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Inst # 2001-11913

03/30/2001-11913
SHELBY COUNTY JUDGE OF PROBATE
060 NB 12608.00

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

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

RIVER PLACE, L.L.C.
(Mortgagor)

to

ARCHON FINANCIAL, L.P.
(Mortgagee)

Dated: As of March 30, 2001

Property Location: 4501 Old Caldwell Mill Road
Birmingham, Alabama 35242

Loan No. 09-0001492

Archon Financial
Mortgage, Assignment of Leases and Rents,
Security Agreement and Fixture Filing
River Place Apartments

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), made as of March 30, 2001, by **RIVER PLACE, L.L.C.**, an Alabama limited liability company, having its principal place of business at 951 18th Street South, Suite 200, Birmingham, Alabama 35205, ("Mortgagor"), to **ARCHON FINANCIAL, L.P.**, a Delaware limited partnership, having its principal place of business at 600 East Las Colinas Boulevard, Suite 800, Irving, Texas 75039 ("Mortgagee").

W I T N E S S E T H:

To secure (i) the payment of an indebtedness in the original principal sum of Eight Million Two Hundred Eighty Thousand and No/100 Dollars (\$8,280,000.00), lawful money of the United States of America, to be paid with interest according to a certain mortgage note of even date herewith made by Mortgagor to Mortgagee (the mortgage note together with all extensions, renewals, modifications, substitutions, consolidations and amendments thereof being hereinafter collectively called the "Note") and all other sums due hereunder, under the other Loan Documents (hereinafter defined) and under the Note, including, without limitation, interest, default interest, late charges, prepayment premiums and any sums advanced by Mortgagee to protect or preserve the hereinafter defined Mortgaged Property (said indebtedness and interest due under the Note and all other sums due hereunder, under the Note and under the other Loan Documents being hereinafter collectively referred to as the "Debt"), and (ii) the full and prompt performance of each obligation of Mortgagor contained herein or in the Loan Documents, Mortgagor has mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned, and hypothecated and by these presents does hereby mortgage, give, grant, bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee the real property described in Exhibit A attached hereto (the "Premises") and the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter located thereon (the "Improvements");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "Mortgaged Property"):

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, all rights to oil, gas, minerals, coal and other substances of any kind or character, 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, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in

equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including, without limitation, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) and other property of every kind and nature, whether tangible or intangible, whatsoever owned by Mortgagor, or in which Mortgagor 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 Mortgagor, or in which Mortgagor 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 (hereinafter collectively referred to as the "Equipment"), including any leases of any of the foregoing, any deposits existing at any time in connection with any of the foregoing, and the proceeds of any sale or transfer of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interests" as defined in the Uniform Commercial Code, as adopted and enacted by the State or States where any of the Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that 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, without limitation, 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;

(d) all leases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises and the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "Leases") and all rents, rent equivalents, moneys payable as damages or in lieu of rent or rent equivalents, royalties (including, without limitation, all oil and gas or other mineral royalties and bonuses), income, fees, receivables, receipts, revenues, deposits (including, without limitation, security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and the Improvements (hereinafter collectively referred to as the "Rents"), together with 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 Debt;

(e) all 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;

(f) all accounts, escrows, impounds, reserves, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code, and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses (including liquor licenses, to the extent assignable), license agreements, operating contracts, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the Mortgaged Property) and all management, franchise, service, supply and maintenance contracts and agreements, and any other agreements, permits or contracts of any nature whatsoever now or hereafter obtained or entered into by the Mortgagor with respect to the operation or ownership of the Mortgaged Property; and all approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property); and all causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "Intangibles");

(g) all proceeds, products, offspring, rents and profits from any of the foregoing, including, without limitation, those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing; and

(h) any and all monies or funds now or hereafter deposited in or with respect to any impound, escrow or similar funds established pursuant to or held under any of the Loan Documents, including but not limited to the Tax and Insurance Impound and the Replacement Escrow Funds (as such terms are hereinafter defined).

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Mortgagor shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Note and this Mortgage and shall well and truly abide by and comply with each and every covenant and condition set forth herein, in the Note and in the other Loan Documents (hereinafter defined) in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void.

GENERAL PROVISIONS

1. **Representations, Warranties and Covenants Concerning Loan.** Mortgagor represents, warrants, covenants and agrees as follows:

(a) Mortgagor shall pay the Debt at the time and in the manner provided in the Note and in this Mortgage. All the covenants, conditions and agreements contained in (a) the Note and (b) all and any of the documents including the Note and this Mortgage now or hereafter executed by Mortgagor, any guarantor and/or others and by or in favor of Mortgagee, which evidences, secures or guarantees all or any portion of the payments due under the Note or otherwise is executed and/or delivered in connection with the Note and this Mortgage (the "Loan Documents") are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. The Note is evidence of that certain loan made to Mortgagor by Mortgagee (the "Loan").

(b) Mortgagor warrants that Mortgagor has good, marketable, indefeasible and insurable title to the Mortgaged Property and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Premises and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to said exceptions. Mortgagor shall forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

(c) Mortgagor shall pay all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Taxes") and all ground rents, maintenance charges, other impositions, and other charges, including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Premises, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof (the "Other Charges") as the same become due and payable. If the Mortgaged Property is not taxed and assessed as one or more tax parcels exclusive of all other real property, the term "Taxes" will include all taxes, assessments, water rates and sewer rents now or hereafter levied, assessed or imposed against all other property, whether or not owned by Mortgagor, that is taxed and assessed as part of any tax parcel that includes all or any portion of the Mortgaged Property. Mortgagor will deliver to Mortgagee receipts for payment or other evidence satisfactory to Mortgagee that the Taxes and Other Charges have been so paid or are not then delinquent no later than thirty (30) days prior to the date on which the Taxes and/or Other Charges would otherwise be delinquent if not paid (provided, however, that Mortgagor is not required to furnish such receipts for payment of Taxes in the event that such Taxes have been paid by Mortgagee

from the impound created pursuant hereto). Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property.

(d) The Note, this Mortgage and the other Loan Documents are not subject to any right of recision, set-off, counterclaim or defense, including the defense of usury, nor would the operation of any of the terms of the Note, this Mortgage and the other Loan Documents, or the exercise of any right thereunder, render this Mortgage unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury.

(e) All certifications, permits, licenses and approvals, including, without limitation, certificates of completion and occupancy permits required for the legal use, occupancy and operations of the Mortgaged Property as a multifamily residential property, have been obtained and are in full force and effect. The Mortgaged Property is free of material damage and is in good repair, and there is no proceeding pending (or notice of such proceeding received by Mortgagor) for the total or partial condemnation of, or affecting, the Mortgaged Property. The Mortgagor shall comply with all of the recommendations concerning the maintenance and repair of the Mortgaged Property which are contained in the inspection and engineering report which was delivered to Mortgagee in connection with the origination of the Loan.

(f) All of the Improvements which were included in determining the appraised value of the Mortgaged Property lie wholly within the boundaries and building restriction lines of the Mortgaged Property, and no improvements on adjoining properties encroach upon the Mortgaged Property, and no easements or other encumbrances upon the Premises encroach upon any of the Improvements, so as to affect the value or marketability of the Mortgaged Property except those which are insured against by title insurance. All of the Improvements comply with all material requirements of any applicable zoning and subdivision laws and ordinances.

(g) The Mortgaged Property is not subject to any Leases other than the Leases described in the rent roll delivered to Mortgagee in connection with this Mortgage. No person has any possessory interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of the Leases. The current Leases are in full force and effect and there are no defaults thereunder by either party, except as shown on the rent roll delivered by Mortgagor to Mortgagee on or prior to the date hereof, and there are no conditions that, with the passage of time or the giving of notice, or both, would constitute defaults thereunder.

(h) Intentionally omitted.

(i) The Mortgaged Property is and shall at all times remain in compliance with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Mortgaged Property.

(j) The Leasing and Management Agreement, dated January 23, 2001 (the "Management Agreement") between Mortgagor and Engel, Inc. (the "Property Manager") pursuant to which Property Manager operates the Mortgaged Property is in full force and effect and there is no default or violation by any party thereunder. The fee due under the Management Agreement, and the terms and provisions of the Management Agreement, are subordinate to this Mortgage and the Property Manager shall attorn to Mortgagee. Mortgagor shall not terminate, cancel, modify, renew or extend the Management Agreement, or enter into any agreement relating to the management or operation of the Mortgaged Property with Property Manager or any other party without the express written consent of Mortgagee, which consent shall not be unreasonably withheld. If at any time Mortgagee consents to the appointment of a new manager, such new manager and Mortgagor shall, as a condition of Mortgagee's consent, execute a Manager's Consent and Subordination of Management Agreement in the form then used by Mortgagee.

2. **Insurance.** Mortgagor, at its sole cost and expense, for the mutual benefit of Mortgagor and Mortgagee, shall obtain and maintain during the entire term of this Mortgage (the "Term") the following policies of insurance:

(a) **All Risk or Special Causes of Loss Property Form including Business Interruption.**

(i) Insurance against loss or damage by fire, lightning, wind and such other perils as are included in a standard "all-risk" or "special causes of loss" form, and against loss or damage by all other risks and hazards covered by a standard extended coverage insurance policy including, without limitation, riot and civil commotion, vandalism, malicious mischief, burglary and theft. Such insurance shall be in an amount equal to the greatest of (i) the then full replacement cost of the Improvements and Equipment, without deduction for physical depreciation, (ii) the outstanding principal balance of the Loan, and (iii) such amount that the insurer would not deem Mortgagor a co-insurer under said policies. The policies of insurance carried in accordance with this paragraph shall be paid annually in advance and shall contain a "Replacement Cost Endorsement" with a waiver of depreciation and an "Agreed Amount Endorsement". The policies shall have a deductible no greater than \$10,000 unless agreed to by Mortgagee.

(ii) Rental loss and/or business interruption insurance for a period of twelve (12) months in an amount equal to the greater of (A) estimated gross revenues from the operations of the Mortgaged Property over twelve (12) months or (B) the projected operating expenses (including stabilized management fees, applicable

reserve deposits, and debt service) for the maintenance and operation of the Mortgaged Property over twelve (12) months. The amount of such insurance shall be increased from time to time during the term of the Note as and when new Leases and renewal Leases are entered into and the Rents increase or the annual estimate of (or the actual) gross revenue, as may be applicable, increases. The perils covered by this insurance shall be the same as those accepted on the real property, including flood and earthquake, as necessary. This coverage shall be written on the same basis as the property policy as stated in clause (i) above.

(iii) Ordinance or law coverage to compensate for the loss to the undamaged portion of the Improvements, the cost of demolition and the increased cost of reconstruction or repairs to comply with current ordinances or laws.

(iv) If windstorm coverage is excluded from the policy required under clause (i) above, Mortgagor must provide separate windstorm insurance in an amount equal to the lesser of the original principal balance of the Loan and the maximum amount permitted by law, if the Mortgaged Property is located in area where Mortgagee requires such insurance. Deductibles larger than \$10,000 are subject to approval by Mortgagee.

(v) A completed value, "All Risk" Builder's Risk form or "Course of Construction" coverage in non-reporting form may be required during any period of construction, renovation or alterations of Improvements valued in excess of ten percent (10%) of the Loan. The amount of such coverage must be approved by Mortgagee.

(b) **Commercial General Liability/Umbrella Liability.** Commercial General Liability insurance, including a broad form comprehensive general liability endorsement and coverage for broad form property damage, contractual damages, personal injuries (including death resulting therefrom) and a liquor liability endorsement if liquor is sold on the Mortgaged Property, containing minimum limits per occurrence of \$1,000,000.00, and \$2,000,000.00 in the aggregate, together with excess and/or umbrella liability in an amount of at least \$5,000,000.00. Claims covered should include all legal liability imposed upon Mortgagor and all court costs and attorneys' fee incurred in connection with the ownership, operation and maintenance of the Mortgaged Property. If Mortgagor has a multi-location policy or loan, the coverage must be maintained on a "per-location basis".

(c) **Flood Insurance.** Flood insurance will be required if the Mortgaged Property is located in a Special Flood Hazard Area (Zones A and V) as designated by the Federal Emergency Management Agency ("FEMA"). The flood insurance requirement will be waived if: (a) the Mortgaged Property's Improvements are not in the Special Flood Hazard Area - even though part of the unimproved real property may be; or (b) there is a letter from FEMA stating that its maps have been amended so that the Mortgaged Property is no longer in a Special Flood Hazard Area. The minimum amount of flood insurance required is the

minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis. The maximum deductible shall be no more than \$25,000.

(d) **Sinkhole, Mine Subsidence and Earthquake.** Sinkhole, mine subsidence and earthquake insurance shall be obtained and maintained if in the opinion of a professional engineer, whose resume shows evidence of his/her experience in this professional area, that there is a foreseeable risk of loss due to this hazard. If necessary, as determined by the engineer, the Mortgagor shall maintain coverage in the full principal amount of the Loan.

(e) **Boiler and Machinery Coverage.** Insurance against loss or damage from (A) leakage of sprinkler systems, if the same are present on the Mortgaged Property and (B) explosion of steam boilers, air conditioning equipment, high pressure piping, machinery and equipment, pressure vessels or similar apparatus now or hereafter installed in the Improvements (without exclusion for explosions), in an amount at least equal to the lesser of the outstanding principal amount of the Note or \$2,000,000.00, with a deductible no greater than \$10,000, unless approved by Mortgagee.

(f) **Worker's Compensation and Employer's Liability.** If the Mortgaged Property contains commercial property, worker's compensation insurance with respect to any employees of Mortgagor, as required by any governmental authority or legal requirement.

(g) **Miscellaneous.** Such other insurance as may from time to time be reasonably required by Mortgagee in order to protect its interests.

All policies of insurance (the "Policies") required pursuant to this Paragraph 2: (i) shall be issued by companies approved by Mortgagee and licensed to do business in the state where the Mortgaged Property is located, with a claims paying ability rating of "BBB" or better by Standard & Poor's Ratings and a rating of "A: IX" or better in the current Best's Insurance Reports; (ii) shall name Mortgagee and its successors and/or assigns as their interest may appear as the mortgagee; (iii) shall contain a Non-Contributory Standard Mortgagee Clause and a Lender's Loss Payable Endorsement, or their equivalents, naming Mortgagee as the person to which all payments made by such insurance company shall be paid; (iv) shall contain a waiver of subrogation against Mortgagee; (v) shall be maintained throughout the Term without cost to Mortgagee; (vi) shall be assigned and the originals delivered to Mortgagee (including certified copies of the Policies in effect on the date hereof within thirty (30) days after the closing of the Loan); (vii) shall contain such provisions as Mortgagee deems reasonably necessary or desirable to protect its interest including, without limitation, endorsements providing that neither Mortgagor, Mortgagee nor any other party shall be a co-insurer under said Policies and that Mortgagee shall receive at least thirty (30) days prior written notice of any modification, reduction or cancellation; and (viii) shall be satisfactory in form and substance to Mortgagee and shall be approved by Mortgagee as to amounts, form, risk coverage, deductibles, loss payees and insureds. Mortgagor shall pay the premiums for such Policies (the "Insurance Premiums") as the same become due and payable and shall furnish to Mortgagee evidence of the renewal of each of the Policies with receipts

for the payment of the Insurance Premiums or other evidence of such payment reasonably satisfactory to Mortgagee (provided, however, that Mortgagor is not required to furnish such evidence of payment to Mortgagee in the event that such Insurance Premiums have been paid by Mortgagee pursuant hereto). If Mortgagor does not furnish such evidence and receipts at least thirty (30) days prior to the expiration of any expiring Policy, then Mortgagee may procure, but shall not be obligated to procure, such insurance and pay the Insurance Premiums therefor, and Mortgagor agrees to reimburse Mortgagee for the cost of such Insurance Premiums promptly on demand. Within thirty (30) days after request by Mortgagee, Mortgagor shall obtain such increases in the amounts of coverage required hereunder as may be reasonably requested by Mortgagee, taking into consideration changes in the value of money over time, changes in liability laws, changes in prudent customs and practices, and the like.

3. Casualty.

(a) If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty (an "Insured Casualty"), Mortgagor shall give prompt notice thereof to Mortgagee. Following the occurrence of an Insured Casualty, Mortgagor, regardless of whether insurance proceeds are available, shall promptly proceed to restore, repair, replace or rebuild the same to be of at least equal value and of substantially the same character as prior to such damage or destruction, all to be effected in accordance with applicable law. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall become part of the Debt and be secured hereby and shall be reimbursed by Mortgagor to Mortgagee upon demand.

(b) In case of loss or damages covered by any of the Policies, the following provisions shall apply:

(i) In the event of an Insured Casualty that does not exceed ten percent (10%) of the original principal amount of the Note, Mortgagor may settle and adjust any claim without the consent of Mortgagee and agree with the insurance company or companies on the amount to be paid upon the loss; provided that such adjustment is carried out in a competent and timely manner. In such case, Mortgagor is hereby authorized to collect and receipt for any such insurance proceeds.

(ii) In the event an Insured Casualty shall exceed ten percent (10%) of the original principal amount of the Note, then and in that event, Mortgagee may settle and adjust any claim without the consent of Mortgagor and agree with the insurance company or companies on the amount to be paid on the loss and the proceeds of any such policy shall be due and payable solely to Mortgagee and held in escrow by Mortgagee in accordance with the terms of this Mortgage.

(iii) In the event of an Insured Casualty where the loss is in an aggregate amount less than twenty-five percent (25%) of the original principal balance of the

Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6) months and prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Insured Casualty) and not less useful than the same was prior to the Insured Casualty, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default (as hereinafter defined) shall have occurred and be then continuing, the proceeds of insurance (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the net proceeds of insurance made available pursuant to the terms hereof.

(iv) Except as provided above, the proceeds of insurance collected upon any Insured Casualty shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Insured Casualty, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred then the Mortgagor shall pay to Mortgagee an additional amount equal to the greater of (a) the Yield Maintenance Premium (hereinafter defined), if any, that would be required hereunder if an Involuntary Prepayment (as hereinafter defined) has been defeased, or (b) three percent (3%) of the Involuntary Prepayment. The term "Involuntary Prepayment" shall mean an amount or amounts that Mortgagee receives representing (i) insurance proceeds or other payments as a result of fire or other casualties, or (ii) awards or other payments made in any condemnation or eminent domain proceedings. Any such application to the Debt shall (A) be applied to those payments of principal and interest last due under the Note but shall not postpone any payments otherwise required pursuant to the Note other than such last due payments and (B) cause the Note to be re-amortized in accordance with its terms and conditions.

(v) In the event Mortgagor is entitled to reimbursement out of insurance proceeds held by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of insurance to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates,

waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of cost, payment and performance as Mortgagee may reasonably require and approve. Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value of the work performed from time to time; funds other than proceeds of insurance shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in the hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the cost of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of insurance proceeds held by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall be paid to any party entitled thereto.

4. **Condemnation.** Mortgagor shall promptly give Mortgagee written notice of the actual or threatened commencement of any condemnation or eminent domain proceeding (a "Condemnation") and shall deliver to Mortgagee copies of any and all papers served in connection with such Condemnation. Following the occurrence of a Condemnation, Mortgagor, regardless of whether an Award (hereinafter defined) is available, shall promptly proceed to restore, repair, replace or rebuild the same to the extent practicable to be of at least equal value and of substantially the same character as prior to such Condemnation, all to be effected in accordance with applicable law.

(a) Mortgagee is hereby irrevocably appointed as Mortgagor's attorney-in-fact, coupled with an interest, with exclusive power to collect, receive and retain any award or payment ("Award") for any taking accomplished through a Condemnation (a "Taking") and to make any compromise or settlement in connection with such Condemnation, subject to the provisions of this Mortgage. Notwithstanding any Taking by any public or quasi-public authority (including, without limitation, any transfer made in lieu of or in anticipation of such a Taking), Mortgagor shall continue to pay the Debt at the time and in the manner provided for in the Note, in this Mortgage and the other Loan Documents and the Debt shall not be reduced unless and until any Award shall have been actually received and applied by Mortgagee to expenses of collecting the Award and to discharge of the Debt. Mortgagee shall not be limited to the interest paid on the Award by the condemning authority but shall be entitled to receive out of the Award interest at the rate or rates provided in the Note. Mortgagor shall cause any Award that is payable to Mortgagor to be paid directly to Mortgagee.

(b) In the event of any Condemnation where the Award is in an aggregate amount less than fifteen percent (15%) of the original principal balance of the Note, and if, in the reasonable judgment of Mortgagee, the Mortgaged Property can be restored within six (6)

months and prior to maturity of the Note to an economic unit not less valuable (including an assessment of the impact of the termination of any Leases due to such Condemnation) and not less useful than the same was prior to the Condemnation, and after such restoration will adequately secure the outstanding balance of the Debt, then, if no Event of Default shall have occurred and be then continuing, the proceeds of the Award (after reimbursement of any expenses incurred by Mortgagee) shall be applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to Condemnation, in the manner set forth below. Mortgagor hereby covenants and agrees to commence and diligently to prosecute such restoring, repairing, replacing or rebuilding; provided always, that Mortgagor shall pay all costs (and if required by Mortgagee, Mortgagor shall deposit the total thereof with Mortgagee in advance) of such restoring, repairing, replacing or rebuilding in excess of the Award made available pursuant to the terms hereof.

(c) Except as provided above, the Award collected upon any Condemnation shall, at the option of Mortgagee in its sole discretion, be applied to the payment of the Debt or applied to reimburse Mortgagor for the cost of restoring, repairing, replacing or rebuilding the Mortgaged Property or part thereof subject to the Condemnation, in the manner set forth below. Any such application to the Debt shall be without any prepayment consideration except that if an Event of Default, or an event with notice and/or the passage of time would constitute an Event of Default, has occurred then the Mortgagor shall pay to Mortgagee an additional amount equal to the greater of (a) the Yield Maintenance Premium, if any, that would be required hereunder if an Involuntary Prepayment had been defeased or (b) three percent (3%) of the Involuntary Prepayment. Any such application to the Debt shall (i) be applied to those payments of principal and interest last due under the Note but shall not postpone or reduce any payments otherwise required pursuant to the Note other than such last due payments and (ii) cause the Note to be re-amortized in accordance with its terms and conditions. If the Mortgaged Property is sold, through foreclosure or otherwise, prior to the receipt by Mortgagee of such Award, Mortgagee shall have the right, whether or not a deficiency judgment on the Note shall be recoverable or shall have been sought, recovered or denied, to receive all or a portion of said Award sufficient to pay the Debt.

(d) In the event Mortgagor is entitled to reimbursement out of the Award received by Mortgagee, such proceeds shall be disbursed from time to time upon Mortgagee being furnished with (1) evidence satisfactory to it of the estimated cost of completion of the restoration, repair, replacement and rebuilding resulting from such condemnation, (2) funds or, at Mortgagee's option, assurances satisfactory to Mortgagee that such funds are available, sufficient in addition to the proceeds of the Award to complete the proposed restoration, repair, replacement and rebuilding, and (3) such architect's certificates, waivers of lien, contractor's sworn statements, title insurance endorsements, bonds, plats of survey and such other evidences of costs, payment and performance as Mortgagee may reasonably require and approve; and Mortgagee may, in any event, require that all plans and specifications for such restoration, repair, replacement and rebuilding be submitted to and approved by Mortgagee prior to commencement of work. No payment made prior to the final completion of the restoration, repair, replacement and rebuilding shall exceed ninety percent (90%) of the value

of the work performed from time to time; funds other than proceeds of the Award shall be disbursed prior to disbursement of such proceeds; and at all times, the undisbursed balance of such proceeds remaining in hands of Mortgagee, together with funds deposited for that purpose or irrevocably committed to the satisfaction of Mortgagee by or on behalf of Mortgagor for that purpose, shall be at least sufficient in the reasonable judgment of Mortgagee to pay for the costs of completion of the restoration, repair, replacement or rebuilding, free and clear of all liens or claims for lien. Any surplus which may remain out of the Award received by Mortgagee after payment of such costs of restoration, repair, replacement or rebuilding shall, in the sole and absolute discretion of Mortgagee, be retained by Mortgagee and applied to payment of the Debt.

5. Tax and Insurance Impound. Mortgagor shall pay to Mortgagee on the first day of each calendar month (a) one-twelfth of the Taxes that Mortgagee estimates will be payable during the next ensuing twelve (12) months in order to accumulate with Mortgagee sufficient funds to pay all such Taxes at least thirty (30) days prior to their respective due dates, and (b) one-twelfth of the Insurance Premiums that Mortgagee estimates will be payable for the renewal of the coverage afforded by the Policies upon the expiration thereof in order to accumulate with Mortgagee sufficient funds to pay all such Insurance Premiums at least thirty (30) days prior to the expiration of the Policies (said amounts in (a) and (b) above hereinafter called the "Tax and Insurance Impound"). The monthly Tax and Insurance Impound and the payments of interest and principal payable pursuant to the Note, shall be added together and shall be paid as an aggregate sum by Mortgagor to Mortgagee. Mortgagor hereby pledges to Mortgagee and grants to Mortgagee a security interest in any and all monies now or hereafter deposited in the Tax and Insurance Impound as additional security for the payment of the Debt. Mortgagee will apply the Tax and Insurance Impound to payments of Taxes and Insurance Premiums required to be made by Mortgagor pursuant hereto. In making any payment relating to the Tax and Insurance Impound, Mortgagee may do so according to any bill, statement or estimate procured from the appropriate public office (with respect to Taxes) or insurer or agent (with respect to Insurance Premiums), without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof. If the amount of the Tax and Insurance Impound shall exceed the amounts due for Taxes and Insurance Premiums, Mortgagee shall, in its sole discretion, return any excess to Mortgagor or credit such excess against future payments to be made to the Tax and Insurance Impound. In allocating such excess, Mortgagee may deal with the person shown on the records of Mortgagee to be the owner of the Mortgaged Property. If at any time Mortgagee determines that the Tax and Insurance Impound is not or will not be sufficient to pay the items set forth in (a) and (b) above, Mortgagee shall notify Mortgagor of such determination and Mortgagor shall increase its monthly payments to Mortgagee by the amount that Mortgagee estimates is sufficient to make up the deficiency at least thirty (30) days prior to delinquency of the Taxes and/or expiration of the Policies, as the case may be. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Tax and Insurance Impound to the payment of the Debt in any order in its sole discretion. Until expended or applied as above provided, any amounts in the Tax and Insurance Impound shall constitute additional security for the Debt. The Tax and Insurance Impound shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. Mortgagor shall not receive interest on the Tax and Insurance Impound, which Fund shall be held in

Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. If Mortgagee so elects at any time, Mortgagor shall provide, at Mortgagor's expense, a tax service contract for the Term issued by a tax reporting agency acceptable to Mortgagee. If Mortgagee does not so elect, Mortgagor shall reimburse Mortgagee for the cost of making annual tax searches throughout the Term.

6. Replacement Escrow Fund. Mortgagor shall pay to Mortgagee on the first day of each calendar month an amount equal to one-twelfth of \$48,138.00, the amount estimated by Mortgagee in its sole discretion to be due for replacements and repairs required to be made to the Mortgaged Property during the calendar year (the "Replacement Escrow Fund"). Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Replacement Escrow Fund as additional security for the payment of the Debt. Beginning January 1, 2003, and every January 1st thereafter for the term of the Loan, Mortgagor shall pay Mortgagee an amount equal to one-twelfth of 102.5% of the previously required annual Replacement Escrow Fund amount on each monthly payment date for one year (or until the Loan is defeased in full pursuant to this Mortgage). Notwithstanding the foregoing, Mortgagee may reassess its estimate of the amount necessary for the Replacement Escrow Fund from time to time and in its reasonable discretion, and may adjust the monthly amounts required to be deposited into the Replacement Escrow Fund after giving thirty (30) days notice to Mortgagor. If an adjustment is made, Mortgagor shall be required to pay the adjusted monthly amount until January 1st following one year from the date the first adjusted monthly payment is made. Commencing at that time, and every January 1st thereafter for the term of the Loan, Mortgagor shall pay Mortgagee an amount equal to one-twelfth of 102.5% of the previously required annual Replacement Escrow Fund amount on each monthly payment date for one year. Provided that no Event of Default shall exist and remain uncured, Mortgagee shall make disbursements from the Replacement Escrow Fund as requested, in writing, by Mortgagor, and approved by Mortgagee in its sole discretion, on a quarterly basis in increments of no less than \$5,000 upon delivery by Mortgagor of copies of paid invoices (or with respect to requests in excess of \$10,000, unpaid invoices) for the amounts requested, a certification from the Mortgagor stating: (a) the nature and type of the related replacement or repair, (b) that the related replacement or repair has been completed in a good and workmanlike manner and (c) that the related replacement or repair has been paid for in full (or, with respect to requests in excess of \$10,000, will be paid for in full from the requested disbursement) and, if required by Mortgagee, lien waivers and releases from all parties furnishing materials and/or services in connection with the requested payment. Any disbursement by Mortgagee hereunder for a capital item in excess of \$10,000 and not already paid for by Mortgagor, shall be made by joint check, payable to Mortgagor and the applicable contractor, supplier, materialman, mechanic, subcontractor or other party to whom payment is due in connection with such capital item. Mortgagee may require an inspection of the Mortgaged Property at Mortgagor's expense prior to making a disbursement in order to verify completion of replacements and repairs for which reimbursement is sought. The Replacement Escrow Fund shall be held in an interest bearing account in Mortgagee's name at a financial institution selected by Mortgagee in its sole discretion. All earnings or interest on the Replacement Escrow Fund shall be and become a part of such Replacement Escrow Fund and shall be disbursed as provided in this Paragraph 6. Upon the occurrence of an Event of Default, Mortgagee may apply any sums then present in the Replacement

Escrow Fund to the payment of the Debt in any order in its sole discretion. The Replacement Escrow Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee.

7. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee, all Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment to Mortgagee shall not be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such Lease or otherwise impose any obligation upon Mortgagee. Mortgagor agrees to execute and deliver to Mortgagee such additional instruments, in form and substance satisfactory to Mortgagee, as may hereafter be requested by Mortgagee to further evidence and confirm such assignment. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property and to collect the Rents. Mortgagor shall hold the Rents, or a portion thereof, sufficient to discharge all current sums due on the Debt, in trust for the benefit of Mortgagee for use in the payment of such sums. Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents, whether or not Mortgagee enters upon or takes control of the Mortgaged Property. Mortgagee is hereby granted and assigned by Mortgagor the right, at its option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of the license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) All Leases entered into after the date hereof shall be written on the standard form of lease which has been approved by Mortgagee. Upon request, Mortgagor shall furnish Mortgagee with executed copies of all Leases. The execution of any new Lease covering commercial space at the Improvements or amendment of any existing such Lease shall require prior written approval by Mortgagee. No material changes may be made to the Mortgagee approved standard lease without the prior written consent of Mortgagee. In addition, all renewals of Leases and all proposed leases shall provide for rental rates comparable to existing local market rates and shall be arms length transactions. All Leases entered into after the date hereof shall provide that they are subordinate to this Mortgage and that the tenant agrees to attorn to Mortgagee.

(c) Mortgagor (i) shall observe and perform all the obligations imposed upon the lessor under the Leases and shall not do or permit to be done anything to impair the value of the Leases as security for the Debt; (ii) shall enforce all the terms, covenants and conditions contained in the Leases upon the part of the lessee thereunder to be observed or performed, short of termination thereof; (iii) shall not collect any of the Rents more than one (1) month in advance; (iv) shall not execute any other assignment of the lessor's interest in the Leases

or the Rents; (v) shall deliver to Mortgagee, upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee, provided that Mortgagor shall not be required to deliver such certificates more frequently than two (2) times in any calendar year; and (vi) shall execute and deliver at the request of Mortgagee all such further assurances, confirmations and assignments in connection with the Mortgaged Property as Mortgagee shall from time to time require. Except to the extent Mortgagor is acting in the ordinary course of business as a prudent operator of property similar to the Mortgaged Property, Mortgagor (A) shall not, alter, modify or change the terms of the Leases in any material respect without the prior written consent of Mortgagee; (B) shall not convey or transfer or suffer or permit a conveyance or transfer of the Mortgaged Property or of any interest therein so as to effect a merger of the estates and rights of, or a termination or diminution of the obligations of, tenants under the Leases; (C) shall not consent to any assignment of or subletting under the Leases not in accordance with their terms, without the prior written consent of Mortgagee; and (D) shall not cancel or terminate the Leases or accept a surrender thereof, except if a tenant is in default thereunder; provided, however, that any Lease may be cancelled if at the time of the cancellation thereof a new Lease is entered into on substantially the same terms or more favorable terms as the cancelled Lease.

(d) All security deposits of tenants, whether held in cash or any other form, shall not be commingled with any other funds of Mortgagor and, if cash, shall be deposited by Mortgagor at such commercial or savings bank or banks as may be reasonably satisfactory to Mortgagee (and Mortgagee deems First Commercial Bank, located in Birmingham, Alabama, as being reasonably satisfactory for the purposes for this sentence). Any bond or other instrument which Mortgagor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described, shall be issued by an institution reasonably satisfactory to Mortgagee, shall, if permitted pursuant to any legal requirements, name Mortgagee as payee or mortgagee thereunder (or at Mortgagee's option, be fully assignable to Mortgagee) and shall, in all respects, comply with any applicable legal requirements and otherwise be reasonably satisfactory to Mortgagee. Mortgagor shall, upon request, provide Mortgagee with evidence reasonably satisfactory to Mortgagee of Mortgagor's compliance with the foregoing. Following the occurrence and during the continuance of any Event of Default, Mortgagor shall, upon Mortgagee's request, if permitted by any applicable legal requirements, turn over to Mortgagee the security deposits (and any interest theretofore earned thereon) with respect to all or any portion of the Mortgaged Property, to be held by Mortgagee subject to the terms of the Leases.

8. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor and its controlling principals in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a

means of maintaining the value of the Mortgaged Property as security for repayment of the Debt. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Mortgagor default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not, without the prior written consent of Mortgagee, sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Paragraph 8 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; (iii) if Mortgagor, Guarantor, or any general partner, member or manager of Mortgagor or Guarantor is a corporation, the voluntary or involuntary sale, conveyance or transfer of such corporation's stock (or the stock of any corporation directly or indirectly controlling such corporation by operation of law or otherwise) or the creation or issuance of new stock in one or a series of transactions by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders or any change in the control of such corporation; (iv) if Mortgagor, any Guarantor or any general partner, member or manager of Mortgagor or any Guarantor is a limited or general partnership, joint venture or limited liability company, the change, removal, resignation or addition of a general partner, managing partner, limited partner, joint venturer or member or the transfer of the partnership interest of any general partner, managing partner or limited partner or the transfer of the interest of any joint venturer or member; and (v) any pledge, hypothecation, assignment, transfer or other encumbrance of any ownership interest in Mortgagor.

(c) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Debt immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to any one time sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged

]Property made in contravention of this Paragraph 8 shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

(f) Mortgagor acknowledges that it shall not have the right to sell or transfer the Mortgaged Property prior to the Stabilization Date (as such term is defined in Paragraph 53 hereof), and that Mortgagee will not consent to any such sale or transfer prior to such date. After the Stabilization Date, Mortgagee's consent to the sale or transfer of the Mortgaged Property will not be unreasonably withheld after consideration of all relevant factors, provided that

(i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;

(ii) the proposed transferee ("Transferee") and guarantor for non-recourse carve-outs ("Transferee Guarantor") shall be reputable entities or persons of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Mortgagee;

(iii) the Transferee and its property manager shall have sufficient experience in the ownership and management of properties similar to the Mortgaged Property, and Mortgagee shall be provided with reasonable evidence thereof (and Mortgagee reserves the right to approve the Transferee without approving the substitution of the property manager);

(iv) Mortgagee shall have recommendations in writing from the Rating Agencies (as hereinafter defined) to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction (as hereinafter defined). The term "Rating Agencies" as used herein shall mean each of Standard & Poor's Ratings Services, a division of McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co. and Fitch/IBCA, or any other nationally-recognized statistical rating agency which has been approved by Mortgagee;

(v) the Transferee and Transferee Guarantor shall have executed and delivered to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee, evidencing such Transferee's agreement to abide and be bound by the

terms of the Note, this Mortgage and the other Loan Documents, and such Transferee Guarantor's agreement to abide and be bound by the terms of the Guaranty, and Mortgagee shall have received such legal opinions and title insurance endorsements as may be reasonably requested by Mortgagee; and

(vi) Mortgagee shall have received payment of (i) a transfer fee equal to one percent (1%) of the then outstanding amount of the Debt and (ii) all costs and expenses incurred by Mortgagee in connection with such assumption (including, without limitation, reasonable attorney's fees and costs, title search costs, title insurance endorsement premiums, lien search, credit investigation, and other re-underwriting expenses) incurred by Mortgagee in connection with the review, approval and documentation of any such sale/transfer/assumption.

(g) Mortgagor acknowledges that it shall not have the right to sell or transfer the Mortgaged Property prior to the Stabilization Date (as such term is defined in Paragraph 53 hereof), and that Mortgagee will not consent to any such sale or transfer prior to such date. After the Stabilization Date, notwithstanding anything to the contrary in this Paragraph 8, Mortgagor shall have a one-time right to transfer the Mortgaged Property with an assumption by Transferee and Transferee Guarantor after satisfaction of the following conditions:

(i) no Event of Default or event which with the giving of notice or the passage of time would constitute an Event of Default shall have occurred and remain uncured;

(ii) the Transferee and Transferee Guarantor shall be reputable entities or persons of good character, creditworthy, with sufficient financial worth considering the obligations assumed and undertaken, as evidenced by financial statements and other information reasonably requested by Mortgagee;

(iii) the Transferee and its property manager shall have sufficient experience in the ownership and management of properties similar to the Mortgaged Property, and Mortgagee shall be provided with reasonable evidence thereof (and Mortgagee reserves the right to approve the Transferee without approving the substitution of the property manager);

(iv) Mortgagee shall have recommendations in writing from the Rating Agencies to the effect that such transfer will not result in a re-qualification, reduction or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction;

(v) the Transferee and Transferee Guarantor shall have executed and delivered to Mortgagee an assumption agreement in form and substance acceptable to Mortgagee, evidencing such Transferee's agreement to abide and be bound by the terms of the Note, this Mortgage and the other Loan Documents and such Transferee

Guarantor's agreement to abide and be bound by the terms of the Guaranty, and Mortgagee shall have received such legal opinions and title insurance endorsements as may be reasonably requested by Mortgagee; and

(vi) Mortgagee shall have received payment of (i) a transfer fee equal to one percent (1%) of the then outstanding amount of the Debt and (ii) all costs and expenses incurred by Mortgagee in connection with such assumption (including, without limitation, reasonable attorney's fees and costs, title search costs, title insurance endorsement premiums, lien search, credit investigation, and other re-underwriting expenses) incurred by Mortgagee in connection with the review, approval and documentation of any such sale/transfer/assumption.

(h) Notwithstanding anything to the contrary contained in this Paragraph 8, (i) holders of interests in Mortgagor (or holders of interests in any entity directly or indirectly holding an interest in Mortgagor) as of the date of this Mortgage (the "Interest Holders") shall have the right, without Mortgagee's consent, to transfer their interest in Mortgagor (or any entity directly or indirectly holding an interest in Mortgagor), and (ii) a transfer of an Interest Holder's interest in Mortgagor (or any entity directly or indirectly holding an interest in Mortgagor) that occurs by inheritance, devise or bequest or by operation of law upon the death of a natural person who is an Interest Holder shall not require the consent of Mortgagee; provided, however, that in each instance covered by this subparagraph all of the following conditions are satisfied:

(1) after taking into account any prior transfers pursuant to this subparagraph, whether to the proposed transferee or otherwise, no such transfer (or series of transfers) shall result in (x) the proposed transferee, together with all members of the proposed transferee's immediate family or any affiliates thereof, owning in the aggregate (directly, indirectly or beneficially) more than 49% of the interests in Mortgagor (or any entity directly or indirectly holding an interest in Mortgagor), or (y) a transfer in the aggregate of more than 49% of the interests in Mortgagor as of the date hereof;

(2) no such transfer of interest shall result in a change of control of Mortgagor or the day to day operations of the Mortgaged Property;

(3) Mortgagor shall give Mortgagee notice of such transfer (at least 10 days in advance of any transfer other than one resulting from the death of an individual) together with copies of all instruments effecting such transfer;

(4) Mortgagee shall have received payment of all costs and expenses, if any, incurred by Mortgagee in connection with such transfer;

(5) no Event of Default has occurred and remains uncured; and

(6) the legal and financial structure of Mortgagor after such transfer and its shareholders, partners or members and the single purpose nature of Mortgagor and its shareholders, partners or members, to the extent required by this Mortgage, satisfies Mortgagee's then current applicable underwriting criteria and requirements, including without limitation the requirement at the request of Mortgagee to deliver written confirmations from the Rating Agencies that such transfer or series of transfers will not result in a qualification, downgrade or withdrawal of the then applicable ratings.

(i) For purposes of this Paragraph 8, (i) a change of control of Mortgagor shall be deemed to have occurred if there is any change in the identity of the individual or entities or group of individuals or entities who have the right, by virtue of any partnership agreement, articles of incorporation, by-laws, articles of organization, operating agreement or any other agreement, with or without taking any formative action, to cause Mortgagor to take some action or to prevent, restrict or impede Mortgagor from taking some action which, in either case, Mortgagor could take or could refrain from taking were it not for the rights of such individuals, and (ii) an "immediate family member" shall mean a spouse or a child of any Interest Holder and any trust established for the benefit of a spouse or child of any Interest Holder.

9. **Single Purpose Entity/Separateness.** Mortgagor represents, warrants and covenants as follows:

(a) Mortgagor does not own and will not own any asset or property other than (i) the Mortgaged Property, and (ii) incidental personal property necessary for the ownership or operation of the Mortgaged Property.

(b) Mortgagor will not engage in any business other than the ownership, management and operation of the Mortgaged Property and Mortgagor will conduct and operate its business as presently conducted and operated.

(c) Mortgagor will not enter into any contract or agreement with any affiliate of the Mortgagor, any constituent party of Mortgagor, any guarantor (a "Guarantor") of the Debt or any part thereof or any affiliate of any constituent party or Guarantor, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(d) Mortgagor has not incurred and will not incur any indebtedness, secured or unsecured, direct or indirect, absolute or contingent (including guaranteeing any obligation), other than (i) the Debt, (ii) trade and operational debt incurred in the ordinary course of business with trade creditors and in amounts as are normal and reasonable under the circumstances, and (iii) debt incurred in the financing of equipment and other personal

property used on the Premises. No indebtedness other than the Debt may be secured (subordinate or pari passu) by the Mortgaged Property.

(e) Mortgagor has not made and will not make any loans or advances to any third party (including any affiliate or constituent party, any Guarantor or any affiliate of any constituent party or Guarantor), and shall not acquire obligations or securities of its affiliates or any constituent party.

(f) Mortgagor is and will remain solvent and Mortgagor will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall become due.

(g) Mortgagor has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Mortgagor will not, nor will Mortgagor permit any constituent party or Guarantor to amend, modify or otherwise change the partnership certificate, partnership agreement, articles of incorporation and bylaws, trust or other organizational documents of Mortgagor or such constituent party or Guarantor without the prior written consent of Mortgagee.

(h) Mortgagor will maintain all of its books, records, financial statements and bank accounts separate from those of its affiliates and any constituent party and Mortgagor will file its own tax returns. Mortgagor shall maintain its books, records, resolutions and agreements as official records.

(i) Mortgagor will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Mortgagor, any constituent party of Mortgagor, any Guarantor or any affiliate of any constituent party or Guarantor), shall correct any known misunderstanding regarding its status as a separate entity, shall conduct business in its own name, shall not identify itself or any of its affiliates as a division or part of the other and shall maintain and utilize a separate telephone number and separate stationery, invoices and checks.

(j) Mortgagor will maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations.

(k) Neither Mortgagor nor any constituent party will seek the dissolution, winding up, liquidation, consolidation or merger in whole or in part, of the Mortgagor.

(l) Mortgagor will not commingle the funds and other assets of Mortgagor with those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party of Guarantor, or any other person.

(m) Mortgagor has and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or constituent party, any Guarantor, or any affiliate of any constituent party or Guarantor, or any other person.

(n) Mortgagor does not and will not hold itself out to be responsible for the debts or obligations of any other person.

(o) If Mortgagor is a limited partnership or a limited liability company, each general partner or managing member shall be an entity whose sole asset is its interest in Mortgagor and each such general partner or managing member at all times comply, and will cause Mortgagor to comply, with each of the representations, warranties, and covenants contained in this Paragraph 9 as if such representation, warranty or covenant was made directly by such general partner or managing member.

10. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair. The Improvements and the Equipment shall not be removed, demolished or materially altered (except for normal replacement of the Equipment) without the consent of Mortgagee. Mortgagor shall promptly comply with all laws, orders and ordinances affecting the Mortgaged Property, or the use thereof. Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property that is destroyed by any casualty, or becomes damaged, worn or dilapidated or that is affected by any proceeding of the character referred to in Paragraph 4 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Premises. Mortgagor shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Mortgaged Property is or shall become a nonconforming use, Mortgagor will not cause or permit such nonconforming use to be discontinued or abandoned without the express written consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, (ii) permit or suffer to occur any waste on or to the Mortgaged Property or to any portion thereof or (iii) take any steps whatsoever to convert the Mortgaged Property, or any portion thereof, to a condominium or cooperative form of management. Mortgagor will not install or permit to be installed on the Premises any underground storage tank.

11. Defeasance.

(a) At any time after the date which is the earlier of three years following the date hereof or two years after the date of a Secondary Market Transaction (as defined in Paragraph 19(b)), and provided no Event of Default exists, Mortgagor may obtain the release of the Mortgaged Property from the lien of this Mortgage upon the satisfaction of the following conditions precedent:

(i) not less than thirty (30) days prior written notice to Mortgagee specifying a regularly scheduled payment date (the "Release Date") on which the Defeasance Deposit (hereinafter defined) is to be made;

(ii) the payment to Mortgagee of interest accrued and unpaid on the principal balance of the Note to and including the Release Date;

(iii) the payment to Mortgagee of all other sums, not including scheduled interest or principal payments, due under the Note, this Mortgage, the Assignment of Leases, and the other Loan Documents;

(iv) the payment to Mortgagee of the Defeasance Deposit; and

(v) the delivery to Mortgagee of:

(A) a security agreement, in form and substance satisfactory to Mortgagee, creating a first priority lien on the Defeasance Deposit and the U.S. Obligations (hereinafter defined) purchased on behalf of Mortgagor with the Defeasance Deposit in accordance with this provision of this paragraph (the "Security Agreement");

(B) a release of the Mortgaged Property from the lien of this Mortgage (for execution by Mortgagee) in a form appropriate for the jurisdiction in which the Mortgaged Property is located;

(C) an officer's certificate of Mortgagor certifying that the requirements set forth in this subparagraph (a) have been satisfied;

(D) an opinion of counsel for Mortgagor in form and substance and delivered by counsel satisfactory to Mortgagee stating, among other things (x) that Mortgagee has a perfected first priority security interest in the Defeasance Deposit and the U.S. Obligations purchased by Mortgagee on behalf of Mortgagor, (y) that the Security Agreement is enforceable against Mortgagor in accordance with its terms and (z) that the defeasance will not cause any trust to fail to qualify as a "real estate mortgage investment conduit" (a "REMIC"), within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended from time to time or any successor statute;

(E) evidence in writing from the applicable Rating Agencies to the effect that such release will not result in a re-qualification, reduction or withdrawal of any rating in effect immediately prior to such defeasance for any securities issued in connection with a Secondary Market Transaction; and

(F) such other certificates, opinions, documents or instruments as Mortgagee may reasonably request.

In connection with the conditions set forth in Subparagraph 11(a)(v) above, Mortgagor hereby appoints Mortgagee as its agent and attorney-in-fact for the purpose of using the Defeasance Deposit to purchase U.S. Obligations which provide payments on or prior to, but as close as possible to, all successive scheduled payment dates after the Release Date upon which interest and principal payments are required under the Note (including the amounts due on the Maturity Date) and in amounts equal to the scheduled payments due on such dates under the Note (the "Scheduled Defeasance Payments"). Mortgagor, pursuant to the Security Agreement or other appropriate document, shall authorize and direct that the payments received from the U.S. Obligations may be made directly to Mortgagee and applied to satisfy the obligations of the Mortgagor under the Note.

(b) Upon compliance with the requirements of this Paragraph 11, the Mortgaged Property shall be released from the lien of this Mortgage and the pledged U.S. Obligations shall be the sole source of collateral securing the Note. Any portion of the Defeasance Deposit in excess of the amount necessary to purchase the U.S. Obligations required by subparagraph (a) above and satisfy the Mortgagor's obligations under this paragraph shall be remitted to the Mortgagor with the release of the Mortgaged Property from the lien of this Mortgage. In connection with such release, Mortgagee may establish or designate a successor entity (the "Successor Mortgagor") and Mortgagor shall transfer and assign all obligations, rights and duties under and to the Note together with the pledged U.S. Obligations to such Successor Mortgagor. The right of Mortgagee to establish or designate a Successor Mortgagor shall be retained by Mortgagee notwithstanding the sale or transfer of this Mortgage unless such obligation is specifically assumed by the transferee. Such Successor Mortgagor shall assume the obligations under the Note and the Security Agreement and Mortgagor shall be relieved of its obligations thereunder. The Mortgagor shall pay \$1,000.00 to any such Successor Mortgagor as consideration for assuming the obligations under the Note and the Security Agreement. Notwithstanding anything in this Mortgage to the contrary, no other assumption fee shall be payable upon a transfer of the Note in accordance with this paragraph, but Mortgagor shall pay all costs and expenses incurred by Mortgagee, including Mortgagee's attorneys' fees and expenses, incurred in connection with this Paragraph 11.

(c) For purposes of this paragraph, the following terms shall have the following meanings:

(i) The term "Defeasance Deposit" shall mean a deposit equal to the amount of U.S. Obligations which provide payments on or prior to, but as close as possible to, the Scheduled Defeasance Payments, the Yield Maintenance Premium, any costs and expenses incurred or to be incurred in the purchase of U.S. Obligations necessary to meet the Scheduled Defeasance Payments and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection

with the transfer of the Note or otherwise required to accomplish the agreements of this paragraph;

(ii) The term "Yield Maintenance Premium" shall mean the amount (if any) which, when added to the remaining principal amount of the Note, will be sufficient to purchase U.S. Obligations providing the required Scheduled Defeasance Payments; and

(iii) The term "U.S. Obligations" shall mean direct, non-callable obligations of the United States of America.

12. Estoppel Certificates and No Default Affidavits.

(a) After written request by Mortgagee, Mortgagor shall within twenty (20) days furnish Mortgagee with a statement, duly acknowledged and certified, setting forth (i) the amount of the original principal amount of the Note, (ii) the unpaid principal amount of the Note, (iii) the rate of interest of the Note, (iv) the date installments of interest and/or principal were last paid, (v) any offsets or defenses to the payment of the Debt, if any, and (vi) that the Note, this Mortgage and the other Loan Documents are valid, legal and binding obligations and have not been modified or if modified, giving particulars of such modification.

(b) After written request by Mortgagee, Mortgagor shall within twenty (20) days furnish Mortgagee with a certificate reaffirming all representations and warranties of Mortgagor set forth herein and in the other Loan Documents as of the date requested by Mortgagee or, to the extent of any changes to any such representations and warranties, so stating such changes.

(c) If the Mortgaged Property contains commercial tenants, Mortgagor shall deliver to Mortgagee upon request, tenant estoppel certificates from each commercial tenant at the Mortgaged Property in form and substance reasonably satisfactory to Mortgagee provided that Mortgagor shall not be required to deliver such certificates more frequently than two (2) times in any calendar year.

13. Changes in Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

14. No Credits on Account of the Debt. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Debt for any part of the Taxes or Other Charges assessed against the Mortgaged Property, or any part thereof, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property, or any part thereof, for real estate tax purposes by reason of this Mortgage or the Debt. In the event such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by written notice of not less than ninety (90) days, to declare the Debt immediately due and payable.

15. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

16. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor, and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this Paragraph 16 shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Debt, or if Mortgagee's exercise of the option to accelerate the maturity of the Note, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited on the principal balance of the Note and all other Debt, and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Debt shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Debt until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate from time to time in effect and applicable to the Debt for so long as the Debt is outstanding. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Mortgagee to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

17. Financial Statements.

(a) The financial statements heretofore furnished to Mortgagee are, as of the dates specified therein, complete and correct and fairly present the financial condition of the Mortgagor and any other persons or entities that are the subject of such financial statements, and are prepared in accordance with sound accounting principles consistently applied. Mortgagor does not have any contingent liabilities, liabilities for taxes, unusual forward or

long-term commitments or unrealized or anticipated losses from any unfavorable commitments that are known to Mortgagor and reasonably likely to have a materially adverse effect on the Mortgaged Property or the operation thereof as a multifamily residential, except as referred to or reflected in said financial statements. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operation or business of Mortgagor from that set forth in said financial statements.

(b) Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish to Mortgagee on or before forty-five (45) days after the end of each calendar quarter the following items, each certified by Mortgagor as being true and correct: (i) a written statement (rent roll) dated as of the last day of each such calendar quarter identifying for each of the Leases: the term, space occupied, rental required to be paid, security deposit paid, any rental concessions, commencement date, expiration date, options to renew/expand/purchase, expense recovery provisions, and identifying any defaults or payment delinquencies thereunder; and (ii) if requested by Mortgagee, monthly and year to date operating statements prepared for each calendar month during each such calendar quarter, each of which shall include an itemization of actual (not pro forma) capital expenditures during the applicable period. From the date hereof through the date which is the earlier of twelve (12) months after the date hereof or the date of disposition of the Loan by Mortgagee in a Secondary Market Transaction (defined in Paragraph 19(b)), the Mortgagor shall furnish monthly each of the items listed in the immediately preceding sentence (collectively, the "Pre-Securitization Financials") within twenty (20) days after the end of such month. Within ninety (90) days following the end of each calendar year, Mortgagor shall furnish statements of its financial affairs and condition including a balance sheet and a statement of profit and loss for the Mortgagor in such detail as Mortgagee may request, and setting forth the financial condition and the income and expenses for the Mortgaged Property for the immediately preceding calendar year. Mortgagor's annual financial statements shall be accompanied by a certificate executed by the chief financial officer of Mortgagor or the general partner of Mortgagor, as applicable, stating that each such annual financial statement presents fairly the financial condition of the Mortgaged Property being reported upon and has been prepared in accordance with sound accounting principles consistently applied. At any time and from time to time Mortgagor shall deliver to Mortgagee or its agents such other financial data as Mortgagee or its agents shall reasonably request with respect to the ownership, maintenance, use and operation of the Mortgaged Property.

(c) In the event that Mortgagor fails to provide to Mortgagee or its designee any of the financial statements, certificates, reports or information (the "Required Records") required by this Paragraph 17 within thirty (30) days after the date upon which such Required Record is due, Mortgagor shall pay to Mortgagee, at Mortgagee's option and in its sole discretion, an amount equal to \$5,000 for each Required Record that is not delivered; provided that, Mortgagee has given at least fifteen (15) days prior written notice to Mortgagor of such failure by Mortgagor to timely submit the applicable Required Record. Notwithstanding the foregoing, in the event that Mortgagor fails to provide Mortgagee with

Pre-Securitization Financials on or before the date they are due, Mortgagor shall pay to Mortgagee, at Mortgagee's option and in its sole discretion, an amount equal to \$5,000 for each month that Mortgagor fails to deliver the required Pre-Securitization Financials.

18. Performance of Other Agreements. Mortgagor shall observe and perform each and every term to be observed or performed by Mortgagor pursuant to the terms of any of the Intangibles or any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property. Mortgagor further covenants and agrees to (a) give prompt notice to the Mortgagee of any notice received by the Mortgagor concerning any of the Intangibles or any such other agreement or recorded instruments, together with a complete copy of any such notice, (b) enforce, short of termination thereof, the performance and observance of each and every term, covenant and provision of the Intangibles and any such other agreement and recorded instrument to be performed or observed, if any, and (c) not terminate any of the Intangibles or any such other agreement or recorded statement without the prior written consent of the Mortgagee.

19. Further Acts, Etc.

(a) Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage or for facilitating the sale of the Loan and the Loan Documents as described in Paragraph 19(b) below. Mortgagor, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Upon foreclosure, the appointment of a receiver or any other relevant action, Mortgagor will, at the cost of Mortgagor and without expense to Mortgagee, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including, without limitation, such rights and remedies available to Mortgagee pursuant to this paragraph.

(b) Mortgagor acknowledges that Mortgagee and its successors and assigns may (i) sell this Mortgage, the Note and other Loan Documents to one or more investors as a whole loan, (ii) participate the Loan secured by this Mortgage to one or more investors,

(iii) deposit this Mortgage, the Note and other Loan Documents with a trust, which trust may sell certificates to investors evidencing an ownership interest in the trust assets, or (iv) otherwise sell the Loan or interest therein to investors (the transactions referred to in clauses (i) through (iv) are hereinafter each referred to as "Secondary Market Transaction"). Mortgagor shall cooperate with Mortgagee in effecting any such Secondary Market Transaction and shall cooperate to implement all requirements imposed by any Rating Agency involved in any Secondary Market Transaction. Mortgagor shall provide such information, legal opinions and documents relating to Mortgagor, Guarantor, if any, the Mortgaged Property and any tenants of the Improvements as Mortgagee may reasonably request in connection with such Secondary Market Transaction. In addition, Mortgagor shall make available to Mortgagee all information concerning its business and operations that Mortgagee may reasonably request. Mortgagee shall be permitted to share all such information with the investment banking firms, Rating Agencies, accounting firms, law firms and other third-party advisory firms involved with the Loan and the Loan Documents or the applicable Secondary Market Transaction. It is understood that the information provided by Mortgagor to Mortgagee may ultimately be incorporated into the offering documents for the Secondary Market Transaction and thus various investors may also see some or all of the information. Mortgagee and all of the aforesaid third-party advisors and professional firms shall be entitled to rely on the information supplied by, or on behalf of, Mortgagor and Mortgagor indemnifies Mortgagee as to any losses, claims, damages or liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in such information or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated in such information or necessary in order to make the statements in such information, or in light of the circumstances under which they were made, not misleading. Mortgagee may publicize the existence of the Loan in connection with its marketing for a Secondary Market Transaction or otherwise as part of its business development.

20. Recording of Mortgage, Etc. Mortgagor 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 security interest 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 the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, 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 mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

21. Notice of Certain Events. Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor or the death, insolvency or bankruptcy filing of any Guarantor.

22. Events of Default. The Debt shall become immediately due and payable at the option of Mortgagee upon the happening of any one or more of the following events of default (each an "Event of Default"):

(a) failure to make payment of (1) interest or principal within five (5) days after the same is due, or (2) the entire Debt on or before the Maturity Date;

(b) subject to Mortgagor's right to contest as provided herein, if any of the Taxes or Other Charges are not paid when the same are due and payable;

(c) if the Policies are not kept in full force and effect, or if the Policies are not delivered to Mortgagee upon request;

(d) if Mortgagor transfers or encumbers any portion of the Mortgaged Property without Mortgagee's prior written consent, or any person owning interests in Mortgagor encumbers such interests without the prior written consent of Mortgagee;

(e) if any representation or warranty of Mortgagor, or of any Guarantor, made herein or in any other Loan Document or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(f) if Mortgagor or any Guarantor shall make an assignment for the benefit of creditors or if Mortgagor shall generally not be paying its debts as they become due;

(g) if a receiver, liquidator or trustee of Mortgagor or of any Guarantor shall be appointed or if Mortgagor or any Guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any Guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or of any Guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or such Guarantor, upon the same not being discharged, stayed or dismissed within sixty (60) days;

(h) if Mortgagor shall be in default under any other mortgage or security agreement covering any part of the Mortgaged Property whether it be superior or junior in lien to this Mortgage;

(i) subject to Mortgagor's right to contest as provided herein, if the Mortgaged Property becomes subject to any mechanic's, materialman's or other lien except a lien for local real estate taxes and assessments not then due and payable;

(j) if Mortgagor fails to cure properly any violations of laws or ordinances affecting or which may be interpreted to affect the Mortgaged Property within thirty (30) days after Mortgagor first receives notice of any such violations;

(k) except as permitted in this Mortgage, the alteration, improvement, demolition or removal of any of the Improvements without the prior consent of Mortgagee;

(l) if Mortgagor shall continue to be in default under any term, covenant, or provision of the Note or any of the other Loan Documents, beyond applicable cure periods contained in those documents;

(m) if Mortgagor fails to cure a default under any other term, covenant or provision of this Mortgage within thirty (30) days after Mortgagor first receives notice of any such default; provided, however, if such default is reasonably susceptible of cure, but not within such thirty (30) day period, then Mortgagor may be permitted up to an additional sixty (60) days to cure such default provided that Mortgagor diligently and continuously pursues such cure;

(n) if, without Mortgagee's prior written consent, (i) the Management Agreement is terminated, (ii) the ownership, management or control of Property Manager is transferred, (iii) there is a material change in the Management Agreement, or (iv) if there shall be a material default by Mortgagor under the Management Agreement; or

(o) if Mortgagor ceases to continuously operate the Mortgaged Property or any material portion thereof as a multifamily residential property for any reason whatsoever (other than temporary cessation in connection with any repair or renovation thereof undertaken with the consent of Mortgagee).

23. Late Payment Charge. If any portion of the Debt is not paid within five (5) days of (and including) the date on which it is due, Mortgagor shall pay to Mortgagee upon demand an amount equal to the lesser of five percent (5%) of such unpaid portion of the Debt or the maximum amount permitted by applicable law in order to defray a portion of the expenses incurred by Mortgagee in handling and processing such delinquent payment and to compensate Mortgagee for the loss of the use of such delinquent payment, and such amount shall be secured by this Mortgage. The late payment charge provided for in this paragraph shall not be applicable to the payment of the entire unpaid principal balance of the Note upon its maturity, however such maturity may be brought about.

24. Mortgagee's Right To Cure Defaults. Upon the occurrence of any Event of Default or if Mortgagor fails to make any payment or to do any act as herein provided, Mortgagee may, but

without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest at the Default Rate (as defined in the Note) for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

25. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property by Mortgagee itself or otherwise, including, without limitation, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) Declare the entire Debt to be immediately due and payable.

(ii) Institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner.

(iii) With or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due.

(iv) Sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law.

(v) Institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein, or in any of the other Loan Documents.

(vi) Recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage.

(vii) Apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor, any Guarantor or of any person, firm or other entity liable for the payment of the Debt.

(viii) Enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents; and (E) apply the receipts from the Mortgaged Property to the payment of Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees.

(ix) Pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code.

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 on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this paragraph, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable

provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Any sale or sales made under or by virtue of this paragraph, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this paragraph, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(f) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this paragraph at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by the Note, this Mortgage or in any of the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by the Note, this Mortgage or in any of the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in the Note, this Mortgage or any of the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by the Note, this Mortgage or any of the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable

hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 25 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Note, this Mortgage or any of the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, Guarantor or surety of any of the Debt.

26. Right of Entry. In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the Term. The cost of such inspections or audits shall be borne by Mortgagor should Mortgagee determine that an Event of Default exists, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

27. Security Agreement. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider necessary to create, perfect, and preserve Mortgagee's security interest herein granted. This Mortgage shall also constitute a "fixture filing" for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to

become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including attorneys' fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof and promptly after request shall execute, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagor shall, promptly after request, execute, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor's obligations under the Note, this Mortgage and the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage.

28. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect their interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

29. Contest of Certain Claims. Notwithstanding the provisions of Paragraphs 1(c) and 22 hereof, Mortgagor shall not be in default for failure to pay or discharge Taxes, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property if, and so long as, (a) Mortgagor shall have notified Mortgagee of same within five (5) days of obtaining knowledge thereof; (b) Mortgagor shall diligently and in good faith contest the same by appropriate legal

proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Mortgaged Property or any part thereof, to satisfy the same; (c) Mortgagor shall have furnished to Mortgagee a cash deposit, or an indemnity bond satisfactory to Mortgagee with a surety satisfactory to Mortgagee, in the amount of the Taxes, Other Charges or mechanic's or materialman's lien claim, plus a reasonable additional sum to pay all costs, interest and penalties that may be imposed or incurred in connection therewith, to assure payment of the matters under contest and to prevent any sale or forfeiture of the Mortgaged Property or any part thereof; (d) Mortgagor shall promptly upon final determination thereof pay the amount of any such Taxes, Other Charges or claim so determined, together with all costs, interest and penalties which may be payable in connection therewith; (e) the failure to pay the Taxes, Other Charges or mechanic's or materialman's lien claim does not constitute a default under any other deed of trust, mortgage or security interest covering or affecting any part of the Mortgaged Property; and (f) notwithstanding the foregoing, Mortgagor shall immediately upon request of Mortgagee pay (and if Mortgagor shall fail so to do, Mortgagee may, but shall not be required to, pay or cause to be discharged or bonded against) any such Taxes, Other Charges or claim notwithstanding such contest, if in the opinion of Mortgagee, the Mortgaged Property or any part thereof or interest therein may be in danger of being sold, forfeited, foreclosed, terminated, cancelled or lost. Mortgagee may pay over any such cash deposit or part thereof to the claimant entitled thereto at any time when, in the judgment of Mortgagee, the entitlement of such claimant is established.

30. Recovery of Sums Required to be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Debt as the same become due, without regard to whether or not the balance of the Debt shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

31. Marshalling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

32. Hazardous Substances. Mortgagor hereby represents and warrants to Mortgagee that, except as disclosed in the environmental site assessment prepared in connection with the Loan and delivered to Mortgagee, to the best of Mortgagor's knowledge, after due inquiry and investigation: (a) the Mortgaged Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community

Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state super-lien and environmental clean-up statutes and all regulations adopted in respect to the foregoing laws (collectively, "Environmental Laws"); (b) the Mortgaged Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants including without limitation, petroleum, tremolite, anthophyllite, actinolite or polychlorinated biphenyls and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively, "Hazardous Substances"); (c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Mortgaged Property), discharged, generated, treated, disposed of or stored on, incorporated in, or removed or transported from the Mortgaged Property other than in compliance with all Environmental Laws; (d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and (e) no underground storage tanks exist on any of the Mortgaged Property. So long as Mortgagor owns or is in possession of the Mortgaged Property, Mortgagor (i) shall keep or cause the Mortgaged Property to be kept free from Hazardous Substances and in compliance with all Environmental Laws, (ii) shall promptly notify Mortgagee if Mortgagor shall become aware of any Hazardous Substances on or near the Mortgaged Property and/or if Mortgagor shall become aware that the Mortgaged Property is in direct or indirect violation of any Environmental Laws and/or if Mortgagor shall become aware of any condition on or near the Mortgaged Property which shall pose a threat to the health, safety or welfare of humans, (iii) shall remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law (or as shall be required by Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by Mortgagee ("Mortgagee's Consultant")), promptly after Mortgagor becomes aware of same, at Mortgagor's sole expense and (iv) shall comply with all of the recommendations contained in the environmental report which was delivered to Mortgagee in connection with the origination of the Loan. Nothing herein shall prevent Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure. The obligations and liabilities of Mortgagor under this Paragraph 32 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

33. Asbestos. Mortgagor represents and warrants that, except as disclosed in the environmental site assessment prepared in connection with the Loan and delivered to Mortgagee, to the best of Mortgagor's knowledge, after due inquiry and investigation, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Mortgaged Property except as may have been disclosed in an environmental report delivered to Mortgagee prior to the date of this Mortgage. Mortgagor shall not install in the Mortgaged Property, nor permit to be installed in the

Mortgaged Property, Asbestos and shall remove any Asbestos promptly upon discovery to the satisfaction of Mortgagee, at Mortgagor's sole expense. Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Mortgaged Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Mortgaged Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. In the event that Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Mortgaged Property, Mortgagor shall immediately notify Mortgagee. The obligations and liabilities of Mortgagor under this Paragraph 33 shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

34. Environmental Monitoring. Mortgagor shall give prompt written notices to Mortgagee of: (a) any proceeding or inquiry by any party with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Mortgaged Property, (b) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance or Asbestos, and (c) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property to be subject to any investigation or cleanup pursuant to any Environmental Law. Mortgagor shall permit Mortgagee to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Mortgaged Property in connection with any Environmental Law or Hazardous Substance, and Mortgagor shall pay all attorneys' fees and disbursements incurred by Mortgagee in connection therewith. Upon Mortgagee's request, at any time and from time to time while this Mortgage is in effect, Mortgagor shall provide (i) an inspection or audit of the Mortgaged Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Mortgaged Property, and (ii) an inspection or audit of the Mortgaged Property prepared by a duly qualified engineering or consulting firm approved by Mortgagee, indicating the presence or absence of Asbestos on the Mortgaged Property. The cost and expense of such audit or inspection shall be paid by Mortgagor not more frequently than once every five (5) calendar years after the occurrence of a Secondary Market Transaction unless Mortgagee, in its good faith judgment, determines that reasonable cause exists for the performance of an environmental inspection or audit of the Mortgaged Property, then such inspections or audits described in the preceding sentence shall be at Mortgagor's sole expense. If Mortgagor fails to provide any inspection or audit required pursuant to this Paragraph 34 within thirty (30) days after such request, Mortgagee may order same, and Mortgagor hereby grants to Mortgagee and its employees and agents access to the Mortgaged Property and a license to undertake such inspection or audit. The cost of such inspection or audit may be added to the Debt and shall bear interest thereafter until paid at the Default Rate. In the event that any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at Mortgagor's expense upon request of Mortgagee. In the event that any investigation, site monitoring,

containment cleanup, removal, restoration or other work of any kind is reasonably necessary or desirable under an applicable Environmental Law (the "Remedial Work"), Mortgagor shall commence within thirty (30) days after written demand by Mortgagee for performance thereof (or such shorter period of time as may be required under applicable law) and thereafter diligently prosecute to completion all such Remedial Work. All Remedial Work shall be performed by contractors approved in advance by Mortgagee, and under the supervision of a consulting engineer approved by Mortgagee. All costs and expenses of such Remedial Work shall be paid by Mortgagor including, without limitation, Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. In the event Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, may be added to the Debt and shall bear interest thereafter until paid at the Default Rate.

35. Handicapped Access.

(a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988, if applicable, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee's approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would increase Mortgagor's responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violation of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

36. Indemnification. In addition to any other indemnifications provided herein or in the other Loan Documents, Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against Mortgagee by reason of (a) ownership of this Mortgage, the Mortgaged Property or any interest therein or receipt of any Rents; (b) any accident, injury to or death of persons or loss of or damage to property occurring in,

on or about the Mortgaged Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) any use, nonuse or condition in, on or about the Mortgaged Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (d) any failure on the part of Mortgagor to perform or comply with any of the terms of this Mortgage; (e) performance of any labor or services or the furnishing of any materials or other property in respect of the Mortgaged Property or any part thereof; (f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from, or affecting the Mortgaged Property; (g) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos; (h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos; (i) any violation of the Environmental Laws, which are based upon or in any way related to such Hazardous Substance or Asbestos including, without limitation, the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses; (j) any failure of the Mortgaged Property to comply with any Access Laws; (k) any representation or warranty made in the Note, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made; (l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Mortgaged Property or any part thereof under any legal requirement or any liability asserted against Mortgagee with respect thereto; and (m) the claims of any lessee of any or any portion of the Mortgaged Property or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts payable to Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Mortgagee until paid. The obligations and liabilities of Mortgagor under this Paragraph 36 shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by Mortgagee of any of its rights or remedies hereunder, including, but not limited to, the acquisition of the Mortgaged Property by foreclosure or a conveyance in lieu of foreclosure.

37. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing, addressed to the address, as set forth above, of the party to whom such notice is to be given, or to such other address as Mortgagor or Mortgagee, as the case may be, shall designate in writing, and shall be deemed to be received by the addressee on (i) the day such notice is personally delivered to such addressee, (ii) the third (3rd) day following the day such notice is deposited with the United States postal service first class certified mail, return receipt requested, (iii) the day following the day on which such notice is delivered to a nationally recognized overnight courier delivery service, or (iv) the day facsimile transmission is confirmed after transmission of such notice by telecopy to such telecopier number as Mortgagor or Mortgagee, as the case may be, shall have previously designated in writing.

38. Authority. (a) Mortgagor (and the undersigned representative of Mortgagor, if any) represent and warrant that it (or they, as the case may be) has full power, authority and right to execute, deliver and perform its obligations pursuant to this Mortgage, and to mortgage, give, grant,

bargain, sell, alien, enfeoff, convey, confirm, warrant, pledge, hypothecate and assign the Mortgaged Property pursuant to the terms hereof and to keep and observe all of the terms of this Mortgage on Mortgagor's part to be performed; and (b) Mortgagor represents and warrants that Mortgagor is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended and the related Treasury Department regulations, including temporary regulations.

39. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor or Guarantor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, or any of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Debt or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Mortgage or any of the other Loan Documents. Mortgagee may resort for the payment of the Debt to any other security held by Mortgagee in such order and manner as Mortgagee, in its sole discretion, may elect. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

40. No Oral Change. This Mortgage, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Mortgagee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

41. Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever. If, but only if, Mortgagee has received and accepted in writing an assumption agreement in form and substance acceptable to Mortgagee, executed by a Transferee and evidencing a Transferee's agreement to abide and be bound by the terms of the Note, this Mortgage and the other Loan Documents, the parties who have executed this Mortgage shall be relieved of all obligations under the Note, this Mortgage and the other Loan Documents.

42. Inapplicable Provisions. If any term, covenant or condition of the Note or this Mortgage is held to be invalid, illegal or unenforceable in any respect, the Note and this Mortgage shall be construed without such provision.

43. Headings, Etc. The headings 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.

44. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

45. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the words "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein and the words "attorneys' fees" shall include any and all attorneys' fees, paralegal and law clerk fees, including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder. 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.

46. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part hereof.

47. Assignments. Mortgagee shall have the right to assign or transfer its rights under this Mortgage without limitation. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

48. Waiver of Jury Trial. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO

A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

49. Miscellaneous.

(a) Mortgagor covenants and agrees that during the Term, unless Mortgagee shall have previously consented in writing, (a) Mortgagor will take no action that would cause it to become an "employee benefit plan" as defined in 29 C.F.R. Section 2510.3-101, or "assets of a governmental plan" subject to regulation under the state statutes, and (b) Mortgagor will not sell, assign or transfer the Mortgaged Property, or any portion thereof or interest therein, to any transferee that does not execute and deliver to Mortgagee its written assumption of the obligations of this covenant. Mortgagor further covenants and agrees to protect, defend, indemnify and hold Mortgagee harmless from and against all loss, cost, damage and expense (including without limitation, all attorneys' fees and excise taxes, costs of correcting any prohibited transaction or obtaining an appropriate exemption) that Mortgagee may incur as a result of Mortgagor's breach of this covenant. This covenant and indemnity shall survive the extinguishment of the lien of this Mortgage by foreclosure or action in lieu thereof; furthermore, the foregoing indemnity shall supersede any limitations on Mortgagor's liability under any of the Loan Documents.

(b) The Loan Documents contain the entire agreement between Mortgagor and Mortgagee relating to or connected with the Loan. Any other agreements relating to or connected with the Loan not expressly set forth in the Loan Documents are null and void and superseded in their entirety by the provisions of the Loan Documents.

(c) Mortgagor represents and warrants to Mortgagee that there has not been committed by Mortgagor or any other person in occupancy of or involved with the operation or use of the Mortgaged Property any act or omission affording the federal government or any state or local government the right of forfeiture as against the Mortgaged Property or any part thereof or any monies paid in performance of Mortgagor's obligations under the Note or under any of the other Loan Documents. Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act, omission or circumstance affording such right of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or injury by reason of the breach of the covenants and agreements or the representations and warranties set forth in this paragraph. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor or all or any part of the Mortgaged Property under any federal or state law for which forfeiture of the Mortgaged Property or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result, shall, at the election of Mortgagee, constitute an Event of Default hereunder without notice or opportunity to cure.

(d) Mortgagor acknowledges that, with respect to the Loan, Mortgagor is relying solely on its own judgment and advisors in entering into the Loan without relying in any manner on any statements, representations or recommendations of Mortgagee or any parent, subsidiary or affiliate of Mortgagee. Mortgagor acknowledges that Mortgagee engages in the business of real estate financings and other real estate transactions and investments which may be viewed as adverse to or competitive with the business of the Mortgagor or its affiliates. Mortgagor acknowledges that it is represented by competent counsel and has consulted counsel before executing the Loan Documents.

(e) Mortgagor covenants and agrees to pay Mortgagee upon receipt of written notice from Mortgagee, all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements and the costs and expenses of any title insurance company, appraisers, engineers or surveyors) incurred by Mortgagee in connection with (i) the preparation, negotiation, execution and delivery of this Mortgage and the other Loan Documents; (ii) Mortgagor's performance of and compliance with Mortgagor's respective agreements and covenants contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iii) Mortgagee's performance and compliance with all agreements and conditions contained in this Mortgage and the other Loan Documents on its part to be performed or complied with after the date hereof; (iv) the negotiation, preparation, execution, delivery and administration of any consents, amendments, waivers or other modifications to this Mortgage and the other Loan Documents; and (v) the filing and recording fees and expenses, title insurance fees and expenses, and other similar expenses incurred in creating and perfecting the lien in favor of Mortgagee pursuant to this Mortgage and the other Loan Documents.

(f) This Mortgage shall be governed by and construed in accordance with the laws of the State in which the Premises are located and the applicable laws of the United States of America.

50. Recourse Provisions. Subject to the qualifications below, Mortgagee shall not enforce the liability and obligation of Mortgagor to perform and observe the obligations contained in this Mortgage, the Note or in any of the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Mortgagor, except that Mortgagee may bring a foreclosure action, an action for specific performance or any other appropriate action or proceeding to enable Mortgagee to enforce and realize upon its interests under the Note, this Mortgage or the other Loan Documents or in the Mortgaged Property, the Rents or any other collateral given to Mortgagee pursuant to this Mortgage and the other Loan Documents; provided, however, that, except as specifically provided herein, any judgment in any such action or proceeding shall be enforceable against Mortgagor only to the extent of Mortgagor's interest in the Mortgaged Property, in the Rents and in any other collateral given to Mortgagee, and Mortgagee, by accepting this Mortgage, the Note and the other Loan Documents, agrees that it shall not sue for, seek or demand any deficiency judgment against Mortgagor in any such action or proceeding under or by reason of or in connection with this Mortgage, the Note or the other Loan Documents. The provisions of this paragraph shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured

by this Mortgage, the Note or any of the other Loan Documents; (ii) impair the right of Mortgagee to name Mortgagor as a party defendant in any action or suit for foreclosure and sale under this Mortgage; (iii) affect the validity or enforceability of any guaranty or indemnity made in connection with the Loan or any of the rights and remedies of the Mortgagee thereunder; (iv) impair the right of Mortgagee to obtain the appointment of a receiver; (v) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; or (vi) constitute a waiver of the right of Mortgagee to enforce the liability and obligation of Mortgagor, by money judgment or otherwise, to the extent of, *but only to the extent of*, any loss, damage, cost, expense, liability, claim or other obligation incurred by Mortgagee (including attorneys' fees and costs reasonably incurred) arising out of or in connection with the following:

(i) fraud, material misrepresentation, gross negligence or willful misconduct by Mortgagor or any of its partners, officers, principals, members, any guarantor or any other person authorized to make statements or representations, or act, on behalf of Mortgagor in connection with the Loan;

(ii) physical waste committed on the Mortgaged Property; damage to the Mortgaged Property as a result of the intentional misconduct or gross negligence of Mortgagor or any of its principals, officers, general partners or members, or any agent or employee of any such persons; or the removal of any portion of the Mortgaged Property in violation of the terms of the Loan Documents following an Event of Default;

(iii) subject to any right to contest such matters, as provided herein, failure to pay any valid taxes, assessments, mechanic's liens, materialmen's liens or other liens which could create liens on any portion of the Mortgaged Property which would be superior to the lien or security title of this Mortgage or the other Loan Documents, to the full extent of the amount claimed by any such lien claimant;

(iv) all legal costs and expenses (including attorneys' fees) reasonably incurred by Mortgagee in connection with litigation or other legal proceedings involving the collection or enforcement of the Loan or preservation of Mortgagee's rights under the Loan Documents, including any costs incurred by Mortgagee arising from or relating to the filing of a petition under the U.S. Bankruptcy Code by or against Mortgagor, other than those customarily incurred by a lender in realizing upon its lien in an uncontested foreclosure sale after an undisputed default;

(v) the breach of any representation, warranty, covenant or indemnification provision in that certain Environmental and Hazardous Substance Indemnification Agreement of even date herewith given by Mortgagor to Mortgagee or in this Mortgage concerning environmental laws, hazardous substances or asbestos;

(vi) the misapplication or conversion by Mortgagor of (A) any insurance proceeds paid by reason of any loss, damage or destruction to the Mortgaged Property, (B) any awards or other amounts received in connection with the condemnation of all or a portion of the Mortgaged Property, or (C) any Rents following an Event of Default;

(vii) any security deposits or other refundable deposits collected with respect to the Mortgaged Property which are not delivered to Mortgagee upon a sale or foreclosure of the Mortgaged Property or other action in lieu thereof, except to the extent any such security deposits were applied in accordance with the terms and conditions of any of the Leases prior to the occurrence of the Event of Default that gave rise to such sale or foreclosure or action in lieu thereof; and

(viii) the failure of Mortgagor to pay the difference, if any, between the Yield Maintenance Amount and the Yield Maintenance Deposit due pursuant to Paragraph 53(e) of this Mortgage.

Notwithstanding anything to the contrary in any of the Loan Documents, (i) Mortgagee shall not be deemed to have waived any right which Mortgagee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Debt secured by this Mortgage or to require that all collateral shall continue to secure all of the Debt owing to Mortgagee in accordance with the Loan Documents, and (ii) the Debt shall become fully recourse to Mortgagor in the event that: (A) the first full monthly payment of principal and interest under the Note is not paid when due; (B) Mortgagor fails to permit on-site inspections of the Mortgaged Property within ten (10) days after request by Mortgagee, or Mortgagor fails to provide financial information within thirty (30) days after the date upon which such financial information is due and Mortgagee has given at least fifteen (15) days prior written notice to Mortgagor of such failure by Mortgagor to provide such information, or Mortgagor fails to maintain its status as a single purpose entity as required by, and in accordance with the terms and provisions of this Mortgage; (C) Mortgagor fails to obtain Mortgagee's prior written consent to any subordinate financing or other voluntary lien encumbering the Mortgaged Property or any interests in Mortgagor; or (D) Mortgagor fails to obtain Mortgagee's prior written consent to any assignment, transfer, or conveyance of the Mortgaged Property or any interest therein as required by this Mortgage.

51. Certain Retail Covenants. Mortgagor shall maintain the Management Agreement for the operation of the Mortgaged Property in full force and effect and timely perform all of Mortgagor's obligations thereunder and enforce performance of all obligations of the manager thereunder. Mortgagor will enter into and cause the Property Manager to enter into an assignment and subordination of such Management Agreement in form satisfactory to Mortgagee, assigning and subordinating the Property Manager's interest in the Mortgaged Property and all fees and other rights of the manager pursuant to such Management Agreement to the rights of Mortgagee. Upon an Event of Default, Mortgagor at Mortgagee's request made at any time while such Event of Default continues, shall terminate the Management Agreement and replace the manager with a manager approved by Mortgagee.

52. Special State Provisions.

(a) In the event of any conflict between the terms and provisions of this Section and any other term or provision of this Mortgage, the terms and provisions of this Section shall govern and control.

(b) Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where said Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money therefor, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid for and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect, and Mortgagee may bid for and purchase the Mortgaged Property or any such portion thereof, and shall be entitled to apply all or any part of the Debt as a credit to the purchase price.

(c) Mortgagee may foreclose this Mortgage either by sale at public outcry or by proceedings in law or equity, and Mortgagee may become the purchaser at any foreclosure sale if the highest bidder, and, in the event of sale at public outcry, Mortgagee may sell or cause to be sold, all and singular, the Mortgaged Property and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the main door of the courthouse of the county in which the Mortgaged Property is located at such time or times and upon such terms as may be required by law or as Mortgagee may determine, after having first given notice of the time, place and terms of sale, together with the description of the Mortgaged Property to be sold, by publication once a week for three consecutive weeks prior to said sale in any newspaper then published in the county in Alabama in which the Mortgaged Property is located, and after giving such other notice of the time, place and terms of sale as may be required by law. In the event of a sale hereunder, Mortgagee or owners of the debt and Mortgage, or the auctioneer, shall execute to the purchaser for and in the name of Mortgagor, a good and sufficient deed to the Mortgaged Property. Mortgagee may sell such Mortgaged Property either as a whole or in separate parcels and in such order as Mortgagee may direct (Mortgagor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Mortgagee to the extent permitted by applicable law), payable at the time of sale. Mortgagee may postpone the sale of all or any part of the Mortgaged Property by public announcement at such time and place of sale, and from time to time after any such postponement may postpone such sale by public announcement at the time fixed by the preceding postponement. Mortgagee shall deliver to the purchaser at such sale its deed conveying the Mortgaged Property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts shall be

conclusive proof of the truthfulness thereof. Any person, including Mortgagee, may purchase at such sale, and any bid by Mortgagee may be, in whole or in part, in the form of cancellation of all or any part of the Debt.

53. Holdback Fund – Earnout

(a) Mortgagor acknowledges and agrees that as of the date hereof the entire stated principal sum of the Note has been advanced to Mortgagor and such entire outstanding principal balance shall accrue interest commencing as of the date hereof in accordance with the terms of the Note. Mortgagor hereby authorizes and directs Mortgagee to deposit the sum of \$638,000.00 from the proceeds of the Loan into the Holdback Fund (as defined below), which fund will consist of the following: (i) the sum of \$580,000.00 to be released to Mortgagor or applied to repay the principal balance of the Note upon the re-underwriting of the Loan in accordance with the terms and conditions of this Paragraph 53 (the "Earnout Amount") and (ii) the sum of \$58,000.00 to be held solely as a deposit for the payment in whole or in part of all or part of a Yield Maintenance Amount (defined herein below) in the event such a premium is payable as hereinafter provided (the "Yield Maintenance Deposit"). The Earnout Amount and the Yield Maintenance Deposit are collectively referred to as the "Holdback Fund." Mortgagor hereby pledges to Mortgagee any and all monies now or hereafter deposited in the Holdback Fund, including all accrued interest thereon, as additional security for payment of the Debt. Upon the occurrence of an Event of Default or, subject to the provisions set forth below, on the Stabilization Date or Early Stabilization Date (as such terms are defined below), as the case may be, Mortgagee may apply any sums then present in the Holdback Fund to the payment of the Debt in any order in its sole discretion. The Holdback Fund shall not constitute a trust fund and may be commingled with other monies held by Mortgagee. All earnings or interest in the Holdback Fund shall be and become part of the Holdback Fund and shall be disbursed as provided in this Paragraph 53. For purposes of this Paragraph 53, (x) "Yield Maintenance Amount" shall mean the greater of (A) one percent (1%) of the principal amount of the Loan to be prepaid or (B) the present value as of the Stabilization Date or the Early Stabilization Date, as the case may be, of the remaining scheduled payments of principal and interest corresponding to the principal of the Loan to be prepaid from the Stabilization Date or the Early Stabilization Date, as the case may be, through the Maturity Date (inclusive of any balloon payment) determined by discounting such payments at the Discount Rate (as hereinafter defined) less the amount of principal being repaid and (y) "Discount Rate" shall mean the yield on the non-callable U.S. Treasury issue with a maturity date closest to the Maturity Date, with such yield being based on a bid price for such issue as published in The Wall Street Journal on the Stabilization Date or the Early Stabilization Date, as the case may be, and converted to a monthly compounded nominal yield. In the event The Wall Street Journal is no longer published or The Wall Street Journal no longer reports information permitting the calculation of such yield, Mortgagee shall utilize another nationally recognized source (i.e., Telerate, Bloomberg Reports) to determine such yield.

(b) Mortgagor shall have the one-time right to request a re-underwriting of the Loan which re-underwriting shall occur prior to the Stabilization Date in accordance with the terms and conditions of this Paragraph 53. If Mortgagor fails to request a re-underwriting of the Loan by the date that is (30) days prior to the Stabilization Date in accordance with Paragraph 53(c)(iii) below,

Mortgagee, at its option, shall have the right to perform such re-underwriting in accordance with the terms hereof and Mortgagor hereby agrees to cooperate with Mortgagee and satisfy all of the conditions of this Paragraph 53 in connection therewith. Any such re-underwriting of the Loan shall be in accordance with Mortgagee's then current underwriting procedures and standards, as determined by Mortgagee in its sole discretion. If Mortgagor satisfies all of the terms and conditions of this Paragraph 53, including without limitation the conditions precedent contained in Paragraph 53(c), Mortgagee shall release from the Holdback Fund to Mortgagor on the Stabilization Date or the Early Stabilization Date, as the case may be, the Earnout Amount, or so much thereof as Mortgagor qualifies for, in accordance with the terms and conditions of this Paragraph 53. If Mortgagor fails to qualify for a disbursement of some or all of the Earnout Amount as of the Stabilization Date or Early Stabilization Date, as the case may be, Mortgagee may apply such sum as a prepayment of the Debt in accordance with this Paragraph 53 without further notice or demand. The term "Stabilization Date" as used in this Mortgage means April 1, 2002, and on which date a re-underwriting of the Loan is effectuated. The term "Early Stabilization Date" as used in this Mortgage means a date prior to the Stabilization Date on which a regularly scheduled Monthly Payment (as defined in the Note) is due on the Note, and on which date a re-underwriting of the Loan is effectuated.

(c) Mortgagee's obligation to release any portion of the Earnout Amount to Mortgagor from the Holdback Fund on the Stabilization Date or the Early Stabilization Date, as the case may be, is contingent upon the satisfaction of each of the following conditions precedent:

(i) no Event of Default shall have occurred, nor shall have there occurred any event that would, with the giving of notice or the passage of time, or both, constitute an Event of Default;

(ii) no material adverse change shall have occurred in the condition of the Mortgaged Property or in the financial or credit position of Mortgagor or its principals, and there shall have occurred no transfer of any interest in the Mortgagor or Mortgaged Property;

(iii) Mortgagor shall have submitted to Mortgagee a written request for the disbursement from the Holdback Fund either (A) not earlier than sixty (60) days and not later than thirty (30) days prior to the Stabilization Date or (B) not earlier than sixty (60) days and not later than thirty (30) days prior to the Early Stabilization Date, together with (1) a re-underwriting fee of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) and (2) an expense deposit in an amount reasonably required by Mortgagee to cover legal fees and expenses as well as the costs of updating third party reports;

(iv) Mortgagor, at its sole cost and expense, shall have promptly provided to Mortgagee all documentation and information determined by Mortgagee in Mortgagee's sole discretion to be necessary to complete the underwriting analysis described in this Paragraph 53 (the "Stabilization Review"), including, without limitation, leases, financial information pertaining to commercial tenants, rent rolls, tenant estoppel certificates from commercial tenants, property operating and financial statements, updated, revised or new

appraisals (subject to subparagraph (d)(iii) below), environmental reports, engineering reports, land title surveys and title insurance reports and any other evidence of performance, operation or condition of the Mortgaged Property requested by Mortgagee in its sole discretion;

(v) Mortgagee shall have reviewed and approved such third-party reports and other information and documents determined by Mortgagee in Mortgagee's sole discretion to be necessary to assess the condition and operation of the Mortgaged Property, which third-party reports and other information and documentation shall be in form and substance acceptable to Mortgagee in its sole discretion and shall have been prepared and furnished at the sole cost and expense of Mortgagor;

(vi) Mortgagor shall have increased the amount of broad form property damage insurance as described in the Mortgage to a reasonable amount as determined by Mortgagee in its sole discretion;

(vii) If reasonably requested by Mortgagee or requested by the Rating Agencies, Mortgagee shall have received such endorsements to Mortgagee's lender's policy of title insurance ("Lender's Title Policy") determined by Mortgagee in Mortgagee's sole discretion to be necessary to insure Mortgagee's continuing first priority lien on the Mortgaged Property for the full amount of disbursed Loan proceeds, and date-down the Lender's Title Policy as of the Stabilization Date or the Early Stabilization Date, as the case may be, and insure there are no new liens or encumbrances on title other than those shown on Lender's Title Policy as of the original date of issuance of such policy, a lien for current real estate taxes not yet due and payable, and such other liens and encumbrances expressly consented to by Mortgagee in its sole discretion;

(viii) all of Mortgagor's representations and warranties contained herein and in the other Loan Documents shall be true, accurate and complete in all material respects as of the Stabilization Date or the Early Stabilization Date, as the case may be, and be deemed remade as of the Stabilization Date or the Early Stabilization Date, as the case may be;

(ix) Mortgagor shall have paid to Mortgagee all out-of-pocket costs and expenses of Mortgagee in connection with Mortgagee's reevaluation of the Mortgaged Property and Mortgagor, and the documentation and disbursement of the Holdback Fund, including without limitation, all attorneys' fees and costs, third-party report costs and expenses, title insurance charges and premiums, and taxes and recording fees or charges, if any;

(x) the results of the Stabilization Review shall have indicated that Mortgagor is entitled to a disbursement of the Earnout Amount; and

(xi) Mortgagor shall have satisfied any other reasonable conditions required by Mortgagee to protect its lien and security interest in the Mortgaged Property.

(d) The Stabilization Review shall include the following steps:

(i) First, Mortgagee shall reevaluate in its sole discretion the net cash flow available for debt service ("NCFADS") of the Mortgaged Property utilizing Mortgagee's then current system of calculation and standards at the time of evaluation, based upon, among other things, (A) the actual gross income from the Mortgaged Property for the then trailing three (3) month period, annualized and adjusted pursuant to Mortgagee's then current system of calculation and standards including, without limitation, assuming a minimum vacancy rate of the greater of (1) actual, (2) the market rate for what Mortgagee determines are "Class B" apartment complexes within the Highway 280, Birmingham, Alabama submarket or (3) six percent (6%), and a collection loss of one percent (1%), less (B) operating expenses in an amount equal to the greater of (1) \$598,573.00 or (2) the actual operating expenses for the Mortgaged Property for the then trailing twelve (12) month period, annualized and adjusted pursuant to Mortgagee's then current system of calculation and standards including, without limitation, assuming a minimum property management fee of the greater of four percent (4%) or actual, real estate taxes and special assessments levied against the Mortgaged Property at an assumed full year's assessment, the annual Insurance Premiums, common area charges and expenses for maintenance and repairs, administrative charges, utility charges, and reserves for on-going replacements at the Improvements as required under Mortgagee's reunderwriting standards; provided that with respect to the calculation of only the property management fee and salaries for other on-site personnel the amounts shall be based on the greater of the then trailing six (6) month period or the time elapsed from the date of this Mortgage, annualized and adjusted as provided above.

(ii) Second, Mortgagee shall reevaluate in its sole discretion both the actual debt service coverage ratio for the Loan utilizing the system of calculation and standards used by Mortgagee at the time of evaluation calculated as the ratio of NCFADS to the annual principal and interest payable on the outstanding principal balance of the Loan based upon the Contract Rate (as defined in the Note) (the "Actual DSCR") and the stressed debt service coverage ratio for the Loan utilizing the system of calculation and standards used by Mortgagee at the time of re-evaluation calculated as the ratio of NCFADS to the assumed annual principal and interest payable on the outstanding principal balance of the Loan multiplied by 9.66% (the "Stressed DSCR").

(iii) Third, Mortgagee shall reevaluate in its sole discretion the loan to value ratio for the Loan utilizing the system of calculation and standards used by Mortgagee at the time of re-evaluation based on a ratio of the total outstanding principal balance of the Loan to the value of the Mortgaged Property as established by an "As Is, Market Value" appraisal approved by Mortgagee in connection with the re-underwriting of the Loan (such value being referred to as the "Appraised Value"). (Any reevaluation conducted on or prior to October 1, 2001, shall be based upon the last appraisal of the Mortgaged Property received and approved by Mortgagee prior to the date of this Mortgage, unless Mortgagor at its sole cost and expense elects to obtain a new appraisal, which new appraisal would be subject to Mortgagee's review and approval in its sole discretion.)

(iv) Fourth, Mortgagee shall conduct such additional analysis and evaluations as it deems necessary in its sole discretion to reassess the condition, operation and development of the Mortgaged Property and the financial or credit position of Mortgagor and its principals.

If Mortgagee determines in its sole discretion that the NCFADS as of the Stabilization Date or the Early Stabilization Date, as the case may be, has increased over the underwritten net cash flow available for debt service of the Mortgaged Property as determined by Mortgagee in its sole discretion at the time of the original closing of the Loan (the "Underwritten NCFADS") and such increase is due to increased occupancy resulting from the leasing of space vacant as of the date hereof or to increased rent collections resulting from increases in rental rates as of the date hereof, Mortgagee shall disburse to Mortgagor from the Holdback Fund the Earnout Amount, or so much thereof as Mortgagor shall qualify for, to the extent that as of such Stabilization Date or Early Stabilization Date, as the case may be, (i) the total outstanding principal balance under the Note does not exceed eighty percent (80%) of the Appraised Value, (ii) the Actual DSCR is not less than 1.20:1, and (iii) the Stressed DSCR is not less than 1.05:1.

(e) Any Earnout Amount remaining in the Holdback Fund after a disbursement, if any, to Mortgagor on the Stabilization Date or the Early Stabilization Date, as the case may be, shall be immediately applied to reduce the outstanding principal balance of the Loan, in the inverse order of maturity, and Mortgagor shall pay to Mortgagee the Yield Maintenance Amount from the Yield Maintenance Deposit (together with any other funds if necessary in order for Mortgagor to pay the Yield Maintenance Amount in respect of the amount prepaid). Any portion of the Yield Maintenance Deposit not actually applied to pay the Yield Maintenance Amount, if any, shall be disbursed to Mortgagor from the Holdback Fund on the Stabilization Date or the Early Stabilization Date, as the case may be. In the event the Yield Maintenance Amount payable hereunder exceeds the amount of the Yield Maintenance Deposit, Mortgagor covenants and agrees to pay to Mortgagee such shortfall on the Stabilization Date or the Early Stabilization Date, as the case may be. The liability for the payment of any such shortfall shall be a recourse obligation with respect to Mortgagor and Guarantor.

(f) In the event any portion of the Earnout Amount is applied to reduce the outstanding principal amount of the Loan, as of the date of such reduction the outstanding principal balance of the Note shall continue to accrue interest at the Contract Rate, and the Monthly Payment (as defined in the Note) shall be revised accordingly to amortize the reduced outstanding principal balance of the Loan over the remaining portion of the originally scheduled amortization schedule, with a balloon payment due at maturity, as further provided in the Note. In connection with such reduction, Mortgagee shall deliver a certificate of revised Loan terms in form reasonably acceptable to Mortgagee which shall be binding on both parties. Mortgagor also agrees to execute such amendments to the Loan Documents as reasonably required by Mortgagee to reflect such adjustment.

(g) Mortgagor shall pay immediately upon demand all out-of-pocket costs and expenses of Mortgagee in connection with or related to Mortgagee's reevaluation of the Mortgaged Property

and the re-underwriting of the Loan, including without limitation, all attorneys' fees and costs, third-party report costs and expenses, and taxes and recording fees or charges, if any.

(h) Mortgagor and Mortgagee agree and acknowledge that during the term of the Loan there may be one, and only one, Stabilization Date or Early Stabilization Date, and if there is a disbursement of all or any portion of the Holdback Fund to Mortgagor, such disbursement shall be made in one installment.

The remainder of this page is left blank. The signature page(s) follow.

EXECUTED on the date set forth in the acknowledgment below, to be effective on and as of the date first above written.

MORTGAGOR:

RIVER PLACE, L.L.C.,
an Alabama limited liability company

By: Engel Properties, L.L.C., an Alabama limited
liability company, its Managing Member

By: Engel, Inc., an Alabama corporation,
its Managing Member

By: William A. Butler
William A. Butler, President

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William A. Butler whose name as President of ENGEL, INC., an Alabama corporation, as Managing Member of Engel Properties, L.L.C., an Alabama limited liability company, as Managing Member of River Place, L.L.C., an Alabama limited liability company, is signed to the foregoing document, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer of Engel Properties, Inc., and with full authority, executed the same voluntarily for and as the act of said corporation in its capacity as Managing Member of Engel Properties, L.L.C., the Managing Member of River Place, L.L.C.

Given under my hand and official seal, this the 22 day of March, 2001.

Robert Lemley
Notary Public
My Commission Expires: 5/06/2001

3427666.4
373:19153-172

Archon Financial
Mortgage, Assignment of Leases and Rents,
Security Agreement and Fixture Filing
River Place Apartments

EXHIBIT A

Legal Description

PARCEL I:

A tract of land situated in the NW $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West, Shelby County, Alabama, said tract being part of Block 2 of Altadena Park, as recorded in Map Book 5, Page 73, part of Lot 1, Butte Woods Ranch Addition to Altadena Valley as recorded in Map Book 5, Page 1, all recorded in the Probate Office of Shelby County, Alabama, said tract of land more particularly described as follows:

Commence at the southwest corner of the NE $\frac{1}{4}$, NW $\frac{1}{4}$ of said Section 3, and run thence easterly, along the south line thereof, 69.02 feet; thence turn 69°30'50" right and run southeasterly 96.27 feet to the point of beginning, said point being on the northerly line of Lot 1 of said Altadena Park; thence turn 90°00' left and run northeasterly 240.0 feet to the northernmost corner of said Lot 1; thence turn 90°58'45" right and run southeasterly 149.79 feet to the southeast corner of said Lot 1; thence turn 6°16'15" right and run southeasterly, along the easterly line of Lot 2 of said subdivision, 144.94 feet to the most easterly corner of Lot 2; thence turn 7°01'15" right and run southerly along the easterly line of Lot 3 and said subdivision, for 57.52 feet to a point on last said lot line; thence turn 106°56'15" left and run northeasterly 128.13 feet; thence turn 84°50' right and run southeasterly for 195.0 feet; thence turn 20°59'30" left and run southeasterly for 333.22 feet; thence turn 52°39'30" left and run easterly for 150.0 feet; then turn 90° left and run northerly for 600.14 feet; thence turn 41°00' right and run northeasterly for 300.00 feet; thence turn 14°00' left and run northeasterly for 125.0 feet; thence turn 25°00' left and run northerly for 170.0 feet; thence turn 87°58'40" right and run Easterly for 137.41 feet to a point on the east line of the NE $\frac{1}{4}$ of NW $\frac{1}{4}$, Section 3, Township 19 South, Range 2 West; thence turn left 90° and run northerly, along said $\frac{1}{4}$ - $\frac{1}{4}$ line for 270 feet, more or less, to the Westerly bank of the Cahaba River; thence run northerly and westerly, along the southwest bank of said river 1400 feet, more or less, to the west line of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 3, said point also being on the easterly line of Lot 1 of said Butte Woods Ranch Addition to Altadena Valley; thence run northerly, along last said $\frac{1}{4}$ - $\frac{1}{4}$ section line of said lot line for 90 feet, more or less, to the northeasterly corner of said Lot 1; thence turn left and run westerly, along the northerly line of said Lot 1, for 240 feet, more or less, to the northwest corner of said Lot 1; thence turn left and run southwesterly and along the easterly right-of-way line of Caldwell Mill Road for 425 feet, more or less; thence turn left 31°45' and run southeasterly for 67.96 feet; thence turn left 31°45' and run southeasterly, along the new northeasterly right-of-way line of Old Caldwell Mill Road for 231.58 feet to the beginning curve to the right, having a radius of 263.05 feet; thence continue southeasterly and along said right-of-way line and along the arc of said curve 162.13 feet to the end of said curve; thence continue southeasterly on a course tangent to said curve, and along said right-of-way line 245.3 feet to the point of beginning. Situated in Shelby County, Alabama. This site contains 35.8 acres, more or less.

Less and except:

PARCEL II:

Part of the NW $\frac{1}{4}$ of Section 3, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

WB

Beginning at an existing crimp iron pin, being the most westerly corner of Lot 1A, Altadena Park Resurvey, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 5, Page 111, run in a northwesterly direction, along the northeast right-of-way line of Old Caldwell Mill Road, for a distance of 245.65 feet to an existing crimp iron pin and being the point of beginning of a curve, said curve being concave in a Southwesterly direction and having a central angle of $35^{\circ}18'51''$ and a radius of 263.05 feet; thence turn an angle to the left and run in a northwesterly direction, along the arc of said curve and along the northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 162.13 feet, to the point of ending of said curve; thence continue in a northwesterly direction, along a line tangent to the end of said curve, and along the northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 231.58 feet; thence turn an angle to the right of $31^{\circ}45'$ and run in a northwesterly direction for a distance of 67.96 feet to a point on the east right-of-way line of Caldwell Mill Road; thence turn an angle to the right of $31^{\circ}45'$ and run in a northerly direction, along the east right-of-way line of said Caldwell Mill Road, for a distance of 162.68 feet to a point of intersection with a curve, said curve being concave in a northwesterly direction and having a central angle of $3^{\circ}36'16''$ and a radius of 2005.22 feet; thence turn an angle to the right ($59^{\circ}20'24''$ to the chord of said curve) and run in a northeasterly direction, along the arc of said curve, for a distance of 126.15 feet to a point of reverse curve, said latest curve being concave in a southerly direction and having a central angle of $36^{\circ}13'17''$ and a radius of 58.97 feet; thence turn an angle to the right and run in a northeasterly and easterly direction, along the arc of said curve, for a distance of 37.28 feet to the point of ending of said curve, thence run in an easterly direction, along a line tangent to the end of said curve, for a distance of 102.25 feet, to the point of beginning; thence turn an angle to the right of $63^{\circ}45'02''$ and run in a southeasterly direction for a distance of 55.01 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left $91^{\circ}51'45''$ and run in a northeasterly direction for a distance of 150.88 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $94^{\circ}18'35''$ and run in a northwesterly direction for a distance of 55.20 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $82^{\circ}59'55''$ and run in a southwesterly direction for a distance of 144.88 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $90^{\circ}49'45''$ and run in a southerly direction for a distance of 6.87 feet, more or less, to the point of beginning.

ALSO LESS AND EXCEPT:

Together with a 20 foot easement for ingress and egress lying 10 foot on either side of the center line of said easement and said center line being more particularly described as follows:

From an existing crimp iron pin, being the most westerly corner of Lot 1A, Altadena Park Resurvey, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 5, Page 111, run in a northwesterly direction, along the northeast right-of-way line of Old Caldwell Mill Road, for a distance of 245.65 feet to an existing crimp iron pin and being the point of beginning of a curve, said curve being concave in a southwesterly direction and having a central angle of $35^{\circ}18'51''$ and a radius of 263.05 feet; thence turn an angle to the left and run in a northwesterly direction, along the arc of said curve and along the northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 162.13 feet, to the point of ending of said curve; thence continue in a northwesterly direction, along a line tangent to the end of said curve, and along the northeast right-of-way line of said Old Caldwell Mill Road, for a distance of 231.58 feet; thence turn an angle to the right of $31^{\circ}45'$ and run in a northwesterly direction for a distance of 67.96 feet to a point on the east right-of-way line of Caldwell Mill Road; thence turn an angle

to the right of 31°45' and run in a northerly direction, along the east right-of-way line of said Caldwell Mill Road, for a distance of 162.68 feet to a point of intersection with a curve, being the point of beginning, said curve being concave in a northwesterly direction and having a central angle of 3°36'16" and a radius of 2005.22 feet; thence turn an angle to the right (59°20'24" to the chord of said curve) and run in a northeasterly direction, along the arc of said curve, for a distance of 126.15 feet to a point of reverse curve, said latest curve being concave in a southerly direction and having a central angle of 36°13'17" and a radius of 58.97 feet; thence turn an angle to the right and run in a northeasterly and easterly direction, along the arc of said curve, for a distance of 37.28 feet to the point of ending of said curve; thence run in an easterly direction, along a line tangent to the end of said curve, for a distance of 102.25 feet, to the point of ending.

Together with an easement running along all existing sanitary sewer lines for construction, operation and maintenance of sanitary sewer.



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Inst # 2001-11913

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SHELBY COUNTY JUDGE OF PROBATE
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