

99-1301

Tax - 1657.50

RECORDING REQUESTED BY:

THIS INSTRUMENT WAS
PREPARED BY:

WHEN RECORDED RETURN TO:

American Commercial Capital LLC
5963 La Place Court, Suite 300
Carlsbad, CA 92008
Attention: James Kendrick Noble III
Unit (Pod) No.: 2
Store Loan No.: 99 0344 002
Store Unit No.: 4409
Property: 101 Cahaba Valley Parkway, Pelham, AL

Andrews & Kurth L.L.P.
1717 Main Street, Suite 3700
Dallas, Texas 75201
Attention: Brigitte Kimichik

Inst # 1999-45405

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING
SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO
SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED, AND SHOULD BE
CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

**MORTGAGE, ASSIGNMENT OF LEASES AND RENTS,
AND FIXTURE FILING**

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, AND FIXTURE FILING
(the "Mortgage") is made as of August 31, 1999, by SOUTH TACALA, LLC, a Delaware limited
liability company, having its principal place of business at 4268 Cahaba Heights Court, Birmingham,
Alabama 35243 ("Debtor") for the benefit of AMERICAN COMMERCIAL CAPITAL LLC, a
Delaware limited liability company, having an office at 5963 La Place Court, Carlsbad, California
92008 ("Secured Party").

Terms used herein and not otherwise defined herein have the meanings accorded to such terms in
the paragraph above and in the DEFINITIONS SCHEDULE attached hereto. Terms used herein and
not otherwise defined have the meaning accorded to such terms in the UCC.

The Obligations secured by this Mortgage are comprised of the following:

- (i) the full and punctual payment when due of (a) an indebtedness in the Initial Principal
Amount (as defined below), in lawful money of the United States of America, to be paid with

MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING
AMERICAN COMMERCIAL CAPITAL/TACALA - ALABAMA

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SHELBY COUNTY JUDGE OF PROBATE
035 HWS 1751.00

(i) the full and punctual payment when due of (a) an indebtedness in the Initial Principal Amount (as defined below), in lawful money of the United States of America, to be paid with interest and periodic charges (said indebtedness and interest, periodic charges, along with any prepayment premium amount, and all other sums which may or shall become due hereunder including all future advances and other future indebtedness, obligations and liabilities included therein, being hereinafter collectively referred to as the "Debt") according to the Secured Promissory Note, dated concurrently herewith executed by Debtor in favor of Secured Party in the initial principal amount of \$10,110,000.00 (the "Initial Principal Amount") with a maturity date of December 1, 2017 ("Maturity Date"), recourse liability under this Mortgage being limited to the maximum amount of \$1,105,000.00;

(ii) the full and punctual payment and performance of all amounts payable under this Mortgage, the Security Agreement and all other Loan Documents, including without limitation, indemnification and expense reimbursement obligations; and

(iii) the timely and full payment and performance and observance of each other Obligation, however and whenever incurred, due or to become due, and whether Debtor is obligated alone, or with others on a joint, several or solitary basis, as a principal obligor or as a surety (including any interest, prepayment premium, costs, fees and expenses which at any time accrue or otherwise payable on or with respect to the foregoing, whether before or after the commencement of any case, proceeding or other action relating to the bankruptcy, insolvency or reorganization of the Debtor), and each other term, covenant, agreement, requirement, condition and other provision under or in connection with any Loan Document.

GRANTING CLAUSE

NOW THEREFORE, in consideration of the premises and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, for the purpose of securing the due and punctual payment, performance and observance of the Obligations and intending to be bound hereby, Debtor has GRANTED, BARGAINED, SOLD, CONVEYED and CONFIRMED and by these presents does hereby GRANT, BARGAIN, SELL, CONVEY and CONFIRM unto Secured Party, its successors and assigns, FOREVER, for the purposes and on the terms and conditions hereinafter set forth, with power of sale and right of entry and possession, all right, title, interest and estate of Debtor now owned or existing, or hereafter acquired or arising, in and to the following property, rights and interests, wheresoever located, subject however to the Permitted Encumbrances, if any, (such property, rights and interests being hereinafter collectively referred to as the "Mortgaged Property"):

- (1) The real property described in Exhibit A attached hereto (the "Premises") and all of the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING
AMERICAN COMMERCIAL CAPITAL/TACALA - ALABAMA

- (2) All easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, riparian, littoral, and water rights and powers, air rights, access rights, development rights and parking rights, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Premises, to the center line thereof;
- (3) All goods, machinery, furnishings, appliances, equipment, fixtures (including but not limited to all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature (hereinafter collectively called the "Equipment"), whether tangible or intangible, whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements and all building equipment, materials and supplies of any nature whatsoever owned by Debtor, or in which Debtor has or shall have an interest, now or hereafter located upon the Premises and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Premises and the Improvements, including the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Debtor in and to any of the Equipment which may be subject to any security interests, as defined in the UCC superior in lien to the lien of this Mortgage;
- (4) All Loss Proceeds and other awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Premises and the Improvements, whether from the exercise of the right of eminent domain or Condemnation (including but not limited to any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Premises and Improvements;
- (5) All leases, subleases and other agreements (including without limitation, any and all security interests, contractual Liens and security deposits thereunder) affecting the use, enjoyment or occupancy of the Premises and the Improvements heretofore and hereafter entered into (the "Leases") and all income, rents, issues, profits and revenues (including all oil and gas or other mineral royalties and bonuses) from the Premises and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Indebtedness and other Obligations of Debtor to Secured Party;

- (6) All Insurance Proceeds and other proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;
- (7) The right, in the name and on behalf of Debtor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Secured Party in the Mortgaged Property;
- (8) All accounts, escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, all Contractual Obligations and all other contract rights, franchises, books, records, plans, specifications, maps, surveys, permits, and licenses (to the extent assignable), approvals, actions, and causes of action, trade, service and business marks and names which now or hereafter relate to, are derived from or are used in connection with the Premises, or the use, operation, maintenance, occupancy or employment thereof or the conduct of any business or activities thereon (hereinafter collectively called the "Intangibles");
- (9) All Consents and Other Action and all other permits, and licenses (including alcoholic beverage licenses, to the extent assignable by Debtor), agreements (including all license, operating, management, service, supply and maintenance agreements), and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by Debtor with respect to the ownership, operation maintenance and administration of the Mortgaged Property, including without limitation those documents and agreements described in that certain Assignment of Licenses, Permits and Contracts dated concurrently herewith executed by Debtor in favor of Secured Party; and
- (10) Any and all proceeds and products of any of the foregoing and any and all other security and collateral of any nature whatsoever, now or hereafter given for the repayment of the Obligations, including the performance of Debtor's obligations under the Loan Documents.

TO HAVE AND TO HOLD the Mortgaged Property and Debtor does hereby bind itself, its successors and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Secured Party, its successors and assigns, FOREVER, under and subject to the terms and conditions of this Mortgage, and for security and enforcement of the prompt and complete payment and performance when due of all Obligations.

PROVIDED that Secured Party may from time to time release all or a portion of the Mortgaged Property, in accordance with the terms and conditions of the Security Agreement and applicable Law.

MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING
AMERICAN COMMERCIAL CAPITAL/TACALA - ALABAMA

PROVIDED FURTHER that this Mortgage is made upon the condition that if (i) all of the Obligations are paid in full, and (ii) the Debtor reimburses the Secured Party for any amounts the Secured Party has paid in respect of Liens, impositions, prior mortgages, insurance premiums, repairing or maintaining the Mortgaged Property, performing the Debtor's obligations under any lease related to the Premises, performing the Debtor's obligations hereunder with respect to environmental matters, and any other advancements hereunder, and interest thereon, and (iii) the Debtor fulfills all of the Debtor's other obligations under this Mortgage, and (iv) the Secured Party has no obligation to extend any further credit to or for the account of the Debtor and there is in existence no contingent liability of the Debtor that is secured by this Mortgage, and (v) any other conditions set forth in the following paragraph, this conveyance shall be null and void upon the filing by the Secured Party of a written instrument of termination executed by an officer of the Secured Party.

This Mortgage and the Secured Party's Liens under this Mortgage in the Mortgaged Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Secured Party's officers is filed for record in the county in which the Mortgaged Property is located. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representations, warranties, agreements or other obligations of the Debtor or the powers, rights and remedies of the Secured Party under this Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Secured Party at any one time should be paid in full, this Mortgage will continue to secure any Obligations that might later be owed to the Secured Party until such mortgage satisfaction instrument has been executed and recorded. Unless otherwise specifically provided in the Security Agreement, in no event shall the Secured Party be obligated to satisfy its Liens under this Mortgage or return or release any of the Mortgaged Property to the Debtor (a) until the payment in full of all Obligations then outstanding, (b) if the Secured Party is obligated to extend credit to the Debtor, (c) if any contingent obligation of the Debtor to the Secured Party remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to Secured Party under bankruptcy or insolvency laws.

This Mortgage, the obligations of the Debtor hereunder, and the Liens, rights, powers and remedies of the Secured Party hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Debtor, any Obligor, or any other person (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Debtor, any Obligor or any such person, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

DEBTOR ADDITIONALLY COVENANTS AND AGREES WITH AND REPRESENTS AND WARRANTS TO SECURED PARTY AS FOLLOWS:

1. **Payment of Debt: Continued Effectiveness.** Debtor shall pay the Debt at the time and in the manner provided for its payment in the Note, the Security Agreement and in this Mortgage and Debtor shall pay, perform and observe the other Obligations in accordance with their terms. Debtor shall cause the representations and warranties of Debtor in this Mortgage and the Loan Documents to continue to be true in each and every respect at all times prior to the termination of this Mortgage.

2. **Warranty of Title and Liens.** Debtor is lawfully seized in fee simple of the Land, Premises, and Improvements and is the lawful owner of, and has good title to, the remainder of the Mortgaged Property, and the Debtor has good right to mortgage, assign and grant a security interest in the Mortgaged Property as aforesaid; the Mortgaged Property is free of all Liens other than Permitted Encumbrances; the Debtor has full power to encumber, assign and convey the Mortgaged Property as provided herein; this Mortgage is and will remain a valid and enforceable first priority mortgage Lien on, and security interest in, the Mortgaged Property, subject only to Permitted Encumbrances; and the Debtor shall forever warrant and defend the title to the Mortgaged Property unto the Secured Party against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

3. **Insurance.** Debtor shall keep the Mortgaged Property insured in accordance with the provisions of the Security Agreement. Sums paid to Secured Party by any insurer may be retained and applied by Secured Party toward payment of the Debt and other Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Sole Discretion shall deem proper or, at the Sole Discretion of Secured Party, the same may be paid, either in whole or in part, to Debtor for such purposes as Secured Party shall designate. If Secured Party shall receive and retain such Insurance Proceeds, the Obligations secured by the Lien of this Mortgage shall be reduced only by the amount thereof received and retained by Secured Party and actually applied by Secured Party in reduction of the Debt and other Obligations.

4. **Payment of Taxes, etc.** Debtor shall pay all Taxes and Other Charges, now or hereafter levied or assessed against the Mortgaged Property prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. Debtor shall deliver to Secured Party, upon request, receipted bills, canceled checks and other evidence satisfactory to Secured Party evidencing the payment of the Taxes and Other Charges prior to the date upon which any fine, penalty, interest or cost may be added thereto or imposed by Law for the nonpayment thereof. At Secured Party's option and upon its demand and except where prohibited by Law, Debtor shall, until all Obligations have been paid in full, pay to Secured Party each month an amount estimated by Secured Party in its Sole Discretion to be an amount approximately equal to (a) the Taxes and Other Charges, (b) all payments under the Lease (if the

Mortgaged Property is Debtor's interest in a leasehold estate), (c) all payments and premiums with respect to Insurance Requirements, and (d) any payments required under Permitted Encumbrances, if any, (collectively, the "Required Payments"). Except to the extent required to satisfy the Requirements of Law or otherwise determined by Secured Party in its Sole Discretion, amounts so paid shall not bear interest. Amounts so paid shall be additions to Collateral and subject to the terms of the Security Agreement and, prior to the occurrence of an Event of Default may be applied by Secured Party in its Discretion to the payment of the Required Payments or released to Debtor for application to and payment of the Required Payments.

5. **Condemnation.** Notwithstanding any Condemnation, Debtor shall continue to pay the Debt at the time and in the manner provided for its payment in the Note, the Security Agreement and this Mortgage and the Debt shall not be reduced until any award or payment therefor shall have been actually received and applied by Secured Party to the discharge of the Debt. Subject to the Security Agreement, Secured Party may apply the entire amount of any such award or payment to the discharge of the Debt or other Obligations whether or not then due and payable in such order, priority and proportions as Secured Party in its Discretion shall deem proper. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Secured Party of such award or payment, Secured Party shall have the right, whether or not a deficiency judgment on the Note shall have been sought, recovered or denied, to receive such award or payment, or a portion thereof sufficient to pay the Debt and other Obligations. Debtor shall file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Secured Party in accordance with the Security Agreement. Debtor hereby irrevocably authorizes and empowers Secured Party, in the name of Debtor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claim or claims. Although it is hereby expressly agreed that the same shall not be necessary in any event, Debtor shall, upon demand of Secured Party, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to Secured Party, free and clear of any Lien of any kind or nature whatsoever.

6. **Leases and Rents.** Debtor acknowledges and confirms that it has executed and delivered to Secured Party an Assignment of Leases and Rents of even date (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Assignment of Leases and Rents"), intending that such instrument create a present, absolute assignment to Secured Party of the Leases and the Rents. Without limiting the intended benefits or the remedies provided under the Assignment of Rents and Leases, Debtor hereby assigns to Secured Party, as further security for the Debt and the Obligations, the Leases and Rents. While any Event of Default exists, Secured Party shall be entitled to exercise any or all of the remedies provided in the Assignment of Leases and Rents and in this Mortgage, including, without limitation, the right to have a receiver appointed (to the extent permitted by applicable law). Subject to the terms of this paragraph, Secured Party waives the right to enter the Mortgaged Property for the purpose of collecting the Rents, and grants Debtor the right under a revocable license to collect the Rents. Debtor shall hold

the Rents, or an amount sufficient to cover the payment of all operating expenses of the Mortgaged Property and to discharge all current sums due on the Debt, in trust for use in payment of such current operating expenses and current sums due on the Debt. The right of Debtor under the revocable license to collect the Rents may be revoked by Secured Party upon any Event of Default by giving notice of such revocation to Debtor. Following such notice Secured Party may retain and apply the Rents toward payment of the Debt or other Obligations in such order, priority and proportions as Secured Party, in its Discretion, shall deem proper, or to the operation, maintenance and repair of the Mortgaged Property, and irrespective of whether Secured Party shall have commenced a foreclosure of this Mortgage or a sale of the Mortgaged Property pursuant to the provisions of this Mortgage or shall have applied or arranged for the appointment of a receiver. Debtor shall not, without the consent of Secured Party, make, or suffer to be made, any Leases or materially modify or cancel any Leases or accept prepayments of installments of the Rents for a period of more than one (1) month in advance or further assign the whole or any part of the Rents. Debtor shall (a) fulfill or perform each and every provision of the Leases on the part of Debtor to be fulfilled or performed, (b) promptly send copies of all notices of default which Debtor shall send or receive under the Leases to Secured Party, and (c) enforce, short of termination of the Leases, the performance or observance of the provisions thereof by the tenants thereunder. In addition to the other rights which Secured Party may have herein, in the event of any default under this Mortgage, Secured Party, at its option, may require Debtor to pay monthly in advance to Secured Party or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be in possession of Debtor. Upon default in any such payment, Debtor will vacate and surrender possession of the Mortgaged Property to Secured Party or to such receiver and, in default thereof, Debtor may be evicted by summary proceedings or otherwise. Nothing contained in this paragraph shall be construed as imposing on Secured Party any of the obligations of the lessor under the Leases. Nothing in this paragraph 6 is intended to affect adversely in any way any rights of Secured Party pursuant to the Assignment of Leases and Rents, and in the event of any conflict between the provisions of this paragraph 6 and the provisions of the Assignment of Leases and Rents, the provisions of the Assignment of Leases and Rents shall control.

7. Maintenance of the Mortgaged Property. Debtor, at its sole cost and expense, shall cause the Mortgaged Property to be maintained in good condition and repair and will not commit or suffer to be committed any waste of the Mortgaged Property. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal repairs and replacement of the Equipment in accordance with the Security Agreement), without the consent of Secured Party. Debtor shall promptly comply with all existing and future Requirements of Law affecting the Mortgaged Property, or any portion thereof or the use thereof. Debtor shall promptly repair, replace or rebuild all or any part of the Mortgaged Property which has suffered any Loss, whether by casualty or Condemnation or otherwise, and shall complete and pay for, within a reasonable time, any structure at any time in the process of construction or repair on the Premises. Debtor shall not, without obtaining the prior consent of Secured Party, initiate, join in or consent to

any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting, or affecting the uses which may be made of the Mortgaged Property or any part thereof. Debtor shall promptly notify Secured Party of the receipt by Debtor of notice (or of Debtor's knowledge) of any Conflict under any Requirement of Law, or of any Conflict or threatened or actual termination of any Contractual Obligations or Consent or Other Action relating to the Premises.

8. Estoppel Certificates. Debtor, within ten (10) days after request by Secured Party and at Debtor's expense, will furnish Secured Party with a statement, duly acknowledged and certified, setting forth the amount of the Debt and the offsets or defenses thereto, if any.

9. Transfer or Encumbrance of the Mortgaged Property. Subject to the terms of the Security Agreement, no part of the Mortgaged Property nor any interest of any nature whatsoever therein nor any interest of any nature whatsoever in Debtor (whether partnership, stock, equity, beneficial, profit, loss or otherwise) shall in any manner be Disposed of or further encumbered, sold, transferred, assigned or conveyed, or permitted to be Disposed of or further encumbered, sold, transferred, assigned or conveyed or otherwise be subject to a Lien without the prior consent of Secured Party, which consent in any and all circumstances may be withheld in the Sole Discretion of Secured Party. The provisions of the foregoing sentence of this paragraph shall apply to each and every such Disposition and further encumbrance, sale, transfer, assignment or conveyance, regardless of whether or not Secured Party has consented to, or waived by its action or inaction its rights hereunder with respect to, any Disposition and such previous further encumbrance, sale, transfer, assignment or conveyance, and irrespective of whether such Disposition and further encumbrance, sale, transfer, assignment or conveyance is voluntary, by reason of operation of Law or is otherwise made.

10. Notice. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be sent in the manner specified in the Security Agreement.

11. Sale of Mortgaged Property. If this Mortgage is foreclosed, the Mortgaged Property, or any interest therein, may, at the Discretion of Secured Party, be sold in one or more parcels or in several interests or portions and in any order or manner.

12. Changes in Laws Regarding Taxation. In the event of the passage after the date of this Mortgage of any Law of the State in which the Premises are located deducting from the value of real property for the purpose of taxation any Lien or encumbrance thereon or changing in any way the Laws for the taxation of deeds of trusts or mortgages or debts secured by deeds of trust or mortgages for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Note or the Debt, Debtor shall, if permitted by Law, pay any tax imposed as a result of any such Law within the statutory period or within fifteen (15) days after demand by Secured Party, whichever is less, provided, however, that if, in the

opinion of the attorneys for Secured Party, Debtor is not permitted by Law to pay such taxes, Secured Party shall have the right, at its option, to declare the Debt due and payable on a date specified in a prior notice to Debtor of not less than thirty (30) days.

13. No Credits on Account of the Debt. Debtor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes and Other Charges assessed against the Mortgaged Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Mortgaged Property, or any part thereof, by reason of this Mortgage or the Debt.

14. Documentary Stamps and Recording Tax. If at any time any Government Authority shall require revenue or other stamps to be affixed to the Note, or this Mortgage or any Loan Document, or impose any recording or privilege tax on recording this Mortgage, Debtor shall pay for the same, with interest and penalties thereon, if any.

15. Performance of Other Agreements. Debtor shall observe and perform each and every term to be observed or performed by Debtor pursuant to the terms of any Contractual Obligation (including any recorded instrument) affecting or pertaining to the Mortgaged Property.

16. Events of Default. The Debt shall become due at the option of Secured Party upon the occurrence of any one or more of the following events (herein collectively referred to as "Events of Default"):

- (a) a breach of any term, covenant, condition, restriction, representation or warranty as set forth in this Mortgage;
- (b) if an Event of Default, as defined in the Security Agreement, shall occur;
- (c) if Debtor shall fail to pay within twenty (20) days of written notice and demand by Secured Party, any installment of any assessment against the Mortgaged Property for local improvements heretofore or hereafter laid, which assessment is or may become payable in annual or periodic installments and is or may become a Lien on the Mortgaged Property, notwithstanding the fact that such installment may not be due and payable at the time of such notice and demand;
- (d) if without the consent of Secured Party any Leases are made, canceled or modified or if any portion of the Rents is paid for a period of more than one (1) month in advance or if any of the Rents are further assigned;
- (e) if Debtor or other Person shall be in default under any deed of trust or mortgage covering any part of the Mortgaged Property whether superior or inferior in Lien to this

Mortgage, and including, without limitation, any such deed of trust or mortgage now or hereafter held by Secured Party;

(f) if the Mortgaged Property shall become subject (i) to any Lien for Taxes and Other Charges, other than a Lien for local real estate taxes and assessments not due and payable, or (ii) to any lis pendens, notice of pendency, stop order, notice of intention to file mechanic's or materialman's Lien, mechanic's or materialman's Lien or other Lien of any nature whatsoever and the same shall not either be discharged of record or in the alternative insured over to the satisfaction of Secured Party by the title company insuring the Lien of this Mortgage within a period of thirty (30) days after the same is filed or recorded, and irrespective of whether the same is superior or subordinate in Lien or other priority to the Lien of this Mortgage and irrespective of whether the same constitutes a perfected or inchoate Lien or encumbrance on the Mortgaged Property or is only a matter of record or notice; or

(g) if an Event of Default shall occur under any other deed of trust or mortgage or any other Loan Document now or hereafter entered into by Debtor or an Affiliate of Debtor in favor of Secured Party.

17. **Remedies.** Upon the occurrence of an Event of Default and subject to any applicable cure period, Secured Party may, at Secured Party's option, by Secured Party itself, through any Person or otherwise, do any one or more of the following:

(a) **Right to Perform Debtor's Covenants.** If Debtor has failed to keep or perform any covenant whatsoever contained in this Mortgage or the other Loan Documents, Secured Party may, but shall not be obligated to any Person to do so, perform or attempt to perform said covenant; and any payment made or expense incurred in the performance or attempted performance of any such covenant, together with any sum expended by Secured Party that is chargeable to Debtor or subject to reimbursement by Debtor under the Loan Documents, shall be and become a part of the Debt, and Debtor promises, upon demand, to pay to Secured Party, at the place where the Note is payable, all sums so incurred, paid or expended by Secured Party, with interest from the date when paid, incurred or expended by Secured Party at the Default Rate as specified in the Note.

(b) **Right of Entry.** Secured Party may, prior or subsequent to the institution of any foreclosure proceedings, enter upon the Mortgaged Property, or any part thereof, and take exclusive possession of the Mortgaged Property and of all books, records, and accounts relating thereto and exercise without interference from Debtor any and all rights which Debtor has with respect to the management, possession, operation, protection, or preservation of the Mortgaged Property, including without limitation the right to rent the same for the account of Debtor and to deduct from such Rents all costs, expenses, and liabilities of every character incurred by the Secured Party in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property and to apply the remainder of such Rents on the Debt in such manner as Secured Party may elect. All such costs, expenses, and liabilities incurred by the Secured Party in collecting

such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as hereinabove provided, shall constitute a future advance owed and a demand obligation owing by Debtor and shall bear interest from the date of expenditure until paid at the Default Rate as specified in the Note, all of which shall constitute a portion of the Debt. If necessary to obtain the possession provided for above, the Secured Party may invoke any and all legal remedies to dispossess Debtor, including specifically one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by the Secured Party pursuant to this subparagraph, the Secured Party shall not be liable for any loss sustained by Debtor resulting from any failure to let the Mortgaged Property, or any part thereof, or from any other act or omission of the Secured Party in managing the Mortgaged Property unless such loss is caused by the willful misconduct of the Secured Party, nor shall the Secured Party be obligated to perform or discharge any obligation, duty, or liability under any of the Leases or under or by reason hereof or the exercise of rights or remedies hereunder. Debtor shall and does hereby agree to indemnify the Secured Party for, and to hold the Secured Party harmless from, any and all liability, loss, or damage, which may or might be incurred by the Secured Party under any such Leases or under or by reason hereof or the exercise of rights or remedies hereunder, and from any and all claims and demands whatsoever which may be asserted against the Secured Party by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any such Lease. Should the Secured Party incur any such liability, the amount thereof, including without limitation costs, expenses, and reasonable attorneys' fees, together with interest thereon from the date of expenditure until paid at the Default Rate as specified in the Note, shall be secured hereby, and Debtor shall reimburse the Secured Party therefor immediately upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility upon the Secured Party for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the carrying out of any of the terms and conditions of any such Lease; nor shall it operate to make the Secured Party responsible or liable for any waste committed on the Mortgaged Property, or for any hazardous substances or environmental conditions on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property or for any negligence in the management, leasing, upkeep, repair, or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee, or stranger. Debtor hereby assents to, ratifies, and confirms any and all actions of the Secured Party with respect to the Mortgaged Property taken under this subparagraph.

(c) Right to Accelerate. Secured Party may without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Debtor and all other parties obligated in any manner whatsoever on the Debt, declare the entire unpaid balance of the Debt immediately due and payable, and upon such declaration, the entire unpaid balance of the Debt shall be immediately due and payable.

(d) Foreclosure-Power of Sale. Secured Party may institute a proceeding or proceedings, judicial, or nonjudicial, by advertisement or otherwise, for the complete or partial

foreclosure of this Mortgage or the complete or partial sale of the Mortgaged Property under the power of sale contained herein or under any applicable provision of Law. Secured Party may sell the Mortgaged Property, and all estate, right, title, interest, claim and demand of Debtor therein, and all rights of redemption thereof, at one or more sales, as an entirety or in parcels, with such elements of real and/or personal property, and at such time and place and upon such terms as it may deem expedient, or as may be required by applicable Law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a Lien and security interest on the remaining portion of the Mortgaged Property. This Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Secured Party shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, to sell the Mortgaged Property (or such part or parts thereof as the Secured Party may from time to time elect to sell) under the power of sale which is hereby given to the Secured Party, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Mortgaged Property to be sold, by publication in some newspaper published in the county or counties in which the land to be sold is located. If there is land to be sold in more than one county, publication shall be made in all counties where the land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Secured Party may bid at any sale held under this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Debtor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Secured Party, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(e) Foreclosure Deeds. To the extent permitted by applicable law, Debtor hereby authorizes and empowers Secured Party or the auctioneer at any foreclosure sale had hereunder, for and in the name of Debtor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(f) Multiple Sales. If an Event of Default exists, Secured Party shall have the option to proceed with foreclosure, either through the courts or by power of sale as provided for in

the Mortgage, but without declaring the whole of the Obligations due. Any such sale may be made subject to the unmatured part of the Obligations, and such sale, if so made, shall not affect the unmatured part of the Obligations, but as to such unmatured part of the Obligations the Mortgage shall remain in full force and effect as though no such sale had been made. Several sales may be made hereunder without exhausting the right of sale for any remaining part of the Indebtedness, whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Obligations without exhausting the power of foreclosure and the power to sell the Mortgaged Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(g) Prerequisites of Sales. In case of any sale of the Mortgaged Property as authorized by this Paragraph 17, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as rebuttably presumptive evidence that the facts so stated or recited are true.

(h) Personal Property and Fixtures. If an Event of Default shall occur, the Secured Party shall have with respect to the Mortgaged Property that is subject to Article 9 of the Alabama Uniform Commercial Code (the "UCC Property") all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Secured Party's request, Debtor shall assemble the UCC Property and make it available to the Secured Party at any place designated by the Secured Party. To the extent permitted by law, Debtor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. Debtor agrees that the Secured Party may sell or dispose of both the real property included in the Mortgaged Property and the UCC Property in accordance with the rights and remedies granted under this Mortgage with respect to real property.

(i) Judicial Remedies. Secured Party may proceed by suit or suits, at law or in equity, to enforce the payment of the Debt or other Obligations to foreclose the Liens of this Mortgage as against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other nonjudicial remedies available to the Secured Party under this Mortgage or the other Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available nonjudicial remedy of the Secured Party.

(j) Secured Party's Right to Appointment of Receiver. As a matter of right and (i) without regard to the sufficiency of the security for repayment of the Debt and without notice to

Debtor, (ii) without any showing of insolvency, fraud, or mismanagement on the part of Debtor, (iii) without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, and (iv) without regard to the then value of the Mortgaged Property, Secured Party shall be entitled to the appointment of a receiver or receivers for the protection, possession, control, management and operation of the Mortgaged Property, including the power to collect the Rents. Debtor hereby irrevocably consents to the appointment of a receiver or receivers. Any receiver appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters.

(k) Secured Party's Uniform Commercial Code Remedies. The Secured Party may exercise its rights of enforcement under the Uniform Commercial Code in effect in the state in which the Mortgaged Property is located.

(l) Other Rights. Secured Party (i) may surrender the insurance policies maintained pursuant to the Insurance Requirements, and upon receipt shall apply the unearned premiums as a credit on the Debt and other Obligations, and, in connection therewith, Debtor hereby appoints Secured Party as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Debtor to collect such premiums; and (ii) may apply any funds held by Secured Party toward payment of the Debt and other Obligations; and (iii) shall have and may exercise any and all other rights and remedies which Secured Party may have at law or in equity, or by virtue of any of the Loan Documents, or otherwise.

(m) Discontinuance of Remedies. In case Secured Party shall have proceeded to invoke any right, remedy, or recourse permitted under the Loan Documents and shall thereafter elect to discontinue or abandon same for any reason, Secured Party shall have the unqualified right so to do and, in such event, Debtor and Secured Party shall be restored to their former positions with respect to the Debt and other Obligations, the Loan Documents, the Mortgaged Property and otherwise, and the rights, remedies, recourses and powers of Secured Party shall continue as if same had never been invoked.

(n) Remedies Cumulative. All rights, remedies, and recourses of Secured Party granted in the Note, this Mortgage and the other Loan Documents, any other pledge of collateral, or otherwise available at Law or equity: (i) shall be cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Debtor, the Mortgaged Property, or any one or more of them, at the Sole Discretion of Secured Party; (iii) may be exercised as often as occasion therefor shall arise, it being agreed by Debtor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) shall be nonexclusive; (v) shall not be conditioned upon Secured Party exercising or pursuing any remedy in relation to the Mortgaged Property prior to Secured Party bringing suit to recover the Debt or other Obligations; and (vi) in the event Secured Party elects to bring suit on the Debt or other Obligations and obtains a judgment against Debtor prior to exercising any remedies in relation to

the Mortgaged Property, all security interests and other Liens, including the Lien of this Mortgage, shall remain in full force and effect and may be exercised thereafter at Secured Party's option.

(o) Election of Remedies. Secured Party may release, regardless of consideration, any part of the Mortgaged Property without, as to the remainder, in any way impairing, affecting, subordinating, or releasing the Lien evidenced by this Mortgage or the other Loan Documents or affecting the obligations of Debtor or any other party to pay the Debt or other Obligations. For payment of the Debt or other Obligations, Secured Party may resort to any collateral securing the payment of the Debt or other Obligations in such order and manner as Secured Party may elect. No collateral taken by Secured Party shall in any manner impair or affect the Lien given pursuant to the Loan Documents, and all collateral shall be taken, considered, and held as cumulative.

(p) Waivers. Debtor hereby irrevocably and unconditionally waives and releases: (i) all benefits that might accrue to Debtor by virtue of any present or future Law exempting the Mortgaged Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) except as expressly provided herein, all notices of any Event of Default or of Secured Party's exercise of any right, remedy, or recourse provided for under the Loan Documents; and (iii) any right to a marshaling of assets, a sale in inverse order of alienation or any other right to direct, in any manner, the order of sale of any of the Mortgaged Property.

(q) Statute of Limitations. To the extent permitted by applicable Law, Secured Party's rights hereunder shall continue even to the extent that a suit for collection of the Debt, or part thereof, is barred by a statute of limitations. Debtor hereby expressly waives and releases to the fullest extent permitted by Law, the pleading of any statute of limitations as a defense to payment of the Debt or other Obligations.

(r) Waiver of Automatic or Supplemental Stay. In the event of the filing of any voluntary or involuntary petition under the U.S. Bankruptcy Code (the "Bankruptcy Code") by or against Debtor (other than an involuntary petition filed by or joined in by Secured Party), the Debtor shall not assert, or request any other party to assert, that the automatic stay under Section 362 of the Bankruptcy Code shall operate or be interpreted to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage, or any other rights that Secured Party has, whether now or hereafter acquired, against any guarantor of the Debt. Further, Debtor shall not seek a supplemental stay or any other relief, whether injunctive or otherwise, pursuant to Section 105 of the Bankruptcy Code or any other provision therein to stay, interdict, condition, reduce or inhibit the ability of Secured Party to enforce any rights it has by virtue of this Mortgage against any guarantor of the Debt or other Obligations. The waivers contained in this paragraph are a material inducement to Secured Party's willingness to enter into this Mortgage and Debtor acknowledges and agrees that no grounds exist for equitable relief which would bar, delay or impede the exercise by Secured Party of Secured Party's rights and remedies against Debtor or any guarantor of the Debt or other Obligations.

(s) Bankruptcy Acknowledgment. In the event that the Mortgaged Property or any portion thereof or any interest therein becomes property of any bankruptcy estate or subject to any state or federal insolvency proceeding, then Secured Party shall immediately become entitled, in addition to all other relief to which Secured Party may be entitled under this Mortgage, to obtain (i) an order from the Bankruptcy Court or other appropriate court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so to permit Secured Party to pursue its rights and remedies against Debtor as provided under this Mortgage and all other rights and remedies of Secured Party at law and in equity under applicable Law, and (ii) an order from the Bankruptcy Court prohibiting Debtor's use of all "cash collateral" as defined under Section 363 of the Bankruptcy Code. In connection with such Bankruptcy Court orders, Debtor shall not contend or allege in any pleading or petition filed in any court proceeding that Secured Party does not have sufficient grounds for relief from the automatic stay. Any bankruptcy petition or other action taken by the Debtor to stay, condition, or inhibit Secured Party from exercising its remedies are hereby admitted by Debtor to be in bad faith and Debtor further admits that Secured Party would have just cause for relief from the automatic stay in order to take such actions authorized under Law.

(t) Application of Proceeds. The proceeds from any sale, lease, or other Disposition made pursuant to this Mortgage, or the Insurance Proceeds (including proceeds from the surrender of any insurance policies pursuant hereto), or any Rents collected by Secured Party from the Mortgaged Property, and any other amounts received pursuant to the Loan Documents, shall be applied by Secured Party (or the receiver, if one is appointed), as the case may be, to the Debt or other Obligations in the following order and priority: (1) to the payment of all expenses of advertising, selling, and conveying the Mortgaged Property or part thereof, and/or prosecuting or otherwise collecting Rents, proceeds, premiums or other sums including reasonable attorneys' fees and reasonable fees or commissions; (2) to the satisfaction of the Debt and other Obligations, in whole or in part (whether or not due), in such order as Secured Party may, in its Sole Discretion, elect; (3) to the holder or beneficiary of any inferior Liens covering the Mortgaged Property, if any, in order of the priority of such inferior Liens (Secured Party shall hereby be entitled to rely exclusively on a commitment for title insurance issued to determine such priority) or as otherwise provided in the Security Agreement; and (4) lastly, the cash balance, if any, to the Debtor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Debt or other Obligations like any other payment. The balance of the Debt or other Obligations remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note and the other Loan Documents.

(u) Occupancy After Foreclosure. In the event there is a foreclosure sale hereunder and at the time of such sale, Debtor or Debtor's representatives, successors or assigns, or any other persons claiming any interest in the Mortgaged Property by, through or under Debtor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Mortgaged Property, or any part thereof, then, to the extent not prohibited by applicable Law, each and all shall, at the option of Secured Party or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall

be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Mortgaged Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable Law, in the event the tenant fails to surrender possession of the Mortgaged Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Mortgaged Property in the appropriate court of the county in which the Premises are located.

(v) Notice to Account Debtors. Secured Party may, at any time after a default hereunder, which default is not cured within any applicable grace, notice or cure period, notify the account debtors and obligors of any accounts, chattel paper, or general intangibles, or negotiable instruments or other evidences of Indebtedness to Debtor included in the Mortgaged Property to pay Secured Party directly. Debtor shall at any time or from time to time upon the request of Secured Party provide to Secured Party a current list of all such account debtors and obligors and their addresses.

(w) Payment of Expenses. Debtor shall pay on demand all of Secured Party's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Secured Party until actually paid by Debtor at the Default Rate, and the same shall be secured by this Mortgage and by all of the other Loan Documents securing all or any part of the Indebtedness evidenced by the Note or other Obligations.

18. Non-Waiver. The failure of Secured Party to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Debtor shall not be relieved of Debtor's obligation to pay the Debt or other Obligations at the time and in the manner provided for its payment in the Note, the Security Agreement, this Mortgage, or the other Loan Documents by reason of (i) failure of Secured Party to comply with any request of Debtor to take any action to foreclose this Mortgage or sell the Mortgaged Property pursuant to the provisions of this Mortgage or otherwise enforce any of the provisions hereof or of the Note or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations or any portion thereof, (ii) the release, regardless of consideration, of the whole or any part of the Mortgaged Property or any other security for the Debt or other Obligations, or (iii) any agreement or stipulation between Secured Party and any subsequent owner or owners of the Mortgaged Property or other Person extending the time of payment or otherwise modifying or supplementing the terms of the Note, the Security Agreement, this Mortgage, or other Loan Documents or any other deed of trust, mortgage, instrument or document evidencing, securing or guaranteeing payment of the Debt or other Obligations or any portion thereof, without first having obtained the consent of Debtor, and in the latter event, Debtor shall continue to be obligated to pay the Debt and other Obligations at the time and in the manner provided in the Note, the Security Agreement, this Mortgage, and other Loan Documents, as so extended, modified and supplemented, unless expressly released and discharged from such obligation by Secured Party in writing.

Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate Lien, encumbrance, right, title or interest in or to the Mortgaged Property, Secured Party may release any Person at any time liable for the payment of the Debt or other Obligations or any portion thereof or any part of the security held for the Debt or other Obligations and may extend the time of payment or otherwise modify the terms of the Note, the Security Agreement, this Mortgage, or other Loan Documents, including, without limitation, a modification of the interest rate payable on the principal balance of the Note, without in any manner impairing or affecting this Mortgage or the Lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt and other Obligations over any such subordinate Lien, right, title or interest. Secured Party may resort for the payment of the Debt or other Obligations to any other security held by Secured Party in such order and manner as Secured Party, in its Discretion, may elect. Secured Party may take action to recover the Debt or other Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Secured Party thereafter to foreclose this Mortgage or to effect a sale of the Mortgaged Property in accordance with the provisions of this Mortgage. Secured Party shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by any Loan Document or Law. The rights of Secured Party under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Secured Party shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

19. Further Acts, etc. Debtor will, at the cost of Debtor, and without expense to Secured Party, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Secured Party shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Secured Party, as the case may be, the property and rights hereby conveyed or assigned or intended now or hereafter so to be, or which Debtor may be or may hereafter become bound to convey or assign to Secured Party, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Secured Party to execute in the name of Debtor to the extent Secured Party may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the Lien hereof upon the Mortgaged Property.

20. Performance and Subrogation. If Debtor shall fail to pay or perform any of its Obligations under any Loan Documents (including, without limitation, any payment of expenses), Secured Party without notice to or consent of Debtor may, from time to time, but need not, pay or perform (or cause to be paid or performed) any such Obligation, in any form or manner Secured Party may determine in its Discretion, and any amount so paid or expended, with interest at the Default Rate, shall be added to the Obligations and shall be paid by Debtor on demand. No such action (or in action) of Secured Party shall be considered as a waiver of default or Event of Default or any right accruing to Secured Party on account of the occurrence of any default on the part of

Debtor under this Mortgage or any Loan Document. To the extent that Secured Party pays any sum due from Debtor or in respect of the Premises under any Law or Contractual Obligation, Secured Party shall be subrogated to and shall receive and enjoy all rights and benefits (including any Liens) possessed, held or enjoyed by any payee or other Person with respect thereto, and the same shall remain in existence for the benefit of Secured Party and shall secure the amount expended by Secured Party and other Obligations.

21. Headings, etc. The headings, titles and captions of various paragraphs of this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

22. Filing of Mortgage, etc. Debtor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a Lien or evidencing the Lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future Law in order to publish notice of and fully to protect, preserve and perfect the Lien hereof upon, and the interest of Secured Party in, the Mortgaged Property. Debtor will pay all filing, registration and recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property, and any instrument of further assurance, and all Federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any deed of trust or any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance. Debtor shall hold harmless and indemnify Secured Party, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

23. Intentionally Deleted.

24. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

25. Certain Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage shall be used interchangeably in singular or plural form and the word "Debtor" shall mean each Debtor and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein; the word "Secured Party" shall mean Secured Party or any subsequent holder of the Note"; the word "Note" shall mean the Secured Promissory Note or any other evidence of indebtedness secured by this Mortgage; the words "Security Agreement" shall mean the Security Agreement; the word "Guarantor" shall mean each person guaranteeing payment of the Debt or other Obligations or any portion thereof or performance by Debtor of any of the terms of this Mortgage and their respective heirs, executors, administrators, legal representatives, successors and assigns; the words "Mortgaged Property" shall include any

portion of the Mortgaged Property and the word "default" shall include any default by Debtor or other Person in the observance or performance of any of the terms, covenants or provisions of this Mortgage, the Note, the Security Agreement or any other Loan Documents on the part of Debtor or such other Person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

26. Waiver of Notice. Debtor shall not be entitled to any notices of any nature whatsoever from Secured Party except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Secured Party to Debtor, and Debtor hereby expressly waives the right to receive any notice from Secured Party with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Secured Party to Debtor.

27. Waiver of Statutory Rights. Debtor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption Laws, or any so-called "Moratorium Laws", now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Laws to the full extent that Debtor may do so under applicable Law. Debtor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshaled upon any foreclosure of the Lien of this Mortgage and agrees that any court having jurisdiction to foreclose such Lien may order the Mortgaged Property sold as an entirety. Debtor hereby waives for itself and all who may claim through or under it, and to the full extent Debtor may do so under applicable Law, any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage or granted under any Law now existing or hereafter enacted.

28. Waiver of Counterclaims. Debtor absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature with respect to this Mortgage or the obligations of Debtor under this Mortgage in any action or proceeding brought by Secured Party to collect the Debt or other Obligations, or any portion thereof, or to enforce the obligations of the Debtor under this Mortgage.

29. Superior Lien. If Debtor fails to pay any installment of principal or interest or any other sum due under any mortgage or other Lien superior in Lien to the Lien of this Mortgage, as the same becomes due and payable, Secured Party may, at its option, pay the same, and Debtor shall upon demand reimburse Secured Party for all sums so expended by Secured Party, with interest at a rate per annum equal to the Default Rate. All such sums expended by Secured Party, with interest, shall be secured by this Mortgage.

30. Security Agreement. Unless specifically provided to the contrary, all of the terms, and provisions of the Security Agreement are hereby incorporated and shall become a part of this Mortgage.

31. Solvency, Binding Effect and Enforceability. The Debtor is (and, after giving effect to this Mortgage, will be) solvent. This Mortgage is the legal, valid and binding obligation of the Debtor enforceable in accordance with its terms.

32. Governing Law; Consent to Jurisdiction.

(a) WITH RESPECT TO MATTERS RELATING TO (1) THE CREATION, PRIORITY, PERFECTION, VALIDITY, AND PROCEDURES RELATING TO THE ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT TO THIS MORTGAGE AND THE REMEDIES GRANTED HEREIN (INCLUDING WITHOUT LIMITATION, THE RIGHT GIVEN TO TRUSTEE TO ADVERTISE AND SELL THE MORTGAGED PROPERTY FOLLOWING AN EVENT OF DEFAULT) AND (2) THE METHOD AND EFFECT OF TRANSFERS OF REAL PROPERTY AND MATTERS RELATING TO TITLE TO THE MORTGAGED PROPERTY, THIS MORTGAGE SHALL BE GOVERNED BY, AND BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH AND TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN ALL MATTERS RELATING TO THIS MORTGAGE AND ALL OF THE INDEBTEDNESS AND OBLIGATIONS DESCRIBED HEREIN.

(b) DEBTOR AND SECURED PARTY HEREBY CONSENT, UNCONDITIONALLY AND IRREVOCABLY TO THE NONEXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS IN THE STATE OF NEW YORK WITH RESPECT TO ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING UNDER THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OTHER THAN PURSUIT OF A JUDGMENT ON THE NOTE WHERE SUIT IS ALSO BROUGHT IN THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED TO TAKE JURISDICTION OF THE MORTGAGED PROPERTY. DEBTOR FURTHER CONSENTS, UNCONDITIONALLY AND IRREVOCABLY, TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE WHERE THE MORTGAGED PROPERTY IS LOCATED IN RESPECT OF ANY PROCEEDING RELATING TO ANY MATTER, CLAIM OR DISPUTE ARISING WITH RESPECT TO THE MORTGAGED PROPERTY INCLUDING BUT NOT LIMITED TO FORECLOSURES. DEBTOR FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS, UNCONDITIONALLY AND IRREVOCABLY, AT THE ADDRESSES SET FORTH HEREIN IN CONNECTION WITH ANY OF THE AFORESAID PROCEEDINGS IN ACCORDANCE WITH THE RULES APPLICABLE TO SUCH PROCEEDINGS. TO THE EXTENT PERMITTED BY APPLICABLE LAW,

DEBTOR HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW HAVE OR HAVE IN THE FUTURE TO THE LAYING OF VENUE IN RESPECT OF ANY OF THE AFORESAID PROCEEDINGS BROUGHT IN THE COURTS REFERRED TO ABOVE AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. NOTHING HEREIN SHALL AFFECT THE RIGHT OF SECURED PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW OR TO COMMENCE PROCEEDINGS OR OTHERWISE PROCEED AGAINST DEBTOR IN ANY JURISDICTION. To the extent that the Debtor has or may hereafter acquire any immunity from the jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to the Debtor or the Debtor's property, the Debtor hereby irrevocably waives such immunity in respect of its obligations under this Mortgage to the fullest extent permitted by Law.

33. WAIVER OF TRIAL BY JURY. DEBTOR AND SECURED PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT OF ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY IN CONNECTION HERewith OR THEREWITH.

34. Cross-Default; Cross-Collateralization. The Indebtedness and Obligations of Debtor as evidenced by the Note, this Mortgage and any of the other Loan Documents securing or executed in connection with the Note (collectively, the "Subject Loan Documents"), is cross collateralized and cross defaulted with any other note, mortgage or deed of trust, security agreement or loan document or agreement executed in connection with or as security for Indebtedness and Obligations now or hereafter existing by Debtor to Secured Party (collectively, the "Cross Pledged and Defaulted Loan Documents"). The existence of an Event of Default under any of the Subject Loan Documents (after the expiration of any applicable notice and cure periods) shall be deemed and shall constitute an Event of Default (as defined in the Cross Pledged and Defaulted Loan Documents) under the Cross Pledged and Defaulted Loan Documents (without any further notice and cure by Secured Party to Debtor which is hereby specifically waived by Debtor for all purposes), and an Event of Default under any of the Cross Pledged and Defaulted Loan Documents (after the expiration of any applicable notice and cure periods), shall constitute an Event of Default under the Subject Loan Documents (without any further notice and cure by Secured Party to Debtor which is hereby specifically waived by Debtor for all purposes). The Mortgaged Property and other Collateral (as such terms are defined in the Subject Loan Documents) shall secure the Indebtedness and Obligations as evidenced by the Cross Pledged and Defaulted Loan Documents, and the Mortgaged Property and other Collateral (as such terms are defined in the Cross Pledged and Defaulted Loan

Documents) shall secure the Indebtedness and Obligations as evidenced by the Subject Loan Documents.

35. Special Alabama Provisions.

(a) Fixture Filing. This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become located upon or affixed to the Premises and the Improvements. The goods are described by item or type in Paragraph 3 of the Granting Clause of this Mortgage. The Debtor is the debtor, and the Secured Party is the secured party. The names of the Debtor and the Secured Party are given in the first paragraph of this Mortgage. This Mortgage is signed by the Debtor as a fixture filing. The mailing address of the Secured set out on the first page of this Mortgage is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Debtor set out on the first page of this Mortgage is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Paragraph and in the Granting Clause of this Mortgage. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Debtor is the record owner of the real estate.

[Signature Page Follows]

IN WITNESS WHEREOF, Debtor has duly executed this Mortgage as of the date first above written.

DEBTOR:

SOUTH TACALA, LLC, a
Delaware limited liability company

By: Tacala, Inc., an Alabama corporation,
its Manager

By: _____


Richard D. Reese
Chief Executive Officer

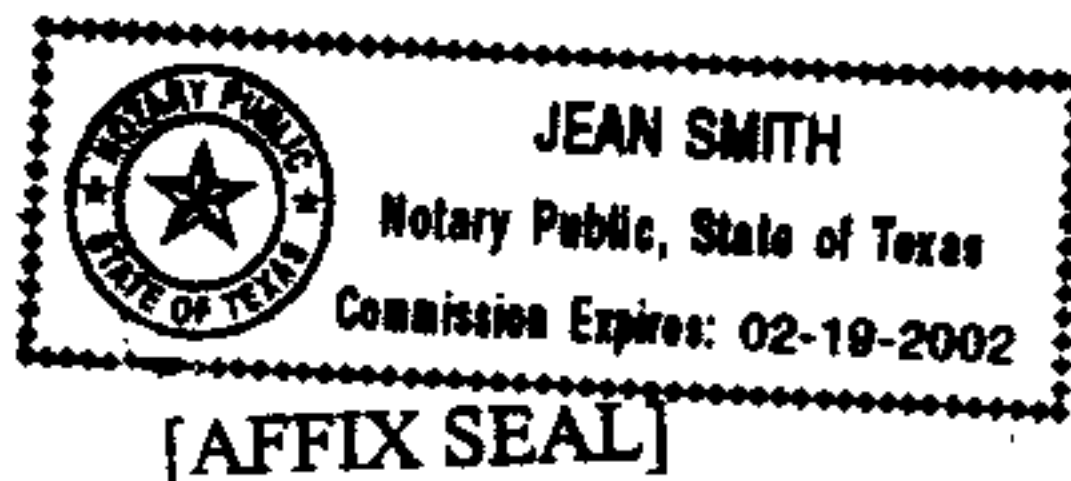
STATE OF TEXAS

COUNTY OF DALLAS

§
§
§

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that RICHARD D. REESE, whose name as Chief Executive Office of TACALA, INC., an Alabama corporation, as Manager of SOUTH TACALA, LLC, a Delaware 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as Manager of said limited liability company as aforesaid.

Given under my hand and official seal, this 27th day of August, 1999.



Jean Smith
Notary Public

My Commission Expires: 02-19-2002

MORTGAGE, ASSIGNMENT OF LEASES AND
RENTS AND FIXTURE FILING
AMERICAN COMMERCIAL CAPITAL/TACALA - ALABAMA

DAL02-200976.1

DEFINITIONS SCHEDULE Mortgage

"Account" or **"Accounts"** shall have the meaning accorded to such term in the UCC.

"Affiliate" or **"Affiliates"** shall mean, with respect to any Person, (i) any Person who controls, is controlled by, or is under common control with such Person, (ii) any Person who is a manager, director or officer of, partner in, trustee of, or blood or legal relative, guardian or representative of the specified Person, or any Person who acts or serves in a similar capacity with respect to the specified Person, (iii) any Person of which or whom the specified Person is a manager, director or officer, partner, trustee, or blood or legal relative, guardian or representative, or with respect to which or whom, the specified Person acts or serves in a similar capacity; (iv) any Person, who, directly or indirectly, is the legal or beneficial owner of or controls 10% or more of any class of equity securities of the specified Person, and (v) any Person who is an Affiliate as defined in clauses (i), (ii), (iii) or (iv) of an Affiliate of the specified Person.

"Secured Party" shall mean Secured Party or any subsequent holder of the Note.

"Business" shall mean the business of operating the Stores part of the Unit in accordance with the Principal Agreements.

"Business Day" shall mean any date other than a Saturday, Sunday or legal holiday or date on which banking institutions in Delaware, New York, or California are authorized or required to close.

"Capital Stock" shall mean any common stock, partnership interest, membership interest or other equity interest.

"Change in Control" any act or event (including any assignment, sale, disposition or issuance) which results in (or with the passage of time will result in) the Control Persons owning of record and beneficially less than 80% of the Capital Stock of Debtor.

"Chattel Paper" shall have the meaning accorded to such term in the UCC.

"Collateral" shall mean all Goods (including Equipment and Inventory), General Intangibles (including Principal Agreements, Accounts, Certificates of Title, Fixtures, Money, Instruments, Investment Property, Documents, Chattel Paper, Deposit Accounts, Letters of Credit, (as all of such terms are defined in the UCC or otherwise in this schedule or the Loan Documents), credit balances, deposits, bankers' acceptances, guaranties, credits, claims, choses in action, demands, liens, security interests, rights, insurance, awards, compensation, remedies, title and interest in, to and in respect of other Collateral, and all Collateral Revenues and all other personal property, now or hereafter owned, acquired, existing, arising, held, sold, used or consumed in connection with the Business or the Unit and any other property, rights, and interests which at any time relate to, arise out of or in connection with the foregoing or which come into the possession, custody or control of Secured Party or any of its agents, representatives, associates or correspondents, for any purpose.

"Collateral Revenues" shall mean with respect to any Collateral all interest, income, dividends, distributions, rents, revenues, profits and earnings thereon or other monies or revenues derived therefrom, including any such property received in connection with any disposition of any Principal Agreement and all moneys which may become payable or received under any policy insuring the Collateral or otherwise required to be maintained under the Security Agreement (including return of unearned premium.)

"Condemnation" shall mean any taking by any Governmental Authority or other Person.

"Conflict" or **"Conflicting"** shall mean, with respect to any Contractual Obligation, Organizational Document, Requirement of Law, Consent or Other Action or any other item, any conflict with, breach of, default under, any triggering of rights, benefits, or obligations under or in connection with such item.

"Consent or Consents and Other Action" shall mean any consent, authorization, Judgment, directive, approval, license, certificate, registration, permit, exception, exemption, filing, notice, declaration or other action by, with or to any Person.

"Contractual Obligation" shall include any obligation under or in connection with any Instrument, Document, General Intangible.

"Control Persons" shall have the meaning as set forth in the Security Agreement.

"Debtor" shall mean each Debtor and any Person executing any Affiliate Guarantee, Security Agreement, Mortgage, or other Contractual Obligation securing or evidencing the Loan to Secured Party, and any subsequent owner or owners of the Mortgaged Property or any part thereof or interest therein.

"Debtor's Use" shall include Debtor's acquiring, obtaining, making, manufacturing, producing, operating, holding, possessing, maintaining, selling, transferring, granting, pledging, leasing, disposing or using.

"Default" shall include any default by Debtor or other Person in observance or performance of any of the terms, covenants or provisions of this Mortgage, the Note, the Security Agreement or any other Loan Document on the part of Debtor or such other Person to be observed or performed without regard to whether such default constitutes or would constitute upon notice or lapse of time, or both, an Event of Default under this Mortgage.

"Default Rate" shall have the meaning accorded to such term in the Note.

"Discretion" shall mean Sole Discretion.

"Dispose" or **"Disposing"** or **"Disposed"** or **"Disposition"** shall include, with respect to any property, assets, obligations or other items, any sale, assignment, conveyance, pledge, Grant, encumbrance, lease, gift, abandonment or other disposition.

"Document" shall have the meaning accorded to such term in the UCC.

"Equipment" shall have the meaning accorded to such term in the UCC.

"Financing Statements" shall mean financing statements on form UCC-1 naming Debtor as debtor and Secured Party as secured party and describing the Collateral as the collateral.

"Fixtures" shall have the meaning accorded to such term in the UCC.

"GAAP" shall mean the generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

"General Intangible" or **"General Intangibles"** shall have the meaning accorded to such term in the UCC.

"Governmental Authority" shall mean any public office, court, arbitration or mediation panel, or office, administrative agency, regulatory authority, government, self-regulatory agency or authority or any subdivision thereof.

"Grant" or **"Grants"** or **"Granting"** shall include to grant, assign, transfer, convey, set over and dispose.

"Indebtedness" shall mean and include (i) with respect to any Person, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of such Person, (b) all indebtedness and liabilities of other Persons assumed or guaranteed by such Person or in respect to which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise, and (c) all indebtedness and liabilities of other Persons secured by any Lien in any property of such Person; and (ii) with respect to the Stores part of the Unit, (a) all items of indebtedness and liabilities which, in accordance with GAAP, would be included in determining liabilities that are shown on the liability side of the balance sheet of the Stores part of the Unit, (b) to the extent such indebtedness or liability specifically relates to the Unit or depends on cash flow of the Unit for repayment (as provided in an assumption of debt, guaranty or other agreement), all indebtedness and liabilities of other Persons assumed or guaranteed by any Person or in respect of which such Person is secondarily or contingently liable whether by any agreement to acquire indebtedness and liabilities or to supply or advance funds or otherwise and (c) all indebtedness and liabilities secured by any Lien on any property used in the operation of each of the Stores part of the Unit, to the extent not included pursuant to clauses (a) and (b) of this definition.

"Instrument" shall have the meaning accorded to such term in the UCC.

"Insurance Proceeds" means, at any time, all insurance proceeds or payments to which Debtor may be or become entitled by reason of any casualty under the insurance policies with respect to any of the Stores part of the Unit required to be maintained pursuant to the Security Agreement plus (i) the amounts of any deductibles under such insurance policies; (ii) if Debtor fails to maintain any of the insurance policies required under the Security Agreement, the amounts which would have

been available with respect to such casualty had Debtor maintained such insurance policies; and (iii) all insurance proceeds and payments to which Debtor may be or become entitled, including, without limitation, pursuant to title insurance or by reason of any casualty under any other insurance policy coverage maintained by Debtor with respect to any of the Stores part of the Unit.

"Insurance Requirements" shall have the meaning accorded to such terms in the Security Agreement.

"Interest Rate" shall have the meaning accorded to such term in the Note.

"Inventory" shall have the meaning accorded to such term in the UCC.

"Judgment" shall mean any order, decision, decree, award, injunction of any Governmental Authority.

"Key Individuals" shall have the meaning as set forth in the Security Agreement.

"Late Payment Charge" shall have the meaning accorded to such term in paragraph 4 of the Note.

"Law" or **"Laws"** shall mean any statute, law, code, rule, regulation, ordinance.

"License" or **"Licenses"** shall mean any license, permit, directive, authorization, approval or stipulation required to operate the Business at the Property.

"Lien" or **"Liens"** shall mean any pledge, security title, security interest, encumbrance, right of set off or offset, rights of others, benefits, claims or other liens (including federal or state tax liens).

"Litigation" shall mean any action, proceeding, litigation, investigation, arbitration, mediation, claim, Judgment.

"Loan" or **"Loans"** shall mean the indebtedness of Debtor to Secured Party as evidenced by the Loan Documents.

"Loan Document" or **"Loan Documents"** shall mean the Note, the Security Agreement, and any other note, security agreement, mortgage, deed of trust, deed to secure debt, affiliate guarantee, collateral assignments, and other contractual Obligations, filings (including financing statements) and recordings executed, delivered or filed, including any amendments, supplements, renewals, extensions replacements thereof, executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party.

"Loss" shall have the meaning accorded to such term in Section 2.22 of the Security Agreement.

"Loss Proceeds" shall have the meaning accorded to such term in Section 2.22 of the Security Agreement.

"Material Adverse Effect" shall mean any material adverse affect on the Debtor, or any Scheduled Affiliate, its financial condition or property, the Business or the Mortgaged Property.

"Maturity Date" shall have the meaning accorded to such term in the Note.

"Money" shall have the meaning accorded to such term in the UCC.

"Mortgaged Property" shall have the meaning as defined in the Mortgage.

"Note" shall mean the Secured Promissory Note made by Debtor payable to Secured Party evidencing the Loan.

"Obligations" shall mean all of Debtor's Indebtedness, obligations and liabilities to Secured Party evidenced by, arising under or in connection with the Note (including, without limitation, indebtedness, obligations and liabilities in respect of principal, interest, and Prepayment Premium Amount), the Security Agreement, or any of the other Loan Documents (executed between Debtor and Secured Party or by Debtor for the benefit of Secured Party), and any future advances thereon, renewals, extensions, modifications, amendments, substitutions and consolidations thereof, or any other agreement with Secured Party under or in connection with the Loan, including Debtor's obligations to pay (or reimburse Secured Party for) all costs and expenses (including attorneys fees and disbursements) incurred by Secured Party in obtaining, maintaining, protecting and preserving its interest in the Collateral or its security interest therein, foreclosing, retaking, holding, preparing for sale or lease, selling or otherwise disposing or realizing on the Collateral or in exercising its rights hereunder or as secured party under the UCC, any other applicable Law or Loan Document, and all other indebtedness, obligations and liabilities of any kind of Debtor to Secured Party now or hereafter existing (including future advances whether or not pursuant to commitment), arising directly between Debtor and Secured Party or acquired outright, conditionally or as collateral security from another, absolute or contingent, joint and/or several, secured, due or not due, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, or direct or indirect, including Debtor's liabilities to Secured Party as a member, partner or equity owner of any Person or group, and whether incurred by Debtor as principal, surety, indorser, guarantor, accommodation party or otherwise, including all amounts which would be payable or owing to Secured Party but for the fact they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Debtor or any Person.

"Obligors" shall have the meaning accorded to such term in Section 7 of the Note.

"Permitted Encumbrance" or **"Permitted Encumbrances"** shall have the meaning accorded to such term in Section 2.16 of the Security Agreement.

"Person" or **"Persons"** shall mean any natural person, corporation, partnership, limited liability company, trust, association, firm, entity or Governmental Authority.

"Personal Property Lease" shall mean any lease of Equipment or other personal property deemed an operating lease under GAAP.

"Pod" shall mean the group of Stores or Store Units comprising the Unit.

"Prepayment Premium Amount" shall have the meaning accorded to such term in the Note.

"Principal Agreement" or **"Principal Agreements"** shall have the meaning as set forth in the Security Agreement.

"Principal Amount" shall have the meaning accorded to such term in the Note.

"Proceeds" shall include Insurance Proceeds, Loss Proceeds and "proceeds" within the meaning accorded to such term in the UCC.

"Property" or **"Properties"** shall mean each parcel of real property (whether one or more) upon which the Debtor operates the Business as more particularly described in Exhibit A of the Security Agreement and in the other Loan Documents.

"Records" shall mean any books, records, writings (including any electronic data) pertaining to the Business, the Unit and the Collateral.

"Requirement of Law" or **"Requirements of Law"** shall mean any requirement, direction, policy or procedure of any Law or License, Judgment, or Consent or Other Action.

"Scheduled Affiliate" or **"Scheduled Affiliates"** shall have the meaning accorded to such term in Section 2.4 of the Security Agreement.

"Security Agreement" shall mean the Security Agreement between Debtor and Secured Party, relating to the Loan and, among other things, Granting the Secured Party a Lien on the Collateral.

"Sole Discretion" shall mean with respect to any decision or action (including granting of any consent or approval) the discretion to make or take or fail to take or make any decision or action with or without any reason, taking into account such factors, if any, as the decision maker or action taker determines (including self interest), and any decision or action may be subject to any such conditions or no conditions as the decision maker or action taker determines and shall be final and conclusive.

"Stores" or **"Store Unit"** shall mean the Business operation conducted at each Property or other location.

"Target Debtor FCCR" shall have the meaning accorded to such term in the Security Agreement.

"Target CU FCCR" shall have the meaning accorded to such term in the Security Agreement.

"Taxes and Other Charges" shall mean all taxes, assessments and other governmental charges, ground rents, or other rents, rates and charges, excises, levies, fees and other charges (public or private) which may be assessed, levied, confirmed or imposed on, or in respect of or be a lien upon the Collateral, the Unit or the Business or any part thereof or any interest therein.

"UCC" shall mean the Uniform Commercial Code as adopted in the State where the Properties are located.

"Unit" or **"Units"** shall collectively mean the group of Stores or Store Units and the Business operated thereon and the Collateral, the Property and the other property and assets related to the Business or located at the Property.

"Waivers" shall have the meaning accorded to such term in the Note.

[Signature Pages Follow]

The foregoing terms contained in this Definitions Schedule as applicable to the Mortgage to which this schedule is attached, executed by the undersigned Debtor for the benefit of American Commercial Capital, LLC, a Delaware limited liability company, are approved and agreed to by the undersigned.

DEBTOR:

**SOUTH TACALA, LLC, a
Delaware limited liability company**

**By: Tacala, Inc., an Alabama corporation,
its Manager**

**By: 
Richard D. Reese
Chief Executive Officer**

EXHIBIT A

Part of Block 1 of Cahaba Valley Park North as recorded in Map Book 13, page 140, in the Probate Office of Shelby County, Alabama, more particularly described as follows:

Begin at the Southwest corner of said Block 1, said point being on the Northerly right of way line of Alabama Highway 119, and run Northwesterly for 150.00 feet; thence $88^{\circ} 04' 00''$ right and run Northeasterly for 227.16 feet to a point on the Westerly right of way line of Cahaba Valley Parkway; thence $90^{\circ} 00''$ right and run Southeasterly along said right of way line for 99.56 feet to a point; said point being at the beginning of a curve to the right, subtending a central angle of $89^{\circ} 53' 17''$ and having a radius of 50.00 feet; thence run Southwesterly along the arc of said curve for 78.44 feet to a point on the Northerly right of way line of Alabama Highway 119 and end of said curve; thence at tangent to said curve run Southwesterly along said right of way line for 182.32 feet to the point of beginning.

Inst # 1999-45405

11/04/1999-45405
09:00 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
035 NMS 1751.00