

PREPARED BY AND AFTER RECORDING, MAIL TO:

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600 North 20th Street
Suite 400
Birmingham, Alabama 35203**

STATE OF ALABAMA)

COUNTY OF SHELBY)

Inst # 2001-57002
04:26 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 CH 184.85

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of this 1st day of March, 2001, is between COLONIAL PROPERTIES SERVICES, INC., an Alabama corporation (hereinafter called the "Borrower"), whose address is 2101 6th Avenue North, Suite 900, Birmingham, Alabama 35203 and COLONIAL REALTY LIMITED PARTNERSHIP, a Delaware limited partnership (hereinafter called the "Lender"), Mortgagee, whose address is 2101 6th Avenue North, Suite 900, Birmingham, Alabama 35203.

RECITALS:

A. Borrower is indebted to the Lender for money loaned in the principal sum of Forty-One Thousand Eight Hundred Forty-Seven and 03/100 Dollars (\$41,847.03), (the "Loan"), as is evidenced by that certain Promissory Note of even date herewith from the Borrower (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note").

B. As a condition precedent to making the Loan, the Lender has required that the Borrower execute this Mortgage as security for the Loan and the other Loan Obligations (as hereinafter defined).

AGREEMENT

NOW, THEREFORE, the undersigned, for and in consideration of the indebtedness above mentioned and the Loan Obligations, and to secure the prompt payment and performance of the Loan Obligations, does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage, pledge

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and set over unto Lender, its successors and assigns, all Borrower's right, title and interest in and to the land more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, and interests in such land, real estate, and any buildings, improvements, fixtures, furniture, and other personal property hereafter located on such land (and including replacements, additions, accessions, substitutions and products thereto, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property"):

TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in:

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Mortgaged Property, including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers, cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, under padding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Mortgaged Property in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Mortgaged Property (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements"); and

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to (i) a taking or damaging of the Mortgaged Property or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Mortgaged Property or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided for the benefit of or naming Lender, and refunds or rebates of taxes or assessments on the Mortgaged Property;

(d) all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") hereafter affecting the Mortgaged Property including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Borrower may have against

any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding; including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the Mortgaged Property or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices and deposits securing reservations of such space) license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance.

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Mortgaged Property or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

(f) all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Mortgaged Property or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Mortgaged Property or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Borrower with proceeds to satisfy the loan evidenced hereby or improve the Mortgaged Property or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees;

(g) all books, records, surveys, reports and other documents related to the Mortgaged Property, the Improvements, the Leases, or other items of collateral described herein; and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.

(i) all licenses and rights including, without limitation, business, alcoholic beverage control board, restaurant or other licenses, rights or permits.

All of the foregoing described collateral is exclusive of any furniture, furnishings or trade fixtures owned and supplied by tenants of the Mortgaged Property. The Mortgaged Property,

the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property".

TOGETHER with all Appurtenant Rights, including, without limitation, easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

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

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay to the Lender the Loan Obligations, at the times and in the manner stipulated herein, in the Note and in the other Loan Documents, all without any deduction or credit for taxes or other similar charges paid by the Borrower and shall cause all other obligated parties to, keep, perform, and observe all and singular the covenants and promises herein, in the Note and in each of the other Loan Documents expressed to be kept, performed, and observed, all without fraud or delay, then this Mortgage, and all the properties, interests, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender and represents and warrants unto Lender as follows:

ARTICLE I

DEFINED TERMS

1.01 Defined Terms. As used herein, the following terms will have the following meanings:

"Accounts" means all accounts (including accounts receivable) arising from the operation of the Facility, including but not limited to, rights to payment for goods sold or leased or for services rendered, not evidenced by an Instrument.

"Appurtenant Rights" means all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, flowers, shrubs, timber and other emblements now or hereafter appurtenant to, or used or useful in connection with, or located on, under or above the Property, or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any other Mortgaged Property, or any part thereof.

"Equipment" means all fixtures and equipment located on, attached to or used or useful in connection with the Property or the Facility, including, but not limited to, beds, linen, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, rehabilitation equipment and restaurant and kitchen equipment; provided, however, that with respect to any items which are leased and not owned, the Equipment shall include the leasehold interest only together with any options to purchase any of said items and any additional or greater rights with respect to such items hereafter acquired (but nothing herein shall permit the leasing of any Equipment except as otherwise expressly permitted herein unless Lender's written consent is first obtained).

"Facility" means any building or improvement located on the Property.

"General Intangibles" means all general intangibles and other intangible personal property arising out of or connected with the Property or the Facility (other than Accounts, Rents, Instruments, Inventory, Money and Permits, including, without limitation, choses in action, contract rights and other rights to payment of money).

"Improvements" means all buildings, structures and improvements of every nature whatsoever hereafter situated on the Property, including, but not limited to, all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, air conditioning equipment, carpeting and other floor coverings, water heaters, awnings and storm sashes, cleaning apparatus, signs, landscaping, and parking areas, which are or shall be attached to the Property or said buildings, structures or improvements.

"Instruments" means all instruments, chattel paper, documents or other writings obtained from or in connection with the operation of the Property or the Facility (including, without limitation, all ledger sheets, computer records and printouts, data bases, programs, books of account and files relating thereto).

"Inventory" means all inventory from time to time used at the Facility.

"Loan Documents" means, collectively, this Mortgage and the Note, together with any and all other documents executed by Borrower or others, evidencing, securing, or otherwise relating to the Loan.

"Loan Obligations" means the aggregate of all principal and interest owing from time to time under the Note and all expenses, charges and other amounts from time to time owing under the Note, this Mortgage, or the other Loan Documents and all covenants, agreements and other obligations from time to time owing to, or for the benefit of, Lender pursuant to the Loan Documents.

"Money" means all monies, cash, rights to deposit or savings accounts or other items of legal tender obtained from or for use in connection with the operation of the Facility.

"Permits" means all licenses, permits, certificates, approvals, authorizations and registrations obtained from any governmental or quasi-governmental authority and used or useful in connection with the ownership, operation, use or occupancy of the Property or the Facility, including, without limitation, building permits, business licenses, licenses to conduct business, and all such other permits, licenses and rights.

"Permitted Encumbrances" means all matters set forth in Exhibit B hereto, provided that to the extent any of the same are listed as subordinate, such matters are permitted only so long as they are in fact subordinate to this Mortgage.

"Proceeds" means all proceeds (whether cash or non-cash, moveable or immovable, tangible or intangible), including proceeds of insurance and condemnation, from the sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the Mortgaged Property.

"Rents" means all rent and other payments of whatever nature from time to time payable pursuant to any lease of the Property or the Facility, or any part thereof.

1.02 Singular and Plural. Singular terms shall include the plural forms and vice versa, as applicable of the terms defined.

1.03 References. All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified or amended, and all replacements and substitutions therefor.

ARTICLE II

COVENANTS, AGREEMENTS, AND REPRESENTATIONS OF BORROWER

2.01 Performance of Loan Documents. The Borrower will perform, observe, and comply with all provisions hereof and of each of the other Loan Documents and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

2.02 Warranty of Title. The Borrower is lawfully seized of a fee simple interest in the Property, and Borrower have good and absolute title to all existing personal property hereby mortgaged, and have good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit "B" attached hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

2.03 Monthly Tax Deposits. If required by Lender, at any time during the term of the Loan, Borrower will pay to Lender on the first day of each month together with and in addition to the regular installment of principal and/or interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, with any amount under this Section 2.03 remaining to Borrower' credit.

2.04 Other Taxes, Utilities and Liens.

(a) Borrower will pay, when and as due, and prior to any delinquency, and will exhibit promptly to Lender, receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 2.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Borrower or in respect of the Mortgaged Prop-

erty or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower will pay promptly or cause to be paid promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) Borrower shall pay promptly and will not suffer any mechanic's, laborer's, statutory, or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto, and Borrower will not transfer, sell, convey, mortgage or encumber the Mortgaged Property, or any part thereof or interest therein.

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

(e) The Borrower hereby agree to indemnify and hold Lender harmless from any sales or use tax that may be imposed on the Lender by virtue of Lender's making the Loan to Borrower.

2.05 **Insurance.** If demand is received from Lender, Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:

(a) "All Risk" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the full replacement value of the Property (with a deductible not to exceed \$5,000), naming Lender under a lender's loss payee endorsement (form 438BFU or equivalent) and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

(b) Comprehensive general liability insurance in an amount not less than \$5,000,000.00 insuring against personal injury, death and property damage and naming Lender as additional insured;

(c) Business interruption insurance covering loss of rental or other income (including all expenses payable by tenants) for up to twelve (12) months; and

(d) Such other types of insurance or endorsements to existing insurance as may be required from time to time by Lender in Lender's standard lending practices.

Upon the request of Lender, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with Lender's request in Lender's standard lending practices. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and rated A:X or better by A.M. Best Company, and shall be in form acceptable to Lender. If and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Borrower shall carry flood insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less. Certificates of all insurance required to be maintained hereunder shall be delivered to Lender, along with evidence of payment in full of all premiums required thereunder, contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to Lender and shall require the insurance company to give to Lender at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to Lender, along with evidence of the payment in full of all premiums required thereunder, at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time when Borrower shall be in default hereunder, Lender shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to Lender, and upon foreclosure hereunder, Lender shall become the owner thereof. Lender shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

If any act or occurrence of any kind or nature (including any casualty for which insurance was not obtained or obtainable) shall result in damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to Lender. All insurance proceeds paid or payable in connection with any Loss shall be paid to Lender. If (i) no Event of Default has occurred and is continuing hereunder, (ii) Borrower provides evidence satisfactory to Lender of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, and (iii) the available insurance proceeds are, in Lender's judgment, sufficient to fully and completely restore, repair or replace the Property, Borrower shall have the right to apply all insurance proceeds received in connection with such Loss either (a) to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such Loss, or (b) to the payment of the Indebtedness in such order as Lender may elect. If an Event of Default has occurred and is continuing hereunder at the time of such Loss, if Lender determines that Borrower will be unable

to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, if the available insurance proceeds are insufficient, in Lender's judgment, to fully and completely restore, repair or replace the Property then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness, or if so instructed by Lender, Borrower will promptly, at Borrower's sole cost and expense and regardless of whether sufficient insurance proceeds shall be available, commence to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition, character immediately prior to such Loss. Borrower shall diligently prosecute any restoration, repairs or replacement of the Property undertaken by or on behalf of Borrower pursuant to this Section 2.05. All such work shall be conducted pursuant to written contracts approved by Lender in writing. Notwithstanding anything contained herein to the contrary, in the event the insurance proceeds received by Lender following any Loss are insufficient in Lender's judgment to fully and completely restore, repair or replace the Property, and if Borrower has complied with all of the other conditions described in this Section 2.05, Borrower may elect to restore, repair or replace the Property if it first deposits with Lender such additional sums as Lender determines are necessary in order to fully and completely restore, repair or replace the Property. In the event any insurance proceeds remain following the restoration, repair or replacement of the Property, such proceeds shall be applied to the Indebtedness in such order as Lender may elect.

Borrower waives any and all right to claim or recover against Lender or its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against under this Section 2.05.

If required by Lender at any time during the term of the Loan, Borrower will pay to Lender on the first day of each month, together with and in addition to the regular installment of principal and/or interest and monthly tax deposit (as required by Section 2.03 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agree to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such insurance premiums. Upon the occurrence of an Event of Default Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount paid in accordance herewith remaining to Borrower's credit.

2.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, other than a taking of a part of the Mortgaged Property which does not in Lender's reasonable opinion adversely affect access to or use of the Mortgaged Property or operation of the Facility, the entire Loan Obligations secured hereby shall at the option of the Lender become immediately due and payable.

Borrower, immediately upon obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Mortgaged Property or any part thereof, will notify Lender, and Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation. Borrower may compromise or settle any claim for compensation so long as no Event of Default exists and any compromise or settlement results in a payment to Lender not less than the entire Loan Obligations. If an Event of Default exists, Lender shall have the sole and exclusive right to compromise or settle any claim for compensation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its reasonable out-of-pocket expenses incurred in the collection and administration of such sums, including reasonable attorney's fees of outside counsel, Lender may release any moneys so received by it for the repair or restoration of the Mortgaged Property taken, or may apply the same in such manner as the Lender shall determine to reduce the Loan Obligations in such order as Lender may elect, whether or not then due, and without affecting this Mortgage as security for any remaining Loan Obligations, and any balance of such moneys shall be paid to the Borrower.

2.07 Care of the Property.

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

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

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

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

(e) Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority, and covenants and restrictions affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, upon Lender making any insurance proceeds available to Borrower, Borrower will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not such insurance proceeds shall be sufficient for such purpose. If a part of the Mortgaged Property shall be physically damaged through condemnation, upon Lender making any condemnation proceeds available to Borrower, Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to Lender, regardless of whether or not such condemnation proceeds shall be sufficient for such purpose.

2.08 Leases and Management Agreement.

Borrower shall not, without the prior written consent and approval of Lender (which consent shall not be unreasonably withheld), enter into any lease or permit any tenancy (except for admission of Facility residents), or enter into or permit any management agreement, of or affecting the Mortgaged Property without the prior written consent of the Lender which consent shall not be unreasonably withheld.

2.09 Further Assurances - After-Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be reasonably deemed necessary by Lender (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable the Lender to exercise and enforce its rights and remedies hereunder in respect of the Mortgaged Property; or (iii) to effect otherwise the purposes of this Mortgage, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as may be reasonably necessary or that the Lender may request in order to perfect and preserve the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower; (B) if certificates of title are now or hereafter issued or outstanding with respect to any of the Mortgaged Property, by immediately causing the interest of Lender to be properly noted thereon at Borrower's expense; and (C) furnishing to the Lender from time to time statements and schedules further identifying and describing the Mortgaged Property and such other reports in connection with the Mortgaged Property as the Lender may reasonably request, all in reasonable detail. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, continuation statements, or amendments thereto, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

2.10 Indemnity Expenses. Borrower will pay or reimburse Lender for all reasonable attorney's fees of Lender's outside counsel, costs and expenses incurred by Lender in any suit, action, trial, appeal, bankruptcy or other legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Loan Obligations, this Mortgage or the interest created herein, or the Mortgaged Property, or any appeal thereof, including, but not limited to, any foreclosure action, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Borrower, any lessee of the Mortgaged Property (or any part thereof), and any such amounts paid by Lender shall be added to the Loan Obligations and shall be secured by this Mortgage. Borrower will indemnify and hold Lender harmless from and against all claims, damages, and out-of-pocket expenses, including reasonable attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those Applicable Environmental Laws, provided Borrower shall not be required to indemnify Lender for matters directly and solely caused by Lender's misconduct or negligence. Borrower acknowledges that it has undertaken the obligation to pay all intangibles taxes and documentary taxes now or hereafter due in connection with the Loan Obligations and the Loan Documents, and Borrower agrees to indemnify and hold Lender harmless from any intangibles taxes and documentary stamp taxes, and any interest or penalties, which the Lender may hereafter be required to pay in connection with the Loan Obligations or Loan Documents. The agreements of this Section shall expressly survive satisfaction of this Mortgage and repayment of the Loan Obligations.

2.11 Estoppel Affidavit. Borrower, upon ten (10) days prior written notice, shall furnish the Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Loan Obligations, stating whether or not to its knowledge any off-sets or defenses exist against the Loan Obligations, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

2.12 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage, the Note or any other Loan Document, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage, the Note, or any other Loan Document that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Mortgage, the Note and any other Loan Documents.

2.13 Legal Actions. In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, the Note, the Loan Obligations or the validity or priority of this Mortgage, Borrower shall immediately, upon demand,

reimburse Lender for all out-of-pocket costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Loan Obligations and shall be secured by this Mortgage.

2.14 Compliance with Applicable Environmental Law. As of the date hereof, and except as may previously been disclosed to Lender by Borrower or by some third party, Borrower represents and warrants to the Lender that, to the best of Borrower's knowledge, the Mortgaged Property and the Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property. Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any Improvements or Equipment by reason of any Applicable Environmental Law. Borrower further represents and warrants that, to the best of Borrower's knowledge, no petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Property. The use of the Mortgaged Property as previously operated and hereafter intended to be operated by the Borrower will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on the Property in violation of any Applicable Environmental Law.

ARTICLE III **EVENTS OF DEFAULT; REMEDIES**

3.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) The occurrence of any "Event of Default" (as therein defined) under any other Loan Documents (it being understood and agreed that the term "Event of Default" includes the expiration of any cure or grace periods permitted to Borrower under the applicable Loan Documents), under any Joint Development Agreement entered into by Lender and Borrower relating to the Mortgaged Property, or the failure to properly and timely perform or observe any covenant or condition of this Mortgage which is not cured within thirty (30) days after written notice from Lender to Borrower; or

(b) The sale, transfer, lease (except for the Leases in the ordinary course of business), assignment, or other disposition, voluntarily or involuntarily, of the Mortgaged Property, or any part thereof or any interest therein, including a sale or transfer in lieu of condemnation (excepting only transfers or other dispositions of the Mortgaged Property permitted by the Loan Documents) or, except for Permitted Encumbrances or as otherwise expressly permitted by the Loan Documents, any further encumbrance of the Mortgaged Property, unless the prior written consent

of Lender is obtained (which consent may be withheld with or without cause in Lender's discretion; or

(c) Failure or refusal by Borrower to make any payment of principal, interest, or prepayment premium under the Note when due or to pay any portion of any other sum secured by this Instrument when due, and such failure or refusal shall continue for a period of ten (10) days after written notice is given to Borrower by Lender specifying such failure; or

(d) Failure of Borrower within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien, and such failure shall continue for a period of ten (10) days after written notice is given to Borrower by Lender specifying such failure; or

(e) Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances; or

(f) Failure by Borrower to observe or perform any of its obligations under any of the Leases, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or

(g) The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of Lender, except as specifically allowed under this Instrument, including without limitation creating or allowing any liens on the Property or leasing any portion of the Property; or

(h) Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the income or rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 5.01 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations; or

(i) Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or

other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or

(j) The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law; or

(k) A material adverse change occurs in the assets, liabilities or net worth of Borrower from the assets, liabilities or net worth of Borrower of the indebtedness evidenced by the Note previously disclosed to Lender; or

(l) Any warranty, representation or statement furnished to Lender by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents, shall prove to have been false or misleading in any material respect; or

(m) Failure of Borrower to observe or perform any other covenant or condition contained in the Instrument and such default shall continue for thirty (30) days after notice is given to Borrower specifying the nature of the failure, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions; provided, however, that no notice of default and no opportunity to cure shall be required with respect to defaults under Section 5.10 or Section 5.11 hereof or if during the prior twelve (12) months Lender has already sent a notice to Borrower concerning default in performance of the same obligation; or

(n) Failure of Borrower to observe or perform any other obligation under any other Loan Document when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Loan Document, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months Lender has already sent a notice to Borrower concerning default in performance of the same obligation; or

(o) Any of the foregoing events occur with respect to any tenant of the Property, or with respect to any guarantor of any tenant's obligations relating to the Property.

3.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Loan Obligations shall, at the option of the Lender, immediately become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

3.03 Performance by Lender. Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Default Rate or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

3.04 Receiver. If any Event of Default shall have occurred, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the sufficiency or value of any security for the Loan Obligations, the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Property is situated. Borrower will pay unto Lender upon demand all reasonable expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and upon any Borrower's failure to pay the same, any such amounts shall be added to the Loan Obligations and shall be secured by this Mortgage.

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

3.06 Purchase by Lender. Upon any foreclosure sale of the Mortgaged Property, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

3.07 Application of Foreclosure Proceeds. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees and expenses (and attorney's fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and

charges, including utility charges and any other amounts advanced by Lender hereunder, and interest thereon; then to payment of the Loan Obligations in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower or to the person or entity lawfully entitled thereto.

3.08 Waiver of Exemption. Borrower hereby waives and renounces all exemption rights, if any, provided for 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 Loan Obligations, or any part thereof.

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

3.10 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property and, if and to the extent permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower;

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Loan Obligations and shall be secured by this Mortgage;

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise

by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Mortgaged Property, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as Lender may at its option pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits for taxes and insurance required in this Mortgage and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal and any other unpaid Loan Obligations then due. Anything in this Section to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, incomes, issues and profits actually received by Lender;

(d) Borrower hereby absolutely and unconditionally assigns and transfers to Lender all Rents and Accounts to come due, and hereby gives to and confers upon Lender the right, power and authority to collect the Rents and Accounts, except Lender grants Borrower a license to collect the same prior to an Event of Default, and upon such Event of Default Borrower's license shall be deemed automatically revoked. It is agreed that neither the foregoing assignment of Rents and Accounts to Lender, nor the exercise by Lender of any of its rights or remedies under this Section, nor the appointment of a receiver or possession of the Property by a receiver shall make Lender a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy or enjoyment or operation of all or any portion thereof, unless and until Lender in person assumes actual possession thereof, nor shall it obligate Lender under any lease or rental agreement. Nothing herein shall require Lender to have a receiver appointed to collect any Rents and Accounts, but Lender shall be entitled to such appointment at its option in accordance with this Mortgage. If an Event of Default shall exist, Lender may require that Borrower cause all of its Accounts and Rents to be paid to Lender or one or more deposit accounts with Lender, or at Lender's option, with another financial institution approved by Lender. Borrower assigns and grants to Lender a security interest in, pledge of and right of setoff against all moneys from time to time paid to Lender or held in such deposit accounts. Borrower agrees to promptly notify all of its account debtors and tenants, to make payments to Lender or one or more such deposit accounts upon Lender's request and as designated by Lender, Borrower agrees to provide any necessary endorsements to checks, drafts and other forms of payment so that such payments will be properly collected and/or deposited in such accounts. Lender may apply moneys held by it to the Loan Obligations, or may cause moneys to be withdrawn from such deposit accounts and applied to the Loan Obligations, all in such order as Lender may elect, whether or not then due. Borrower appoints Lender as its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to provide any notice, endorse any check, draft or other payment for deposit, or take any other action

which Borrower agrees to take in this Section. Notwithstanding the foregoing sentence, Lender shall not act upon Lender's appointment as Borrower's attorney-in-fact until after (i) a Default or (ii) Lender has given the Borrower five (5) days notice to take certain actions and the Borrower has failed to take such action within such notice period. Lender shall not be liable for failure to collect any Accounts or Rents, or to enforce the contracts or leases pursuant to which such Accounts or Rents are payable, or for any action or omission on the part of Lender, its officers, agents and employees in collecting or enforcing such Accounts, Rents, contracts or leases.

(e) Whenever all the Loan Obligations shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the Mortgaged Property to Borrower and its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.11 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property (or any part thereof) at public outcry to the highest bidder for cash in front of the Court House door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property maybe offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

3.12 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property and Improvements, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights, will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale.

3.13 Borrower as Tenant Holding Over. In the event of any such foreclosure sale, Borrower (if it shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

3.14 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely

to Lender, then in every such case, Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceedings had occurred.

3.15 Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of the Loan Obligations and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Loan Obligations may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by Lender, and it may pursue inconsistent remedies.

3.16 Waiver.

(a) No delay or omission by Lender or by any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver expressed or implied by Lender to or of any breach or default by Borrower in the performance of the obligations of Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies of Lender hereunder.

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note, this Mortgage, other Loan Documents, or any other obligation of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Loan Obligations; (ii) take other or additional

security for the payment of any of the Loan Obligations; (iii) waive or fail to exercise any right granted herein, in the Note, in other Loan Documents; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note, this Mortgage, other Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the other Loan Documents, the Mortgaged Property or any document or instrument evidencing, securing or in any way related to the Loan Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property, the Loan Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. To the fullest extent that Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and Borrower and its representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisal, marshaling, stay of execution, and extension. Borrower further agrees that if any law referred to in this paragraph and now in force, of which Borrower or its representatives, successors or assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. Borrower expressly waives and relinquishes any and all rights and remedies that it may have or be able to assert by reason of the laws of the state of jurisdiction pertaining to the rights and remedies of sureties.

(d) The Borrower, for itself and all other parties claiming under the Borrower, hereby waives all claims for marshaling-of-assets under applicable law.

Borrower makes these arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan, after consulting with and considering the advice of independent legal counsel selected by Borrower.

3.17 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or

its property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

ARTICLE IV

4.01 Assembly of Mortgaged Property. Upon the occurrence of an Event of Default, the Borrower shall assemble, if requested by the Lender, at its expense, all of the personal property which is part of the Mortgaged Property and the documents evidencing such personal property and the books and records applicable thereto and make them available to the Lender at a place to be designated by the Lender.

4.02 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon Borrower and Lender and their respective legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Borrower" or "Lender," such reference shall be deemed to include a reference to the legal representatives, successors, successors-in-title and assigns of Borrower or Lender, as the case may be, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

4.03 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

4.04 Severability; Complete Agreement. If any provisions of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the other Loan Documents constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

4.05 Applicable Law. This Mortgage shall be governed by the laws of the State of Alabama. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be invalid or unenforceable, the remaining words, terms,

provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

4.06 Notices. etc. All notices and other communications provided hereunder shall be in writing and shall be given in accordance with the provisions of the Loan Agreement.

4.07 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower at Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

4.08 Assignment. This Mortgage is assignable by Lender and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.

4.09 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Mortgage, the Note and all other Loan Documents.

4.10 Waiver of Jury Trial. BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS MORTGAGE OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS MORTGAGE OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

4.11 Restoration and Repair of Property Damaged or Taken. Notwithstanding the provisions of Sections 2.05 and 2.06 hereof, Lender agrees that Lender shall apply the net proceeds of insurance or condemnation (after payment of costs and expenses pursuant to Section 2.05 and

2.06) to repair or restoration of the Mortgaged Property on the following terms and subject to Borrower' satisfaction of the following conditions:

(1) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Default or Event of Default;

(2) The property, buildings, improvements and fixtures for which a loss or damage has resulted shall be capable of being restored to its pre-existing condition and utility with a value equal to or greater than prior to such loss or damage, shall be capable of being completed prior to the maturity of the Loan, and shall not be such as would allow any tenant to reduce its rental payments (except during any period in which the leased premises are uninhabitable) or terminate or reduce the term of its lease, and evidence thereof satisfactory to Lender shall have been provided to Lender;

(3) Within thirty (30) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(4) Within ninety (90) days following the date of notice under the preceding paragraph and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage,

(ii) if loss or damage exceeds \$50,000, fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,

(iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause,

(iv) such additional funds as in Lender's opinion are necessary to complete the repair and restoration, and

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(5) Lender may, at Borrower' expense, retain an independent inspecting engineer to review plans and specifications and completed construction and to certify all requests for disbursement;

(6) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of reconstructing those portions of the property for which a loss or damage has occurred;

(7) Borrower shall commence such work within ninety (90) days of such loss or damage and shall diligently pursue such work to completion;

(8) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with the disbursement procedures set forth in the Loan Agreement;

(9) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest;

(10) In the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fail to timely make such election or having made such election fail to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the indebtedness under the Note (without premium), or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

4.12 Future Advances. This Mortgage shall secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or made pursuant to any Joint Development Agreement entered into by Lender and Borrower relating to the Mortgaged Property, or to be made at the option of Lender, or otherwise, and whether made under the Loan Agreement, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, but such secured indebtedness shall not exceed at any time the maximum principal amount of two times the original principal amount of the Note, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the Mortgaged Property, with interest on such disbursements. Any such future advances, whether obligatory or to be made at the option of Lender, or otherwise, and whether made under the Loan Agreement, or otherwise, may be made either prior to or after the due date of the Note or any other notes secured by this Mortgage.

ARTICLE V

5.01 Charges, Liens. Borrower shall pay all Impositions attributable to the Property in the manner provided under Article II hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such other manner as Lender may designate

in writing. If requested by Lender, Borrower shall promptly furnish to Lender all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without Lender's prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record and deliver evidence of such release to Lender.

5.02 Use of Property. Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not, without Lender's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.

5.03 Protection of Security. If Borrower fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 2.05 hereof.

Any amounts disbursed by Lender pursuant to this Section 5.03, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the highest rate which may be collected from Borrower under applicable law or, at Lender's option, the rate stated in the Note. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 5.03 shall require Lender to incur any expense or take any action hereunder.

5.04 Inspection. Lender may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof.

5.05 Intentionally Omitted.

5.06 Borrower And Lien Not Released. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Section 5.06 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay Lender a service charge, together with such title insurance premiums and attorneys fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

5.07 Forbearance Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Sections 2.05 and 2.06 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

5.08. Uniform Commercial Code Security Agreement. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to Lender a first and prior security interest in all of the Property that constitutes personalty, whether now owned or hereafter acquired. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Lender may require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items,

including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Lender shall have the remedies of a secured party under the Uniform Commercial Code, and Lender may also invoke the remedies provided in Article III of this Instrument as to such items. In exercising any of said remedies Lender may proceed against the items of real property and any items of personal property specified above separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in Article III of this Instrument.

5.09 Leases of The Property. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases of the Property or any part thereof. All Leases hereafter entered into will be in form and substance subject to the approval of Lender. All Leases of the Property shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments as to tenants affiliated with Borrower, but as to unrelated tenants approved by Lender, nondisturbance agreements will be provided. Borrower shall not, without Lender's written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Instrument.

5.10 Transfers of The Property or Beneficial Interests in Borrower: Assumption. Lender may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Article III of this Instrument, if title to the Property is changed without the prior written consent of Lender, which consent shall be at Lender's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for leases to tenants in the ordinary course of managing income property which are approved by Lender pursuant to Section 5.09 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property) shall be considered a change in Title. Lender shall have the right to condition its consent to any proposed sale or transfer described in this Section 5.10 upon, among other things, Lender's approval of the transferee's creditworthiness and management ability and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as Lender may require, including, if required by Lender, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by Lender to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 5.10. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness.

Borrower shall pay any recording tax, recording cost, title insurance premium, attorneys' fees, or other third-party expenses incurred by Lender in connection with any transfer, plus a \$200 documentation fee, incurred by Lender in connection with any transfer, whether or not consent is required.

5.11 **Hazardous Waste.** As of the date hereof, Borrower has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to Lender in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials. As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that Lender at any time believes that the Property is not free of all hazardous waste or materials or that Borrower has violated any applicable environmental law with respect to the Property, then immediately upon request by Lender, Borrower shall obtain and furnish to Lender, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to Lender. In the event that Borrower fails to immediately obtain such audit or inspection, Lender or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. Lender may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Borrower has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse Lender as provided in Section 5.12 below for the full amount of all costs and expenses incurred by Lender prior to Lender acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put Lender in the position of an owner of the Property prior to any acquisition of the Property by Lender. The rights granted to Lender herein and in the other Loan Documents are granted solely for the protection of Lender's lien and security interest covering the Property, and do not grant to Lender the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.

5.12 **Advances, Costs and Expenses.** Borrower shall pay within ten (10) days after written demand from Lender all sums advanced by Lender and all costs and expenses incurred by Lender in taking any actions pursuant to the Loan Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by Lender, and advances made, shall constitute advances under this Instrument to protect the

Property and shall be secured by and have the same priority as the lien of this Instrument. If Borrower fails to pay any such advances, costs and expenses and interest thereon, Lender may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Borrower for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom.

5.13 **Assignment of Leases And Rents.** Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of Borrower in, to and under the Leases of the Property, hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all rents, income and profits which may hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property.

Borrower represents, warrants, covenants and agrees with Lender as follows:

(a) The sole ownership of the entire lessor's interest in the Leases will be vested in Borrower, and Borrower shall not, perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights with respect to the Leases under any of the terms, covenants and conditions of this Instrument.

(b) The Leases shall be valid and enforceable in accordance with their terms and shall not be altered, modified, amended, terminated, canceled, renewed or surrendered except as approved in writing by Lender. The terms and conditions of the Leases shall not be waived in any manner whatsoever except as approved in writing by Lender.

(c) Borrower shall not alter the term or the amount of rent payable under any Lease without prior written notice to Lender and Lender's consent, which shall not be unreasonably withheld.

(d) Borrower shall give prompt written notice to Lender of any notice received by Borrower claiming that a default has occurred under any of the Leases on the part of Borrower, together with a complete copy of any such notice.

(e) Borrower will not permit any Lease to become subordinate to any lien other than the lien of this Instrument.

The assignment made hereunder is an absolute, present assignment from Borrower to Lender, effective immediately, and is not merely an assignment for security purposes but is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a notice is sent to the Borrower in writing that an Event of Default (as defined

below) has occurred under the terms and conditions of the Note or any instrument constituting security for the Note (which notice is hereafter called a "Notice"), Borrower is granted a license to receive, collect and enjoy the rents, income and profits accruing from the Property.

If an Event of Default shall occur, Lender may, at its option, after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, until Lender shall otherwise agree in writing. All sums received by Borrower after service of such Notice shall be deemed received in trust and shall be immediately turned over to Lender.

Borrower hereby irrevocably appoints Lender its true and lawful attorney-in-fact with power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such rents. Such appointment is coupled with an interest and is irrevocable. Lender shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss is found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of Lender.

Lender shall apply the rents received from Borrower's lessees, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Borrower in a timely manner. Nothing contained herein shall be construed to constitute Lender as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Borrower also hereby irrevocably appoints Lender as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Borrower pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

If an Event of Default shall occur, Lender is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or proper to enforce the assignment granted hereunder and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all

times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys' fees incurred in connection with the enforcement of the assignment granted hereunder, and of principal and interest payments due from Borrower to Lender on the Note and this Instrument, all in such order as Lender may determine. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

5.14 **Satisfaction of Mortgage.** Upon payment of all sums secured by this Instrument, Lender shall execute a satisfaction (or at Borrower's option, an assignment) of this Instrument and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto. Such person or persons shall pay Lender's costs incurred in connection with satisfaction or assignment of this Instrument.

5.15 **Attorneys' Fees.** In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, and title insurance, incurred by Lender that are necessary at any time in Lender's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

5.16. **Changes in Writing.** This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Lender relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.17 **No Offset.** Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower may have or claim against Lender in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Lender.

5.18 **Authorization to Insert.** Borrower authorizes Lender or its agent to insert in the spaces provided herein the amount of the Note, the mortgagee's loan policy number, the title company issuing such policy, the total amounts of the obligations secured, and the last payment due dates, if any of the foregoing information is not typed in on this document.

5.19 **Maximum Interest Charges.** Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, in no event shall Lender be entitled to receive interest on the loan secured by this Instrument in amounts which, when added to all of the other interest charged, paid to or received by Lender on the Loan, causes the rate of interest on the Loan to exceed the highest lawful rate. Borrower and Lender intend to comply with the applicable law governing the highest lawful rate and the maximum amount of interest payable on or in connection with the Loan. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the final maturity date of the Loan or if any prepayment by Borrower results in Borrower having paid or demand having been made on Borrower to pay, any interest in excess of the amount permitted by applicable law, then all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, such excess amounts shall be refunded to Borrower), and the provisions of the Note, this Instrument and any demand on Borrower shall immediately be deemed reformed and the amounts thereafter collectible thereunder and hereunder shall be reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder and hereunder. The right to accelerate the final maturity date of the Loan does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread through the full term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the applicable usury ceiling. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be nonusurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Lender written notice of its belief and the reasons why Borrower believes the Loan to be usurious, and Borrower agrees that Lender shall have ninety (90) days

following its receipt of such written notice in which to make appropriate refund or other adjustment in order to correct such condition if it in fact exists.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed and delivered as of the day and year first above written.

BORROWER:

COLONIAL PROPERTIES SERVICES, INC.

By:

Its:

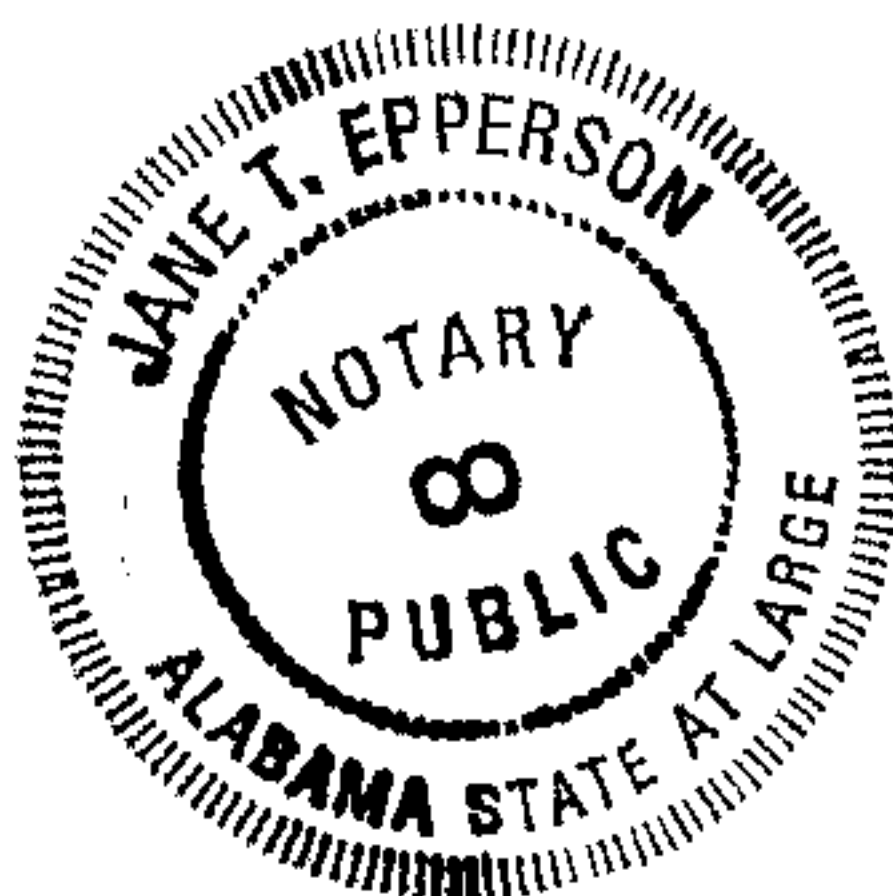
Howard B. Nelson, Jr.
CFO

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public, in and for said County, in said State, hereby certify that Howard B. Nelson, Jr., whose name as CFO of Colonial Properties Services, Inc., an Alabama corporation, is signed to the foregoing document, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 12th day of December, 2001.



Jane T. Epperson
Notary Public

My Commission Expires: My Commission Expires JAN. 15, 2004

WALTER SCHOEL ENGINEERING COMPANY, INC.

CONSULTING ENGINEERS
1001 22ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
PHONE (205) 323-6886
FAX (205) 328-2752
WWW.SCHOEL.COM

LEGAL DESCRIPTION
PARCEL "O"
PROMENADE AT HOOVER

A parcel of land being situated in the NE 1/4 of the NW 1/4 of Section 26, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest Corner of the NE 1/4 of the NW 1/4 of Section 26, Township 19 South, Range 3 West and run in a Southerly direction along the West line of the NE 1/4 of the NW 1/4 of said Section 26 a distance of 225.46 feet to a point; thence 37°24'53" to the left in a Southeasterly direction (leaving the West line of the NE 1/4 of the NW 1/4 of said Section 26) a distance of 55.36 feet to a point; thence 79°09'40" to the left in a Northeasterly direction a distance of 66.22 feet to the POINT OF BEGINNING of the parcel herein described; thence 90°00'00" to the left in a Northwesterly direction a distance of 75.00 feet to a point; thence 90°00'00" to the right in a Northeasterly direction a distance of 85.00 feet to a point; thence 90°00'00" to the right in a Southeasterly direction a distance of 75.00 feet to a point; thence 90°00'00" to the right in a Southwesterly direction a distance of 85.00 feet to the Point of Beginning. Subject to any rights-of-way or easements which may exist.

Containing 0.146 acres.

WALTER SCHOEL ENGINEERING COMPANY, INC.

CONSULTING ENGINEERS
1001 22ND STREET SOUTH
BIRMINGHAM, ALABAMA 35205
PHONE (205) 323-6886
FAX (205) 328-2252
WWW.SCHOEL.COM

LEGAL DESCRIPTION
PARCEL "T"
PROMENADE AT HOOVER

A parcel of land being situated in the NW 1/4 of the NW 1/4 of Section 26, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast Corner of the NW 1/4 of the NW 1/4 of Section 26, Township 19 South, Range 3 West and run in a Southerly direction along the East line of the NW 1/4 of the NW 1/4 of said Section 26 a distance of 254.75 feet to the POINT OF BEGINNING of the parcel herein described; thence continue along the last described course in a Southerly direction along the East line of the NW 1/4 of the NW 1/4 of said Section 26 a distance of 134.06 feet to a point on the Northeasterly Right-of-Way line of Cahaba River Estates Drive (Shelby County Highway 271), said point being on a curve to the left having a radius of 194.86 feet and a central angle of 22°20'08"; thence 126°39'52" to the right (Angle Measured to Tangent) in a Northwesterly direction (leaving the East line of the NW 1/4 of the NW 1/4 of said Section 26) along the Northeasterly Right-of-Way line of Cahaba River Estates Drive (Shelby County Highway 271) and the arc of said curve a distance of 75.96 feet to a point; thence 90°00'00" to the right (Angle Measured to Tangent) in a Northeasterly direction (leaving the Northeasterly Right-of-Way line of said Cahaba River Estates Drive) a distance of 70.10 feet to a point; thence 42°08'15" to the right in a Northeasterly direction a distance of 60.92 feet to a point on the East line of the NW 1/4 of the NW 1/4 of said Section 26 and the Point of Beginning. Subject to any rights-of-way or easements which may exist.

Containing 0.134 acres.

1. The rights of upstream and downstream riparian owners with respect to Patton Creek. (as to Parcels A, C, D, E, F, T, and G)
2. Mineral and mining rights and rights incident thereto recorded in Volume 674, page 557, in the Probate Office of Jefferson County, Alabama, Bessemer Division. (Parcels A, C, D, E, F and T)
3. Mineral and mining rights and rights incident thereto recorded in Bessemer Volume 228, page 548 and Bessemer Volume 64, page 42, in the Probate Office of Jefferson County, Alabama. (as to Parcel G)
4. Right of Way granted to Alabama Power Company by instrument recorded in Bessemer Volume 245, age 516, in the Probate Office of Jefferson County, Alabama. (as to Parcel G)
5. Coal, oil, gas and other mineral interests in, to or under the land herein described are not insured. (as to Parcel G)

EX. "B"

Inst # 2001-57002

12/27/2001-57002
04:00 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
038 CH 184.85