

07/05/2001-27600
07-14-01 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 CJ1 599.00

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made as of the 28th day of June, 2001, by AQUAPURE WATER SYSTEMS, L.L.C., an Alabama limited liability company having its principal place of business at 140 N. Yeager Street, Pelham, Alabama 35124, as mortgagor ("Borrower") to FIRSTMERIT BANK, N.A., a national banking association organized under the laws of the United States of America having an address of 165 S. Main Street, Akron, Ohio 44308, as mortgagee ("Lender").

RECITALS:

Borrower, by its Variable Rate Promissory Note dated as of May 1, 2001 given to Lender (the "Note") in accordance with the terms and conditions of that certain agreement dated May 1, 2001 (the "Loan Agreement"), is indebted to Lender in the amount set forth in the Note, , with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note;

Borrower desires to secure the payment of the Note and the performance of all of its obligations under the Note; provided, however, that the maximum indebtedness secured by this Mortgage shall not exceed THREE HUNDRED FIFTY THOUSAND AND NO/100 U.S. DOLLARS (\$350,000.00).

FOR VALUE RECEIVED, the receipt and adequacy of which is hereby acknowledged, Borrower hereby agrees as follows:

Section 1 - GRANTS OF SECURITY

Section 1.1. PROPERTY MORTGAGED. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "Property"):

(a) **Land and Improvements.** The real property described in Exhibit A attached hereto and made a part hereof (the "Land"), together with the buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "Improvements");

(b) **Easements.** All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversion and reversions, remainder and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, 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 Borrower of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(c) **Fixtures and Personal Property.** All machinery, equipment, and fixtures (including, but not limited to, all heating, air conditioning, plumbing, lighting, communications and elevator fixtures) appurtenant to the Land and the Improvements, and all other personal property, materials and supplies of any nature whatsoever owned by Borrower, or of which Borrower has or shall have an interest, now or

hereafter located upon the Land and the Improvements, or appurtenant thereto (collectively, the "Personal Property"), and all proceeds and products of all of the above;

(d) Leases and Rents. All leases, subleases and other agreements affecting the use, enjoyment or occupancy of the Land and/or the Improvements heretofore or hereafter entered into (and all extensions, amendments and modifications thereto) (the "Leases") and all right, title and interest of Borrower, its successors and assigns therein and thereunder, including, without limitation, all guarantees, credit support given by any guarantor, cash or securities deposited under the Lease to secure the performance by the lessees of their obligations thereunder and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements (the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Note;

(e) Insurance Proceeds. All proceeds of and any unearned premiums on any insurance policies covering the 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 Property;

(f) Condemnation Awards. All awards or payments, including interest thereon (the "Taking Proceeds"), which may heretofore and hereafter be made with respect to the Property, whether from the exercise of the right of eminent domain (including, but not limited to any transfer made in lieu of or in anticipation of the exercise of the right), or for a change of grade, or for any other injury to or decrease in the value of the Property (a "Taking");

(g) Actions or Proceedings. The right, in the name and on behalf of Borrower, to appear in and defend any action or proceeding brought with respect to the Property and to commence any action or proceeding to protect the interest of Lender in the Property;

(h) Other Agreements. All agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or respecting any business or activity conducted on the Land and any part thereof and all right, title and interest of Borrower therein and thereunder, including, without limitation, the right, upon the occurrence and during the continuance of an Event of Default, to receive and collect any sums payable to Borrower thereunder; and

(i) Other Rights. Any and all other rights of Borrower in and to the Property.

Section 1.2. ASSIGNMENT OF LEASES AND RENTS. Borrower hereby absolutely and unconditionally assigns to Lender Borrower's right, title and interest in and to all current and future Leases and Rents; it being intended by Borrower that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 1.2 and Section 10.1, Lender grants to Borrower a revocable license to collect and receive the Rents.

Section 1.3. SECURITY AGREEMENT. This Mortgage is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Borrower in the Property. By executing and delivering this Mortgage, Borrower hereby grants to Lender, as security for the Note, a security interest in the Personal Property and other collateral given as security for the Note (whether denominated as part of the Property or otherwise) to the extent that under Applicable Laws the same would be governed by the Uniform Commercial Code (collectively, "UCC Collateral") to

the full extent that the Personal Property and other UCC Collateral may be subject to the Uniform Commercial Code.

Section 1.4. CONDITION TO GRANT. TO HAVE AND TO HOLD the above granted and described Property to the use and benefit of Lender, and the successors and assigns of Lender, forever; PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Debt at the time and in the manner provided in the Note and this Mortgage, shall perform all other obligations under the Loan Documents (as hereinafter defined) and shall comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

Section 2 - DEBT AND OBLIGATIONS SECURED/PAYMENT COVENANTS

Section 2.1. DEBT. This Mortgage and the grants, assignments and transfers made in Section 1 are given for the purpose of securing the payment of the following, in such order of priority as Lender may determine in its sole discretion:

- (a) the indebtedness evidenced by the Note in lawful money of the United States of America;
- (b) interest, default interest, late charges and other sums, as provided in the Note;
- (c) all other monies agreed or provided to be paid by Borrower in the Note;
- (d) all sums advanced pursuant to this Mortgage to protect and preserve the Property and the lien and the security interest created hereby; and
- (e) all sums advanced and costs and expenses incurred by Lender in connection with the Debt or any part thereof, any renewal, extension, modification, replacement, restatement or increase of or substitution for the Debt or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Borrower or Lender;

limited, however, to an amount not to exceed THREE HUNDRED FIFTY THOUSAND AND NO/100 U.S. DOLLARS (\$350,000.00) (the "Debt").

Section 2.2. OTHER OBLIGATIONS. This Mortgage and the grants, assignments and transfers made in Section 1 are also given for the purpose of securing the performance of each and every other obligation of Borrower contained herein (the "Other Obligations").

Section 2.3. PAYMENT OF DEBT. Borrower shall pay the Debt at the time and in the manner provided in the Note and in this Mortgage. Borrower's obligations for the payment of the Debt and the performance of the Other Obligations shall be referred to collectively as the "Obligations."

Section 2.4. PERFORMANCE OF OTHER AGREEMENTS. Borrower shall observe and perform each and every term to be observed or performed by Borrower pursuant to the terms of any agreement or recorded instrument affecting or pertaining to the Property, or given by Borrower to Lender for the purpose of further securing an Obligation and any amendments, modifications or changes thereto.

Section 2.5. PAYMENTS. Unless payments are made in the required amount in immediately available funds at the place where the Note is payable, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Lender in funds immediately available at the place where the Note is payable (or

any other place as Lender, in Lender's sole discretion, may have established by delivery of written notice thereof to Borrower) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks; provided, however, Lender shall not be required to accept payment for any Obligation in cash. Acceptance by Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

Section 2.6. INCORPORATION BY REFERENCE. All the covenants, conditions and agreements contained in (a) the Note, (b) the Loan Agreement, and (c) all and any of the documents other than the Note or this Mortgage now or hereafter executed by Borrower and/or others and by or in favor of Lender, which wholly or partially secure or guaranty payment of the Note, the Other Obligations or are otherwise executed and delivered in connection with the Loan (collectively such documents together with the Note and 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.

Section 3 - PROPERTY COVENANTS

Borrower covenants and agrees that:

Section 3.1 PROPERTY USE. The Property shall be used only for such lawful purposes as do not adversely affect the value of the Property, and for no other use without the prior written consent of Lender.

Section 3.2. MANAGEMENT. The Property shall be managed by either Borrower, or an entity affiliated with Borrower approved by Lender, in a first-class manner. All Rents generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Borrower's liabilities and obligations with respect to the Loan Documents, and none of the Rents generated by or derived from the Property shall be diverted by Borrower and utilized for any other purpose unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied.

Section 3.3. INSURANCE.

(a) Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the following coverages:

(i) **Property Insurance.** Insurance with respect to the Improvements and Personal Property insuring against any peril now or hereafter included within the classification "Cause of Loss -- Special Form" (sometimes referred to as "All Risk of Physical Loss") in amounts at all times sufficient to prevent Lender from becoming a co-insurer within the terms of the Policies and under Applicable Law, but in any event such insurance shall be maintained in an amount which, after application of deductible, shall be equal to the actual replacement cost of the Improvements and Personal Property (without taking into account any depreciation) (the "Replacement Cost");

(ii) **Liability Insurance.** Commercial general liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon Lender and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Property in such amounts as are generally available at commercially reasonable

premiums and are generally required by institutional lenders for properties comparable to the Property. This requirement may be satisfied by a layering of Commercial General Liability, Umbrella and Excess Liability Policies.

(iii) Other Insurance. Statutory workers' compensation insurance with respect to any work on or about the Property; broad form boiler and machinery insurance (without exclusion for explosion) covering all boilers or other pressure vessels, machinery, and equipment located in, on or about the Property (including "system breakdown coverage") and insurance against loss of occupancy or use arising from any breakdown in such amounts as are generally required by institutional lenders for properties comparable to the Property; at all times during which construction, repairs or alterations are being made with respect to the Improvements which either affect the structure of the Improvements or will cost in excess of 5% of the value of the Property, a standard policy of Builders Risk insurance until such Improvements are fully completed, in amounts satisfactory to Lender, but not less than the Replacement Cost; and such other insurance with respect to the Property or on any replacements or substitutions or additions or increased coverage limits as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated.

Any and all policies of insurance obtained or required by this Section are referred to herein as a "Policy" or the "Policies."

(b) All insurance provided for in Section 3.3 shall be carried with generally recognized, responsible insurance companies, with such deductibles as are commercially reasonable and in amounts approved by Lender, with a standard non-contributing mortgagee clause and with Lender named as an insured and loss payee. All Policies shall contain (i) a provision that such Policies shall not be denied renewal, materially changed (other than to increase the coverage provided), cancelled or terminated, nor shall they expire, without at least thirty (30) days' prior written notice to Lender in each instance; and (ii) include effective waivers by the insurer of all claims for applicable premiums ("Insurance Premiums") against any mortgagee, loss payees, additional insureds and named insureds (other than Borrower). Evidence of insurance with respect to all renewal and replacement Policies shall be delivered to Lender not less than twenty (20) days prior to the expiration date of any of the Policies required to be maintained hereunder which evidence shall bear notations evidencing payment of Insurance Premiums. Originals or evidence of such replacement Policies shall be delivered to Lender promptly after Borrower's receipt thereof but in any case within thirty (30) days after the effective date thereof. If Borrower fails to maintain and deliver to Lender the original Policies or evidence of insurance required by this Mortgage, Lender may procure such insurance at Borrower's sole cost and expense.

(c) Borrower shall comply with all insurance requirements and shall not cause or permit any condition to exist on the Property which would be prohibited by an insurance requirement, or would invalidate the insurance coverage required hereunder to be maintained by Borrower pursuant to this Section and shall not purchase any additional amounts of insurance that would cause Lender to become a co-insurer within the terms of the Policies.

(d) Subject to Section 3.7, Lender may apply any and all proceeds of any Policies carried under this Section 3.3 as a result of damage or destruction to the Property to the reduction or discharge of the Debt whether or not then due and payable.

(e) In the event of a foreclosure of the Mortgage or other transfer of title to the Property in extinguishment in whole or in part of the Debt, all right, title and interest of Borrower in and to the Policies then in force concerning the Property and all proceeds payable thereunder shall thereupon vest

in Lender or the purchaser at such foreclosure or other transferee in the event of such other transfer of title.

Section 3.4. PAYMENT OF TAXES, ETC.

(a) Borrower shall promptly pay by their due date all taxes, assessments (whether general, special or otherwise), water rates, sewer rents, governmental impositions, and other charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Taxes"), all maintenance charges and similar charges, now or hereafter levied or assessed or imposed against the Property or any part thereof (the "Other Charges"), and all charges for utility services provided to the Property as same become due and payable. Borrower will deliver to Lender, promptly upon Lender's request, evidence satisfactory to Lender that the Taxes, Other Charges and utility service charges have been so paid or are not then delinquent. Borrower 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 Property.

(b) After prior written notice to Lender, Borrower, at its own expense, may contest by appropriate legal proceeding, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application in whole or in part of any of the Taxes, provided that (i) no Event of Default has occurred and is continuing under any of the Loan Documents, (ii) neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost, unless Borrower has paid all of the Taxes under protest, or Borrower shall have furnished the security as may be required in the proceeding, or as may be reasonably requested by Lender to insure the payment of any contested Taxes, together with all interest and penalties thereon.

Section 3.5. CONDEMNATION.

(a) If all or any part of the Property shall be damaged or taken as a result of a Taking, either temporarily or permanently, the entire amount of the Debt secured by this Mortgage shall, at the option of Lender, become immediately due and payable. Borrower hereby assigns, transfers and sets over unto Lender the Taking Proceeds or any claim for damages for any of the Property taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Property is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage. Any and all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Lender by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Borrower shall reimburse Lender therefor immediately, or Lender shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Lender hereunder. In the event that the Property is wholly condemned, Lender shall receive from Borrower and/or from the Taking Proceeds payment of the entire amount of the indebtedness secured by this Mortgage.

(b) Borrower will immediately notify Lender of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Property, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Lender copies of any and all papers served in connection with any such proceedings. Borrower further covenants and agrees to make, execute and deliver to Lender, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Lender for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Borrower, at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or

temporary, under any such proceedings. In the event of a Taking, Lender shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein. Borrower hereby assigns to Lender so much of the balance of the Taking Proceeds payable by the condemning authority as is required to pay such interest.

(c) Borrower hereby irrevocably authorizes and appoints Lender its attorney-in-fact, coupled with an interest, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of the indebtedness secured hereby whether then matured or not. Borrower shall execute and deliver to Lender on demand such assignments and other instruments as Lender may require for such purposes.

(d) Notwithstanding anything to the contrary contained herein, Lender may apply any award of Taking Proceeds to the reduction or discharge of the Debt whether or not then due and payable, provided, however, that if the taking is not of a "material portion" of the Property, the Taking Proceeds shall be made available to Borrower for restoration. As used herein the term "material portion" shall mean a taking that is of any portion of the building or Improvements on the Property or is equal to or greater than either: i) ten percent (10%) of the area of the Property, or ii) ten percent (10%) of the value of the Property (based upon the Purchase Price).

Section 3.6. CASUALTY.

(a) If the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, or if the Property or any portion thereof is taken in any condemnation or eminent domain proceeding, Borrower shall give prompt notice of such damage or taking to Lender. Subject to Lender's rights contained in this Section 3.6 and provided Lender has not applied the Proceeds to the Debt secured hereunder, Borrower shall promptly commence and diligently proceed to restore, repair, replace or rebuild the Property (the "Restoration") in a workmanlike manner to the extent practicable to be of at least equal value and condition and substantially the same character as the Property was immediately prior to such fire or other casualty or taking, with such alterations as may be approved by Lender.

(b) Borrower hereby authorizes Lender, at its option, to collect, adjust and compromise the proceeds payable with respect to any such casualty ("Casualty Proceeds"), and hereby irrevocably appoints Lender as its attorney-in-fact, coupled with an interest, for such purposes. Lender shall have the right to deduct from the Casualty Proceeds any expenses incurred by Lender in connection with such collection and shall either: i) apply the Casualty Proceeds in reduction of the indebtedness secured hereby, whether then matured or not, or ii) release the Casualty Proceeds to Borrower, in such manner as Lender deems appropriate, in whole or in part to be applied toward the restoration of the improvements, in which event Lender shall not be obligated to see to the proper application thereof nor shall the amount so released or used be deemed a payment on any indebtedness secured hereby. In the event of foreclosure of this Mortgage or other transfer of title in lieu of foreclosure, all right, title and interest of Borrower, in and to any insurance policies then in force shall pass to the purchaser or Lender as the case may be.

(c) All proceeds of use and occupancy or rental value insurance shall be paid to Lender for the purpose of paying, to the extent available and necessary, in the following order: (1) insurance premiums payable with respect to any insurance required to be carried by Borrower under this Mortgage, (2) taxes, assessments and charges payable by Borrower under this Mortgage, and (3) all amounts payable on the Note, together with any additions to the indebtedness under this Mortgage, and to the extent that such insurance proceeds are available to pay the items listed in clauses (1), (2) and (3), Lender shall pay such

items for the account of Borrower. All such insurance proceeds not deemed necessary, in Lender's sole opinion, to pay the above items shall be paid over to Borrower.

(d) Upon any failure on the part of Borrower promptly to commence or continue the repair or restoration of the Property after settlement of any claim with the insurer, Lender shall have the right to apply such insurance proceeds to the payment of any indebtedness secured by this Mortgage and resort to such other remedies available to Lender hereunder; provided, however, that nothing herein contained shall prevent Lender from applying at any time the whole or any part of such insurance proceeds to the curing of any default under this Mortgage or the Note.

Section 3.7. LEASES AND RENTS.

(a) Borrower may enter into a proposed Lease without the prior written consent of Lender, provided such proposed Lease: (i) does not have a materially adverse effect on the value of the Property taken as a whole, and (ii) is subject and subordinate to the Mortgage and the lessee thereunder agrees to attorn to Lender. Borrower shall promptly deliver to Lender copies of all Leases which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Section.

(b) Borrower (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 any of the Leases as security for the Debt; (ii) upon request, shall promptly send copies to Lender of all notices of default which Borrower shall send or receive thereunder; (iii) shall enforce all of the material terms, covenants and conditions contained in the Leases upon the part of the tenant thereunder to be observed or performed; (iv) shall not collect any of the Rents more than one (1) month in advance (except security deposits shall not be deemed Rents collected in advance); (v) shall not execute any other assignment of the lessor's interest in any of the Leases or the Rents; and (vi) shall not consent to any assignment of or subletting under any Leases not in accordance with their terms, without the prior written consent of Lender.

(c) Borrower may, without the consent of Lender, amend, modify or waive the provisions of any Lease or terminate, reduce rents under, accept a surrender of space under, or shorten the term of, any Lease provided that such action does not have a materially adverse effect on the value of the Property taken as a whole, and provided that such Lease, as amended, modified or waived, is otherwise in compliance with the requirements of this Mortgage and any subordination agreement binding upon Lender with respect to such Lease. Borrower shall promptly deliver to Lender copies of amendments, modifications and waivers which are entered into pursuant to this Subsection together with Borrower's certification that it has satisfied all of the conditions of this Subsection.

(d) Notwithstanding anything contained herein to the contrary, Borrower's rights under this Section shall be subject and subordinate to Borrower's obligations and Lender's rights contained in Section 8.

Section 3.8. MAINTENANCE AND USE OF PROPERTY. Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property) without the consent of Lender, which consent shall not be unreasonably withheld. Subject to Section 3.6, Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 3.5 and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.9. WASTE. Borrower shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Property, or take any action that might invalidate or give cause for cancellation of any Policy, or do or permit to be done thereon anything that may in any way impair the value of the Property or the security of this Mortgage.

Section 3.10. COMPLIANCE WITH LAW. Borrower shall promptly comply with all Applicable Laws affecting the Property, or the use thereof. Borrower shall, upon Lender's request, provide Lender with evidence reasonably satisfactory to Lender that the Property complies with all Applicable Laws or is exempt from compliance with Applicable Laws. Borrower shall give prompt notice to Lender of the receipt by Borrower of any notice related to a violation of any Applicable Laws and of the commencement of any proceedings or investigations which relate to compliance with Applicable Laws.

Section 3.11. PAYMENT FOR LABOR AND MATERIALS. Borrower will promptly pay when due all bills and costs for labor, materials, and specifically fabricated materials incurred in connection with the Property and never permit to exist in respect of the Property or any part thereof any lien or security interest, even though inferior to the liens and the security interests hereof, and in any event never permit to be created or exist in respect of the Property or any part thereof any other or additional lien or security interest other than the liens or security interests hereof, except for the Permitted Exceptions.

Section 4 – COVENANTS OF BORROWER

Borrower covenants and agrees that:

Section 4.1. EXISTENCE. Borrower will continuously maintain (a) its existence and shall not dissolve or permit its dissolution, (b) its rights to do business in the state where the Property is located and (c) its franchises and trade names, if any.

Section 4.2. CHANGE OF PRINCIPAL PLACE OF BUSINESS/CHIEF EXECUTIVE OFFICE. If Borrower shall change its principal place of business or chief executive office, Borrower shall promptly provide notice to Lender and agrees to execute such instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Property as a result of such change of principal place of business.

Section 4.3. CHANGE OF NAME, IDENTITY OR STRUCTURE. Borrower will not change Borrower's name, identity (including its trade name or names) or Borrower's corporate, partnership or other structure without notifying Lender of such change in writing at least thirty (30) days prior to the effective date of such change and, in the case of a change in Borrower's structure, without first obtaining the prior written consent of Lender.

Section 5 - REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Lender that:

Section 5.1. WARRANTY OF TITLE. Borrower has good title to the Property and has the right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the same and that Borrower possesses an unencumbered fee simple absolute estate in the Land and the Improvements and that it owns the Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown in the title insurance policy issued in connection with its acquisition of the Property (the "Permitted Exceptions"). Borrower shall forever warrant, defend and preserve the title and the

validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Lender against the claims of all persons.

Section 5.2. LEGAL STATUS AND AUTHORITY. Borrower (a) is duly organized, validly existing and in good standing under the laws of its state of organization or incorporation; (b) is duly qualified to transact business and is in good standing in the state where the Property is located; and (c) has all necessary approvals, governmental and otherwise, and full power and authority to own, operate and lease the Property. Borrower has full power, authority and legal right to mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey the Property pursuant to, and to keep and observe all of, the terms of this Mortgage.

Section 5.3. VALIDITY OF DOCUMENTS. (a) The execution, delivery and performance of the Loan Documents and the borrowing evidenced by the Note (i) are within the power and authority of Borrower; (ii) have been authorized by all requisite organizational action; (iii) have received all necessary approvals and consents, corporate, governmental or otherwise; (iv) will not violate, conflict with, result in a breach of or constitute (with notice or lapse of time, or both) a material default under any provision of law, any order or judgment of any court or governmental authority, the articles of incorporation, by-laws, partnership or trust agreement, articles of organization, operating agreement, or other governing instrument of Borrower, or any indenture, agreement or other instrument to which Borrower is a party or by which it or any of its assets or the Property is or may be bound or affected; (v) will not result in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of its assets, except the lien and security interest created hereby; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Mortgage in appropriate land records in the State where the Property is located and except for Uniform Commercial Code filings relating to the security interest created hereby); (b) the Loan Documents have been duly executed and delivered by Borrower through the undersigned authorized representative of Borrower; and (c) to the best of Borrower's knowledge, the Loan Documents constitute the legal, valid and binding obligations of Borrower.

Section 5.4. STATUS OF PROPERTY. Borrower has obtained all necessary certificates, licenses and other approvals, governmental or otherwise, necessary for the operation of the Property and the conduct of its business, and all required zoning, building code, land use, environmental and other similar permits or approvals, all of which are in full force and effect as of the date hereof and not subject to revocation, suspension, forfeiture or modification. The Property, and the present and contemplated use and occupancy thereof, are in full compliance with all Applicable Laws. The Property is served by all utilities required for the current or contemplated use thereof.

Section 5.6. FINANCIAL CONDITION.

(a) Borrower is solvent, and no proceeding under Creditors Rights Laws with respect to Borrower has been initiated, and Borrower has received reasonably equivalent value for the granting of this Mortgage.

(b) No petition in bankruptcy has been filed by or against Borrower, any Guarantor, any Indemnitor or any related entity, or any principal, general partner or member thereof, in the last seven (7) years, and neither Borrower, any Guarantor, any Indemnitor nor any related entity, or any principal, general partner or member thereof, in the last seven (7) years has ever made any assignment for the benefit of creditors or taken advantage of any Creditors Rights Laws.

Section 5.7. BUSINESS PURPOSES. The Loan is solely for the business purpose of Borrower, and is not for personal, family, household, or agricultural purposes.

Section 5.8. TAXES. Borrower has filed all federal, state, county, municipal, and city income, personal property and other tax returns required to have been filed by them and have paid all taxes and related liabilities which have become due pursuant to such returns or pursuant to any assessments received by them. Borrower does not know of any basis for any additional assessment in respect of any such taxes and related liabilities for prior years.

Section 5.9. DISCLOSURE. Borrower has disclosed to Lender all material facts and has not failed to disclose any material fact that could cause any representation or warranty made herein to be materially misleading.

Section 5.10. ILLEGAL ACTIVITY. No portion of the Property has been or will be purchased, improved, equipped, fixtured, or furnished with proceeds of any criminal or other illegal activity and to the best of Borrower's knowledge, there are no illegal activities or activities relating to controlled substances at the Property.

Section 6 - OBLIGATIONS AND RELIANCE

Section 6.1. RELATIONSHIP OF BORROWER AND LENDER. The relationship between Borrower and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Borrower, and no term or condition of any of the Loan Documents shall be construed so as to deem the relationship between Borrower and Lender to be other than that of debtor and creditor.

Section 6.2. NO RELIANCE ON LENDER. The members, general partners, principals and (if Borrower is a trust) beneficial owners of Borrower are experienced in the ownership and operation of properties similar to the Property, and Borrower and Lender are relying solely upon such expertise in connection with the ownership and operation of the Property. Borrower is not relying on Lender's expertise, business acumen or advice in connection with the Property.

Section 6.3. NO LENDER OBLIGATIONS. Notwithstanding any provision of the Loan Documents, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents. By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

Section 6.4. RELIANCE. Borrower recognizes and acknowledges that in accepting the Loan Documents, Lender is expressly and primarily relying on the truth and accuracy of the warranties and representations set forth in Section 4 and Section 5 without any obligation to investigate the Property and notwithstanding any investigation of the Property by Lender; that the warranties and representations are a material inducement to Lender in accepting the Loan Documents; and that Lender would not be willing to make the Loan and accept this Mortgage in the absence of such warranties and representations.

Section 7 - FURTHER ASSURANCES

Section 7.1. RECORDING OF MORTGAGE. Borrower forthwith upon the execution and delivery of this Mortgaged and thereafter, from time to time, will cause, or cooperate with Lender in causing, this Mortgage, and any of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the 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 and perfect the lien or security interest hereof upon, and the interest of Lender in, the Property. Borrower will pay all taxes, filing, registration or recording fees, and all expenses incident to the preparation, execution, acknowledgment and/or recording of any of the Loan Documents, any note or mortgage supplemental hereto, any security instrument with respect to the Property and any instrument of further assurance, and any modification or amendment of the foregoing documents, 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 Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 7.2. FURTHER ACTS, ETC. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming to Lender the Property and rights hereby mortgaged, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or other Loan Documents, or for filing, registering or recording this Mortgage, or for complying with Applicable Laws.

Section 7.3. ESTOPPEL CERTIFICATES.

(a) After request by Lender, Borrower, within ten (10) days, shall furnish Lender or any proposed assignee with a statement, duly acknowledged and certified, setting forth (i) that all Leases are in full force and effect and (provided the Property is not a residential multifamily property) have not been modified (or if modified, setting forth all modifications), (ii) the date to which the Rents thereunder have been paid pursuant to the Leases, (iii) whether or not, to the best knowledge of Borrower, any of the lessees under the Leases are in default under the Leases, and, if any of the lessees are in default, setting forth the specific nature of all such defaults, (iv) the amount of security deposits held by Borrower under each Lease and that such amounts are consistent with the amounts required under each Lease, and (v) as to any other matters reasonably requested by Lender and reasonably related to the Leases, the obligations secured hereby, the Property or this Mortgage.

(b) Borrower shall use its best efforts to deliver to Lender, promptly upon request, duly executed estoppel certificates from any one or more lessees as required by Lender attesting to such facts regarding the Lease as Lender may require.

Section 8 -DUE ON SALE/ENCUMBRANCE/TRANSFER

Section 8.1. NO SALE/ENCUMBRANCE/TRANSFER.

(a) Except as provided in Section 3.7 with respect to leasing the Property, Borrower shall not sell, encumber, pledge, refinance, or otherwise transfer all or any portion of the Property or Borrower's interest therein without the prior written consent of Lender, which consent may be withheld in Lender's sole and absolute discretion.

(b) For purposes of this Section sale or transfer shall include, in addition to the common and ordinary meaning of those terms and without limiting their generality, a transfer or a series of transfers of substantially all of the stock (or other ownership interests) of Borrower, transfers made to subsidiary or

affiliate entities of Borrower, transfers of ownership interests between owners, transfers by Borrower to any owner of Borrower, and any merger or consolidation between Borrower and any other entity.

Section 9 - DEFAULT

Section 9.1. EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an "Event of Default":

- (a) if any portion of the Debt is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date;
- (b) 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 Lender as provided in Section 3.3;
- (d) if Borrower sells or transfers the Property in violation of Article 8;
- (e) if any representation or warranty of, or with respect to, Borrower or any member, general partner, principal or beneficial owner thereof, made herein or in any of the other Loan Documents shall have been false or misleading in any material respect when made;
- (f) if Borrower shall file a voluntary petition in bankruptcy or under any bankruptcy act or similar law, state or federal, whether now or hereafter existing, or make an assignment for the benefit of creditors or file an answer admitting insolvency or inability to pay its debts generally as they become due, or shall fail to obtain a vacation or stay of any such proceedings which are involuntary within ninety (90) days after the institution of such proceedings;
- (g) if any plan of liquidation or reorganization is filed by or on behalf of Borrower in any bankruptcy, insolvency or other judicial proceeding, or a trustee or a receiver shall be appointed for the Property in any involuntary proceeding and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed on appeal or otherwise within ninety (90) days after the appointment thereof;
- (h) if the Property becomes subject to any mechanic's, materialman's or other lien other than a lien for any Taxes or Other Charges not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;
- (i) if any federal tax lien is filed against Borrower, any member or general partner of Borrower, or the Property and same is not discharged of record within thirty (30) days after same is filed; or
- (j) if Borrower is in default under any of the other Loan Documents.

Section 10 - RIGHTS AND REMEDIES

Section 10.1. REMEDIES. Upon the occurrence of any Event of Default, Borrower agrees that Lender may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Borrower and in and to the Property, including, but not limited to the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Debt to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Mortgage under any Applicable Law in which case the 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;
- (c) 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 and security interest of this Mortgage for the balance of the Debt not then due, unimpaired and without loss of priority;
- (d) sell for cash or upon credit the Property or any part thereof and all estate, claim, demand, right, title and interest of Borrower therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, in one or more parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by Applicable Law;
- (e) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;
- (f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage or the other Loan Documents;
- (g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of Borrower, or of any Person liable for the payment of the Debt;
- (h) subject to any Applicable Law, the license granted to Borrower under Section 1.2 shall automatically be revoked and Lender may enter into or upon the Property, either personally or by its agents, nominees or attorneys and dispossess Borrower and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of all books, records, accounts, rent rolls, leases (including the form lease) subleases (including the form sublease) and rental and license agreements with the tenants, subtenants and licensees in possession of the Property or any part or parts thereof; tenants', subtenants' and licensees' money deposits or other property (including, without limitation, any letter of credit) given to secure tenants', subtenants' and licensees' obligations under leases, subleases or licenses, together with a list of the foregoing; all lists pertaining to current rent and license fee arrears; any and all architects' plans and specifications, licenses and permits, documents, books, records, accounts, surveys and property which relate to the management, leasing, operation, occupancy, ownership, insurance, maintenance, or service of or construction upon the Property and Borrower agrees to surrender possession of the foregoing and of the Property to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Property and conduct the business thereat; (ii) complete any construction on the Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Property; (iv) exercise all rights and powers of Borrower with respect to the Property, whether in the name of Borrower 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 of the Property and every part thereof; (v) either require Borrower (A) to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be occupied by Borrower, or (B) to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower

may be evicted by summary proceedings or otherwise; and (vi) apply the receipts from the Property to the payment of the Debt, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable legal fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, Insurance Premiums and other expenses in connection with the Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise 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: (i) the right to take possession of the Personal Property and other UCC Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Personal Property and other UCC Collateral, and (ii) request Borrower at its expense to assemble the Personal Property and other UCC Collateral and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property and other UCC Collateral sent to Borrower in accordance with the provisions hereof at least five (5) days prior to such action, shall constitute commercially reasonable notice to Borrower;

(j) surrender the Policies maintained pursuant to Article 3, collect the unearned Insurance Premiums and apply such sums as a credit on the Debt in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Borrower to collect any unearned Insurance Premiums;

(k) apply the undisbursed balance of any Net Proceeds, together with interest thereon, to the payment of the Debt in such order, priority and proportions as Lender shall deem to be appropriate in its discretion;

(l) exercise all rights and remedies under any causes of action, whether before or after any sale of the Property by foreclosure, power of sale, or otherwise and apply the proceeds of any recovery to the Debt or to any deficiency under this Mortgage; or

(m) pursue such other remedies as Lender may have under applicable state or federal law.

In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of the Property, this Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority. Notwithstanding the provisions of this Section to the contrary, if any Event of Default as described in Article 9 shall occur, the entire unpaid Debt shall be automatically due and payable, without any further notice, demand or other action by Lender.

Section 10.2. APPLICATION OF PROCEEDS. The purchase money, proceeds and avails of any disposition of the Property, or any part thereof, or any other sums collected by Lender pursuant to the Loan Documents, may be applied by Lender to the payment of the Debt in such priority and proportions as Lender in its discretion shall deem proper.

Section 10.3. RIGHT TO CURE DEFAULTS. Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation hereunder, make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Property or to foreclose this Mortgage or collect the Debt. The cost and expense of any cure hereunder (including reasonable legal fees to the extent permitted by law), with interest, shall constitute a

portion of the Debt and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Debt and be secured by this Mortgage and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 10.4. ACTIONS AND PROCEEDINGS. Lender has the right to appear in and defend any action or proceeding brought with respect to the Property, and after the occurrence and during the continuance of an Event of Default, to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

Section 10.5. RECOVERY OF SUMS REQUIRED TO BE PAID. Lender 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 Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Borrower existing at the time such earlier action was commenced.

Section 10.6. OTHER RIGHTS, ETC.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Borrower to take any action to foreclose this Mortgage or otherwise enforce any of the provisions of the Loan Documents, (ii) the release, regardless of consideration, of the whole or any part of the Property, or of any Person liable for the Debt or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment, changing the rate of interest, or otherwise modifying or supplementing the terms of the Loan Documents.

(b) It is agreed that the risk of loss or damage to the Property is on Borrower, and Lender shall have no liability whatsoever for decline in value of the Property, for failure to maintain the Policies, or for failure to determine whether insurance in force is adequate as to the amount of risks insured. Possession by Lender shall not be deemed an election of judicial relief, if any such possession is requested or obtained, with respect to any Property or collateral not in Lender's possession.

(c) Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Mortgage. The rights of Lender under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender 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.

Section 10.7. RIGHT TO RELEASE ANY PORTION OF THE PROPERTY. Lender may release any portion of the Property for such consideration as Lender may require without, as to the remainder of the Property, in any way impairing or affecting the lien or priority of this Mortgage, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require

without being accountable for so doing to any other lienholder. This Mortgage shall continue as a lien and security interest in the remaining portion of the Property.

Section 10.8. VIOLATIONS OF LAW. If the Property is not in compliance with Applicable Laws, Lender may impose additional requirements upon Borrower in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 10.9. RIGHT OF ENTRY. Lender and its agents shall have the right to enter and inspect the Property at all reasonable times.

Article 11 - ENVIRONMENTAL HAZARDS

Section 11.1. ENVIRONMENTAL COVENANTS. Borrower covenants and agrees that so long as Borrower owns, manages, is in possession of, or otherwise controls the operation of the Property: (a) all uses and operations on or of the Property, whether by Borrower or any other Person, shall be in compliance with all Environmental Laws and permits issued pursuant thereto; (b) there shall be no Releases of Hazardous Materials in, on, under or from the Property; (c) there shall be no Hazardous Materials in, on, or under the Property, except those that are both (i) in compliance with all Environmental Laws and with permits issued pursuant thereto, if and to the extent required, and (ii) (A) in amounts not in excess of that necessary to operate the Property or (B) fully disclosed to and approved by Lender in writing; (d) Borrower shall keep the Property free and clear of all Environmental Liens; (e) Borrower shall, at its sole cost and expense, fully and expeditiously cooperate in all activities pursuant to this Section, including but not limited to providing all relevant information and making knowledgeable persons available for interviews; (f) Borrower shall, at its sole cost and expense, perform any environmental site assessment or other investigation of environmental conditions in connection with the Property, pursuant to any reasonable written request of Lender, upon Lender's reasonable belief that the Property is not in full compliance with all Environmental Laws, and share with Lender the reports and other results thereof, and Lender shall be entitled to rely on such reports and other results thereof; (g) Borrower shall, at its sole cost and expense, comply with all reasonable written requests of Lender to (i) reasonably effectuate remediation of any Hazardous Materials in, on, under or from the Property; and (ii) comply with any Environmental Law; (h) Borrower shall not allow any tenant or other user of the Property to violate any Environmental Law; and (i) Borrower shall immediately notify Lender in writing after it has become aware of (A) any presence or Release or threatened Release of Hazardous Materials in, on, under, from or migrating towards the Property; (B) any non-compliance with any Environmental Laws related in any way to the Property; (C) any actual or potential Environmental Lien against the Property; (D) any required or proposed remediation of environmental conditions relating to the Property; and (E) any written or oral notice or other communication of which Borrower becomes aware from any source whatsoever (including but not limited to a governmental entity) relating in any way to Hazardous Materials. Any failure of Borrower to perform its obligations pursuant to this Section 11.1 shall constitute an event of default and bad faith waste with respect to the Property.

Section 11.2. LENDER'S RIGHTS. Lender and any other Person designated by Lender, including but not limited to any representative of a governmental entity, and any environmental consultant, and any receiver appointed by any court of competent jurisdiction, shall have the right, but not the obligation, to enter upon the Property at all reasonable times to assess any and all aspects of the environmental condition of the Property and its use, including but not limited to conducting any environmental assessment or audit (the scope of which shall be determined in Lender's sole discretion) and taking samples of soil, groundwater or other water, air, or building materials, and conducting other invasive testing. Borrower shall cooperate with and provide access to Lender and any such person or entity designated by Lender.

Section 11.3. ENVIRONMENTAL DEFINITIONS. "Environmental Law" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act, that apply to Borrower or the Property and relate to Hazardous Materials or protection of human health or the environment. "Environmental Liens" means all Liens and other encumbrances imposed pursuant to any Environmental Law, whether due to any act or omission of Borrower or any other Person. "Environmental Report" means the written reports resulting from the environmental site assessments of the Property delivered to Lender. "Hazardous Materials" shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls ("PCBs") and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material", "hazardous waste", "toxic substance", "toxic pollutant", "contaminant", or "pollutant" within the meaning of any Environmental Law. "Release" of any Hazardous Materials includes but is not limited to any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials.

Section 12 - INDEMNIFICATION

Section 12.1. GENERAL INDEMNIFICATION. Borrower shall, at its sole cost and expense, protect, defend, indemnify, release and hold harmless Lender from and against any and all Losses imposed upon or incurred by or asserted against Lender and directly or indirectly arising out of or in any way relating to any one or more of the following: (a) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (b) any use, nonuse or condition in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways; (c) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof; (d) any failure of the Property to be in compliance with any Applicable Laws; (e) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained in any Lease; or (f) the payment of any commission, charge or brokerage fee to anyone which may be payable in connection with the Property. Any amounts payable to Lender by reason of the application of this Section 12.1 shall become immediately due and payable and shall bear interest at the Default Rate from the date loss or damage is sustained by Lender until paid. The term "Losses" shall mean any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, fines, penalties, charges, fees, judgments, awards, amounts paid in settlement of whatever kind or nature (including but not limited to legal fees and other costs of defense).

Section 12.2. DUTY TO DEFEND; LEGAL FEES AND OTHER FEES AND EXPENSES. Upon written request by Lender, Borrower shall defend Lender by attorneys and other professionals approved by Lender. Notwithstanding the foregoing, Lender may, in its sole discretion, engage its own attorneys and other professionals to defend or assist it, and, at the option of Lender, its attorneys shall control the resolution of any claim or proceeding. Upon demand, Borrower shall pay or, in the sole discretion of Lender, reimburse Lender for the payment of reasonable fees and disbursements of attorneys, engineers, environmental consultants, laboratories and other professionals in connection therewith.

Section 13 - WAIVERS

Section 13.3. WAIVER OF COUNTERCLAIM. Borrower hereby waives the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against it by Lender arising out of or in any way connected with any of the Loan Documents.

Section 13.4. MARSHALLING AND OTHER MATTERS. Borrower hereby waives, to the extent permitted by law, the benefit of all Applicable Laws now or hereafter in force regarding appraisement, valuation, stay, extension, reinstatement and redemption and all rights of marshalling in the event of any sale hereunder of the Property or any part thereof or any interest therein. Further, Borrower hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Borrower, and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by Applicable Law.

Section 13.5. WAIVER OF NOTICE. Borrower shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Mortgage specifically and expressly provides for the giving of notice by Lender to Borrower and except with respect to matters for which Lender is required by Applicable Law to give notice, and Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Mortgage does not specifically and expressly provide for the giving of notice by Lender to Borrower.

Section 13.6. SOLE DISCRETION OF LENDER. Wherever pursuant to this Mortgage (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision to approve or disapprove all decisions that arrangements or terms are satisfactory or not satisfactory, and all other decisions and determinations made by Lender, shall be in the sole discretion of Lender, except as may be otherwise expressly and specifically provided herein.

Section 13.7. WAIVER OF TRIAL BY JURY. BORROWER AND LENDER, BY ACCEPTANCE OF THIS MORTGAGE, HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER OR BORROWER.

Section 13.8. WAIVER OF FORECLOSURE DEFENSE. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

Section 14 - INCORPORATION

Section 14.1. INCORPORATION. The provisions of the Note are hereby incorporated by reference to the fullest extent as if the text of such Note were set forth in its entirety herein.

Section 15 – NOTICES

Section 15.1. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, or (ii) one (1) Business Day after having been deposited

for overnight delivery with nationally recognized overnight courier, at the addresses set forth on the first page of this Mortgage or addressed as such party may from time to time designate by written notice to the other parties. Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Section 16 - CHOICE OF LAW

Section 16.1. CHOICE OF LAW. This Mortgage shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America, without reference to conflict of laws or choice of laws.

Section 16.2. PROVISIONS SUBJECT TO LAW. All rights, powers and remedies provided in this Mortgage may be exercised only to the extent that the exercise thereof does not violate any Applicable Law and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any Applicable Law.

Section 17 - DEFINITIONS

Section 17.1. GENERAL USAGE. 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 words "Applicable Laws" shall mean "all existing and future federal, state and local laws, orders, ordinances, governmental rules and regulations and court orders and is expressly deemed to include all Environmental Laws;" the word "Borrower" shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or any interest therein;" the words "Lease" shall include any guaranty, letter of credit or other credit support with respect thereto; the word "Lender" shall mean "Lender and any subsequent holder of the Note;" the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Mortgage together with all extensions, renewals, modifications, substitutions and amendments thereof;" the word "Loan" shall mean "the Debt evidenced by the Note and secured by the Loan Documents;" the word "Person" shall include an individual, corporation, limited liability company, partnership, trust, unincorporated association, government, governmental authority, and any other entity; the word "Property" shall include any portion of the Property and any interest therein; the phrase "legal fees" shall include any and all counsel, attorney, paralegal and law clerk fees and disbursements, including, but not limited to fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder, whether with respect to retained firms, the reimbursement for the expenses of in-house staff or otherwise; and the words "Loan Documents" shall include any and all extensions, renewals, substitutions, replacements, amendments, modifications and/or restatements of any of the Loan Documents.

Section 18 - MISCELLANEOUS PROVISIONS

Section 18.1. 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 Borrower or Lender, 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.

Section 18.2. LIABILITY. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Mortgage shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

Section 18.3. 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 not be invalidated in their entirety, but shall be construed without such provision.

Section 18.4. DUPLICATE ORIGINALS. This Mortgage may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original.

Section 18.5. HEADINGS, ETC. The headings and captions of various Articles and Sections 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.

Section 18.6. NUMBER AND GENDER. 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.

IN WITNESS WHEREOF, this Mortgage has been executed by Borrower as of the day and year first above written.

BORROWER:

WITNESSES:

George M. Vaughn
George M. Vaughn

PRINT NAME

Melissa N. Brown
MELISSA N. BROWN

PRINT NAME

AQUAPURE WATER SYSTEMS, L.L.C.

BY: John H. Crilly
John H. Crilly
President and CEO

ACKNOWLEDGMENT

STATE OF ALABAMA)

)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that John H. Crilly whose name as President and CEO of Aquapure Water Systems, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such President and CEO, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 28th day of June, 2001.

Angela P. Phillips
NOTARY PUBLIC

My commission expires:

01/16/04

NOTARY MUST AFFIX SEAL

EXHIBIT A

(DESCRIPTION OF LAND)

Lot 3, according to a Resurvey of Lot 1, Yeager Commercial Park North as recorded in Map Book 24, page 08 in the Office of Probate of Shelby County, Alabama; being situated in Shelby County, Alabama.

Inst # 2001-27600

**07/05/2001-27600
07:48 AM CERTIFIED
22 SHELBY COUNTY JUDGE OF PROBATE
022 CJ1 599.00**