

THE MAXIMUM AMOUNT OF INDEBTEDNESS AND OTHER OBLIGATIONS SECURED BY THIS MORTGAGE IS  
\$2,251,133.00.

✓

Recording requested by:  
Lawyers Title Insurance Corporation  
This Mortgage was prepared by and  
when recorded should be mailed to:  
Marcia W. Sullivan, Esq.  
Katten Muchin Zavis Rosenman  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60661

MORTGAGE, ASSIGNMENT OF RENTS, SECURITY  
AGREEMENT AND FIXTURE FILING  
FROM  
Intown Suites Southpark, LLC, a Georgia limited liability company (Mortgagor")  
IN FAVOR OF  
SFT II, INC., a Delaware corporation, doing business in the State of Alabama  
as iStar SFT II, Inc. ("Lender")

**THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** (this "**Security Instrument**") is made as of May 1, 2002 by Intown Suites Southpark, LLC, a Georgia limited liability company ("**Mortgagor**") having its principal office at c/o InTown Suites Management, Inc., 300 Galleria Parkway, Suite 1200, Atlanta, Georgia 30339, in favor of SFT II, Inc., a Delaware corporation, doing business in the State of Alabama as iStar SFT II, Inc. ("**Lender**") having its principal office at c/o iStar Financial Inc., a Maryland corporation, 1114 Avenue of the Americas, 27<sup>th</sup> Floor, New York, New York 10036, together with its successors and assigns in such capacity.

WITNESSETH:

**WHEREAS**, this Security Instrument is given to secure a loan (the "**Loan**") in the principal sum of **ONE HUNDRED MILLION DOLLARS** (\$100,000,000.00) (the "Loan Amount") advanced pursuant to that certain Loan and Security Agreement, dated as of the date hereof, among Intown Suites Group Two, LLC, a Georgia limited liability company ("**Borrower**"), Mortgagor, the other Property Owners as defined in the Loan Agreement (collectively with Owner, the "**Property Owners**") and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note dated as of the date hereof, executed by Borrower, Mortgagor and the other Property Owners, jointly and severally in favor of Lender thereunder (the "**Note**"). The Note is secured by mortgages, deeds of trust and deeds to secure debt executed by the other Property Owners and instruments (hereinafter collectively referred to as the "**Loan Documents**"). Unless otherwise defined, all capitalized terms as used herein shall have that meaning ascribed to such term in the Loan Agreement; and

**WHEREAS**, the Mortgagor expects to derive benefit, directly or indirectly, from the Loan Agreement, and the credit extended to Borrower and the other Property Owners thereunder, both in its separate capacity and as a member of an integrated group with the other Property Owners, since the successful operation of the Borrower, Mortgagor and the other Property Owners is dependent on the continued successful performance of the function of the integrated group as a whole; and

**WHEREAS**, the Mortgagor desires to secure the payment and performance of the Obligations (as defined in the Loan Agreement).

**NOW THEREFORE**, in consideration of the making of the Loan by Lender and the covenants, agreements, representations and warranties set forth in this Security Instrument:

#### ARTICLE 1 - GRANTS OF SECURITY

Section 1.1. Property Mortgaged. To secure the full and timely payment of the Indebtedness (as defined in the Loan Agreement) under the Loan Agreement and the full and timely performance of the Obligations under the Loan Agreement, Mortgagor does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Lender

and its successors and assigns the following property, rights, interests and estates now owned, or hereafter acquired by Mortgagor (collectively, the "**Mortgaged Property**"), subject to the Permitted Encumbrances:

(a) **Land**. The real property described in Exhibit A attached hereto and made a part hereof (the "**Land**");

(b) **Additional Land**. All additional lands, estates and development rights hereafter acquired by Mortgagor for use in connection with the Land and the development of the Land and all additional lands and estates of Mortgagor therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(c) **Improvements**. The buildings, structures, fixtures of Mortgagor, additions, enlargements, extensions, modifications, repairs, replacements and improvements of Mortgagor now or hereafter erected or located on the Land (collectively, the "**Improvements**");

(d) **Easements**. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements, hereditaments and appurtenances of any nature whatsoever, in any way now or hereafter belonging, relating or pertaining to the Land and the Improvements and the reversions and remainders, and all land lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the Land, to the center line thereof and all the estates, rights, titles, interests, rights of dower, rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Land and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(e) **Equipment**. All "equipment," as such term is defined in Article 9 of the Uniform Commercial Code, now owned or hereafter acquired by Mortgagor, which is used at or in connection with the Improvements or the Land or is located thereon or therein (including, but not limited to, all machinery, equipment, furnishings, and electronic data-processing and other office equipment now owned or hereafter acquired by Mortgagor and any and all additions, substitutions and replacements of any of the foregoing), together with all attachments, components, parts, equipment and accessories installed thereon or affixed thereto (collectively, the "**Equipment**"). Notwithstanding the foregoing, Equipment shall not include any property belonging to tenants under leases except to the extent that Mortgagor shall have any right or interest therein;

(f) **Fixtures**. All Equipment now owned or hereafter acquired by Mortgagor which is so related to the Land and Improvements forming part of the Mortgaged Property that it is deemed fixtures or real property under the law of the particular state in which the Equipment is located, including, without limitation, all building or construction materials intended for construction, reconstruction, alteration or repair of or installation on the Mortgaged Property, construction equipment, appliances, machinery, plant equipment, fittings, apparatuses, fixtures and other items now or hereafter attached to, installed in and used in connection with (temporarily or permanently) any of the Improvements or the Land, including, but not limited to,

engines, devices for the operation of pumps, pipes, plumbing, call and sprinkler systems, fire extinguishing apparatuses and equipment, heating, ventilating, incinerating, electrical, air conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances and equipment, pollution control equipment, security systems, disposals, dishwashers, refrigerators and ranges, recreational equipment and facilities of all kinds, and water, gas, electrical, storm and sanitary sewer facilities, utility lines and equipment (whether owned individually or jointly with others, and, if owned jointly, to the extent of Mortgagor's interest therein) and all other utilities whether or not situated in easements, all water tanks, water supply, water power sites, fuel stations, fuel tanks, fuel supply, and all other structures, together with all accessions, appurtenances, additions, replacements, betterments and substitutions for any of the foregoing and the proceeds thereof (collectively, the "**Fixtures**"). Notwithstanding the foregoing, "Fixtures" shall not include any property which tenants are entitled to remove pursuant to leases except to the extent that Mortgagor shall have any right or interest therein;

(g) Personal Property. All furniture, furnishings, objects of art, appliances, machinery, goods, tools, supplies, appliances, general intangibles, contract rights, accounts, accounts receivable, franchises, licenses, certificates and permits; partitions and screens; reservation system; computer and related equipment; generators, boilers, compressors and engines; fuel; water and other pumps and tanks; irrigation lines and sprinklers; refrigeration equipment; pipes and plumbing; elevators and escalators; sprinkler systems and other fire extinguishing machinery and equipment; fire prevention systems; call systems; vacuum cleaning systems; security systems; heating, ventilating, air conditioning and air cooling ducts, machinery and equipment; gas and electric machinery and equipment; facilities used to provide utility services; laundry, drying, dishwashing and garbage disposal machinery or equipment; communication apparatus, including television, radio, music, and cable antennae and systems; guest room furnishings; attached floor coverings, rugs, carpets, window coverings, blinds, awnings, shades, curtains, drapes and rods; screens, storm doors and windows; stoves, refrigerators, dishwashers and other installed appliances; attached cabinets; trees, plants and other items of landscaping; buses and vehicles of any nature whatsoever; visual and electronic surveillance systems; telecommunications equipment including telephones, switchboards, exchanges, wires and phone jacks; maintenance equipment, inventory, tables, chairs, mirrors, desks, wall coverings, clocks, lamps; linens; kitchen, restaurant and other operating equipment, including menus, dishes, glassware, cooking utensils, tables, refrigerating units, microwave equipment, ovens, timers; food and beverages; cleaning materials other similar items; swimming pool heaters and equipment; recreational equipment and maintenance supplies; all equipment, manual, mechanical or motorized, for the construction, maintenance, repair and cleaning of parking areas, walks, underground ways, truck ways, driveways, common areas, roadways, highways and streets, and all other personal property of any kind or character whatsoever as defined in and subject to the to the provisions of the Uniform Commercial Code (as hereinafter defined), whether tangible or intangible, other than Fixtures, which are now or hereafter owned by Mortgagor and which are located within or about the Land and the Improvements, together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof, (collectively, the "**Personal Property**"), and the right, title and interest of Mortgagor in and to any of the Personal Property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the

Mortgaged Property is located (the "Uniform Commercial Code"), superior in lien to the lien of this Security Instrument and all proceeds and products of the above;

(h) Leases and Rents. All leases, subleases or subsubleases, lettings, licenses, concessions or other agreements (whether written or oral) pursuant to which any Person is granted a possessory interest in, or right to use or occupy all or any portion of the Land and the Improvements, and every modification, amendment or other agreement relating to such leases, subleases, subsubleases, or other agreements entered into in connection with such leases, subleases, subsubleases, or other agreements and every guarantee of the performance and observance of the covenants, conditions and agreements to be performed and observed by the other party thereto, heretofore or hereafter entered into, whether before or after the filing by or against Mortgagor of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code") (collectively, the "Leases") and all right, title and interest of Mortgagor, its successors and assigns therein and thereunder, including, without limitation, cash or securities deposited thereunder to secure the performance by the lessees of their obligations thereunder (but subject to the terms thereof) and all rents, additional rents, revenues, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the Land and the Improvements whether paid or accruing before or after the filing by or against Mortgagor of any petition for relief under the Bankruptcy Code (collectively, the "Rents") and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations;

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

(j) Insurance Proceeds. All proceeds of or for the benefit of Mortgagor in respect of the Mortgaged Property under any insurance policies covering the Mortgaged Property, including, without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(k) Tax Certiorari. All refunds, rebates or credits in connection with reduction in real estate taxes and assessments charged against the Mortgaged Property as a result of tax certiorari or any applications or proceedings for reduction;

(l) Conversion. All proceeds of the conversion, voluntary or involuntary, of any of the foregoing including, without limitation, proceeds of insurance and condemnation awards, into cash or liquidation claims;

(m) Rights. The right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Lender in the Mortgaged Property;

(n) Agreements. To the extent assignable, all agreements, contracts, certificates, instruments, franchises, permits, licenses, plans, specifications and other documents, now or

hereafter entered into, and all rights therein and thereto, respecting or pertaining to the use, occupation, construction, management or operation of the Land and any part thereof and any Improvements or any business or activity conducted on the Land and any part thereof and all right, title and interest of Mortgagor therein and thereunder, including, without limitation, the right, upon the happening of any default hereunder, to receive and collect any sums payable to Mortgagor thereunder; and

(o) Other Rights. Any and all other rights of Mortgagor in and to the items set forth in Subsections (a) through (n) above.

AND without limiting any of the other provisions of this Security Instrument, to the extent permitted by applicable law, Mortgagor expressly grants to Lender, as secured party, a security interest in the portion of the Mortgaged Property which is or may be subject to the provisions of the Uniform Commercial Code which are applicable to secured transactions; it being understood and agreed that the Improvements and Fixtures are part and parcel of the Land (the Land, the Improvements and the Fixtures collectively referred to as the "**Real Property**") appropriated to the use thereof and, whether affixed or annexed to the Real Property or not, shall for the purposes of this Security Instrument be deemed conclusively to be real estate and mortgaged hereby.

Section 1.2. Assignment of Rents. (a) As further security for the Indebtedness and Obligations under the Loan Agreement, Mortgagor hereby absolutely and unconditionally sells, assigns and transfers unto Lender all the Rents, now due and which may hereafter become due under or by virtue of any of the leases, whether written or verbal, or any letting of, or of any agreement, whether written or oral, for the use or occupancy of the Mortgaged Property or any part thereof, which may be hereafter made or agreed to by Lender under the powers herein granted, it being the intention hereby to establish an absolute transfer and assignment of all such Leases, and all the Rents, to Lender, and not merely the passing of a security interest. Mortgagor hereby constitutes and appoints Lender as its true and lawful attorney-in-fact, coupled with an interest, of Mortgagor, empowered and authorized in the name, place and stead (with or without taking possession of the Mortgaged Property as provided in this Security Instrument) of Mortgagor, (i) to demand, sue for, attach, levy, recover, and receive all Rents and give proper receipts, releases, and acquittances therefor and after deducting expenses of collection, to the extent permitted by Law, to apply the net proceeds as a credit upon any portion of the Obligations selected by Lender notwithstanding the fact that such portion of the Obligations may not then be due and payable or that such portion of the Obligations is otherwise adequately secured, and Mortgagor does hereby authorize and direct any such lessee to deliver such payment to Lender and (ii) to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such terms as said Lender shall, in its discretion, determine, and to collect all of said Rents arising from or accruing at any time hereafter, and now due or that may hereafter become due under each and every of the Leases or otherwise, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession pursuant to the provisions of this Security Instrument. The foregoing appointment is irrevocable and continuing and such rights, powers, and privileges shall be exclusive in Lender, its successors and assigns.

(b) Nothing contained herein shall be construed as constituting Lender or a "mortgagee-in-possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to this Security Instrument. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Mortgagor.

(c) Mortgagor further agrees to assign and transfer to Lender all future Leases upon all or any part of the Mortgaged Property and to execute and deliver, at the request of Lender, all such further assurances and assignments in the Mortgaged Property as Lender shall from time to time require.

(d) Although it is the intention of the parties that the assignment contained in this Section 1.2 shall be a present absolute assignment, it is expressly understood and agreed, anything contained herein to the contrary notwithstanding, that Lender shall not exercise any of the rights or powers conferred upon either of them by this Section 1.2 unless an Event of Default shall have occurred and is continuing under this Security Instrument, the Note, the Loan Agreement or the Loan Documents.

(e) Nevertheless, subject to Section 1.1(h) of this Security Instrument, and provided that no Event of Default has occurred and is continuing hereunder, Lender grants to Mortgagor a revocable license to collect, receive, use and enjoy the Rents

Section 1.3. Security Agreement. This Security Instrument is both a real property mortgage and a "security agreement" within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. By executing and delivering this Security Instrument, Mortgagor hereby grants to Lender, as security for the Obligations (hereinafter defined), a security interest in the Fixtures, the Equipment and the Personal Property to the full extent that the Fixtures, the Equipment and the Personal Property may be subject to the Uniform Commercial Code (said portion of the Mortgaged Property so subject to the Uniform Commercial Code being called the "Collateral"). If an Event of Default shall occur and be continuing, Lender, in addition to any other rights and remedies which it may have, shall have and may exercise with ten (10) business days prior written notice, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Lender after the occurrence and during the continuance of an Event of Default, Mortgagor shall, at its expense, assemble the Collateral and make it available to Lender at a convenient place (at the Land if tangible property) reasonably acceptable to Lender. Mortgagor shall pay to Lender on demand any and all expenses, including reasonable legal expenses and attorneys' fees, incurred or paid by Lender in protecting its interest in the Collateral and in enforcing its rights hereunder with respect to the Collateral after the occurrence and during the continuance of an Event of Default. Any notice of sale, disposition or other intended action by Lender with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) business days prior to such action, shall, except as otherwise provided by applicable law, constitute

reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may, except as otherwise required by applicable law, be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper. Mortgagor's (debtor's) principal place of business is as set forth on page one hereof and the address of Lender (secured party) is as set forth on page one hereof.

Section 1.4. Fixture Filing. Certain of the Mortgaged Property is or will become "fixtures" (as that term is defined in the Uniform Commercial Code) on the Land, and this Security Instrument, upon being filed for record in the real estate records of the city or county wherein such fixtures are situated, shall operate also as a financing statement filed as a fixture filing in accordance with the applicable provisions of said Uniform Commercial Code upon such of the Mortgaged Property that is or may become fixtures.

Section 1.5. Pledges of Monies Held. Mortgagor hereby pledges to Lender any present and future rights to payment of money, accounts and accounts receivable, including, all now existing or hereafter arising rights from or relating to the construction, use or operation of the Mortgaged Property or any improvements thereon, and (a) all rights to payment for the rental of office or other space or for goods sold or leased or for services rendered, whether or not yet earned by performance, (b) all rights to payment from any consumer credit, charge, entertainment or travel card or service organization or entity, (c) all reserves, deferred payments, refunds, cost savings payments and deposits no matter how evidenced and whether now or later to be received by third parties (including all earnest money sales deposits) (but subject to such third party depositor's rights in and to such amounts) or deposited with Borrower by third parties (including all earnest money sales deposits) or deposited by Borrower with third parties (including all utility deposits), (d) all chattel paper, instruments, documents, notes, drafts and letters of credit (other than any letters of credit in favor of Lender), (e) the Cash Management Accounts, all Depository Accounts, all Securities Accounts, any tenant security deposit account (but subject to such third party depositor's rights in and to such accounts), and any and all other accounts held by or on behalf of Lender and/or Borrower pursuant to the Loan Agreement, and (f) all contracts and agreements which relate to the foregoing.

#### GRANTING CLAUSE; CONDITION OF GRANT

To induce Lender to enter into this Security Instrument, Mortgagor represents to Lender as of the date hereof that there is validly due and owing on the Note and secured by the Security Instrument, without defense, offset or counterclaim of any kind, the total principal sum of the Loan. Mortgagor hereby agrees to repay the Loan, together with interest thereon, in accordance with the terms of the Note.

In order to secure the Obligations, and any and all renewals, extensions, and modifications of all or any part of the Obligations, and renewals, extensions, and modifications of all or any of the instruments, documents and writings evidencing or securing the Obligations, Mortgagor does hereby give, grant, bargain sell, warrant, lien, demise, release, convey, assign, transfer, mortgage, hypothecate, deposit, pledge, set over, grant a security interest in and for the benefit of Lender, to Lender, its successors and assigns, the Mortgaged Property, and Mortgagor unconditionally and absolutely assigns the Leases and Rents to Lender, all subject to the Permitted Encumbrances.

TO HAVE AND TO HOLD the above granted and described Property hereby conveyed or assigned, or intended to be conveyed or assigned, with Power of Sale, unto Lender and its successors and assigns, forever, for the use and purposes set forth herein.

The maximum of indebtedness and other obligations secured by this Security Instrument shall be limited to the sum of \$2,251,133.00.

## ARTICLE 2 - OBLIGATIONS SECURED

Section 2.1. Obligations. This Security Instrument and the grants, assignments and transfers made in Article 1 are given for the purpose of securing the Obligations.

## ARTICLE 3 - MORTGAGOR COVENANTS

Mortgagor covenants and agrees that:

Section 3.1. Payment of Obligations. Mortgagor will pay the Obligations at the time and in the manner provided in the Loan Agreement, the Note, this Security Instrument and the other Loan Documents.

Section 3.2. Incorporation by Reference. All the covenants, conditions and agreements contained in (a) the Loan Agreement, (b) the Note and (c) all and any of the other Loan Documents, are hereby made a part of this Security Instrument to the same extent and with the same force as if fully set forth herein.

Section 3.3. Insurance. Mortgagor shall obtain and maintain, or cause to be maintained, in full force and effect at all times insurance with respect to Mortgagor and the Mortgaged Property as required pursuant to the Loan Agreement.

Section 3.4. Maintenance of Property. Mortgagor shall cause the Mortgaged Property to be maintained in a good and safe condition and repair as required pursuant to the Loan Agreement. Except to the extent expressly permitted pursuant to the Loan Agreement, the Improvements, the Fixtures, the Equipment and the Personal Property shall not be removed, demolished or altered (except for normal replacement of the Fixtures, the Equipment or the Personal Property, tenant finish and refurbishment of the Improvements) without the consent of Lender. Pursuant and subject to the terms and provisions of Section 8 of the Loan Agreement, Mortgagor shall promptly repair, replace or rebuild any part of the Mortgaged Property which may be destroyed by any casualty or which may be affected by any condemnation, and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

Section 3.5. Waste. Except as specifically permitted under the Loan Agreement Mortgagor shall not commit or suffer any waste of the Mortgaged Property or make any change in the use of the Mortgaged Property which will in any way materially increase the risk of fire or other hazard arising out of the operation of the Mortgaged Property, or take any action that could reasonably be expected to invalidate or allow the cancellation of any Policy, or do or permit to be done thereon anything that could reasonably be expected to in any way materially impair the

value of the Mortgaged Property or the security of this Security Instrument. Mortgagor will not, without the prior written consent of Lender, permit any drilling or exploration for or extraction, removal, or production of any minerals from the surface or the subsurface of the Land, regardless of the depth thereof or the method of mining or extraction thereof.

Section 3.6. Performance of Other Agreements. Mortgagor shall observe and perform each and every term, covenant and provision to be observed or performed by Mortgagor pursuant to the Loan Agreement, any other Loan Document and any other agreement or recorded instrument affecting or pertaining to the Mortgaged Property and any amendments, modifications or changes thereto.

#### ARTICLE 4 - OBLIGATIONS AND RELIANCES

Section 4.1. Relationship of Mortgagor and Lender. The relationship between Mortgagor and Lender is solely that of debtor and creditor, and Lender has no fiduciary or other special relationship with Mortgagor, and no term or condition of any of the Loan Agreement, the Note, this Security Instrument and the other Loan Documents shall be construed so as to deem the relationship between Mortgagor and Lender to be other than that of debtor and creditor.

Section 4.2. No Reliance on Lender. The general partners, members, principals and (if Mortgagor is a trust) beneficial owners of Mortgagor are experienced in the ownership and operation of properties similar to the Mortgaged Property, and Mortgagor and Lender are relying solely upon such expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Mortgagor is not relying on Lender's expertise, business acumen or advice in connection with the Mortgaged Property.

#### Section 4.3. No Lender Obligations.

(a) Notwithstanding the provisions of Subsections 1.1(h) and (n) or Section 1.2, Lender is not undertaking the performance of (i) any obligations under the Leases; or (ii) any obligations with respect to such agreements, contracts, certificates, instruments, franchises, permits, trademarks, licenses and other documents.

(b) By accepting or approving anything required to be observed, performed or fulfilled or to be given to Lender pursuant to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, the legality or effectiveness of same, and such acceptance or approval thereof shall not constitute any warranty or affirmation with respect thereto by Lender.

#### ARTICLE 5 - FURTHER ASSURANCES

Section 5.1. Recording of Security Instrument, etc. Mortgagor forthwith upon the execution and delivery of this Security Instrument and thereafter, from time to time on Lender's request, will take all actions to ensure Lender's ability to cause this Security Instrument and any

of the other Loan Documents creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect and perfect the lien or security interest hereof upon, and the interest of Lender in, the Mortgaged Property. Mortgagor will pay all taxes, filing, registration or recording fees including, but not limited to the recordation of this Security Instrument, and all expenses incident to the preparation, execution, acknowledgment and/or recording of the Note, this Security Instrument, the other Loan Documents, any note, deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and any modification or amendment of the foregoing documents agreed to by Lender and Mortgagor, and all federal, state, county and municipal taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Security Instrument, any deed of trust or mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, and any modification or amendment of the foregoing documents, except where prohibited by law so to do.

Section 5.2. Further Acts, etc. In accordance with the Loan Agreement, Mortgagor will, at the cost of Mortgagor, and without expense to Lender, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, deeds of trust, mortgages, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Lender the property and rights hereby mortgaged, deeded, granted, bargained, sold, conveyed, confirmed, pledged, assigned, warranted and transferred or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Lender, or for carrying out the intention or facilitating the performance of the terms of this Security Instrument or for filing, registering or recording this Security Instrument, or for complying with all Legal Requirements. Mortgagor, on demand, will execute and deliver, and in the event it shall fail to so execute and deliver, hereby authorizes Lender to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Lender may lawfully do so, one or more financing statements to evidence more effectively the security interest of Lender in the Mortgaged Property. Mortgagor grants to Lender an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Lender at law and in equity, including without limitation, such rights and remedies available to Lender pursuant to this Section 5.2.

Section 5.3. Changes in Stamp Laws. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note, this Security Instruments, or any of the other Loan Documents or impose any other tax or charge on the same, Mortgagor will pay for the same, with interest and penalties thereon, if any.

## ARTICLE 6 - RIGHTS AND REMEDIES UPON DEFAULT

Section 6.1. Remedies. Upon the occurrence and during the continuance of any Event of Default, Mortgagor agrees that Lender may take such action, without notice or demand, as it

deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

- (a) declare the entire unpaid Note to be immediately due and payable;
- (b) institute proceedings, judicial or otherwise, for the complete foreclosure of this Security Instrument under any applicable provision of law, in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (c) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Security Instrument for the portion of the Obligations then due and payable, subject to the continuing lien and security interest of this Security Instrument for the balance of the Obligations not then due, unimpaired and without loss of priority;
- (d) foreclose this Security Instrument as provided by law and sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagors therein, pursuant to power of sale or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law:
  - (i) In connection with any sale or sales hereunder, Lender shall be entitled to elect to treat any of the Mortgaged Property which consists of a right in action or which is property that can be severed from the Real Property covered hereby or any improvements without causing structural damage thereto as if the same were personal property, and dispose of the same in accordance with applicable law, separate and apart from the sale of Real Property. Where the Mortgaged Property consists of Real Property, Personal Property, Equipment or Fixtures, whether or not such Personal Property or Equipment is located on or within the Real Property, Lender shall be entitled to elect to exercise its rights and remedies against any or all of the Real Property, Personal Property, Equipment and Fixtures in such order and manner as is now or hereafter permitted by applicable law;
  - (ii) Lender shall be entitled to elect to proceed against any or all of the Real Property, Personal Property, Equipment and Fixtures in any manner permitted under applicable law; and if Lender so elects pursuant to applicable law, the power of sale herein granted shall be exercisable with respect to all or any of the Real Property, Personal Property, Equipment and Fixtures covered hereby, as designated by Lender, and Lender is hereby authorized and empowered to conduct any such sale of any Real Property, Personal Property, Equipment and Fixtures in accordance with the procedures applicable to Real Property;
  - (iii) Should Lender elect to sell any portion of the Mortgaged Property which is Real Property or which is Personal Property, Equipment or Fixtures that the Lender has elected under applicable law to sell together with Real Property in accordance with the

laws governing a sale of Real Property, Lender shall give such notice of Event of Default and election to sell as may then be required by law and the terms and provisions of the Loan Documents. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law and the terms and provisions of the Loan Documents, and without the necessity of any demand on Mortgagor, Lender at the time and place specified in the notice of sale, shall sell such Real Property or part thereof at public auction to the highest bidder for cash in lawful money of the United States. Lender may from time to time postpone any sale hereunder by public announcement thereof at the time and place notified therefor;

(iv) If the Mortgaged Property consists of several lots, parcels or items of property, Lender shall, subject to applicable law, (A) designate the order in which such lots, parcels or items shall be offered for sale or sold, or (B) elect to sell such lots, parcels or items through a single sale, or through two or more successive sales, or in any other manner Lender designates. Any Person, including Mortgagor or Lender, may purchase at any sale hereunder. Should Lender desire that more than one sale or other disposition of the Mortgaged Property be conducted, Lender shall, subject to applicable law, cause such sales or dispositions to be conducted simultaneously, or successively, on the same day, or at such different days or times and in such order as Lender may designate, and no such sale shall terminate or otherwise affect the lien of this Security Instrument on any part of the Mortgaged Property not sold until all the Obligations has been paid in full. In the event Lender elects to dispose of the Mortgaged Property through more than one sale, except as otherwise provided by applicable law, Mortgagor agrees to pay the costs and expenses of each such sale and of any judicial proceedings wherein such sale may be made;

(e) institute an action, suit or proceeding in equity for the specific performance of any covenant or agreement contained herein, in the Note, the Loan Agreement or in the other Loan Documents;

(f) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Security Instrument or the other Loan Documents;

(g) apply for the appointment of a receiver, trustee, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor, any guarantor, indemnitor with respect to the Loan or of any Person liable for the payment of the Obligations;

(h) the license granted to Mortgagor under Section 1.2 hereof shall automatically be revoked and, pursuant to the Loan Agreement and this Security Instrument, Lender may enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, without liability for trespass, damages or otherwise and exclude Mortgagor and its agents or servants wholly therefrom, and take possession of all books, records and accounts relating thereto and Mortgagor agrees to surrender possession of the Mortgaged Property and of such books, records and accounts to Lender upon demand, and thereupon Lender may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property

and conduct the business thereat in the ordinary course of a hotel business; (ii) complete any then on-going construction on the Mortgaged Property in such manner and form as Lender deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (iv) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents of the Mortgaged Property and every part thereof; (v) require Mortgagor to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor; (vi) require Mortgagor to vacate and surrender possession of the Mortgaged Property to Lender or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise; and (vii) apply the receipts from the Mortgaged Property to the payment of the Obligations, in such order, priority and proportions as Lender shall deem appropriate in its sole discretion after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, Other Charges, insurance and other expenses in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Lender, its counsel, agents and employees;

(i) exercise any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing:

(i) the right to take possession of the Fixtures, the Equipment, the Personal Property or any part thereof, and to take such other measures as Lender may deem necessary for the care, protection and preservation of the Fixtures, the Equipment, the Personal Property, and (ii) request Mortgagor at its expense to assemble the Fixtures, the Equipment, the Personal Property and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Fixtures, the Equipment, the Personal Property sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor;

(j) apply any sums then deposited or held in escrow or otherwise by or on behalf of Lender in accordance with the terms of the Loan Agreement, this Security Instrument or any other Loan Document to the payment of the following items in any order in its uncontrolled discretion:

(i) taxes and other charges which are or may become a Lien on the Mortgaged Property, any part thereof or interest therein;

(ii) insurance premiums with respect to insurance required to be provided by Mortgagor pursuant to the Loan Agreement;

(iii) Interest on the unpaid principal balance of the Note;

(iv) The unpaid principal balance of the Note;

(v) All other sums payable pursuant to the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, including without limitation

advances made by Lender pursuant to the terms of this Security Instrument or any of the other Loan Documents;

(k) pursue such other remedies as Lender may have under applicable law; or

(l) take action to recover any sum or sums which constitute a part of the Obligations as the same become due, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Lender thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

In the event of a sale, by foreclosure, power of sale or otherwise, of less than all of Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Mortgaged Property unimpaired and without loss of priority.

Section 6.2. Application of Proceeds. The purchase money, proceeds and avails of any disposition of the Mortgaged Property, and/or any part thereof, or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, may be applied by Lender to the payment of the Obligations in such priority and proportions as Lender in its discretion shall deem proper.

Section 6.3. Right to Cure Defaults. Upon the occurrence and during the continuance of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make any payment or do any act required of Mortgagor hereunder in such manner and to such extent as Lender may deem necessary to protect the security hereof. Lender is authorized to enter upon the Mortgaged Property for such purposes, or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Security Instrument or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees actually incurred to the extent permitted by law), with interest as provided in this Section 6.3, shall constitute a portion of the Obligations and shall be due and payable to Lender upon demand. All such costs and expenses incurred by Lender in remedying such Event of Default or such failed payment or act or in appearing in, defending, or bringing any such action or proceeding shall bear interest at the Default Rate, for the period after notice from Lender that such cost or expense was incurred to the date of payment to Lender. All such costs and expenses incurred by Lender together with interest thereon calculated at the Default Rate shall be deemed to constitute a portion of the Obligations and be secured by this Security Instrument and the other Loan Documents and shall be immediately due and payable upon demand by Lender therefor.

Section 6.4. Actions and Proceedings. Lender has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Lender, in its discretion, decides should be brought to protect its interest in the Mortgaged Property.

Section 6.5. Other Rights, etc.

(a) The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Security Instrument. Mortgagor shall not be relieved of Mortgagor's obligations hereunder by reason of (i) the failure of Lender to comply with any request of Mortgagor or any guarantor or indemnitor with respect to the Loan to take any action to foreclose this Security Instrument or otherwise enforce any of the provisions hereof or of the Note or the other Loan Documents, (ii) the release, regardless of consideration, of any part (but not the whole) of the Mortgaged Property, or of any person liable for the Obligations or any portion thereof, or (iii) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Note, this Security Instrument or the other Loan Documents.

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

(c) Lender may resort for the payment of the Obligations to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

Section 6.6. Right to Release Any Portion of the Mortgaged Property. Lender may release any portion of the Mortgaged Property for such consideration as Lender may require without, as to the remainder of the Mortgaged Property, in any way impairing or affecting the lien or priority of this Security Instrument, or improving the position of any subordinate lienholder with respect thereto, except to the extent that the obligations hereunder shall have been reduced by the actual monetary consideration, if any, received by Lender for such release, and may accept by assignment, pledge or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder. This Security Instrument shall continue as a lien and security interest in the remaining portion of the Mortgaged Property.

Section 6.7. Violation of Laws. If the Mortgaged Property is not in material compliance with Legal Requirements, Lender may impose additional reasonable requirements upon Mortgagor in connection herewith including, without limitation, monetary reserves or financial equivalents.

Section 6.8. Choice of Remedies. Notwithstanding any other provision of this Security Instrument or the Loan Agreement, Lender is entitled to enforce the obligations of Mortgagor, any guarantor and indemnitor contained in any of the Loan Documents without first resorting to or exhausting any security or collateral and without first having recourse to the Note or any of the Mortgaged Property, through foreclosure or acceptance of a deed in lieu of foreclosure or otherwise, and in the event Lender commences a foreclosure action against the Mortgaged Property, Lender is entitled to pursue a deficiency judgment with respect to the obligations contained in such sections against Mortgagor and any guarantor or indemnitor with respect to the Loan. Notwithstanding the foregoing, nothing herein shall inhibit or prevent Lender from foreclosing or exercising any other rights and remedies pursuant to the Loan Agreement, the Note, this Security Instrument and the other Loan Documents, whether simultaneously with foreclosure proceedings or in any other sequence. A separate action or actions may be brought and prosecuted against Mortgagor whether or not action is brought against any other Person or whether or not any other Person is joined in the action or actions.

Section 6.9. Right of Entry. Upon reasonable notice to Mortgagor, Lender and its agents shall have the right to enter and inspect the Mortgaged Property at all reasonable times subject to the rights of the applicable tenants under the Leases.

## ARTICLE 7 - WAIVERS

Section 7.1. Marshalling and Other Matters. To the extent permitted by applicable law, Mortgagor hereby waives the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshalling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Security Instrument on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Security Instrument and on behalf of all persons to the extent permitted by applicable law.

Section 7.2. Waiver of Notice. To the extent permitted by applicable law, Mortgagor shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Security Instrument or any other Loan Document specifically and expressly provides for the giving of notice by Lender to Mortgagor and except with respect to matters for which Lender is required by applicable law to give notice, and Mortgagor hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Security Instrument or any other Loan Document does not specifically and expressly provide for the giving of notice by Lender to Mortgagor.

Section 7.3. Waiver of Statute of Limitations. To the extent permitted by applicable law, Mortgagor hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment or performance of the Obligations.

Section 7.4. Survival. The indemnifications made pursuant to the Loan Documents shall continue indefinitely in full force and effect and shall survive and shall in no way be impaired by

any of the following: any satisfaction or other termination of this Security Instrument, any assignment or other transfer of all or any portion of this Security Instrument or Lender's interest in the Mortgaged Property (but, in such case, shall benefit both Indemnified Parties and any assignee or transferee), any exercise of Lender's rights and remedies pursuant hereto including, but not limited to, foreclosure or acceptance of a deed in lieu of foreclosure, any exercise of any rights and remedies pursuant to the Loan Agreement, the Note or any of the other Loan Documents, any transfer of all or any portion of the Mortgaged Property (whether by Mortgagor or by Lender following foreclosure or acceptance of a deed in lieu of foreclosure or at any other time), any amendment to this Security Instrument, the Loan Agreement, the Note or the other Loan Documents, and any act or omission that might otherwise be construed as a release or discharge of Mortgagor from the obligations pursuant hereto.

#### ARTICLE 8 - NOTICES

All notices or other written communications hereunder shall be delivered in accordance with Section 11.6 of the Loan Agreement.

#### ARTICLE 9 - APPLICABLE LAW

Section 9.1. Governing Law. This Security Instrument shall be governed in accordance with the terms and provisions of Section 11.12 of the Loan Agreement, except that the creation, perfection and enforcement of the Liens and security interests created pursuant to this Security Instrument shall be governed and construed according to the law of the state where the Land is located, it being understood that to the fullest extent permitted by the laws of such state, the law of the State of New York shall govern the Loan Agreement, the Note and the other Loan Documents as set forth in Section 11.12 of the Loan Agreement.

Section 9.2. Usury Laws. Notwithstanding anything to the contrary, (a) all agreements and communications between Mortgagor and Lender are hereby and shall automatically be limited so that, after taking into account all amounts deemed interest, the interest contracted for, charged or received by Lender shall never exceed the maximum lawful rate or amount, (b) in calculating whether any interest exceeds the lawful maximum, all such interest shall be amortized, prorated, allocated and spread over the full amount and term of all principal indebtedness of Mortgagor to Lender, and (c) if through any contingency or event, Lender receives or is deemed to receive interest in excess of the lawful maximum, any such excess shall be deemed to have been applied toward payment of the principal of any and all then outstanding indebtedness of Mortgagor to Lender, or if there is no such indebtedness, shall immediately be returned to Mortgagor.

Section 9.3. Provisions Subject to Applicable Law. All rights, powers and remedies provided in this Security Instrument may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law and are intended to be limited to the extent necessary so that they will not render this Security Instrument invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law. If any term of this Security Instrument or any application thereof shall be invalid or unenforceable, the

remainder of this Security Instrument and any other application of the term shall not be affected thereby.

## ARTICLE 10 - DEFINITIONS

All capitalized terms not defined herein shall have the respective meanings set forth in the Loan Agreement. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Security Instrument may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Lender" shall mean "Lender and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by this Security Instrument," the word "Mortgaged Property" shall include any portion of the Mortgaged Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all reasonable attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels actually incurred or paid by Lender in protecting its interest in the Mortgaged Property, the Leases and the Rents and enforcing its rights hereunder.

## ARTICLE 11 - MISCELLANEOUS PROVISIONS

Section 11.1. No Oral Change. This Security Instrument, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Mortgagor or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

Section 11.2. Successors and Assigns. This Security Instrument shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors and assigns forever.

Section 11.3. Inapplicable Provisions. If any term, covenant or condition of the Loan Agreement, the Note or this Security Instrument is held to be invalid, illegal or unenforceable in any respect, the Loan Agreement, the Note and this Security Instrument shall be construed without such provision.

Section 11.4. Headings, etc. The headings and captions of various Sections of this Security Instrument are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

Section 11.5. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

Section 11.6. Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Mortgaged

Property, then, to the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Obligations, the performance and discharge of Mortgagor's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Other Obligations.

Section 11.7. Entire Agreement. The Note, the Loan Agreement, this Security Instrument and the other Loan Documents constitute the entire understanding and agreement between Mortgagor and Lender with respect to the transactions arising in connection with the Obligations and supersede all prior written or oral understandings and agreements between Mortgagor and Lender with respect thereto. Mortgagor hereby acknowledges that, except as incorporated in writing in the Note, the Loan Agreement, this Security Instrument and the other Loan Documents, there are not, and were not, and no persons are or were authorized by Lender to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the transaction which is the subject of the Note, the Loan Agreement, this Security Instrument and the other Loan Documents.

Section 11.8. Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Mortgaged Property upon Lender, nor shall it operate to make Lender responsible or liable for any waste committed on the Mortgaged Property by the tenants or any other Person, or for any dangerous or defective condition of the Mortgaged Property, or for any negligence in the management, upkeep, repair or control of the Mortgaged Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession."

Section 11.9. Cross Collateral. The Note and the other Loan Documents are secured by, among other things, this Security Instrument and by the other mortgages, deeds of trust and deeds to secure debt encumbering real and personal property in the States of Alabama, Arizona, Florida, Georgia, Illinois, Indiana, Kentucky, Minnesota, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Utah and Virginia (collectively, the "Security Instruments") and may hereafter be secured by additional mortgages or deeds of trust, as applicable encumbering real and personal property in other jurisdictions. The Security Instruments in addition to this Security Instrument are sometime referred to herein as the "Other Security Instruments". The Loan may be accelerated as provided in any of the Loan Documents and an Event of Default under any of the Loan Documents constitutes an Event of Default under this Security Instrument. In consequence of an Event of Default, Lender may accelerate the Loan and foreclose any one or more of the Security Instruments or resort to any one or more of its other rights and remedies under the Security Instruments. All of the properties of all kinds conveyed and/or mortgaged by the Security Instruments are security for the Loan without allocation of any one or more of the parcels or portions thereof to any portion of the Loan less than the whole amount thereof. Lender may allocate the proceeds received by Lender upon the exercise of its remedies and rights, including foreclosure, among the Loan, as Lender in its sole discretion may determine to be

advisable. Lender may proceed, at the same or different times, to foreclose the Security Instruments by any proceedings appropriate in the state where any of the land lies, including, private sale, trustees sale, or exercise of power of sale if permitted, and no event of enforcement taking place in any state, including without limiting the generality of the foregoing, any pending judicial foreclosure, judgment or decree of foreclosure, judicial foreclosure sale, rents received, possession taken, deficiency judgment or decrees, or judgment taken on the Note, shall in any way stay, preclude or bar enforcement of any of the Security Instruments in this state or any other state, and Lender may pursue any or all of its remedies to the maximum extent permitted by applicable law until the Loan Agreement and all other Obligations now or hereafter secured by any or all of the Security Instruments and other Security Instruments has been paid or discharged in full. Additionally, and without limitation of any other provision of this Security Instrument, if this Security Instrument is foreclosed and sale is made of the Mortgaged Property (or any part thereof which remains subject to this Security Instrument) pursuant to foreclosure or other proceedings or actions, and if the proceeds of such sale (after application of such proceeds as provided elsewhere in this Security Instrument and the Agreement and after deducting all accrued general and special taxes and assessments) are not sufficient to pay the total sum of the Loan then outstanding and any other amounts provided for by applicable law (herein sometimes collectively referred to as the "**Balance Owed**"), then the Loan shall not be satisfied to the extent of the deficiency in such proceeds to pay the Balance Owed, but such Loan shall continue in existence and continue to be evidenced by the Note and shall continue to be secured by all of the Other Security Instruments. Subject to the requirements of applicable law, if Lender shall acquire the Mortgaged Property as a result of any such foreclosure sale (whether by bidding all or any portion of the Loan or otherwise), the proceeds of such sale shall not be deemed to include (and Mortgagor shall not be entitled to any benefit or credit on account of) proceeds of any subsequent sale of the Mortgaged Property by Lender, its successors and assigns. Without limitation of any other provision hereof, Mortgagor further agrees that if any of the Other Security Instruments are foreclosed and sale is made of any of the property subject to any Other Security Instruments, and if the proceeds of such sale (after application of such proceeds as provided for in the other Security Instruments and the Agreement and after deducting all accrued and general and special taxes and assessments) are not sufficient to pay the Loan and any other amounts provided for by applicable law, thereby creating a Balance Owed, then the Loan then outstanding shall not be satisfied to the extent of the deficiency in such proceeds to pay such Balance Owed, but the Loan shall continue in existence and continue to be evidenced by the Note and shall continue to be secured by this Security Instrument and all of the Other Security Instruments existing immediately prior to any such foreclosure, except such Security Instrument foreclosed upon. No release of personal liability of any person whatsoever and no release of any portion of the property now or hereafter subject to the lien of any of the Security Instruments shall have any effect whatsoever by way of impairment or disturbance of the lien or priority of any other of the Security Instruments or the unreleased properties encumbered by any of the Security Instruments. Any foreclosure or other appropriate remedy brought in any of the states aforesaid may be brought and prosecuted as to any part of the security, wherever located, without regard to the fact that foreclosure proceedings or other appropriate remedies have or have not been instituted elsewhere on any other land or property subject to the lien of the Security Instruments or any of them. Neither Mortgagor nor any person claiming by, through or under Mortgagor shall have or enjoy any right to marshalling of assets, all such right being hereby expressly waived as to the Mortgaged Mortgagor and all persons claiming by, through or under

Mortgagor, including, without limitation, junior lienors. Mortgagor and all endorsers, guarantors and sureties of the Note, and each of them, hereby waive any and all rights arising because of payment or performance by Mortgagor of any Loan or other obligations secured by the Other Security Instruments, (a) against any other person by way of subrogation of the rights of Lender or otherwise, or (b) against any party obligated to pay or perform under the Loan or other obligation secured by the Other Security Instruments by way of contribution, reimbursement or otherwise.

## ARTICLE 12 - STATE-SPECIFIC PROVISIONS

Section 12.1. Principles of Construction. In the event of any inconsistencies between the terms and conditions of this Article 12 and the terms and conditions of this Security Instrument, the terms and conditions of this Article 12 shall control and be binding.

Section 12.2. Defeasance. If the Mortgagor shall: pay in full all of the Secured Indebtedness including but not limited to all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and all sums becoming due and payable by the Mortgagor under the terms of this Security Instrument and the Loan Agreement and the Loan Documents, including but not limited to advances made by Lender pursuant to the terms and conditions of this Security Instrument; and have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the Lender will thereupon cease; and the Lender in such case shall, upon the request of the Mortgagor, deliver to the Mortgagor proper instruments acknowledging satisfaction of this Security Instrument; otherwise, this Security Instrument shall remain in full force and effect.

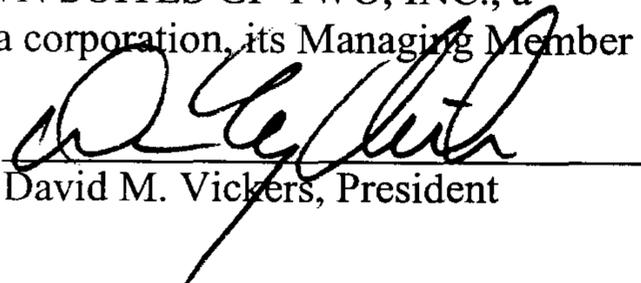
**[NO FURTHER TEXT ON THIS PAGE]**

**IN WITNESS WHEREOF**, this Security Instrument has been executed by Mortgagor as of the day and year first above written.

MORTGAGOR:

**INTOWN SUITES SOUTHPARK, LLC**, a  
Georgia limited liability company

By: INTOWN SUITES GP TWO, INC., a  
Georgia corporation, its Managing Member

By:   
David M. Vickers, President

**ACKNOWLEDGMENT**

STATE OF GEORGIA )  
 )  
 )  
FULTON COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that David M. Vickers, whose name as President of Intown Suites GP Two, Inc., a Georgia corporation, as the Managing Member of INTOWN SUITES SOUTHPARK, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as the Managing Member of said limited liability company, for and as the act of said limited liability company.

Given under my hand and official seal this 23<sup>rd</sup> day of April, 2002.

*Cheryl Vanhook*  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_



**EXHIBIT A**

**Legal Description**

**(See Attached Legal Description)**

Legal Description  
Southpark/Hoover, AL

20020515000229700 Pg 26/26 3,462.80  
Shelby Cnty Judge of Probate, AL  
05/15/2002 11:44:00 FILED/CERTIFIED

**EXHIBIT A**

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

Street Address: 1840 Southpark Drive, Hoover, AL 35244

Tax Parcel Identification Number: 10-9-30-0-001-005.008