

648,135⁰⁰ increase

THIS MORTGAGE AMENDS AND RESTATES IN ITS ENTIRETY THAT CERTAIN
CONSTRUCTION MORTGAGE
BETWEEN MORTGAGOR AND THE MONEY STORE COMMERCIAL MORTGAGE, INC. ("MONEY STORE")
DATED MAY 14, 1996 AND RECORDED AS INSTRUMENT NUMBER 1996-15784 IN THE OFFICE OF
JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, WHICH MORTGAGE HAS BEEN ASSIGNED FROM
MONEY STORE TO ALMA GROUP, L.L.C. BY INSTRUMENT NUMBER 2002-0624-000-294720 IN
SAID PROBATE OFFICE AND BY ALMA GROUP, L.L.C. TO CS ASSETS, LLC BY INSTRUMENT
NUMBER 2002-0624-000-294730 IN SAID PROBATE OFFICE AND BY CS ASSETS, LLC TO
MORTGAGEE BY INSTRUMENT NUMBER 2002-0719-000-337550 IN SAID PROBATE OFFICE

PART OF THE INDEBTEDNESS SECURED HEREBY IS A RENEWAL AND EXTENSION OF INDEBTEDNESS
THAT IS ALSO SECURED BY MORTGAGE INSTRUMENTS RECORDED AS INSTRUMENT NUMBER 1996-
15785 AND/OR 1997-40931

STATE OF ALABAMA)
SHELBY COUNTY)

**AMENDED AND RESTATED
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

THIS AMENDED AND RESTATED MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES (this "Mortgage") is made and entered into as of
this 1st day of September, 2002 and between **Karsons International, Inc.**, an _____
corporation, (the "Mortgagor"), whose address is 357 Highway 204, Calera, Alabama 35040, and
Texhost, LLC, a Nevada limited liability company (the "Mortgagee"), whose address is 901
Northeast Loop 410, Suite 807, San Antonio, Texas 78209.

Recitals

A. Mortgagee acquired and is the holder of indebtedness (the "Existing Indebtedness") evidenced by the Mortgagor's promissory notes described below, each of which is payable to the order of The Money Store Commercial Mortgage, Inc. ("Money Store") and each of which has been assigned to Mortgagee:

(i) Promissory Note dated May 14, 1996 in the original principal amount of \$1,377,000.00, amended by Amendment to Note dated December 16, 1997;

(ii) Promissory Note dated May 14, 1996 in the original principal amount of \$968,000.00, amended by Amendment to Note dated December 16, 1997; and,

✓
Liberty Title Co. LLC
1000 Urban Center Drive
Ste 250
B'ham, AL 35242

(iii) Promissory Note dated December 16, 1997 in the original principal amount of \$656,865.00, as amended August 7, 1998 to increase the principal amount to \$706,865.00.

B. The Existing Indebtedness is secured by, among other things, that certain mortgage executed and delivered by Mortgagor to Money Store and recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument Number 1996-15784.

C. Pursuant to a Loan Modification Agreement (the "Loan Modification Agreement") of even date herewith, Mortgagee has agreed to restructure the Existing Indebtedness. As part of the restructure, the Existing Indebtedness will be divided into two components: one evidenced by Mortgagor's Amended and Restated Promissory Note of even date herewith in the original principal amount of \$2,000,000.00 (which will be referred to herein as, the "Motel Note") and the other by Mortgagor's Amended and Restated Promissory Note in the original principal amount of \$1,700,000.00. Pursuant to the Loan Modification Agreement, the Motel Note is to be secured by only one of the lots that are currently encumbered by the mortgage described in Recital B (the remaining lots to be continued as collateral for the \$1,700,000.00 note referred to in the foregoing sentence pursuant to additional Amended and Restated Mortgages executed contemporaneously herewith). This Mortgage is the New Calera Motel First Mortgage referred to in the Loan Modification Agreement.

D. This Mortgage amends and restates in its entirety the mortgage described in Recital B which is recorded as Instrument Number 1996-15784 in order to, among other things, (i) induce the Mortgagee to restructure the Existing Indebtedness, (ii) secure the Motel Note, and (iii) amend the description of the property encumbered thereby to include only a portion of same.

Agreement

NOW, THEREFORE, in consideration of the premises, and to secure the payment of the following (hereinafter collectively referred to as the "Debt"):

(1) the payment of the debt evidenced by the Motel Note, and interest thereon and any and every extension, renewal, restatement, and modification thereof, or of any part thereof, and all interest on all such extensions, renewals and modifications;

(2) the obligation of Mortgagor to repay certain costs advanced by Mortgagee as provided by paragraph 12(b) of the Loan Modification Agreement, and

(3) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this Mortgage and the payment of all amounts that Mortgagor is obligated to pay hereunder, including without limitation the obligation to pay Advances (as defined herein);

the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through H both inclusive, and does grant to the Mortgagee a security interest in said property and interests in property:

- A. The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements").
- B. All permits, easements, licenses, rights-of-way, contracts, appurtenances, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements.
- C.
 - (i) All leases, written or oral, and all written and oral agreements for use or occupancy of hotel or motel rooms and any other portion of the Real Estate or the Improvements, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate or the Improvements (all such leases, subleases, agreements and tenancies heretofore mentioned being hereinafter individually referred to as a "Lease", and collectively referred to as the "Leases");
 - (ii) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases;
 - (iii) the immediate and continuing right to collect and receive all of the rents, income, accounts, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate or any of the Improvements, or any part thereof, including, but not limited to, rents, accounts and other charges of any nature whatsoever for the use of motel or hotel rooms in the hotel or motel that constitutes part of the Improvements, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or the Improvements, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate or any of the Improvements, all such moneys, rights and claims in this

paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof); and

(iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the Mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment.

- D. All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with, the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.
- E. Any and all furniture, furnishings, appliances, electronics, equipment, machinery, supplies, and appliances owned by the Mortgagor, including without limitation sofas, beds, linens, towels, cleaning supplies and equipment, lamps, electrical and plumbing fixtures, tables, chairs, desks, televisions, radios, microwave and other kinds of ovens, refrigerators, mini-bars, telephones, telephone systems and apparatus, and luggage racks and carts.
- F. The FF&E Reserve (as defined in paragraph 8A, below), the Impound Account (as defined in paragraph 6, below) any and all licenses, license agreements (including without limitation the License Agreement, as defined herein) franchises, franchise agreements, and other intangibles of any nature whatsoever, and any and all other personal property of every kind and nature owned by the Mortgagor now or at any time hereafter located on the Real Estate or in the Improvements and any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Mortgagee, or in which the Mortgagee is granted a security

interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

- G. Each and every policy of hazard insurance now or hereafter in effect which insures the Property (but, in the case of blanket policies, only to the extent that such policy is applicable to the Property), or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of the Mortgagor in and to each and every such policy (but, in the case of blanket policies, only to the extent that such policy is applicable to the Property), including, but not limited to, all the Mortgagor's right, title and interest in and to any premiums paid on each such policy (but, in the case of blanket policies, only to the extent that such premiums are applicable to the Property), including all rights to return premiums.
- H. Any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property.

(All of the property and interests in property described in the foregoing Granting Clauses A through F, both inclusive, are herein sometimes collectively called the "Property". The personal property described in Granting Clause D, E and F and all other personal property covered by this Mortgage are herein sometimes collectively called the "Personal Property".)

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other exceptions described on Exhibit B hereto ("Permitted Exceptions").

To have and to hold the Property unto the Mortgagee, its successors and assigns forever.

1. **Warranties of Title.** The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Personal Property, Improvements and other Property and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances, unless otherwise provided hereinbefore; and that the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons.

2. **Maintenance of Lien Priority.** The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve,

protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

3. **Representations and Warranties Related to Rents and Leases.**

(a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(b) The Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Leases now in effect on the Mortgagor's part to be kept, observed and performed and will so perform with respect to any future Leases.

(c) The Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(d) No Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) The Mortgagor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

4. **Covenants To Pay Liens and Maintain Insurance.** For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (a) pay all taxes, assessments, and other liens taking priority over this Mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (b) keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss or damage from such causes as are customarily insured against by prudent owners of similar facilities. Without limiting the generality of the foregoing, the Mortgagor shall maintain at all times during which this Mortgage is in effect, All Risks or Special Form Property insurance against loss or damage to the Improvements, including but not limited to loss or damage due to perils of flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a property insurance policy with a standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to the Mortgagee) to the Mortgagee, as its interests may appear, subject to the rights of the holders of any prior mortgages. Such insurance shall be in an amount at least equal to the full insurable

value of the Personal Property and Improvements unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefor, shall be delivered to, and held by, the Mortgagee until the Debt is paid in full. The original insurance policy and all replacements therefor must provide that they may not be canceled without the insurer's giving at least fifteen days' prior written notice of such cancellation to the Mortgagee.

5. **Insurance.**

(a) **Mortgagee may Insure.** If the Mortgagor fails to keep the Property insured as specified above, then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit. The amount of all premiums and other costs incurred by the Mortgagee in procuring insurance for the Property shall constitute an Advance, as defined below.

(b) **Insured Casualty; Restoration.** If any part of the Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice to the Mortgagee. The proceeds from the insurance payable on account of such casualty (less the costs of collecting the same), if collected, shall be credited against the Debt, or, at the election of the Mortgagee, such proceeds may be used to purchase additional Personal Property to replace Personal Property that has been damaged or destroyed and to repair or reconstruct the Improvements. Every casualty shall be settled and adjusted by the Mortgagor only after consultation with and approval by the Mortgagee. After a casualty occurs, all insurance proceeds shall be paid to the Mortgagee.

6. **Tax and Insurance Impound Account.** Mortgagor shall establish and maintain with Mortgagee at all times while this Mortgage continues in effect an impound account (the "Impound Account") for payment of Taxes and for the premiums on the insurance required to be maintained with respect to Mortgagor and the Property ("Insurance Premiums") and as additional security for the Debt. In addition to the initial deposit to the Impound Account required simultaneously with the execution hereof, if any, on the first day of each November, May, June, and July (a "Deposit Date"), Mortgagor shall pay to Mortgagee deposits in the amount of \$7,500.00. So long as no event occurs, and no state of facts exists, which, with the giving of notice and/or the passage of time, would constitute an Event of Default hereunder (such event or state of facts, a "Default") has occurred and is continuing, all sums in the Impound Account shall be held by the Mortgagee in the Impound Account to pay said Taxes and Insurance Premiums in one installment before the same becomes delinquent. Mortgagor shall be responsible for ensuring the receipt by Mortgagee, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all Taxes and all Insurance Premiums, and so long as no Default has occurred and is continuing, Mortgagee shall pay the governmental authority or other party entitled thereto directly to the extent funds are available for such purpose in the Impound Account. In making any payment from the Impound Account, Mortgagee shall be entitled to rely on any bill,

statement or estimate procured from the appropriate public office or insurance company or agent without any inquiry into the accuracy of such bill, statement or estimate and without any inquiry into the accuracy, validity, enforceability or contestability of any tax, assessment, valuation, sale, forfeiture, tax lien or title or claim thereof. The Impound Account shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Mortgagee's option and in Mortgagee's discretion, may either be held in a separate account or be commingled by Mortgagee with the general funds of Mortgagee. No interest on the funds contained in the Impound Account shall be paid by Mortgagee to Mortgagor. The Impound Account is solely for the protection of Mortgagee and entails no responsibility on Mortgagee's part beyond the payment of Taxes and of Insurance Premiums, following receipt of bills, invoices or statements thereof in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Mortgage by Mortgagee, any funds in the Impound Account shall be turned over to the assignee and any responsibility of Mortgagee, as assignor, with respect thereto shall terminate. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Mortgagee, such excess may be, in the sole discretion of Mortgagee, retained by Mortgagee for payment of future installments of Taxes and Insurance Premiums, transferred to the FF&E Reserve (see paragraph 8A below), credited by Mortgagee on subsequent payments to be made hereunder to the Impound Account or refunded to Mortgagor. If at any time Mortgagee determines that, with the making of all deposits to the Impound Account when due, the Impound Account nonetheless would not contain sufficient funds to pay the next due periodic installments of all Taxes at least 30 days prior to the delinquency date thereof, or to pay the next due periodic Insurance Premiums at least 30 days prior to the due date thereof, Mortgagor shall, within 45 days prior to the delinquency date of such Taxes or Insurance Premiums, deposit with Mortgagee the full amount of any such deficiency. If the Mortgagor shall fail to deposit with Mortgagee the full amount of such deficiency as provided above, Mortgagee shall have the option, but not the obligation to make such deposit and all such deposits made by Mortgagee shall constitute Advances, as defined in paragraph 30. Upon an Event of Default, Mortgagee may, but shall not be obligated to, apply at any time the balance then remaining in the Impound Account against the Debt in whatever order Mortgagee shall subjectively determine. No such application of the Impound Account shall be deemed to cure any Default or Event of Default hereunder, and any such application shall not limit Mortgagor's obligation to deposit any deficiency of which Mortgagee gives notice. Upon full payment of the Debt in accordance with its terms or at such earlier time as Mortgagee may elect, the balance of the Impound Account then in Mortgagee's possession shall be paid over to Mortgagor and no other party shall have any right or claim thereto.

7. **Condemnation Proceeds, etc.** All awards, payments and damages that may be made to the Mortgagor because of the exercise of eminent domain, alteration of the grade or of any street or any other injury to or decrease in value of the Property and all condemnation proceeds and consideration shall be paid directly to the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Debt in any order and amount and whether or not then due, or hold such balance as a cash

collateral reserve against the Debt, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

8. **Covenant Against Waste; Covenants Regarding License Agreement.**

(a) The Mortgagor agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted.

(b) In no event shall the existing license agreement (the "License Agreement") pursuant to which Mortgagor operates the Holiday Inn Express be terminated, modified or amended without the prior written consent of Mortgagee. Any replacement or subsequent license agreement entered into by Mortgagor with respect to the Property shall be subject to the approval of Mortgagee. Mortgagee's approval of any replacement or successor licensor shall be conditioned, among other things, on Mortgagor's causing such replacement or successor licensor to enter into a consent agreement whereby the licensor grants Mortgagee certain rights upon a default by Mortgagor under the license agreement, which consent agreement shall be in form reasonably acceptable to Mortgagee. In the event of (i) the bankruptcy or insolvency of any such licensor, (ii) a default by licensor under its agreement with Mortgagor, or (iii) an Event of Default by Mortgagor, Mortgagor shall, at the request of Mortgagee, terminate the License Agreement and enter into a new license agreement approved by Mortgagee.

8A. **FF&E and Replacement Reserve.** As additional security for the Debt, Mortgagor shall establish and maintain the reserve accounts required by this Section, subject to the security interest therein as more fully set forth in the Granting Clauses of this Mortgage. Mortgagor agrees that it will cause the Property to be continuously furnished, operated and maintained as a first-class hotel property, in accordance with the requirements of the License Agreement as defined in paragraph 8 hereof). Without limiting the generality of the foregoing, simultaneously herewith, and on each Deposit Date until the Motel Note is paid in full, Mortgagor shall pay to Mortgagee an amount equal to the "FF&E Reserve Deposit Amount", as defined below, to be held in a reserve fund (the "FF&E Reserve") subject to this Mortgage. The FF&E Reserve shall be used to pay the costs of repairs and replacements of "FF&E" (which shall be defined as those items constituting "Property and Equipment", but not "Land" or "Buildings", as such terms are defined in the current edition of the Uniform System of Accounts for Hotels (the "Uniform System") of the American Hotel Association or its successor organization). So long as no Event of Default shall exist and be continuing, Mortgagee shall, to the extent funds are available for such purpose in the FF&E Reserve, disburse to Mortgagor the amount paid or incurred by Mortgagor in purchasing, equipping and/or maintaining FF&E as required above, upon satisfaction of the requirements set forth in paragraph 8B of this Mortgage. Mortgagee may, at Mortgagor's expense, make or cause to be made an inspection of the Property to determine the need, as determined by Mortgagee in its reasonable judgment, for

further Repairs of the Property. In the event that such inspection reveals that further repair or replacements of FF&E, or other repairs of the Improvements, are required, Mortgagee shall provide Mortgagor with a written description of the required items, and Mortgagee shall complete such items to Mortgagee's reasonable satisfaction within ninety (90) days after Mortgagee's notice, or such later date as may be approved by Mortgagee in its discretion. As used in this paragraph, "FF&E Reserve Deposit Amount" shall mean \$5,000.00. Periodically, the FF&E Reserve Deposit Amount shall be reset to an amount determined by Mortgagee from its review of the annual financial statements required to be submitted pursuant to the Motel Note.

8B. **Disbursements from the FF&E Reserve.** So long as no Event of Default shall have occurred and be continuing under this Mortgage, all sums in the FF&E Reserve shall be held by Mortgagee in the FF&E Reserve as set forth above for the purposes set forth in paragraph 8A. So long as no Event of Default has occurred and is continuing, Mortgagee shall disburse to Mortgagor, from the FF&E Reserve for the purposes set forth in paragraph 8A, an amount equal to the actual expenses incurred to date by Mortgagor from such expenditure, but only to the extent that such expense is one for which, pursuant to Paragraph 8A, the proceeds of the FF&E Reserve may be disbursed. Disbursements shall be made to Mortgagor within (10) ten days following Mortgagee's receipt of each of the following:

(a) a written request from Mortgagor for such disbursement, accompanied by a certification by Mortgagor in form and content acceptable to Mortgagee;

(b) copies of invoices, receipts or other evidence satisfactory to Mortgagee verifying payment of the costs and expenses for which Mortgagor is requesting such disbursement;

(c) for disbursement requests in connection with a single project, or group of related projects, for which Mortgagor is seeking reimbursement of \$10,000 or more, affidavits, lien waivers or other evidence reasonably satisfactory to Mortgagee showing that all materialmen, laborers, contractors, suppliers and other parties who have or might claim statutory or common law liens, or who have furnished labor, materials or supplies to or in connection with the Property, have been paid all amounts due;

(d) for disbursement requests in connection with a single project, or group of related projects, for which Mortgagor is seeking reimbursement of \$10,000 or more, a certification from an inspecting architect or other third party acceptable to Mortgagee, verifying that any work for which Mortgagor is requesting a disbursement has been properly completed and that the cost of such work bears a reasonable relationship to the costs incurred therefor;

(e) a copy of the certificate of occupancy for the Improvements if, as a result of any work undertaken by Mortgagor, it was necessary to receive an amendment to the existing certificate of occupancy (or similar instrument) issued with respect to the Improvements, or to obtain a new certificate of occupancy for the Improvements, or a certification of Mortgagor that no such amended or new certificate of occupancy is required; and

- (f) payment of an administrative fee of \$150.00 per request.

Mortgagee shall not be required to make advances from the FF&E Reserve more frequently than once in any thirty (30) day period or for an amount less than \$2,500.00. In making any disbursement from the FF&E Reserve, Mortgagee shall be entitled to rely on the disbursement request from Mortgagor without any inquiry into the accuracy, validity or contestability of any amount set forth therein. The Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds. Mortgagee may, at its discretion hold the FF&E Reserve either in a separate account or commingled by Mortgagee with any other funds in the possession or control of Mortgagee. The FF&E Reserve is solely for the protection of Mortgagee, and shall entail no responsibility on Mortgagee's part beyond making disbursements upon strict satisfaction of the requirements of paragraph 8A and this paragraph and beyond the allowing of due credit for the sums actually received. To the extent that any funds in the FF&E Reserve are invested in any investment suitable for the investment of escrows and reserves established under mortgage loans included in a secondary market transaction in which some or all of the securities issued thereby are rated "AAA" (or the equivalent rating) by one or more rating agencies, as the standards therefor are established from time to time (or if Mortgagee reasonably determines that no such standards exist, such investments as are otherwise acceptable to Mortgagee, in the exercise of prudent lending standards), Mortgagor shall bear the risk of loss of such investments. In the event that the amounts on deposit in the FF&E Reserve are insufficient to reimburse Mortgagor for amounts otherwise properly requested, Mortgagee shall not be obligated or authorized to transfer funds from other reserves and Mortgagor shall pay the amount of such deficiency. Upon assignment of this Mortgage by Lender, any funds in the FF&E Reserve shall be turned over to the assignee, and any responsibility of the assignor with respect thereto shall terminate.

8C. **Interest-Bearing Reserve.** Mortgagee shall cause funds in the FF&E Reserve to be deposited into an interest bearing account of the type customarily maintained by Mortgagee or its servicing agent for the investment of similar reserves, which account may not yield the highest interest rate then available. Interest payable on such amounts shall be computed based on the daily outstanding balance in FF&E Reserve. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made to the FF&E Reserve by Mortgagor. All interest earned on amounts contributed to the FF&E Reserve shall be retained by Mortgagee and added to the balance in the FF&E Reserve and are to be disbursed for payment of the items for which other funds in the FF&E Reserve are to be disbursed. Mortgagor acknowledges that all reserves other than the FF&E Reserve shall not accrued or bear interest for the benefit of Mortgagor and no interest shall be payable thereon by Mortgagee.

9. **Environmental Representations and Warranties.** Mortgagor hereby represents and warrants to the Mortgagee that:

(a) the Property is not in direct or indirect violation of any local, state, federal or other governmental authority, statute, ordinance, code, order, decree, law, rule or regulation pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), the Resource Conservation and Recovery Act, as amended ("RCRA"), the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substance Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended, any state statutes analogous or comparable to the foregoing, any state super-lien and environmental clean-up statutes and all rules and regulations adopted in respect to the foregoing laws (collectively "Environmental Laws");

(b) the Property is not subject to any private or governmental lien or judicial or administrative notice or action or inquiry, investigation or claim relating to hazardous and/or toxic, dangerous and/or regulated, substances, wastes, materials, raw materials which include hazardous constituents, pollutants or contaminants (including without limitation, petroleum and polychlorinated biphenyls) and any other substances or materials which are included under or regulated by Environmental Laws or which are considered by scientific opinion to be otherwise dangerous in terms of the health, safety and welfare of humans (collectively "Hazardous Substances");

(c) no Hazardous Substances are or have been (including the period prior to Mortgagor's acquisition of the Property), released into or from, discharged into, generated, treated, disposed of or stored on, incorporated in, or released, removed or transported from, the Property other than in compliance with all Environmental Laws;

(d) no Hazardous Substances are present in, on or under any nearby real property which could migrate to or otherwise affect the Mortgaged Property; and

(e) no underground storage tanks exist on or under any of the Property.

10. **Environmental Covenants.** So long as Mortgagor owns or is in possession of the Property, the Mortgagor

(a) shall keep the Property, or cause the Property to be kept, free from Hazardous Substances and in compliance with all Environmental Laws;

(b) shall promptly notify Mortgagee if the Mortgagor shall become aware of any Hazardous Substances on or near the Property and/or if the Mortgagor shall become aware

that the Property is in direct or indirect violation of any Environmental Laws and/or if the Mortgagor shall become aware of any condition on or near the Property that shall pose a threat to the health, safety or welfare of humans and (ii) shall, promptly after the Mortgagor becomes aware of same and at the Mortgagor's sole expense, remove such Hazardous Substances and/or cure such violations and/or remove such threats, as applicable, as required by law, (or as shall be required by the Mortgagee in the case of removal which is not required by law, but in response to the opinion of a licensed hydrogeologist, licensed environmental engineer or other qualified consultant engaged by the Mortgagee (the "Mortgagee's Environmental Consultant"). Nothing herein shall prevent the Mortgagor from recovering such expenses from any other party that may be liable for such removal or cure.

The obligations and liabilities of the Mortgagor under this paragraph shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including, without limitation, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

11. **Asbestos.** The Mortgagor represents and warrants that, to the best of its knowledge, no asbestos or any substance or material containing asbestos ("Asbestos") is located on the Property. The Mortgagor shall not knowingly install in the Property, nor knowingly permit to be installed in the Property, Asbestos, shall exercise reasonable care to see that no Asbestos is installed in the Property and shall remove any Asbestos promptly upon discovery to the satisfaction of the Mortgagee, at the Mortgagor's sole expense. The Mortgagor shall in all instances comply with, and ensure compliance by all occupants of the Property with, all applicable federal, state and local laws, ordinances, rules and regulations with respect to Asbestos, and shall keep the Property free and clear of any liens imposed pursuant to such laws, ordinances, rules or regulations. If the Mortgagor receives any notice or advice from any governmental agency or any source whatsoever with respect to Asbestos on, affecting or installed on the Property, the Mortgagor shall immediately notify the Mortgagee. The obligations and liabilities of the Mortgagor under this paragraph shall survive any termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including but not limited to, the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

12. **Environmental Monitoring.** The Mortgagor shall give prompt written notices to the Mortgagee of and provide copies to the Mortgagee of: (a) any proceeding or inquiry by any party, including without limitation the U.S. Environmental Protection Agency, the Alabama Department of Environmental Management and any other governmental instrumentality, with respect to the presence of any Hazardous Substance or Asbestos on, under, from or about the Property; (b) the Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could cause the Property to be subject to any investigation or cleanup pursuant to any Environmental Law. The Mortgagor shall permit the Mortgagee, at its own expense, to join and participate in, as a party if it so elects, any legal

proceedings or actions initiated with respect to the Property in connection with any Environmental Law or Hazardous Substance, and the Mortgagor shall pay all attorneys' fees and disbursements incurred by the Mortgagee in connection therewith. Upon the Mortgagee's request, at any time and from time to time while this Mortgage is in effect (but not more frequently than once per calendar year, unless the Mortgagee has determined (in the exercise of its good faith judgment) that reasonable cause exists for the performance of an environmental site assessment, inspection or audit of the Property more often than once a year), the Mortgagor shall provide, (i) an environmental site assessment, inspection or audit of the Property prepared by a licensed hydrogeologist or licensed environmental engineer approved by the Mortgagee indicating the presence or absence of Hazardous Substances on, in or near the Property, and/or (ii) an inspection or audit of the Property prepared by a duly qualified engineering or consulting firm approved by the Mortgagee, indicating the presence or absence of Asbestos on the Property. If the Mortgagor fails to provide such site assessment, inspection or audit within thirty (30) days after such request, the Mortgagee may order same, and the Mortgagor hereby grants to the Mortgagee and its employees and agents access to the Property and a license to undertake such site assessment, inspection or audit. The Mortgagor shall be responsible for the cost of such assessment, inspection or audit, and if the Mortgagor fails to pay such cost, the Mortgagee may make an Advance to pay the same. If any environmental site assessment report prepared in connection with such inspection or audit recommends that an operations and maintenance plan be implemented for Asbestos or any Hazardous Substance, the Mortgagor shall cause such operations and maintenance plan to be prepared and implemented at the Mortgagor's expense upon request of the Mortgagee. If any investigation, site monitoring, containment, cleanup, removal, restoration or other work of any kind (the "Remedial Work") is reasonably necessary or desirable under an applicable Environmental Law, the Mortgagor shall commence and thereafter diligently prosecute to completion all such Remedial Work within 30 days after written demand by the Mortgagee for performance thereof. All Remedial Work shall be performed by contractors approved in advance by the Mortgagee, and under the supervision of a consulting engineer approved by the Mortgagee. All costs and expenses of such Remedial Work shall be paid by the Mortgagor including, without limitation, the Mortgagee's reasonable attorneys' fees and disbursements incurred in connection with monitoring or review of such Remedial Work. If the Mortgagor shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, the Mortgagee may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall constitute an Advances.

13. Handicapped Access.

(a) Mortgagor agrees that the Mortgaged Property shall at all times strictly comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 (if applicable), all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued

pursuant thereto including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (collectively "Access Laws").

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

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

14. **Indemnity**. In addition to any other indemnifications provided herein or in any of the other Loan Documents ("Loan Documents" meaning this Mortgage, the Loan Modification Agreement, the Motel Note and every other document, instrument or agreement evidencing, securing, guaranteeing or otherwise relating to the Debt, or any portion thereof), the Mortgagor shall protect, defend, indemnify and hold harmless the Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Mortgagee by reason of

(a) ownership of this Mortgage, the Property or any interest therein or receipt of any Rents;

(b) any accident, injury to or death of persons or loss of or damage to property occurring in, on or about the Property or any part thereof or on the adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(c) any use, nonuse or condition in, on or about the Property or any part thereof or on adjoining sidewalks, curbs, adjacent property or adjacent parking areas, streets or ways;

(d) any failure on the part of the Mortgagor to perform or comply with any of the terms of this Mortgage;

(e) performance of any labor or services or the furnishing of any materials or other property in respect of the Property or any part thereof;

(f) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Substance or Asbestos on, from or affecting the Property;

(g) any personal injury (including without limitation wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Substance or Asbestos;

(h) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Substance or Asbestos;

(i) any violation of the Environmental Laws that are based upon or in any way related to such Hazardous Substance or of any state or federal law, rule or regulation governing Asbestos, including without limitation the costs and expenses of any Remedial Work, attorney and consultant fees and disbursements, investigation and laboratory fees, court costs, and litigation expenses;

(j) any failure of the Property to comply with any Access Laws;

(k) any representation or warranty made in the Motel Note, the Loan Modification Agreement, this Mortgage or any of the other Loan Documents being false or misleading in any material respect as of the date such representation or warranty was made;

(l) any claim by brokers, finders or similar persons claiming to be entitled to a commission in connection with any Lease or other transaction involving the Property or any part thereof under any legal requirement or any liability asserted against the Mortgagee with respect thereto; and

(m) the claims of any lessee of the Property or any part thereof or any person acting through or under any lessee or otherwise arising under or as a consequence of any Lease. Any amounts payable to the Mortgagee by reason of the application of this paragraph shall be secured by this Mortgage and shall constitute Advances (as hereinafter defined). The obligations and liabilities of the Mortgagor under this paragraph shall survive the termination, satisfaction, or assignment of this Mortgage and the exercise by the Mortgagee of any of its rights or remedies hereunder, including without limitation the acquisition of the Property by foreclosure or a conveyance in lieu of foreclosure.

15. **Covenants Related to Rents and Leases.** The Mortgagor covenants and agrees that the Mortgagor shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the Mortgagor,

and shall give prompt notice to the Mortgagee in the event the Mortgagor fails to observe, perform and discharge the same;

(b) enforce or secure in the name of the Mortgagee the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee may appear;

(d) not receive or collect any Rents from any present or future lessee of other occupant of the Real Estate or any of the Improvements, or any part thereof, for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(e) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Real Estate or any of the Improvements of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

(f) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Mortgagee;

(g) not renew or otherwise extend the term of the Leases; provided, however, that nothing herein contained shall prevent the Mortgagor, upon expiration of the now-current term (or other expiration or termination) of the Leases, from leasing the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the lien, assignment and security interest of this Mortgage;

(h) promptly upon the execution by the Mortgagor of any future Lease, (i) furnish the Mortgagee with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Mortgagee, a copy of such Lease, and (ii) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require;

(i) not, without the written approval of the Mortgagee, execute any management, leasing, license, or franchise agreements (other than the License Agreement) affecting any of the Real Property; and

(j) if required by the Mortgagee, cause each lessee to provide, in a manner approved by the Mortgagee, that the Lease is junior and subordinate to the Lien of this Mortgage and to that certain Absolute Assignment of Rents and Leases of even date herewith executed by the Mortgagor to the Mortgagee and that the Lessee will recognize as lessor, and attorn to, Mortgagee or any person succeeding to the interest of the Mortgagee, upon the foreclosure of this Mortgage or any exercise by the Mortgagee of its rights, powers and remedies under the Absolute Assignment of Rents and Leases or this Mortgage with respect to the Leases.

16. **Covenant Against Sale, Lease or Transfer, etc.** Notwithstanding any other provision of this Mortgage or the Motel Note, Mortgagor shall not sell, lease, convey, encumber, mortgage, or otherwise transfer the Real Estate or the Improvements without the prior written consent of the Mortgagee. If the Real Estate or the Improvements, or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagee's prior written consent, or if the Real Estate or the Improvements, or any part thereof, or any interest therein, becomes subject to any additional lien (which lien is not removed or otherwise dealt with in the manner and within the time provided in Section 18(f)), mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagee's prior written consent, the Mortgagee may, at its sole option: (a) declare the Debt immediately due and payable in full; or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Debt or to protect the security of this Mortgage.

17. **Defeasance.** This Mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this Mortgage (which Debt includes without limitation the debt evidenced by the Motel Note and interest thereon, Advances (as defined below) and interest thereon, and all renewals, extensions, restatements, and modifications of any of the foregoing, if the Mortgagee has no further obligation or commitment to advance funds, incur obligations or give value to the Mortgagor, and if the Mortgagor fulfills all of its other obligations under this Mortgage, this conveyance shall be null and void.

18. **Events of Default.** The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"):

(a) the Mortgagor shall fail to pay to the Mortgagee when due the principal or interest on the Debt evidenced by the Motel Note or any other sum due under the Loan Modification Agreement or any of the other Loan Documents, or any other Debt secured hereby; or

(b) if the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior mortgage or any other lien or encumbrance thereon or if the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior mortgage or any other lien or encumbrance thereon; or

(c) if the Mortgagor fails to comply with any covenant or agreement contained in, or other provision of, this Mortgage or of the Motel Note, the Loan Modification Agreement or any of the other Loan Documents; or

(d) if any statement, representation or warranty contained in this Mortgage, the Loan Modification Agreement or any of the other Loan Documents or any report, certificate or other instrument delivered to the Mortgagee in connection with any of the same shall be untrue in any material respect; or

(e) if the Mortgagor conveys or further encumbers (as by a mortgage or other consensual encumbrance) all or part of the Property; or

(f) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and the Mortgagor fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to the Mortgagee within thirty days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Real Estate is located or such suit is filed in court; or

(g) if a default or event of default occurs under the License Agreement and is not cured within thirty days of its occurrence; or

(h) if the Mortgagor or any co-maker, endorser, surety, or guarantor of the Motel Note or any of the other Debts (hereinafter collectively called the "Obligors" and singularly an "Obligor") fails to pay such Obligor's debts generally, as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; or

(i) if any Obligor that is a natural person dies or becomes insolvent, or if the Mortgagor dissolves or becomes insolvent; ; or

(j) if any other default or event of default occurs under the Motel Note, the Loan Modification Agreement or any other Loan Document which default or event of default is not cured within any applicable cure period; or

(k) the interest of the Mortgagee in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon unless the Mortgagor cures such endangerment and/or enforcement in a manner and within a time satisfactory to the Mortgagee; or

(l) any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this Mortgage unless the Borrower is legally permitted to and does pay such tax, assessment or deduction or is legally permitted to and does immediately make the Lender whole for such tax, assessment or deduction and cause any such lien to be discharged immediately after it attaches; or

(i) any of the covenants, agreements, conditions or undertakings contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction.

19. Rights and Remedies of Mortgagee upon Default.

(a) **Acceleration of Debt.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Debt immediately due and payable, whereupon all such Debt shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Motel Note, any of the other Security Documents and applicable law. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Motel Note, the Loan Modification Agreement, any of the other Loan Documents and applicable law.

(b) **Access to Property; Operation of Property by Mortgagee.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but will not be obligated to, enter upon, and without taking possession thereof, inspect or cause to be inspected, the Property, including testing for hazardous substances, and/or to take possession of any or all of the Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed

additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

(e) **Personal Property and Fixtures.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest

extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default; provided, however, that to the extent that notice of sale or other disposition of Collateral is required by law, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of paragraph 33 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Debt in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Rents and Leases.** Upon the occurrence of an Event of Default or at any time thereafter:

(i) The Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate automatically, without the necessity of taking any action, the license granted to the Mortgagor in Granting Clause C(iii) hereof to collect the Rents, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor,

and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Debt in such order and amounts as the Mortgagee may choose (or hold the same in a reserve as security for the Debt);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and payment of the Debt in such order and amounts as the Mortgagee may choose (or hold the same in reserve as security for the Debt); and

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this Mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) **Application of Proceeds.** All payments received by the Mortgagee as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the Motel Note, the Loan Modification Agreement and the other Loan Documents, (ii) to the payment in full of any of the Debt that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein, in the Loan Modification Agreement or in any other Loan Document, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Debt that is not

then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) **Multiple Sales.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Debt secured by this Mortgage, but as to such unmatured part of the Debt this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Debt whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting any power of foreclosure and the power to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

(i) **Waiver of Appraisement Laws.** The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Debt (commonly known as stay laws and redemption laws).

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

20. **Collection Costs.** The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Debt, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any Lien on the Property, unless this Mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Debt and shall be secured by this Mortgage.

21. **Obligations with Respect to Leases.** The Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with

respect to Leases, the Improvements, the Personal Property, the Real Estate or any of the other Property (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Real Estate, the Improvements, the Personal Property, or any of the other Property.

22. **Construction of Mortgage.** This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

23. **Successors and Assigns.** All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of the Mortgagee's successors and assigns.

24. **Waiver and Election.** The exercise by the Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Debt or for the whole of the Debt, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Security Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

25. **Landlord-Tenant Relationship.** Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

26. **Enforceability.** If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

27. **Application of Payments.** If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Debt or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Debt, and all payments made on the Debt, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Debt which is not secured or not fully secured by said lien, assignment or security interest created hereby.

28. **Other Mortgages Encumbering the Real Estate.** The Mortgagor hereby authorizes the holder of any other mortgage encumbering the Real Estate or the Improvements to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of debt secured by such mortgage; (b) the amount of such debt that is unpaid; (c) whether such debt is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (e) any other information regarding such mortgage or the debt secured thereby that the Mortgagee may request from time to time. The Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Real Estate or the Improvements, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the Mortgagor, any such payment by the Mortgagee constituting an Advance, as defined below.

29. **Meaning of Particular Terms.** Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

30. **Advances by the Mortgagee.** If the Mortgagor shall fail to comply with the provisions hereof with respect to the procurement of insurance, the payment of Liens, the keeping of the Property in repair, the performance of the Mortgagor's obligations under any Lease, the payment of any prior mortgages, environmental testing or Remedial Work, or the performance of any other agreement or covenant herein contained, the Mortgagee may (but shall not be required to) make advances (individually, an "Advance" and collectively, the "Advances") to perform the same, and where necessary enter the Property for the purpose of performing any such agreement

or covenant. The fees and expenses of Mortgagee's Environmental Consultant shall also constitute an Advance. The Mortgagor agrees to repay all Advances upon demand, with interest from the date such Advances are made, at the post default rate of interest provided for in the Motel Note, or the highest rate permitted by law, whichever shall be less, and all Advances, with interest thereon, shall be a part of the Debt and shall be secured hereby. The making of any Advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid with such Advances.

31. **Release or Extension by the Mortgagee.** The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Debt and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Debt or to waive the prompt and full performance of any term, condition or covenant of the Motel Note, the Loan Modification Agreement, this Mortgage or any other Loan Document.

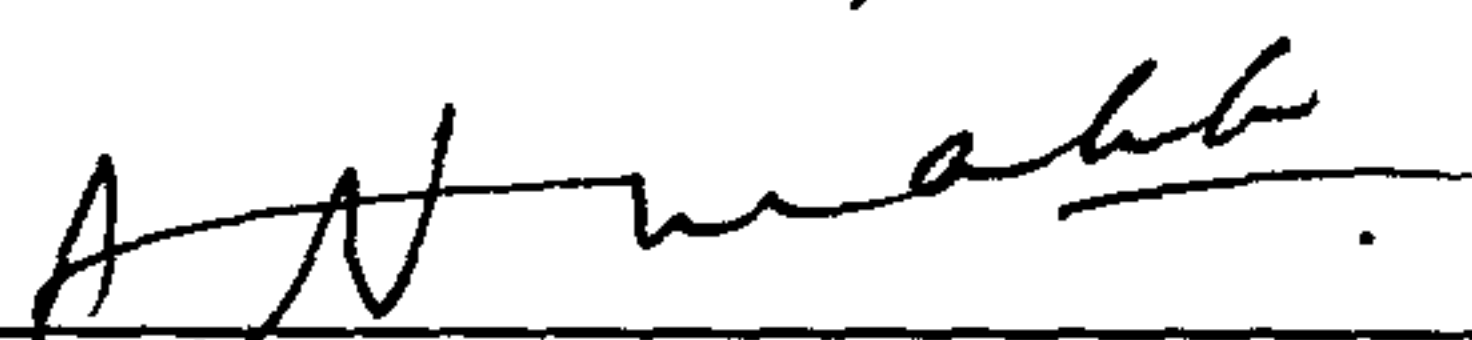
32. **Partial Payments.** Acceptance by the Mortgagee of any payment of less than the full amount due on the Debt shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Debt has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

33. **Addresses for Notices.** All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and mailed or sent or delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other parties hereto.

34. **Titles.** All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

IN WITNESS WHEREOF, the undersigned **Karsons International Inc.** has caused this Mortgage to be executed by its duly authorized representative on the date first written above.

Karsons International, Inc.

By 

Print Name: NOUMAN A. MALIK

Title: PRESIDENT

STATE OF ALABAMA)

Jefferson COUNTY)

I, LeaAnn Atkins, a Notary Public in and for said County in said State, hereby certify that Nauman A. Malik, whose name as President of Karsons International, Inc., a corporation, 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 limited liability company.

Given under my hand and official seal this the 27th day of September, 2002.

My Commission Expires November 20, 2004
LeaAnn Atkins
Notary Public

AFFIX SEAL

My commission expires: My Commission Expires November 20, 2004

This Instrument prepared by:

Edward J. Ashton

WALSTON, WELLS,

ANDERSON & BAINS

505 N. 20th Street, Suite 500

P. O. Box 830642

Birmingham, Alabama 35283-0642

(205) 251-9600

EXHIBIT A
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Legal Description of the Real Estate]

**Lot 9, according to the Map of Malik Subdivision, as recorded in Map Book 20, page 146,
in the Probate Office of Shelby County, Alabama**

EXHIBIT B
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

[Permitted Exceptions]

1. Taxes and assessments for the year 2002 and taxes for subsequent years, not yet due and payable.
2. Building setback lines and easements, as shown by recorded map. (Parcel 1 and Parcel 2)
3. Transmission Line Permits to Alabama Power Company as set forth in Deed Book 176, Page 376 and Deed Book 193, page 111, as recorded in the Probate Office of Shelby County, Alabama.
4. Right of way in favor of the State of Alabama, as set forth in Deed Book 228, page 22, as recorded in the Probate Office of Shelby County, Alabama.
5. Easements to Alabama Power Company, as set forth in Instrument #1997-2629 and Instrument #1998-17745, as recorded in the Probate Office of Shelby County, Alabama.
6. Easement to Postal Telegraph Cable Co., as set forth in Deed Book 80, page 43, as recorded in the Probate Office of Shelby County, Alabama.
7. Easement to American Telegraph and Telephone Company, as set forth in Deed Book 193, page 314, as recorded in the Probate Office of Shelby County, Alabama.
8. Easement for road, as set forth in Deed Book 299, page 771, as recorded in the Probate Office of Shelby County, Alabama.