the property described in Exhibit A, and Mortgagor's books and records relating to the property or construction of the improvements; and all contracts now or hereafter made by Mortgagor relating to the property or the construction, equipping, marketing, management, sale or lease of all or any part of the property or improvements, and all bonds and other guarantees of performance in favor of Mortgagor with respect to any such contracts (and Mortgagor agrees that upon any Event of Default under this mortgage, Lenders shall have the absolute right to make such use of the property so assigned in this subparagraph (e) as Lenders shall desire, and that Lenders will not be limited to remedies

available under the Uniform Commercial Code, but may at its option avail itself of the rights to use such property as set forth herein or in the Loan Agreement in addition to or in substitution for its Uniform Commercial Code remedies).

(f) Proceeds and products of all of the foregoing real and personal property.

All of the foregoing to the extent permitted by applicable law shall be deemed real property and conveyed by this Mortgage.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Agent is hereby authorized on behalf and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Agent may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lenders, their successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to the Lenders the principal and interest and other indebtedness (including future advances) payable in respect to the Notes, the Loan Agreement, this Mortgage, and the Obligations (as defined in the Loan Agreement) at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform, and observe all and singular the covenants and promises in the Notes, in the Loan Agreement executed in connection herewith, in this mortgage expressed to be kept, performed, and observed by and on the part of the Mortgagor or Borrower, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Agent and Lenders as follows:

ARTICLE I

1.01. **Secured Indebtedness.** This Mortgage and Security Agreement (this "Mortgage") is made to secure the following obligations, indebtedness, and liabilities:

(a) The obligations and indebtedness of Borrower to Lenders evidenced by the Notes;

(b) The agreements, obligations and indebtedness of Borrower to the Lenders evidenced by the Loan Agreement;

(c) The obligations and indebtedness of the Mortgagor to the Lenders evidenced by that certain Absolute Assignment of Rents and Income (With License Back), dated of even date herewith, executed by Mortgagor in favor of the Lenders (the "Absolute Assignment");

(d) The obligations and indebtedness of the Mortgagor to the Lenders evidenced by that certain Collateral Assignment of Leases, Deposits and Agreements, dated of even date herewith, executed by the Mortgagor in favor of the Lenders (the "Collateral Assignment");

(e) The obligations of the Mortgagor and/or Borrower under any of the Loan Documents (as defined in the Loan Agreement);

(f) All future advances by the Lenders to Borrower:

(g) All costs and expenses including, without limitation, all attorneys' fees and legal expenses, incurred by the Agent and the Lenders to preserve and maintain the Mortgaged Property, collect the obligations herein described, and enforce this Mortgage; and

(h) All extensions, renewals and modifications of any of the foregoing.

The indebtedness and obligations referred to in this Paragraph 1.01 are herein called the "Indebtedness".

1.02. **Performance of the Mortgage.** The Mortgagor will perform, observe and comply with all provisions hereof and of the Loan Agreement in connection herewith, and duly and punctually will pay to the Lenders all sums required to be paid by the Mortgagor pursuant to the provisions of this mortgage or the Loan Agreement executed in connection herewith, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

1.03. **Warranty of Title.** The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except for those encumbrances, if any, set forth in Exhibit B hereto (herein, the "Permitted Encumbrances"), the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Mortgagor shall and will warrant and forever defend the title thereto unto the Lenders, their successors and assigns, against the lawful claims of all persons whomsoever.

1.04. **Escrow for Taxes and Insurance.** In order to secure the performance and discharge of Mortgagor's obligations of this Paragraphs 1.05 and 1.06, Mortgagor, at Agent's request but which request may be made only after Mortgagor has defaulted in its obligations hereunder, shall deposit in an account, established with and maintained by the Agent, on each date when an installment of principal and/or interest is due under the Notes, sufficient funds equal to one-twelfth (1/12) of the estimated annual taxes and insurance affecting the Mortgaged Property (as estimated from time to time by the Agents) to permit the Agent to pay, at least fifteen (15) days prior to the due date thereof, the next maturing ad valorem taxes, assessments and charges and premiums for such policies of insurance. The Agent shall have the right to rely upon tax information furnished by applicable taxing authorities in the

payment of such taxes or assessments and shall have no obligation to make any protest of any such taxes or assessments. Any excess over the amounts required for such purposes shall be held by the Agent for future use, or refunded to Mortgagor, at the Agent's option; and any deficiency in such funds so deposited shall be made up by Mortgagor upon demand of the Agent. All such funds so deposited shall bear no interest whatsoever, may be mingled with the general funds of the Agent and shall be applied by the Agent toward the payment of such taxes, assessments, charges and premiums when statements therefor are presented to the Agent by Mortgagor (which statements shall be presented by Mortgagor to the Agent a reasonable time before the applicable amount is due); provided, however, that, if a default shall have occurred hereunder, such funds may at the Agent's option after written notice to Mortgagor, be applied to the payment of the Indebtedness in the order determined by the Agent in its sole discretion, and that the Agent may at any time, in its discretion, apply all or any part of such funds toward the payment of any such taxes, assessments, charges or premiums which are past due, together with any penalties or late charges with respect thereto. The conveyance or transfer of Mortgagor's interest in the Mortgaged Property for any reason (including, without limitation, the foreclosure of a subordinate lien or security interest or a transfer by operation of law) shall constitute an assignment or transfer of Mortgagor's interest in and rights to such funds held by the Agent under this paragraph 1.04 but subject to the rights of the Agent hereunder.

1.05. Other Taxes, Utilities and Liens.

(a) The Mortgagor will pay promptly, when and as due, and will exhibit promptly to the Agent receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lenders in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.04 hereof), this mortgage or the Notes, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) The Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Mortgagor shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lenders, the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lenders.

1.06. Insurance.

Property Insurance. Mortgagor will keep the Mortgaged Property insured against loss or damage by fire, explosion, windstorm, hail, flood (if the Mortgaged Property shall at any time be located in an identified "flood prone area" in which flood insurance has been made available pursuant to the Flood Disaster Protection Act of 1973), tornado and such other hazards as may be reasonably required by the Agent by policies of fire, extended coverage (including loss of rents) and other insurance in such company or companies with a Best rating of at least A, in such amounts and deductibles, upon such terms and provisions, and with such endorsements, all as may be reasonably acceptable to the Agent. Without limiting the foregoing, the fire and extended coverage policy shall provide coverage for at least the lesser of 100% of the full insurable value of the improvements or the Borrowing Base Value (as that term is defined in the Loan Agreement) of the Mortgaged Property. Mortgagor will also provide such other insurance as the Agent may from time to time reasonably require, including all-builders risk coverage for the construction of the improvements to the Mortgaged Property, comprehensive general liability, and professional liability for architects and engineers during the construction phase, with such companies, upon such terms and provisions, in such amounts and deductibles, and with such endorsements, all as are approved by the Agent. Mortgagor further agrees that Mortgagor will deliver to the Agent the original policies or certificates (with a copy of such original policies) evidencing such insurance and any additional insurance which shall be taken out upon any part of the Mortgaged Property and receipts evidencing the payment of all premiums, and will deliver certificates evidencing all renewals of all such policies of insurance, including for all-builders risk coverage for the construction of the improvements on the Mortgaged Property, comprehensive general liability, and professional liability for architects and engineers, to the Agent at least fifteen (15) days

before any such insurance shall expire or be renewed, and for fire and extended coverage insurance policies at least fifteen (15) days before any such policies are renewed or expire. Any and all insurance policies shall provide that such policy will not be canceled or modified in any way without thirty (30) days prior written notice. Without limiting the discretion of the Agent with respect to required endorsements to insurance policies, Mortgagor further agrees that all such policies shall provide that proceeds thereunder will be payable to the Lenders as their interest may appear pursuant and subject to a mortgagee clause (without contribution) of standard form attached to or otherwise made a part of the applicable policy. In the event of foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property in extinguishment in whole or in part of the Indebtedness, all right, title and interest of the Mortgagor in and to all proceeds payable under all such insurance policies then in force concerning the Mortgaged Property shall thereupon vest in the purchaser at such foreclosure or the Lenders or other transferee in the event of such other transfer of title. In the event any of the Mortgaged Property covered by such insurance is destroyed or damaged by fire, explosion, windstorm, hail or by any other casualty against which insurance shall have been required hereunder, (i) the Agent may, but shall not be obligated to, make proof of loss if not made promptly by Mortgagor, and, (ii) the insurance proceeds shall be paid and applied as provided in Section 6.08(c) of the Loan Agreement. If any act or occurrence of any kind or nature (including any casualty on which insurance was not obtained or obtainable) shall result in damage to or loss or destruction of the Mortgaged Property, Mortgagor shall give immediate notice thereof by mail to the Agent and, unless otherwise so instructed by the Agent, shall promptly, at Mortgagor's sole cost and expense and provided that any insurance proceeds are made available by the Agent for the purpose but regardless of whether the insurance proceeds, if any, shall be sufficient for the purpose, restore, repair, replace and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction in accordance with plans and specifications submitted to and approved by the Agent.

Liability Insurance. Mortgagor shall maintain Comprehensive General Liability Insurance against claims for bodily injury or death and property damage occurring in or upon or resulting from the Mortgaged Property, in such amounts and in a form acceptable to the Agent and with such insurance company or companies with a Best rating of at least A+. Such Comprehensive General Liability Insurance shall include Blanket Contractual Liability coverage which insures contractual liability under the indemnification of the Lenders and Agent by Mortgagor set forth in this Mortgage (but such coverage or the amount thereof shall in no way limit such indemnification). Mortgagor shall maintain with respect to each policy or agreement evidencing such Comprehensive

General Liability Insurance such reasonably obtainable endorsements as may be reasonably required by the Agent and shall at all times deliver and maintain with the Agent a certificate with respect to such insurance in form satisfactory to the Agent. Any and all insurance policies shall name Lenders as an additional insured and provide that such policy will not be canceled or modified in any way without thirty (30) days prior written notice. Not less than fifteen (15) days prior to the expiration date of each policy of insurance required of Mortgagor pursuant to this subparagraph, Mortgagor shall deliver to the Agent a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Agent.

1.07. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Mortgaged Property or any portion thereof, or any other proceedings arising out of injury or damage to the Mortgaged Property, or any portion thereof, Mortgagor will notify the Agent of the pendency of such proceedings. The Agent may participate in any such proceedings, and Mortgagor shall from time to time deliver to the Agent all instruments requested by it to permit such participation. Mortgagor shall, at its expense, diligently prosecute any such proceedings, and shall consult with the Agent, its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation with respect to the Mortgaged Property and all judgments, decrees and awards for injury or damage to the Mortgaged Property shall be applied, first, to reimburse the Lenders and the Agent for all costs and expenses, including reasonable attorney's fees, incurred in connection with collection of such proceeds and, second, the remainder of said proceeds shall be applied, at the option of Borrower, if no default has occurred and is continuing, and at the option of the Agent if a default has occurred and is continuing, to the payment of the Indebtedness (without premium or penalty) or paid out to repair or restore the Mortgaged Property so affected by such condemnation, injury or damage in the same manner as provided in Section 1.06 hereof, subject to the immediately preceding provision of this Section 1.07. Mortgagor hereby assigns and transfers all such proceeds, judgments, decrees and awards to the Agent and agrees to execute such further assignments of all such proceeds, judgments, decrees and awards as the Agent may request.

1.08. Care of the Mortgaged Property.

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Agent. The Mortgagor may sell or otherwise dispose of, free from the lien of this mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Agent.

(d) The Agent is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Mortgagor will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will restore promptly, repair or alter the remaining property in a manner satisfactory to the Agent.

1.09. Further Assurances; After Acquired Mortgaged Property.
At any time, and from time to time, upon request by the Agent, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Agent and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter

to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Agent any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Agent, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Mortgagor under the Notes and this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Agent may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Agent the agent and attorney-in-fact of the Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.10. **Leases Affecting Mortgaged Property.** The Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Immediately upon Agent's request, Mortgagor will furnish the Agent with executed copies of all leases now or hereafter created with respect to all or any part of the Mortgaged Property; and all leases now or hereafter entered into must be approved by the Agent in advance of Mortgagor becoming obligated upon any such leases. Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of the Agent. The Mortgagor has assigned to the Agent as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the premises from time to time accruing, and will not cancel, surrender, or modify any lease so assigned without the written consent of the Agent.

1.11. **Appraisals.** At the Agent's request, Mortgagor will permit the Agent, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and Mortgagor will cooperate with and provide any information requested in connection with such appraisals. Mortgagor will reimburse the Agent for the cost of any such appraisals, not to exceed the cost of one appraisal in any twelve month period.

1.12. **Expenses.** The Mortgagor will pay or reimburse the Agent and Lenders for all reasonable attorney's fees, costs, and expenses incurred by the Agent or Lenders in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Agent is made a party, or appears as party plaintiff or defendant, affecting the Notes, this mortgage, Mortgagor, or the Mortgaged Property,

including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof.

1.13. Performance by Agent of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Agent, at its option, may perform or observe the same, and all payments made for costs or incurred by the Agent in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Agent. The Agent shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Agent is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

1.14. Books and Records. The Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Agent shall have access to the books of accounts and records and shall be provided financial information regarding the Mortgaged Property in accordance with the terms of the Loan Documents (as defined in the Loan Agreement).

1.15. Estoppel Affidavits. The Mortgagor within ten (10) days after written request from the Agent shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Notes and whether or not any offsets or defenses exist against such principal and interest.

1.16 Environmental Inspection Easement.

(a) Mortgagor hereby grants and conveys to the Agent an easement to enter on and upon the Mortgaged Property at any reasonable time during regular business hours upon ten (10) days notice and from time to time for the purpose of making such audit tests, inspections, and examinations, including subsurface explorations and testing, as the Agent, in its sole discretion, deems necessary, convenient, or proper to determine whether the ownership, use, and operation of the Mortgaged Property and the conduct of the activities engaged in thereon are in compliance with Environmental Laws. The

term "Environmental Laws" shall mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment including, without limitation, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Materials Transportation Act, 49 U.S.C. § 6901 et seq., Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, the United States Environmental Protection Agency's Proposed Rules concerning Underground Storage Tanks, 52 Fed. Reg. 12661, April 17, 1987, and any federal or state rules which supersede or amend such proposed rules, and all similar federal, state and local environmental statutes and ordinances and the regulations, orders and decrees now or hereafter promulgated thereunder. The Agent, or its designated agents, shall have the right to inspect and copy all of the Mortgagor's records relating to environmental matters and to enter all buildings or facilities of the Mortgagor for such purpose. In confirmation of the Agent's right to inspect and copy all of the Mortgagor's records relating to environmental matters and to secure the Mortgagor's obligations to the Lenders in connection with the Loan, the Mortgagor hereby grants to the Lenders a continuing security interest in and to all of the Mortgagor's existing and future records with respect to environmental matters, whether or not located at the Mortgaged Property or elsewhere, whether or not in the possession of the Mortgagor or some third party (including any federal, state, or local agency or instrumentality), and whether or not written, photographic, or computerized, and the proceeds and products thereof. The Agent, or its designated agents, may interview any or all of the Mortgagor's agents and employees regarding environmental matters, including any consultants or experts retained by the Mortgagor, all of whom are directed to discuss environmental issues fully and openly with the Agent or its designated agents and to provide such information as may be requested. All of the costs and expenses incurred by the Agent with respect to the audits, tests, inspections, and examinations which the Agent may conduct, including the fees of the engineers, laboratories, and contractors, shall be borne by Agent, unless Agent reasonably believes that such audits, tests, inspections or examinations should be undertaken because of suspected adverse changed conditions to the Mortgaged Property from the date hereof, in which case such costs and expenses shall be paid by the Mortgagor. The Agent may, but shall not be required to, advance such costs and expenses on behalf of the Mortgagor. All sums so advanced

shall bear interest at the non-default interest rate specified in the Notes.

(b) Agent agrees, promptly upon completion of the tests, explorations or inspections described in this Section 1.16 (a), to restore the Mortgaged Property to the condition it was immediately prior to such tests, inspections and explorations, and to indemnify and hold the Mortgagor harmless from and against any expenses, liability or damages the Mortgagor may suffer or incur as a result of Agent or its agents negligently performing such tests, inspections or explorations or failing to restore the Mortgaged Property following such tests, inspections or explorations in the manner required herein.

(c) The easement granted in this Section 1.16 shall exist and continue until such time as this Mortgage has been released of record. A release of the Mortgage shall evidence a final termination of the easement granted hereby.

(d) The Mortgagor acknowledges that no adequate remedy at law exists for a violation of the easement granted in this Section 1.16 and agrees that the Agent shall have the right to enforce the easement granted hereby by equitable writ or decree, including temporary and preliminary injunctive relief. In the event the Agent is required to enforce its rights hereunder, the Mortgagor shall pay all of the Agent's costs and expenses in connection therewith, including all attorney's fees incurred by the Agent.

(e) This easement shall be assignable and shall be considered assigned to whomever holds the indebtedness secured by this Mortgage. This easement is irrevocable and may not be revoked by the Mortgagor. The exercise of the rights granted hereunder shall not constitute the Lenders mortgagees in possession with respect to the Mortgaged Property. This easement is intended to be and shall be construed as an interest in the Mortgaged Property and as an easement in gross. It is not intended to be a personal right of the Lenders or a mere license.

ARTICLE II

2.01. **Event of Default.** The term Event of Default, wherever used in the mortgage, shall mean any one or more of the following events:

(a) An Event of Default as defined in the Loan Agreement occurs; or

(b) The Mortgaged Property or any part thereof is taken on execution or other process of law in any action against Mortgagor (other than by condemnation); or

(c) Mortgagor abandons all or a portion of the Mortgaged Property; or

(d) Without the prior written consent of the Agent, (i) Mortgagor sells, leases, exchanges, assigns, transfers, conveys or otherwise disposes of all or any part of the Mortgaged Property or any interest therein (except for the disposition of worn-out or obsolete personal property or fixtures expressly excluded from the operation of this Mortgage and except leases to tenants of the apartment units in the ordinary course of business), or (ii) the title to the Mortgaged Property, or any interest therein, is vested in any other party, in any manner whatsoever, by operation of law or otherwise, or (iii) any membership interest in Mortgagor is sold, transferred or assigned; or

(e) Without the prior written consent of the Agent, Mortgagor creates, places or permits to be created or placed, or through any act or failure to act, acquiesces in the placing of, or knowingly allows to remain, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual (except for the lien for ad valorem taxes on the Mortgaged Property which are not delinquent), security interest, lis pendens encumbrance or charge, or conditional sale or other title retention document, against or covering the Mortgaged Property, or any part thereof, other than the Permitted Encumbrances described on Exhibit B attached hereto and incorporated herein by reference for all purposes, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, or acquires any fixtures, equipment or other property forming a part of the Mortgaged Property pursuant to a lease, license or similar agreement; or

(f) The holder of any lien or security interest on the Mortgaged Property (without hereby implying the consent of the Agent to the existence or creation of any such lien or security interest) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder; or

(g) Mortgagor shall fail to discharge within a period of sixty (60) days of the filing of any formal charges under federal or state law for which forfeiture of Mortgagor's interest in the Mortgaged Property or the granting of a lien against the Mortgaged Property, which lien is or could be superior to any of Lenders' liens against the Mortgaged Property, is a potential penalty or remedy.

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Agent is prevented from giving notice by bankruptcy or other applicable law, and the cure period shall be measured from the date of the event or failure rather than from the date of notice, unless expressly stated otherwise. Nothing herein shall require notice except where expressly set forth.

2.02. Acceleration of Maturity. Subject to the provisions of Section 9.06 of the Loan Agreement, if an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Agent, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Agent to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03. Right of Lenders to Enter and Take Possession.

(a) If an Event of Default shall have occurred, the Mortgagor, upon demand of the Agent, shall forthwith surrender to the Agent the actual possession, and if and to the extent permitted by law, the Agent may enter and take possession, of all the Mortgaged Property, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Agent may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in Mortgagor's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Agent, all as the Agent from time to time may determine to be to its best advantage; and the Agent may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Agent

may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lenders; shall apply the remainder of the moneys so received by the Agent to the payment of accrued interest, to the payment of tax and insurance deposits required in Section 1.04 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Agent may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Agent may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04. Receiver.

(a) If an Event of Default shall have occurred, the Agent, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Mortgagor will pay to the Agent upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this mortgage.

2.05. Agent's Power of Enforcement. If an Event of Default shall have occurred, the Agent may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Notes or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lenders shall deem most effectual for such purposes. The Agent shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Agent may determine.

2.06. Power of Sale. If an Event of Default shall have occurred, the Agent may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House

door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Agent or any person conducting the sale for Lenders is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Agent may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property maybe offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Agent may elect.

2.07. Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

FIRST: To the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage and all court costs and charges of every character in the event of such collection or foreclosure.

SECOND: The payment to the Lenders, prorata in accordance with the sums advanced by each under the Notes, of all accrued but unpaid interest on the Indebtedness to the date of sale.

THIRD: The payment to the Lenders, prorata in accordance with the sums advanced by each under the Notes, of the remainder of the Indebtedness.

FOURTH: The payment to the Lenders, prorata in accordance with the sums advanced by each under the Notes, of the remainder of the Obligations.

FIFTH: If required by law to any holder of liens against the Mortgaged Property that are junior to Lenders' lien against the Mortgaged Property.

SIXTH: The balance, if any, shall be paid to the Mortgagor.

2.08. Option on Foreclosure. At the option of the Agent, this mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Agent exercises its option to foreclose the mortgage in equity, Agent may, at its option, foreclose this mortgage

subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Agent to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.09. Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

2.10. Suits to Protect the Mortgaged Property. The Agent shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents, and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Agent.

2.11. Mortgagor to Pay the Notes on Any Default in Payment; Application of Moneys by Agent. If an Event of Default occurs, then, upon demand of the Agent, the Mortgagor will pay to the Agent the whole amount due and payable under the Notes; and in case the Mortgagor shall fail to pay the same forthwith upon such demand, the Agent shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Agent's agents and attorneys.

2.12. Delay or Omission No Waiver. No delay or omission of the Agent, Lenders or of any holder of the Notes to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this mortgage to the Agent or Lenders may be exercised from time to time and as often as may be deemed expedient by the Agent.

2.13. No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any

subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon.

If the Agent (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Notes; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Notes or this mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Notes, this mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Agent from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lenders, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lenders, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.14. Discontinuance of Proceedings - Position of Parties, Restored. In case the Agent shall have proceeded to enforce any right or remedy under this mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lenders or Agent, then and in every such case the Mortgagor, Lenders and the Agent shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Agent and Lenders shall continue as if no such proceeding has been taken.

2.15. Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the Agent and/or Lenders by this mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE III

3.01. **Successors and Assigns Included in Parties.** Whenever in this mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this mortgage by or on behalf of the Mortgagor or by or on behalf of Lenders shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.02. **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03. **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this mortgage or in the Notes shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Notes shall in no way be affected, prejudiced, or disturbed thereby.

3.04. **Security Interest in and Lien on Personal Mortgaged Property.** This mortgage creates a lien on and grants a security interest in the personal property of the Mortgagor described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Mortgagor covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Agent shall require from time to time with respect to such personal property. This mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Mortgagor as the "debtor" and Lenders as the "secured party", and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Agent shall have all rights and remedies of a secured party under the applicable Uniform Commercial Code, and, without limiting the foregoing, Lenders may:

(a) Require Mortgagor to assemble the personal property, or any portion thereof, and make the same available at one or more places as Agent may designate, and deliver possession thereof to Agent, who shall have full right to enter upon any or all of the real property herein mortgaged and other property of Mortgagor to exercise Lenders' rights hereunder, and

(b) Use, store, operate and control the personal property in order to preserve the personal property or the value thereof, including, without limitation, making repairs, replacements, alterations, additions and improvements thereto.

In connection with any public or private sale under the applicable Uniform Commercial Code, Lenders shall give Mortgagor ten (10) days' notice of the time and place of any public sale or of the time after which any private sale or other intended disposition thereof is to be made, which notice shall be deemed to be reasonable notice of such sale or other disposition. Such notice may be mailed to Mortgagor at the address and in the manner set forth in this mortgage.

In the event Lenders recovers possession of all or any part of the personal property pursuant to a writ of possession or other judicial process, whether prejudgment or otherwise, Lenders may thereafter retain, sell or otherwise dispose of such property in accordance with this mortgage or the applicable Uniform Commercial Code, and following such retention, sale or other disposition, Lenders may voluntarily dismiss without prejudice the judicial action in which such writ of possession or other judicial process was issued. Mortgagor hereby consents to the voluntary dismissal by Lenders of such judicial action, and further consents to the exoneration of any bond which Agent may have filed in such action.

3.05. Construction Loan Agreement. This is a construction loan mortgage and the indebtedness secured hereby will be advanced to the Mortgagor by the Agent from time to time in accordance with the Loan Agreement dated of even date herewith, as the same may hereafter be amended. This Mortgage secures future advances made pursuant to such Loan Agreement. The Loan Agreement is, by reference, herein incorporated to the same extent and effect as though set forth herein in full. In the event of a conflict between the terms of this Mortgage and the terms of the Loan Agreement, the Loan Agreement shall govern and prevail.

3.06. Notices. Any notice, consent, request, demand or other communication required or permitted to be given hereunder or under any of the Loan Documents to Lenders, Agent or Mortgagor must be in writing and shall be deemed sufficiently given or made when (i) delivered in person, (ii) sent by private courier or national overnight delivery service with proof of delivery and courier fees paid by sender, or (iii) three (3) days after deposit in the United States mail by first class mail, registered or certified, return receipt requested, postage prepaid, as follows:

To Lenders:

Bank United
3200 Southwest Freeway, Suite 1700
P.O. Box 1370
Houston, Texas 77251-1370
Attention: Rick D. McKinnerney
Telecopy: (713) 543-6604
Telephone: (713) 543-6721

With copy to:

W. David Tidholm
Gardere Wynne Sewell & Riggs, L.L.P.
333 Clay Avenue, Suite 800
Houston, Texas 77002
Telecopy: (713) 308-5565
Telephone: (713) 276-6565

To Mortgagor:

Intown Suites Southpark, LLC
c/o Intown Suites Management, Inc.
2101 Piedmont Road
Atlanta, Georgia
Attention: David M. Vickers
Telecopy: (404) 875-9544
Telephone: (404) 875-7910

With copy to:

King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303
Attention: Alan J. Prince
Telecopy: (404) 572-4600
Telephone: (404) 572-5100

or such other address as shall be set forth in a notice from the appropriate party given in compliance with this Section. Notwithstanding anything to the contrary, any notice delivered shall be deemed sufficiently given when deposited in the United States mail by first class mail, registered or certified, return receipt requested, postage prepaid to the address of Mortgagor as set forth above.

3.06. **Consideration.** Mortgagor acknowledges and agrees that the value of the consideration received and to be received by Mortgagor as a result of Borrower and Lenders entering into the Loan Documents and Mortgagor executing and delivering this Mortgage is reasonably worth at least as much as the liability and obligation of Mortgagor hereunder, and such liability and obligation and the Loan Documents has benefitted or may reasonably be expected to benefit Mortgagor directly or indirectly.

3.07. **Acknowledgment of Consideration.** Mortgagor acknowledges and agrees that the value of the consideration received and to be received by Mortgagor as a result of Borrower and Lenders entering into the Loan Documents and Mortgagor

executing and delivering this Mortgage is reasonably worth at least as much as the liability and obligation of Mortgagor hereunder, and such liability and obligation and the Loan Documents has benefitted or may reasonably be expected to benefit Mortgagor directly or indirectly.

3.08 **Agreement to Comply With Loan Agreement.** Mortgagor hereby adopts and agrees to comply with Section 9.02(b) and (c) of the Loan Agreement.

3.09 **Revolving Line of Credit.** This Mortgage secures, among other obligations, a revolving line of credit pursuant to the terms and conditions of the Loan Agreement under the terms of which funds may be advanced, paid back, and readvanced, provided, however, that the maximum principal amount of advances under the Loan Agreement may not exceed, at any one time, the sum of \$100,000,000.00, and further provided, all such principal advances are due and payable no later than December 30, 2002.

10-10-02
IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage, or has caused this mortgage to be executed, as of the day and year first above written.

MORTGAGOR:

INTOWN SUITES SOUTHPARK, LLC,
a Georgia limited liability company

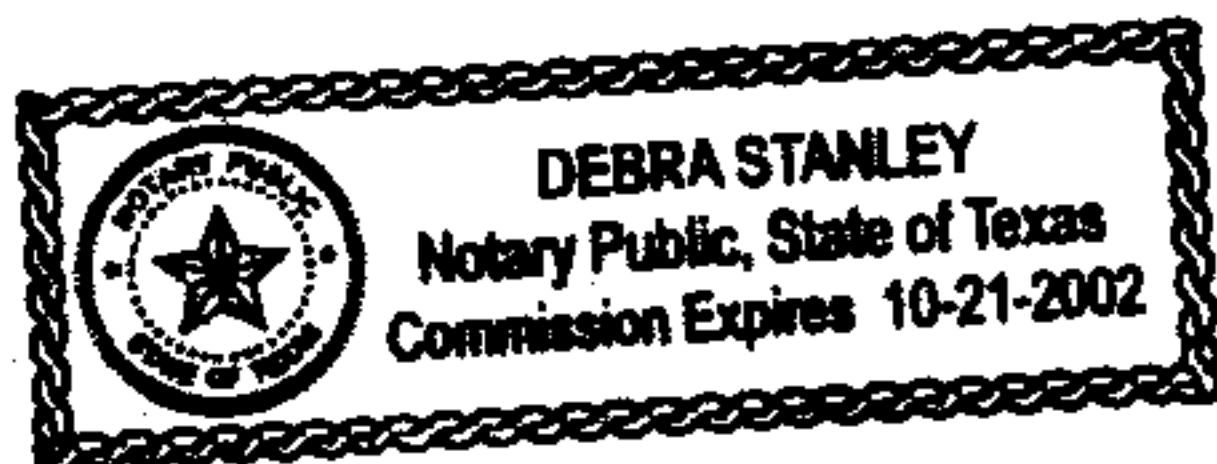
By: 

David M. Vickers
Managing Member

STATE OF TEXAS)
COUNTY OF HARRIS)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that David M. Vickers, whose name as Managing Member of Intown Suites Southpark, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this 30th day of December, 1998.



Debra Stanley
NOTARY PUBLIC

This instrument prepared by:

EXHIBIT "A"

(Southpark)

Lot 9-A according to a Resurvey of Lots 9 and 10, Southpark, as recorded in Map Book 22, Page 17, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT "B"

(Southpark)

1. Title to all minerals within and underlying the premises together with all rights incident thereto including any release or damages set forth in Deed Book 127, Page 140.
2. Transmission line permits to Alabama Power Company as recorded in Deed Book 101, Page 523, Deed Book 139, Page 157, Deed Book 215, Page 586, Deed Book 251, Page 886, and Deed Book 319, Page 40.
3. Transmission line permits to Alabama Power Company as recorded in Deed Book 292, Page 356.
4. Right-of-way in favor of Shelby County, Alabama in Deed Book 153, Page 212 (as to Highway 31) and in Deed Book 177, Page 25 and Deed Book 177, Page 46 (as to Highway 17) in said Probate Office.
5. 25 foot building line along east and west lot line, 30 foot building line along north lot line and 35 foot building setback line along the South side of subject property as shown on survey by Sain Associates, Inc. dated June 8, 1998.
6. Utility and Drainage Easement in the Southwest portion of subject property as shown on survey by Sain Associates, Inc. dated June 8, 1998.
7. Easements rights and obligations reserved by Sunlink Corporation in deed to EES Joint Venture set forth in Book 285, Page 203.
8. Restrictive Covenants Agreement as described in Instrument Number 1997-22108.
9. 20 foot easement along north and east lot lines as shown by Survey of Sain Associates, dated June 8, 1998.
10. 30 foot private water line easement along northeast portion of subject property as shown by Survey of Sain Associates, dated June 8, 1998.
11. 20 foot easement and 15 foot power easement located on portion of Lot 9-A south of South park Drive as shown by Survey of Sain Associates, dated June 8, 1998.
12. Curb and gutter encroachments along south lot line as shown by Survey of Sain Associates, dated June 8, 1998.

13. Easement to Harbert-Equitable Joint Venture recorded in Real Book 267, Page 420 in Office of the Judge of Probate of Shelby County, Alabama.
14. Restrictions appearing of record in Shelby Corp. Book 13, Page 50 as amended in Corp. Book 15, Page 189 and Corp. Book 18, Page 633.

Inst # 1999-03561

391559.1

-2 01/27/1999-03561
08:25 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
028 CRH 4317.25