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WHEN RECORDED RETURN TO:

William F. Stevens  
McKenna Long & Aldridge LLP  
Suite 5300  
303 Peachtree Street  
Atlanta, Georgia 30308

**MORTGAGE AND SECURITY AGREEMENT**  
Loan No. 503779

THIS MORTGAGE AND SECURITY AGREEMENT (this "Security Instrument") is made as of December 13, 2002, between HIGHWAY 150, LLC, an Alabama limited liability company ("Borrower"), having an address at 2101 6th Avenue, Suite 900, Birmingham, Alabama 35203 and COLUMN FINANCIAL, INC., a Delaware corporation ("Lender"), whose address is Eleven Madison Avenue, 5th Floor, New York, New York 10010-3629, Att: Edmund Taylor.

WITNESSETH:

THAT FOR AND IN CONSIDERATION OF THE SUM OF TEN AND NO/100 DOLLARS (\$10.00), AND OTHER VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, BORROWER HEREBY IRREVOCABLY MORTGAGES, GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF LENDER, ITS SUCCESSORS AND ASSIGNS, with power of sale, in all of Borrower's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

(A) All that certain real property situated in the County of Jefferson and Shelby, State of Alabama, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower therein or thereto, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired;

(B) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

(C) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower;

(D) All other assets of Borrower, of every kind and nature, now existing and hereafter acquired and arising and wherever located, including without limitation, accounts, deposit or reserve accounts, letter of credit rights, chattel paper (including electronic chattel paper), documents, contract rights, instruments, investment property, general intangibles (including payment intangibles), software, goods, inventory,

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Land Title

equipment, chattels, furniture and fixtures, all supporting obligations of the foregoing, and all cash and noncash proceeds and products (including without limitation insurance proceeds) of the foregoing, and all additions and accessions thereto, substitutions therefor and renewals and replacements thereof, and including, without limitation, the following:

(1) All furniture, furnishings, fixtures, goods, equipment, inventory, or personal property owned by Borrower and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Borrower as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

(2) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, together (i) with all utilities, utility lines, utility commitments, utility capacity, capital recovery charges, impact fees and other fees paid in connection with same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Land and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent same pertain to or benefit the Land and/or Improvements, including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

(3) All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

(4) All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Security Instrument or any other of the Loan Documents (as hereinafter defined) including, without limitation, all funds now or hereafter on deposit in the Reserves (as hereinafter defined);

(5) All leases, licenses, tenancies, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, bonus money, revenue, income, rights and other benefits (collectively, the "Rents" or "Rents and Profits") of the Land, the Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future lease (including, without limitation, oil, gas and mineral leases), license, tenancy, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject, however, to the provisions contained in Section 1.11 hereinbelow;

(6) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof,



including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

(7) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

(8) All present and future funds, accounts, instruments (including, without limitation, promissory notes), investment property, letter-of-credit rights, letters of credit, money, supporting obligations, accounts receivable, documents, causes of action, claims, general intangibles (including, without limitation, payment intangibles and software, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper (whether tangible or electronic) now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

(9) All water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

(10) All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

(11) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

(E) All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower; and

(F) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards.

**FOR THE PURPOSE OF SECURING:**

(1) The debt evidenced by that certain Promissory Note (such Promissory Note, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions thereof, is hereinafter referred to as the "Note") of even date with this Security Instrument, made by Borrower and payable to the order of Lender in the original principal amount of SEVENTEEN MILLION SEVEN HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$17,775,000.00) (the "Loan" or the "Loan Amount"), together with interest and any fees as therein provided;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note (the Note, this Security Instrument, the Assignment (as hereinafter defined), and such other agreements, documents and instruments, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid, including, without limitation, any applicable yield maintenance premiums or prepayment fees;

(3) Any and all future or additional advances (whether or not obligatory) made by Lender to protect or preserve the Property, or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Borrower remains the owner of the Property at the time of such advances), together with interest thereon at the Default Interest Rate (as defined in the Note); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof.

(All of the sums referred to in Subsections (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

TO HAVE AND TO HOLD the Property unto Lender, its successors and assigns forever, and Borrower does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Lender against every person whomsoever lawfully claiming or to claim the same or any part thereof, for the purposes and uses herein set forth.

PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid and all other covenants contained in the Loan Documents shall have been performed, then, in such case, this Security Instrument shall be satisfied and the estate, right, title and interest of Lender in the Property shall cease, and upon payment to Lender of all costs and expenses incurred for the preparation of the release hereinafter referenced and all recording costs if allowed by law, Lender shall release this Security Instrument and the lien hereof by proper instrument.

#### **ARTICLE I. COVENANTS OF BORROWER**

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Security Instrument, for so long as the indebtedness secured hereby or any part thereof remains unpaid; Borrower represents, covenants and agrees as follows:

1.1. Warranties of Borrower. Borrower, for itself and its successors and assigns, does hereby represent, warrant and covenant to and with Lender, its successors and assigns, that:



(a) Borrower has good, marketable and indefeasible fee simple title to the Property, subject only to those matters expressly set forth on Exhibit B attached hereto and by this reference incorporated herein (the "Permitted Exceptions"), and has full power and lawful authority to grant, bargain, sell, convey, assign, transfer, encumber and mortgage its interest in the Property in the manner and form hereby done or intended. None of the Permitted Exceptions materially interferes with the security intended to be provided by this Security Instrument, the current primary use of the Property or the current ability of the Property to generate income sufficient to service the Loan. Borrower will preserve its interest in and title to the Property and will forever warrant and defend the same to Lender against any and all claims whatsoever and will forever warrant and defend the validity and priority of the lien and security interest created herein against the claims of all persons and parties whomsoever, subject to the Permitted Exceptions. The foregoing warranty of title shall survive the foreclosure, exercise of any power of sale or other enforcement of this Security Instrument and shall inure to the benefit of and be enforceable by Lender in the event Lender acquires title to the Property pursuant to any foreclosure, exercise of any power of sale or otherwise;

(b) No bankruptcy or insolvency proceedings are pending or contemplated by Borrower or, to the best knowledge of Borrower, against Borrower or by or against any endorser, cosigner or guarantor of the Note;

(c) All reports, certificates, affidavits, statements and other data furnished by Borrower to Lender in connection with the Loan are true and correct in all material respects and do not omit to state any fact or circumstance necessary to make the statements contained therein not misleading;

(d) The execution, delivery and performance of this Security Instrument, the Note and all of the other Loan Documents have been duly authorized by all necessary action to be taken, and are, binding and enforceable against Borrower in accordance with the respective terms thereof and do not contravene, result in a breach of or constitute (upon the giving of notice or the passage of time or both) a default under the partnership agreement, certificate or articles of incorporation or other organizational documents of Borrower, or any contract or agreement of any nature to which Borrower is a party or by which Borrower or any of its property may be bound, and do not violate or contravene any law, order, decree, rule or regulation to which Borrower is subject;

(e) Borrower is not required to obtain any consent, approval or authorization from or to file any declaration or statement with, any governmental authority or agency in connection with or as a condition to the execution, delivery or performance of this Security Instrument, the Note or the other Loan Documents which has not been so obtained or filed;

(f) Borrower has obtained or made all necessary (i) consents, approvals and authorizations and registrations and filings of or with all governmental authorities or agencies and (ii) consents, approvals, waivers and notifications of partners, stockholders, members, creditors, lessors and other non-governmental persons and/or entities, in each case, which are required to be obtained or made by Borrower in connection with the execution and delivery of, and the performance by Borrower of its obligations under, the Loan Documents;

(g) Borrower is not an "investment company", or a company "controlled" by an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended;

(h) No part of the proceeds of the indebtedness secured hereby will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulations T, U or X of the Board of Governors of the Federal Reserve System or for any other purpose which would be inconsistent with

such Regulations T, U or X or any other Regulations of such Board of Governors, or for any purpose prohibited by legal requirements or by the terms and conditions of the Loan Documents;

(i) Borrower and, if Borrower is a partnership, any general partner of Borrower, has filed all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, including sales and payroll taxes, payable by Borrower and its general partners, if any. Borrower and its general partners, if any, believe that their respective tax returns properly reflect the income and taxes of Borrower and said general partners, if any, for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit;

(j) Borrower is not an "employee benefit plan", as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), which is subject to Title I of ERISA and the assets of Borrower do not constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101;

(k) The Land and the Improvements and the intended use thereof by Borrower comply with all applicable restrictive covenants, zoning ordinances, subdivision and building codes, flood disaster laws, applicable health and environmental laws and regulations and all other ordinances, orders or requirements issued by any state, federal or municipal authorities having or claiming jurisdiction over the Property. The Land and Improvements constitute a separate tax parcel for purposes of ad valorem taxation. The Land and Improvements do not require any rights over, or restrictions against, other property in order to comply with any of the aforesaid governmental ordinances, orders or requirements;

(l) All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available to the Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or perpetual private easements reflected in the title insurance policy insuring the lien of this Security Instrument and approved by Lender (the "Title Insurance Policy");

(m) All streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been completed, have been dedicated to and accepted by the appropriate municipal authority and are open and available to the Land and the Improvements without further condition or cost to Borrower;

(n) All curb cuts, driveways and traffic signals shown on the survey delivered to Lender prior to the execution and delivery of this Security Instrument are existing and have been fully approved by the appropriate governmental authority;

(o) There are no judicial, administrative, mediation or arbitration actions, suits or proceedings pending or threatened against or affecting Borrower, (and, if Borrower is a partnership, any of its general partners, or if Borrower is a limited liability company, any member of Borrower) or the Property which, if adversely determined, would have a material adverse effect on (a) the Property, (b) the business, prospects, profits, operations or condition (financial or otherwise) of Borrower, (c) the enforceability, validity, perfection or priority of the lien of any Loan Document, or (d) the ability of Borrower to perform any obligations under any Loan Document (collectively, a "Material Adverse Effect");



(p) As of the date of this Security Instrument (i) the Property is free from delinquent water charges, sewer rents, taxes and assessments, and from unrepaired damage caused by fire, flood, accident or other casualty, and (ii) no part of the Land or the Improvements has been taken in condemnation, eminent domain or like proceeding nor is any such proceeding pending or to Borrower's knowledge and belief, threatened or contemplated;

(q) Borrower possesses all franchises, patents, copyrights, trademarks, trade names, licenses and permits adequate for the conduct of its business substantially as now conducted;

(r) Except as set forth in the Title Insurance Policy insuring the lien of this Security Instrument, no improvements on adjoining properties encroach upon the Property. The Improvements are structurally sound, in good repair and free of defects in materials and workmanship and have been constructed and installed in substantial compliance with the plans and specifications relating thereto. All major building systems located within the Improvements, including without limitation the heating and air conditioning systems and the electrical and plumbing systems, are in good working order and condition;

(s) Except as disclosed in writing by Borrower to Lender prior to the date hereof, there are no security agreements or financing statements affecting any of the Property other than the security agreements and financing statements created in favor of Lender;

(t) Borrower has delivered a true, correct and complete schedule (the "Rent Roll") of all leases affecting the Property (individually, an "Existing Lease" and collectively, the "Existing Leases") as of the date hereof, which accurately and completely sets forth in all material respects for each such Existing Lease, the following: the name of the tenant, the lease expiration date, extension and renewal provisions, the base rent payable, and the Security Deposit held thereunder. Borrower is in compliance with all legal requirements relating to such Security Deposits;

(u) No tenant under any Existing Lease has, as of the date hereof, paid rent more than thirty (30) days in advance, and the rents under such Existing Leases have not been waived, released, or otherwise discharged or compromised;

(v) The Property is free and clear of any mechanics' or materialmen's liens or liens in the nature thereof, and no rights are outstanding that under law would give rise to any such liens, any of which liens are or may be prior to, or equal with, the lien of this Security Instrument, except those which are insured against by the Title Insurance Policy;

(w) No Existing Lease or Contract or easement, right-of-way, permit or declaration (collectively, "Property Agreements") provides any party with the right to obtain a lien or encumbrance upon the Property superior to the lien of this Security Instrument;

(x) Borrower has delivered to Lender true, correct and complete copies of all Property Agreements and no default exists or would exist, with the passing of time or the giving of notice, or both, under any Property Agreement which would, in the aggregate, have a Material Adverse Effect;

(y) To the best knowledge of Borrower, no offset or any right of offset exists respecting continued contributions to be made by any party to any Property Agreement except as expressly set forth herein. Except as previously disclosed to Lender in writing, no material exclusions or restrictions on the utilization, leasing or improvement of the Property (including non-compete agreements) exist in any Property Agreement;

(z) All work, if any, to be performed by Borrower under each of the Property Agreements has been substantially performed, all contributions to be made by Borrower to any party to such Property Agreement have been made, and all other conditions to such party's obligations thereunder have been satisfied;

(aa) The Property is taxed separately without regard to any other real estate and constitutes a legally subdivided lot under all applicable legal requirements (or, if not subdivided, no subdivision or platting of the Property is required under applicable legal requirements), and for all purposes may be mortgaged, conveyed, pledged, hypothecated, assigned or otherwise dealt with as an independent parcel;

(bb) The Property forms no part of any property owned, used or claimed by Borrower as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Property is located. Borrower hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead. The Loan evidenced by the Loan Documents is made and transacted solely for business, investment, commercial or other similar purposes;

(cc) There are no outstanding options or rights of first offer or refusal to purchase all or any portion of the Property or Borrower's interest therein or ownership thereof;

(dd) There are no actions, suits, proceedings or orders of record or of which Borrower has notice, and, to the best of Borrower's knowledge, there are no inquiries or investigations, pending or threatened, in any such case against, involving or affecting the Property, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, alleging the violation of any federal, state or local law, statute, ordinance, rule or regulation relating to Environmental Laws. Furthermore, Borrower has not received any written claim, notice or opinion that the ownership or operation of the Property violates any federal, state or local law, statute, ordinance, rule, regulation, decree, order, and/or permit relating to Environmental Laws, and, to the best of Borrower's knowledge, no valid basis for any proceeding, action or claim of such nature exists;

(ee) Each Existing Lease constitutes the legal, valid and binding obligation of Borrower and, to the best of Borrower's knowledge and belief, is enforceable against the tenant thereof;

(ff) All work to be performed by Borrower under the Existing Leases has been substantially performed, all contributions to be made by Borrower to the tenants thereunder have been made and all other conditions precedent to each such tenant's obligations thereunder have been satisfied;

(gg) Each tenant under an Existing Lease has entered into occupancy of the demised premises;

(hh) To the best of Borrower's knowledge and belief, each tenant is free from bankruptcy, reorganization or arrangement proceedings or a general assignment for the benefit of creditors;

(ii) Except as previously disclosed in writing to Lender, there are no brokerage fees or commissions payable by Borrower with respect to the leasing of the space at the Property, and there are no management fees payable by Borrower with respect to the management of the Property, except for fees due to the Manager under the Management Agreement; and



(jj) The representations and warranties contained in this Security Instrument, or the review and inquiry made on behalf of Borrower therefor, have all been made by persons having the requisite expertise and knowledge to provide such representations and warranties. No statement or fact made by or on behalf of Borrower in this Security Instrument or in any certificate, document or schedule furnished to Lender pursuant hereto, contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein or herein not misleading (which may be to Borrower's best knowledge where so provided herein). There is no fact presently known to Borrower which has not been disclosed to Lender which would have a Material Adverse Effect.

1.2. Defense of Title. If, while this Security Instrument is in force, the title to the Property or the interest of Lender therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attached directly or indirectly, or endangered, clouded or adversely affected in any manner, Borrower, at Borrower's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Lender, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest.

1.3. Performance of Obligations. Borrower shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Borrower as provided in the Loan Documents, and shall observe, perform and discharge all obligations, and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Borrower set forth in the Loan Documents in accordance with their terms. In the event that Lender determines that Borrower is not adequately performing any of its obligations under this Security Instrument or under any of the other Loan Documents, Lender may, without limiting or waiving any other rights or remedies of Lender hereunder, take such steps with respect thereto as Lender shall deem necessary or proper, and any and all costs and expenses reasonably incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.4. Insurance. Borrower shall, at Borrower's expense, maintain in force and effect on the Property at all times while this Security Instrument continues in effect the following insurance:

(a) "All-risk" coverage insurance against loss or damage to the Property from all-risk perils, with any and all exclusions subject to Lender approval and otherwise satisfactory to Lender. The amount of such insurance shall be not less than one hundred percent (100%) of the full replacement cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Borrower from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Lender's election, by reference to such indexes, appraisals or information as Lender determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co-insurance provisions) or a waiver of any co-insurance provisions, all subject to Lender's approval.

(b) Commercial general liability insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate (inclusive of umbrella coverage) or such lesser amount as Lender in Lender's sole discretion may accept, for bodily injury, personal injury and property damage. Lender hereby retains the right to periodically review the amount of said liability insurance being maintained by Borrower and to require an increase in the amount of said liability insurance should Lender deem an increase to be reasonably prudent under then existing circumstances.

(c) Insurance covering the major components of the central heating, air conditioning and ventilating systems, boilers, other pressure vessels, high pressure piping and machinery, elevators and escalators, if any, and other similar equipment installed in the Improvements, in an amount equal to one hundred percent (100%) of the full replacement cost of the Improvements which policies shall insure against physical damage to and loss of occupancy and use of the Improvements arising out of an accident or breakdown covered thereunder.

(d) If the Land or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to one hundred percent (100%) of the replacement cost of the Improvements or the maximum amount of flood insurance available, whichever is the lesser.

(e) During the period of any construction on the Land or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Lender and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.

(f) Rental value or rental income insurance in amounts sufficient to compensate Borrower for all Rents and Profits during a period of not less than one (1) year in which the Property may be damaged or destroyed.

(g) Law and ordinance coverage in an amount satisfactory to Lender if the Property, or any part thereof, shall constitute a nonconforming use or structure under applicable zoning ordinances, sub-division and building codes or other laws, ordinances, orders and requirements.

(h) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Lender against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (i) be issued by companies approved by Lender and licensed to do business in the state where the Property is located, with a claims paying ability rating of "A" or better by Standard & Poor's Rating Services, a division of The McGraw Hill Companies, Inc., (ii) contain the complete address of the Land (or a complete legal description), (iii) be for a term of at least one (1) year, (iv) contain deductibles no greater than \$10,000.00 or as otherwise required by Lender, and (v) be subject to the approval of Lender as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates.



Borrower shall as of the date hereof deliver to Lender evidence that said insurance policies have been paid current as of the date hereof and certified copies of such insurance policies and original certificates of insurance signed by an authorized agent evidencing such insurance satisfactory to Lender. Borrower shall renew all such insurance and deliver to Lender certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to insurance policies, Borrower further agrees that all such policies shall provide that proceeds thereunder shall be payable to Lender, its successors and assigns, pursuant and subject to a mortgagee clause (without contribution) of standard form attached to, or otherwise made a part of, the applicable policy and that Lender, its successors and assigns, shall be named as an additional insured under all liability insurance policies. Borrower further agrees that all such insurance policies: (i) shall provide for at least thirty (30) days' prior written notice to Lender prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Lender; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Lender in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of such insurance; and (iii) shall either name Lender as an additional insured or waive all rights of subrogation against Lender. The delivery to Lender of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies by Borrower to Lender as further security for the indebtedness secured hereby. In the event of foreclosure of this Security Instrument, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Borrower in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Lender or other transferee in the event of such other transfer of title. Approval of any insurance by Lender shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Security Instrument or evidence of their renewal as required herein, Lender may, but shall not be obligated to, procure such insurance and Borrower shall pay all amounts advanced by Lender, together with interest thereon at the Default Interest Rate (as defined in the Note) from and after the date advanced by Lender until actually repaid by Borrower, promptly upon demand by Lender. Any amounts so advanced by Lender, together with interest thereon, shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Lender shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Lender has caused the insurance to be placed with the insurer after failure of Borrower to furnish such insurance.

Any failure by Lender to insist on full compliance with all of the above insurance requirements at closing does not constitute a waiver of Lender's right to subsequently require full compliance with these requirements.

1.5. Payment of Taxes. Borrower shall pay or cause to be paid, except to the extent provision is actually made therefor pursuant to Section 1.6 of this Security Instrument, all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Borrower shall furnish Lender with receipts (or if receipts are not immediately available, with copies of canceled checks evidencing payment with receipts to follow promptly after they become available) showing payment of such taxes and assessments at least fifteen (15) days prior to the applicable delinquency date therefor. Notwithstanding the foregoing, Borrower may in good faith, by appropriate proceedings and upon notice to Lender, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Lender determines, in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Lender therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax

or assessment, Borrower deposits in the Impound Account (as hereinafter defined) an amount determined by Lender to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and penalties; provided, however, that Borrower shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

1.6. Tax and Insurance Impound Account. Borrower shall establish and maintain at all times while this Security Instrument continues in effect an impound account (the "Impound Account") with Lender for payment of real estate taxes and assessments and insurance on the Property and as additional security for the indebtedness secured hereby. Borrower shall deposit in the Impound Account an amount determined by Lender to be sufficient (when added to the monthly deposits described herein) to pay the next due annual installment of real estate taxes and assessments on the Property at least one (1) month prior to the delinquency date thereof (if paid in one installment) and the next due annual insurance premiums with respect to the Property at least one (1) month prior to the due date thereof (if paid in one installment). Commencing on the first monthly payment date under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with the monthly payment due under the Note, deposits in an amount equal to one-twelfth (1/12) of the amount of the annual real estate taxes and assessments that will next become due and payable on the Property, plus one-twelfth (1/12) of the amount of the annual premiums that will next become due and payable on insurance policies which Borrower is required to maintain hereunder, each as estimated and determined by Lender. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Impound Account shall be held by Lender in the Impound Account to pay said taxes, assessments and insurance premiums in one installment before the same become delinquent. Borrower shall be responsible for ensuring the receipt by Lender, at least thirty (30) days prior to the respective due date for payment thereof, of all bills, invoices and statements for all taxes, assessments and insurance premiums to be paid from the Impound Account, and so long as no default hereunder or under the other Loan Documents has occurred and is continuing, Lender 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, Lender 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. No interest on funds contained in the Impound Account shall be paid by Lender to Borrower and any interest or other earnings on funds deposited in the Impound Account shall be solely for the account of Lender. If the total funds in the Impound Account shall exceed the amount of payments actually applied by Lender for the purposes of the Impound Account, such excess may be credited by Lender on subsequent payments to be made hereunder or, at the option of Lender, refunded to Borrower. If, however, the Impound Account shall not contain sufficient funds to pay the sums required when the same shall become due and payable, Borrower shall, within ten (10) days after receipt of written notice thereof, deposit with Lender the full amount of any such deficiency.

1.7. Tenant Improvements and Leasing Commissions Reserve.

As additional security for the indebtedness secured hereby, Borrower shall establish and maintain at all times while this Security Instrument continues in effect a reserve (the "TILC Reserve") with Lender for the payment of costs and expenses incurred by Borrower for Tenant Improvements and Leasing Commissions. All such sums, together with any interest thereon, are hereinafter collectively referred to as the "TILC Funds." As used herein, the term "Tenant Improvements" shall mean construction or modification



of improvements on or installation of fixtures or equipment in the Property as required to be performed by Borrower pursuant to the terms of any lease which is hereafter approved or, if such lease does not require approval by Lender, is hereafter entered into by Borrower and tenant pursuant to Section 1.12 hereof ("Approved Lease"). As used herein, the term "Leasing Commissions" shall mean reasonable and customary commissions paid to a real estate broker licensed in the state where the Property is located in connection with an Approved Lease, pursuant to commission agreements containing such terms and provisions including, without limitation, as to the timing of the payment of the commission, as are then prevailing between third party, unaffiliated owners and brokers for comparable leases of space at properties similar to the Property in the market area in which the Property is located.

(a) Deposits Into the TILC Reserve/Interest on TILC Funds. Commencing with the first monthly payment due under the Note and continuing thereafter on each monthly payment date under the Note, Borrower shall pay to Lender, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, a deposit to the TILC Reserve in a monthly amount equal to \$4,867.50 (which monthly deposit shall increase to \$10,000.00 if Wal Mart vacates the Property). To the extent the balance of the TILC Reserve (together with the balance in the Lease Termination Payment Reserve) should equal or exceed \$225,000.00, then Borrower's obligation for monthly deposits under this Section 1.7 shall thereafter be suspended; provided, however, such obligation for monthly deposits shall be reinstated to the extent the balance of the TILC Reserve (together with the balance in the Lease Termination Payment Reserve) should ever thereafter be less than \$225,000.00; provided, however, that the foregoing cap on the TILC Reserve (and the Lease Termination Payment Reserve) shall not apply if Wal Mart vacates the Property; and provided, further that the foregoing cap on the TILC Reserve (and the Lease Termination Payment Reserve) shall not apply in the event of a Sweep Period (as defined in the Cash Management Agreement). So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the TILC Reserve shall be held by Lender in the TILC Reserve to pay and/or reimburse Borrower for the costs and expenses of Tenant Improvements and for paying Leasing Commissions as herein set forth. Interest on the funds contained in the TILC Reserve shall be credited to Borrower as provided in Section 4.28 hereof.

(b) Disbursements from the TILC Reserve. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and to the extent TILC Funds are available for such purpose, Lender shall, within ten (10) days after receipt of a written request from Borrower specifying the amount requested and the applicable Tenant Improvements or Leasing Commissions to be paid for with the requested TILC Funds ("Disbursement Request"), release to Borrower TILC Funds in the amount of the Disbursement Request; subject, however, to the following conditions precedent. Lender shall not be required to make advances from the TILC Reserve more frequently than once in any thirty (30) day period. In making any payment from the TILC Reserve, Lender shall be entitled to rely on such request from Borrower, and on any bill, statement, or estimate from any third party, without any inquiry into the accuracy, validity or contestability of any such amount.

(i) With respect to a Disbursement Request to pay for Tenant Improvements, Borrower shall provide evidence reasonably satisfactory to Lender (including, if requested by Lender, access to the Property by Lender and/or an architect and/or an engineer specified by Lender for the purpose of inspecting the work done, at Borrower's expense) that the Tenant Improvements, or such portion thereof, for which the TILC Funds are being requested have been completed in accordance with Section 1.7(c) below. Borrower shall submit to Lender copies of invoices for which TILC Funds are being requested, and if required by Lender, shall also submit waivers of lien. Borrower shall execute and deliver to Lender a certificate (in form and substance reasonably satisfactory to Lender) that the Tenant Improvements covered by the applicable Disbursement Request comply with, and have fully satisfied, the terms and provisions of

Section 1.7(c) below. Borrower shall provide Lender with a copy of any and all applicable permanent certificates of occupancy and other governmental permits, if any be required, issued by applicable governmental authorities with respect to the Tenant Improvements, which certificates and permits allow the tenant to open for business as contemplated under such lease. Borrower shall provide such additional documents, certificates and affidavits as Lender may reasonably request.

(ii) With respect to the final Disbursement Request relative to any Approved Lease, Borrower shall provide Lender with (A) an original estoppel certificate executed by the tenant under the Approved Lease for which such request relates, stating that such tenant has accepted the Tenant Improvements, and has occupied the space covered by the Tenant Improvements and that there are no defaults under such lease (nor does there exist any event or conditions, which with the passage of time or the giving of notice, or both, could result in such a default); (B) if required by Lender, an original subordination, non-disturbance and attornment agreement in form acceptable to Lender executed by the tenant under the Approved Lease in favor of Lender; (C) evidence of payment of rent by the tenant under the Approved Lease; and (D) if required by the local governmental jurisdiction, certificates of occupancy or comparable local certificates or permits with respect to any Tenant Improvements.

(iii) With respect to a Disbursement Request to pay any portion of the Leasing Commissions, Borrower shall provide evidence as reasonably requested by Lender that such Leasing Commissions are then due and payable or have been properly paid, and such additional documents, certificates and affidavits as Lender may reasonably request;

(iv) Notwithstanding any provision of this Section 1.7 to the contrary, TILC Funds disbursed with respect to any Approved Lease (i) for Tenant Improvements shall be an amount not to exceed, under any circumstances, the reasonable costs and expenses actually incurred by Borrower therefor; and (ii) for Leasing Commissions shall be an amount not to exceed, under any circumstances, the commission actually incurred by Borrower therefor which is reasonable and customary for a licensed real estate broker in the market area in which the Property is located.

(c) Borrower shall construct and complete all Tenant Improvements within the time periods and as required by, and in accordance with, the Approved Leases. Borrower or tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to the Tenant Improvements, whether necessary for commencement, completion, use or otherwise. Borrower shall perform or cause to be performed all work in connection with the Tenant Improvements in a good and workmanlike manner, in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, environmental laws and laws for the handicapped and/or disabled) and, with respect only to those leases requiring Lender approval, with the plans and specifications approved (in writing) by Lender covering the same, which performance by Borrower shall be without regard to the sufficiency of the TILC Funds. Borrower covenants and agrees that Tenant Improvements shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanic's, materialman's or other liens), claims and encumbrances whatsoever.

#### 1.8. Security Interest In Reserves.

(a) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in all sums on deposit or due under this Security Instrument and the other Loan Documents including, without limitation, (i) the Impound



Account, the TILC Reserve, the Lease Termination Payment Reserve, and, to the extent set forth on Exhibit C attached hereto, any Repair Reserve set forth on Exhibit C, and any other reserve set forth on Exhibit C attached hereto (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance on said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account into which the Reserves have been deposited being held in Lender's name or the name of any entity servicing the Note for Lender and hereby acknowledges and agrees that Lender, or at Lender's election, such servicing agent, shall have exclusive control over said account. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the financial institution wherein the Reserves have been established, and Lender, or such servicing entity, shall have possession of all passbooks or other evidences of such accounts. Borrower hereby holds Lender harmless with respect to all risk of loss regarding amounts on deposit in the Reserves, except to the extent that any such loss is caused by the gross negligence or intentional misconduct of Lender. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of set-off or other remedy upon a default. If a default shall occur hereunder or under any other of the Loan Documents which is not cured within any applicable grace or cure period, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other obligations of Borrower under the other Loan Documents in such manner as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable Uniform Commercial Code, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents.

(b) The Reserves are solely for the protection of Lender and entail no responsibility on Lender's part beyond the payment of the respective costs and expenses in accordance with the terms thereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Security Instrument by Lender, any funds in the Reserves shall be turned over to the assignee and any responsibility of Lender, as assignor, with respect thereto shall terminate. The Reserves shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Lender's option and in Lender's discretion, may either be held in a separate account or be commingled by Lender with the general funds of Lender. Upon full payment of the indebtedness secured hereby in accordance with its terms (or if earlier, the completion of the applicable conditions to release of each Reserve to Lender's satisfaction) or at such earlier time as Lender may elect, the balance in the Reserves then in Lender's possession shall be paid over to Borrower and no other party shall have any right or claim thereto.

(c) Any amounts received by Lender from Borrower may be invested by Lender (or its servicer) for its benefit, and Lender shall not be obligated to pay, or credit, any interest earned thereon to Borrower except as may be otherwise specifically provided in this Security Instrument.

1.9. Casualty and Condemnation. Borrower shall give Lender prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance

proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Lender. Lender may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Lender is hereby authorized, in its own name or in Borrower's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Borrower shall from time to time deliver to Lender any instruments required to permit such participation; provided, however, that Lender shall not have the right to participate in the adjustment of any loss which is not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$500,000.00. Provided no default is then continuing hereunder or under any of the other Loan Documents and no event has occurred which, with the giving of notice or the passage of time or both, would constitute a default hereunder or under any of the other Loan Documents, Lender shall apply any sums received by it under this Section first to the payment of all of its costs and expenses (including, but not limited to, reasonable legal fees and disbursements) incurred in obtaining those sums, and then, as follows:

(a) In the event that Lender receives insurance proceeds or condemnation awards upon the occurrence of an Insured Event in an amount not in excess of the lesser of (i) ten percent (10%) of the then outstanding principal balance of the Note, and (ii) \$500,000.00 (collectively, the "Threshold Amount"), Borrower shall repair or restore the Property, and Lender shall, to the extent such insurance proceeds or condemnation awards are available for such purpose, disburse to Borrower the amount paid or incurred by Borrower as a result of any such Insured Event for costs and expenses incurred by Borrower to repair or restore the Property (collectively the "Casualty Repairs") within ten (10) days following: (A) the receipt by Lender of a written request from Borrower for disbursement and a certification by Borrower to Lender that the applicable item of Casualty Repair has been completed; (B) the delivery to Lender of invoices, receipts or other evidence verifying the cost of performing the Casualty Repairs; and (C) for disbursement requests (i) in excess of \$20,000.00 with respect to any single Casualty Repair, or (ii) for any single Casualty Repair that is structural in nature, delivery to Lender of (1) affidavits, lien waivers or other evidence reasonably satisfactory to Lender showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the Property have been paid all amounts due for labor and materials furnished to the Property; (2) a certification from an inspecting architect or other third party acceptable to Lender describing the completed Casualty Repairs and verifying the completion of the Casualty Repairs and the value of the completed Casualty Repairs; and (3) a new (or amended) certificate of occupancy for the portion of the Improvements covered by such Casualty Repairs, if said new certificate of occupancy was required by law, or a certification by Borrower that no new certificate of occupancy was required by law. Lender shall not be required to make any such advances more frequently than one time in any calendar month.

(b) In the event any proceeds or awards from an Insured Event exceed the Threshold Amount but less than sixty percent (60%) of the Improvements located on the Land have been taken or destroyed, then if:

(1) the Property can, in Lender's reasonable judgment, with diligent restoration or repair, be returned to a condition at least equal to the condition thereof that existed prior to the casualty or partial taking causing the loss or damage by the earlier to occur of the following dates: (i) six (6) months after the receipt of insurance proceeds or condemnation awards by either Borrower or Lender, and (ii) six (6) months prior to the stated maturity date of the Note, and



(2) all necessary governmental approvals can be obtained to allow the rebuilding and reoccupancy of the Property as described in Section 1.9(b)(1) above, and

(3) there are sufficient sums available (through insurance proceeds or condemnation awards and contributions by Borrower, the full amount of which shall at Lender's option have been deposited with Lender) for such restoration or repair (including, without limitation, for any reasonable costs and expenses of Lender to be incurred in administering said restoration or repair) and for payment of principal and interest to become due and payable under the Note during such restoration or repair, and

(4) the economic feasibility of the Improvements after such restoration or repair will be such that income from their operation is reasonably anticipated to be sufficient to pay operating expenses of the Property and debt service on the indebtedness secured hereby in full with the same coverage ratio considered by Lender in its determination to make the Loan, and

(5) Borrower shall have delivered to Lender, at Borrower's sole cost and expense, an appraisal report from an appraiser, in form and substance, satisfactory to Lender appraising the value of the Property as proposed to be restored or repaired to be not less than the appraised value of the Property considered by Lender in its determination to make the Loan,

then, Lender shall, solely for the purposes of such restoration or repair, advance so much of the remainder of such sums as may be required to facilitate such restoration or repair, and any funds deposited by Borrower therefor, to Borrower in the manner and upon such terms and conditions as would be required by a prudent interim construction lender, including, but not limited to, the prior approval by Lender of plans and specifications, contractors and the form of construction contracts and the furnishing to Lender of permits, bonds, lien waivers, invoices, receipts and affidavits from contractors and subcontractors in form and substance reasonably satisfactory to Lender. Any remaining proceeds shall be applied by Lender for payment of the indebtedness secured hereby in whatever order Lender directs, or released to Borrower, in its absolute discretion. Borrower shall, in good faith, undertake reasonable efforts to cause the conditions described in this Section 1.9(b) to be fully satisfied (e.g., Borrower shall timely make applications for necessary governmental permits, shall order an appropriate appraisal report, etc). If such conditions are satisfied, Borrower shall be obligated to undertake restoration and repair of the damaged Improvements subject to the terms of this Section 1.9.

Any disbursement pursuant to this clause (b) of sums by Lender shall, subject to Borrower's satisfaction of the provisions hereof, be in a manner to promptly facilitate the restoration or repair of the Property. In the event Borrower fails to meet the requirements of this clause (b), then Lender may elect in its absolute discretion and without regard to the adequacy of Lender's security, to accelerate the maturity date of the Note and declare any and all of the indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums to the payment of the secured indebtedness in whatever order Lender directs in its sole discretion, with any remainder being paid to Borrower.

(c) In all other cases, namely, in the event that sixty percent (60%) or more of the Improvements located on the Land have been taken or destroyed Lender may elect, in Lender's absolute discretion and without regard to the adequacy of Lender's security, to (i) accelerate the maturity date of the Note and declare any and all indebtedness secured hereby to be immediately due and payable and apply the remainder of such sums received pursuant to this Section to the payment of the secured indebtedness in whatever order Lender directs in its absolute discretion, with any remainder being paid to Borrower, or (ii) make insurance or condemnation proceeds available to Borrower for repair or restoration if Borrower establishes to the satisfaction of Lender, in its sole discretion, that Borrower otherwise satisfies the

requirements of Section 1.9(b) above. Should Lender make the election described immediately above in item (ii) of this Section 1.9(c), Borrower shall be obligated to undertake restoration and repair of the damaged Improvements consistent with the provisions of this Section 1.9.

(d) Any reduction in the indebtedness secured hereby resulting from Lender's application of any sums received by it hereunder shall take effect only when Lender actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Borrower shall not be excused in the payment thereof. Partial payments received by Lender, as described in the preceding sentence, shall be applied against the Note consistent with the prepayment provisions described therein for casualty or condemnation proceeds. If Borrower undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property as provided above, Borrower shall promptly and diligently, at Borrower's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions and Borrower shall pay to Lender all costs and expenses of Lender incurred in administering said rebuilding, restoration or repair, provided that Lender makes such proceeds or award available for such purpose. Borrower agrees to execute and deliver from time to time such further instruments as may be requested by Lender to confirm the foregoing assignment to Lender of any award, damage, insurance proceeds, payment or other compensation. Borrower hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed coupled with an interest, shall survive the voluntary or involuntary dissolution of Borrower and shall not be affected by any disability or incapacity suffered by Borrower subsequent to the date hereof), with full power of substitution, subject to the terms of this Section, to settle for, collect and receive any such awards, damages, insurance proceeds, payments or other compensation from the parties or authorities making the same, to appear in and prosecute any proceedings therefor and to give receipts and acquittance therefor.

1.10. Mechanics' Liens. Borrower shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Land or the Improvements; provided, however, that Borrower shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Lender and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Borrower shall contest any such claim or demand, Borrower shall promptly notify Lender of such contest and thereafter shall, upon Lender's request, promptly provide a bond, cash deposit or other security satisfactory to Lender to protect Lender's interest and security should the contest be unsuccessful. If Borrower shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Lender may do so and any and all expenses incurred by Lender, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

1.11. Assignment of Leases and Rents. Borrower acknowledges and confirms that, as additional collateral security for the payment of the indebtedness secured hereby, and cumulative of any and all rights and remedies herein provided, it has executed and delivered to Lender an Assignment of Leases and Rents of even date herewith (the "Assignment"), intending such Assignment to create a present, absolute assignment to Lender of all current or future leases of all or any portion of the Property and Rents. Upon the occurrence of a default under this Security Instrument which has not been cured within any applicable grace or cure



period, Lender shall be entitled to exercise any or all of the remedies provided in this Security Instrument and in the Assignment, including, without limitation, the appointment of a receiver. The Assignment shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

1.12. Leases and Licenses.

(a) Borrower covenants and agrees that it shall not enter into any lease affecting 5,000 square feet or more of the Property or having a term (including any renewal or extension term) of more than 10 years without the prior written approval of Lender, which approval shall not be unreasonably withheld. The request for approval of each such proposed new lease shall be made to Lender in writing and shall state that, pursuant to the terms of this Security Instrument, failure to approve or disapprove such proposed lease within ten (10) business days is deemed approval and Borrower shall furnish to Lender (and any loan servicer specified from time to time by Lender): (i) such biographical and financial information about the proposed tenant as Lender may require in conjunction with its review, (ii) a copy of the proposed form of lease, and (iii) a summary of the material terms of such proposed lease (including, without limitation, rental terms and the term of the proposed lease and any options). It is acknowledged that Lender intends to include among its criteria for approval of any such proposed lease the following: (i) such lease shall be with a bona-fide arm's-length tenant; (ii) such lease shall not contain any rental or other concessions which are not then customary and reasonable for similar properties and leases in the market area of the Land; (iii) such lease shall provide that the tenant pays for its expenses; (iv) the rental shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Land; and (v) such lease shall contain subordination and attornment provisions in form and content acceptable to Lender. Failure of Lender to approve or disapprove any such proposed lease within ten (10) business days after receipt of such written request and all the documents and information required to be furnished to Lender with such request shall be deemed approval, provided that the written request for approval specifically mentioned the same.

(b) All other leases shall be written on the standard form lease (without any material changes) which Lender has approved and shall be on arm's-length terms consistent with the terms for similar leases in the market area of the Land, shall provide for free rent only if the same is consistent with prevailing market conditions and shall provide for market rents then prevailing in the market area of the Land. Such leases shall also provide for Security Deposits in reasonable amounts. Borrower shall also submit to Lender for Lender's approval, which approval shall not be unreasonably withheld, prior to the execution thereof, any proposed lease, license or occupancy agreement of the Property or any portion thereof that differs materially and adversely from the aforementioned form lease. Borrower shall not execute any lease, license or occupancy agreement for all or a substantial portion of the Property, except for an actual occupancy by the tenant, lessee or licensee thereunder, and shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all leases, licenses and occupancy agreements with respect to the Property, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. In addition to the requirements set forth in Section 1.18(c) of this Security Instrument, Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a current rent roll certified by Borrower as being true and correct containing the names of all tenants, lessees and licensees with respect to the Property, the terms of their respective leases, licenses or occupancy agreements, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Lender, Borrower shall deliver to Lender a copy of each such lease, license and occupancy agreement. Borrower shall not do or suffer to be done any act that might result in a default by the landlord, lessor or licensor under any such lease, license or occupancy agreement or allow the tenant, lessee or licensee thereunder to withhold payment or rent and, except as otherwise expressly permitted by the terms of Section 1.13 hereof, shall not further assign any such lease, license or occupancy agreement or any such rents. Borrower, at no cost or expense to Lender, shall enforce, short of termination, the

performance and observance of each and every condition and covenant of each of the parties under such leases. Borrower shall not, without the prior written consent of Lender, modify any of the leases, terminate or accept the surrender of any leases, waive or release any other party from the performance or observance of any obligation or condition under such leases except, with respect only to leases affecting less than 5,000 square feet and having a term of ten (10) years or less, in the normal course of business in a manner which is consistent with sound and customary leasing and management practices for similar properties in the community in which the Property is located. Borrower shall not permit the prepayment of any rents under any of the leases for more than one (1) month prior to the due date thereof.

1.13. Alienation and Further Encumbrances.

(a) Borrower acknowledges that Lender has relied upon the principals of Borrower and their experience in owning and operating properties similar to the Property in connection with the closing of the Loan. Accordingly, except as specifically allowed hereinbelow in this Section and notwithstanding anything to the contrary contained in Section 4.5 hereof, in the event that the Property or any part thereof or interest therein shall be sold (including any installment sales agreement), conveyed, disposed of, alienated, hypothecated, leased (except to tenants of space in the Improvements in accordance with the provisions of Section 1.12 hereof), assigned, pledged, mortgaged, further encumbered or otherwise transferred or Borrower shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Lender being first obtained, which consent may be withheld in Lender's sole discretion, then the same shall constitute a default hereunder and Lender shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. If such acceleration is during any period when a prepayment fee is payable pursuant to the provisions set forth in the Note, then, in addition to all of the foregoing, such prepayment fee shall also then be immediately due and payable to the same end as though Borrower were prepaying the entire indebtedness secured hereby on the date of such acceleration. For the purposes of this Section, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) Borrower shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, transfers or assignments of ownership interests in Borrower (or its constituent parties) may be undertaken without the consent of Lender in the following circumstances:

(1) In the case of a Borrower which is a limited partnership, up to 49% of the limited partnership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer.

(2) In the case of a Borrower which constitutes a limited liability company, up to 49% of the non-managing membership interests in Borrower shall be freely transferable so long as those persons responsible for the management and control of Borrower and the Property remain unchanged following such transfer, and the existing members of Borrower may transfer membership interests among the other existing members of Borrower without consent of Lender, but upon notice to Lender;

(3) In the case of a Borrower which constitutes a corporation, up to 49% of the aggregate of the issued and outstanding capital stock of Borrower may be sold or assigned, taking into account (i) any prior sales or assignments, and (ii) the effective change in ownership resulting from any issuance of new shares of capital stock in Borrower or its constituent party.



(4) Gifts for estate planning purposes of any individual's interests in Borrower or in any of Borrower's general partners, members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be a default under this Security Instrument so long as Borrower is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Borrower remain unchanged following such gift or any replacement management is approved by Lender.

(5) Involuntary assignments or transfers caused by the death, incompetence or dissolution of Borrower, one of its constituent parties or the owner of one of its constituent parties are permitted if: (i) Borrower is reconstituted, if required, following such death, incompetence or dissolution, and (ii) those persons responsible for the management and control of Borrower and the Property remain unchanged as a result of such death, incompetence or dissolution or any replacement management is approved by Lender.

In all cases where assignment of ownership interests is allowed pursuant to this Section 1.13(a), the proportionate ownership which is proposed to be transferred shall be calculated so as to take into account prior transfers or assignments. Furthermore, the sale, conveyance, transfer, disposition, alienation, hypothecation, pledge or encumbering (whether voluntarily or involuntarily) of all or any portion of the ownership interest in (or, directly or indirectly through constituent parties, any of the ultimate beneficial ownership interest in) any guarantor or indemnitor of Borrower's obligation hereunder or under any of the other Loan Documents shall constitute a default hereunder and Lender shall have the right to exercise its various remedies described hereinabove; provided, however, ownership interests in any such guarantor may be transferred in a manner consistent with the allowable transfers of ownership interests in Borrower described hereinabove.

(b) Notwithstanding the foregoing provisions of this Section, Lender shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(1) No default is then continuing hereunder or under any of the other Loan Documents;

(2) Borrower gives Lender written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Lender all reasonable information concerning the proposed transferee of the Property (hereinafter, a "Buyer") as Lender would require in evaluating an initial extension of credit to a borrower, and pays to Lender a non-refundable application fee in the amount of \$5,000.00 (the "Application Fee"). Lender shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Lender shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

(3) Borrower pays Lender, concurrently with the closing of such Sale, a non-refundable assumption fee (the "Assumption Fee") in an amount equal to one percent (1.0%) of the then outstanding principal balance of the Note;

(4) The Buyer assumes and agrees to pay the indebtedness secured hereby subject to the provisions of Section 4.23 hereof and to perform the covenants of Borrower under the Loan Documents, and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Lender may require;

(5) Borrower and the Buyer execute, without any cost or expense to Lender, new financing statements or financing statement amendments and any additional documents reasonably requested by Lender;

(6) Borrower delivers to Lender, without any cost or expense to Lender, such endorsements to Lender's Title Insurance Policy, hazard insurance endorsements or certificates and other similar materials as Lender may deem necessary at the time of the Sale, all in form and substance satisfactory to Lender, including, without limitation, an endorsement or endorsements to Lender's Title Insurance Policy insuring the lien of this Security Instrument, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above in Subsection (4) of this Section 1.13(b) with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

(7) Borrower executes and delivers to Lender, without any cost or expense to Lender, a release of Lender, its officers, directors, employees and agents, from all claims and liability relating to the transactions evidenced by the Loan Documents through and including the date of the closing of the Sale, which agreement shall be in form and substance satisfactory to Lender and shall be binding upon the Buyer;

(8) Subject to the provisions of Section 4.23 hereof, such Sale is not construed so as to relieve Borrower of any personal liability under the Note or any of the other Loan Documents for any acts or events occurring or obligations arising prior to or simultaneously with the closing of such Sale and Borrower executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of said personal liability;

(9) Such Sale is not construed so as to relieve any current guarantor or indemnitor of its obligations under any guaranty or indemnity agreement executed in connection with the Loan and each such current guarantor and indemnitor executes, without any cost or expense to Lender, such documents and agreements as Lender shall reasonably require to evidence and effectuate the ratification of each such guaranty and indemnity agreement, provided that if the Buyer or a party associated with the Buyer approved by Lender in its sole discretion assumes the obligations of the current guarantor or indemnitor under its guaranty or indemnity agreement and the Buyer or such party associated with the Buyer, as applicable, executes, without any cost or expense to Lender, a new guaranty or indemnity agreement in form and substance satisfactory to Lender, then Lender shall release the current guarantor or indemnitor from all obligations arising under its guaranty or indemnity agreement after the closing of such Sale;

(10) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all documents evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which documents shall include, but not in any way be limited to, certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners or members of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Lender may require, shall be



single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Lender;

(11) The Buyer, if required by Lender, shall furnish an opinion of counsel satisfactory to Lender and its counsel (i) that the Buyer's formation documents provide for the matters described in Section 1.13(b)(10) hereof, (ii) that the assumption of the indebtedness evidenced hereby has been duly authorized, executed and delivered, and that the Loan Documents are valid, binding and enforceable against the Buyer in accordance with their terms, (iii) that the Buyer and any entity which is a controlling stockholder, member or general partner of the Buyer, has been duly organized, and is in existence and in good standing, and (iv) with respect to such other matters, as Lender may request;

(12) If the Buyer is a single-member limited liability company, Buyer must be formed in the state of Delaware, and Buyer's operating agreement must provide for the continued existence of Buyer in the event of the bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of the sole member. The Buyer, if required by Lender, shall also furnish an opinion of counsel satisfactory to Lender and its counsel that if the Buyer is a single-member limited liability company, that (i) the Buyer is a separate legal entity formed in the state of Delaware; (ii) the separate existence of the Buyer shall continue until the cancellation of the certificate of organization of the Buyer; (iii) the Buyer's operating agreement provides for the continued existence of the Buyer in the event of the bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of the sole member, and that such provision would be enforceable notwithstanding the bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of the sole member; and (iv) that any judgment creditor of the sole member may not satisfy its claims against the sole member by asserting a claim against the Property or any other assets of the Buyer;

(13) If required under the operative documents with respect to a Secondary Market Transaction (as defined in Section 4.32 hereof), Lender shall have received evidence in writing from the Rating Agency to the effect that the proposed transfer will not result in a re-qualification, reduction, downgrade or withdrawal of any rating initially assigned or to be assigned in a Secondary Market Transaction or, if no such rating has been issued, in Lender's good faith judgment, such transfer shall not have an adverse effect on the level of rating obtainable in connection with the Loan;

(14) Borrower shall reimburse Lender for all of Lender's reasonable out-of-pocket costs and expenses (including, without limitation, reasonable attorney's fees and disbursements and Rating Agency fees and expenses) incurred or anticipated to be incurred by Lender in connection with any Sale including, without limitation, Lender's determination of whether Borrower has satisfied all of the conditions and requirements set forth in this Section 1.13(b); and

(15) Borrower's obligations under the contract of sale pursuant to which such Sale, conveyance or transfer is proposed to occur shall expressly be subject to the satisfaction of the terms and conditions of this Section 1.13(b).

1.14. Payment of Utilities, Assessments, Charges, Etc. Borrower shall pay when due all utility charges which are incurred by Borrower or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Land and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Land and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

1.15. Access Privileges and Inspections. Lender and the agents, representatives and employees of Lender shall, subject to the rights of tenants, have full and free access to the Land and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Borrower relating to the Property. Borrower shall lend assistance to all such agents, representatives and employees of Lender.

1.16. Waste; Alteration of the Property. Borrower shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Borrower shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Lender. Without the prior written consent of Lender, Borrower shall not commence construction of any improvements on the Land other than improvements required for the maintenance or repair of the Property.

1.17. Zoning; Use. Without the prior written consent of Lender, Borrower shall not seek, make, suffer, consent to or acquiesce in any change in the zoning or conditions of use of the Land or the Improvements. Borrower shall comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Land or the Improvements. Borrower shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Property. Borrower shall keep all licenses, permits, franchises, certificates of occupancy, consents, and other approvals necessary for the operation of the Property in full force and effect. Borrower shall operate the Property as a retail shopping center for so long as the indebtedness secured hereby is outstanding. If, under applicable zoning provisions, the use of all or any part of the Land or the Improvements is or becomes a nonconforming use, Borrower shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Further, without Lender's prior written consent, Borrower shall not file or subject any part of the Land or the Improvements to any declaration of condominium or cooperative or convert any part of the Land or the Improvements to a condominium, cooperative or other form of multiple ownership and governance.

1.18. Financial Statements and Books and Records. Borrower shall keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender and its duly authorized representatives shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. So long as this Security Instrument continues in effect, Borrower shall provide to Lender, in addition to any other financial statements required hereunder or under any of the other Loan Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct by Borrower or the entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Lender:

(a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing;

(b) quarterly operating statements for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, operating statements shall be delivered monthly for the first twelve (12) full calendar months of the Note;



(c) current rent rolls for the Property, within fifteen (15) days after the end of each March, June, September and December, provided, rent rolls shall be delivered monthly for the first twelve (12) full calendar months of the Note;

(d) annual balance sheets for the Property and annual financial statements for Borrower, each principal, member or general partner in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan within sixty (60) days after the end of each calendar year; and

(e) such other information with respect to the Property, Borrower, the principals, members or general partners in Borrower, and each indemnitor and guarantor under any indemnity or guaranty executed in connection with the Loan, which may be requested from time to time by Lender, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods, Borrower shall pay to Lender a late fee of \$250.00. Further, if any of the aforementioned materials are not furnished to Lender within the applicable time periods or Lender is dissatisfied with the contents of any of the foregoing, in addition to any other rights and remedies of Lender contained herein, Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit. Borrower agrees that any and all materials furnished hereunder are the property of Lender (and Lender's servicer) and may be released and made available to such parties as Lender or its servicer deems appropriate, including any Rating Agency responsible for rating securities issued in any Secondary Market Transaction (as such terms are defined in Section 4.32 hereof).

1.19. Further Documentation. Borrower shall, on the request of Lender in Lender's reasonable discretion and at the expense of Borrower, promptly correct any defect, error or omission which may be discovered in the contents of this Security Instrument or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and the other Loan Documents or as may be deemed advisable by Lender to protect, continue or preserve the liens and security interests hereunder including, without limitation, security instruments, financing statements and continuation statements.

1.20. Payment of Costs; Advances to Protect Property.

(a) Payment of Costs. Borrower shall pay all reasonable costs and expenses of every character incurred in connection with the closing of the Loan or otherwise attributable or chargeable to Borrower as the owner of the Property, including, without limitation, appraisal fees, recording fees, documentary, stamp, mortgage or intangible taxes, brokerage fees and commissions, title policy premiums and title search fees, uniform commercial code/tax lien/litigation search fees, escrow fees and reasonable attorneys' fees.

(b) Advances to Protect Property. Without limiting or waiving any other rights and remedies of Lender hereunder, if Lender determines that Borrower is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Security Instrument or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency,

arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Lender's interest in the Property or Lender's right to enforce its security, then Lender may, at its option, with or without notice to Borrower, make any appearances, disburse or advance any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Security Instrument or to remedy the failure of Borrower to perform its covenants and agreements (without, however, waiving any default of Borrower). Borrower agrees to pay on demand all expenses of Lender reasonably incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate (as defined in the Note) from and after the date on which Lender incurs such expenses until reimbursement thereof by Borrower. Any such expenses so incurred by Lender, together with interest thereon as provided above, shall be additional indebtedness of Borrower secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its sole and absolute discretion. Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this Section 1.20(b) shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the Default Interest Rate (as defined in the Note), notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrower of a voluntary case or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended (the "Act"), Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section 1.20(b) shall not be construed to require Lender to incur any expenses, make any appearances or take any actions.

1.21. Security Interest. This Security Instrument is also intended to encumber and create a security interest in, and Borrower hereby grants to Lender a security interest in, all Reserves (as hereinabove defined), fixtures, chattels, accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Land or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Land and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith shall be permitted without the prior written approval of Lender. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Security Instrument when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Lender, remove from the Land or the Improvements any of the Collateral subject to the lien or security interest of this Security Instrument except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Security Instrument and the other Loan Documents and except as otherwise expressly permitted by the terms of Section 1.13 of this Security Instrument. All of the Collateral shall be kept at the location of the Land except as otherwise required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.



1.22. Security Agreement. This Security Instrument constitutes both a real property mortgage and a "security agreement" between Borrower and Lender with respect to the Collateral in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's reasonable attorneys' fees and legal expenses), together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable Uniform Commercial Code:

(a) In the event of a foreclosure sale, the Property may, at the option of Lender, be sold as a whole; and

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section 1.22 is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

Borrower will not change the location of its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without in each instance the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Lender's consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements and other instruments which may be necessary to effectively evidence or perfect Lender's security interest in the Collateral as a result of any such changes.

The name principal place of business and chief executive office of Borrower (as Debtor under any applicable Uniform Commercial Code), as of the date hereof, are:

Highway 150, LLC  
2101 6th Avenue, Suite 900  
Birmingham, Alabama 35203

The name and address of Lender (as Secured Party under any applicable Uniform Commercial Code), as of the date hereof, are:

Column Financial, Inc.  
Eleven Madison Avenue  
5th Floor  
New York, New York 10010-3629  
Attention: Edmund Taylor

1.23. Easements and Rights-of-Way. Borrower shall not grant any easement or right-of-way with respect to all or any portion of the Land or the Improvements without the prior written consent of Lender. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Security Instrument and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Lender consents to the grant of an easement or right-of-way, Lender agrees to grant such consent without charge to Borrower other than reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by Lender in the review of Borrower's request and, if applicable, in the preparation of documents relating to the subordination of this Security Instrument to such easement or right-of-way.

1.24. Compliance with Laws. (a) Borrower shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that Borrower may, upon providing Lender with security satisfactory to Lender, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Borrower shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(b) Borrower agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other 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 ("Access Laws"). Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.



1.25. Additional Taxes. In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Security Instrument or the indebtedness secured hereby or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (a) it might be unlawful to require Borrower to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable in full, thirty (30) days from the giving of such notice.

1.26. Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the indebtedness secured hereby prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. To the full extent permitted by law, Borrower shall not have or assert any right under any statute or rule of law pertaining to the exemption of homestead or other exemption under any federal, state or local law now or hereafter in effect, the administration of estates of decedents or any other matters whatsoever to defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Property, for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Lender under the terms of this Security Instrument to the payment of the indebtedness secured hereby out of the proceeds of sale of the Property in preference to every other claimant whatever. Borrower, for Borrower and Borrower's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel waives, releases, relinquishes and forever forgoes: (a) all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the secured indebtedness (except such notices as are specifically provided for herein); (b) all right to a marshaling of the assets of Borrower, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; (c) all rights and periods of redemption provided under applicable law; and (d) all present and future statutes of limitations as a defense to any action to enforce the provisions of this Security Instrument or to collect any of the indebtedness secured hereby to the fullest extent permitted by law and agrees that it shall not solicit or aid the solicitation of the filing of any Petition (as hereinafter defined) against Borrower, whether acting on its own behalf or on behalf of any other party. Without limiting the generality of the foregoing, Borrower shall not (i) provide information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency; or (ii) pay the legal fees or expenses of any creditor or interest holder in Borrower with respect to any matter whatsoever.

1.27. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF ALABAMA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS SECURITY INSTRUMENT OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN JEFFERSON AND SHELBY COUNTY, ALABAMA, (iii) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (iv) AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TO THE FULL EXTENT PERMITTED BY LAW, BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 4.4 HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).**

(b) **BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF LENDER BORROWER, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

1.28. Contractual Statute of Limitations. [INTENTIONALLY OMITTED]

1.29. Management. The management of the Property shall be by either: (a) Borrower or an entity affiliated with Borrower approved by Lender for so long as Borrower or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Lender (any such person or entity which manages the Property, other than Borrower, is hereinafter referred to as the "Manager"). Any such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Lender. In no event shall any Manager be removed or replaced or the terms of any management agreement modified or amended without the prior written consent of Lender. In the event (x) of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, or (y) of a change in control (fifty percent or more) of the ownership of Manager or if Manager provides cause for termination, including, without limitation, gross negligence, wilful misconduct or fraud, or (z) of the Manager becoming insolvent or a debtor in any bankruptcy or insolvency proceeding, Lender shall have the right to terminate, or direct Borrower to terminate, such management contract at any time and, in any such event of termination of the management contract, to retain, or to direct Borrower to retain, a new management agent approved by Lender. Any such



successor manager shall be a reputable management company having a senior executive with at least seven (7) years' experience in the management of properties in the State of the same type as the Property, shall be the manager of at least five (5) projects comparable to the Property and shall be reasonably acceptable to Lender. Borrower further covenants and agrees that Borrower shall require the Manager (or any successor managers) to maintain at all times during the term of this Security Instrument worker's compensation insurance as required by applicable governmental authorities or legal requirements.

1.30. Hazardous Materials and Environmental Concerns.

(a) Borrower hereby represents and warrants to Lender, after due inquiry and investigation, that, as of the date hereof: (i) the Property is in full compliance with, and to the best of Borrower's knowledge, information and belief, the Property has been in full compliance with all local, state or federal laws, rules and regulations pertaining to environmental regulation, contamination, remediation or human health or safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), The Alabama Water Pollution Control Act (ALA. CODE § 22-22-1 et seq.); The Alabama Environmental Management Act (ALA. CODE § 22-22A-1 et seq.); The Alabama Waterworks and Water Supplies Act (ALA. CODE § 22-23-30 et seq.); The Alabama Solid Wastes Disposal Act (ALA. CODE § 22-27-1 et seq.); The Alabama Air Pollution Control Act (ALA. CODE § 22-28-1 et seq.); The Alabama Hazardous Wastes Management and Minimization Act (ALA. CODE § 22-30-1 et seq.); The Alabama Hazardous Substance Cleanup Fund (ALA. CODE § 22-30A et seq.); The Alabama Fees for Disposal of Hazardous Waste or Substances Act (ALA. CODE § 22-30B-1 et seq.); The Alabama Underground Storage Tank Trust Fund Act (ALA. CODE § 22-35-1 et seq.); The Alabama Underground Storage Tank and Wellhead Protection Act (ALA. CODE § 22-36-1 et seq.); The Alabama Lead Ban Act (ALA. CODE § 22-37-1 et seq.); and The Alabama Asbestos Contractor Accreditation Act (ALA. CODE § 22-39-4 et seq.) or in any other Hazardous Waste Laws, all as amended; (ii) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including soil and groundwater beneath the Property) except for those substances used by Borrower in the ordinary course of its business and in compliance with all Environmental Laws; (iii) the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Borrower aware of any basis for such lien, notice or action; (iv) there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) used to store Hazardous Substances on the Property; (v) Borrower has received no notice of, and to the best of Borrower's knowledge and belief, there does not exist any investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Borrower know of any basis for such investigation, action, proceeding or claim; (vi) Borrower has received no notice that, and to the best of Borrower's knowledge and belief, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Borrower know of any basis for such notice or claim; and (vii) there are no present environmental conditions or events or, to the best of Borrower's knowledge, past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property.

(b) Borrower shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Borrower in the ordinary course of its business and in compliance with all Environmental Laws) and in full compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Security Instrument, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos. If required by Lender or under any Environmental Law, Borrower shall maintain an Operations and Maintenance Program ("O&M Program") for the management of asbestos, lead-based paint, radon or any other Hazardous Substances at the Property.

(c) Borrower shall promptly notify Lender if Borrower shall become aware of (i) any Release or threatened Release of Hazardous Substances at, on, under, from, or affecting or threatening to affect the Property (except those substances used by Borrower or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (ii) any lien or filing of lien, action or notice affecting or threatening to affect the Property or Borrower resulting from any violation or alleged violation of Environmental Law, (iii) any investigation, inquiry or proceeding concerning Borrower or the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (iv) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Borrower shall deliver to Lender copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws). Borrower shall, promptly and when and as required, at Borrower's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section 1.30 or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Lender), and shall further pay or cause to be paid, at no expense to Lender, all remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Borrower fails to do so (1) Lender may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (2) Borrower hereby grants to Lender and its agents and employees access to the Property and a license to do all things Lender shall deem necessary to bring the Property into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Lender in connection therewith, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. BORROWER COVENANTS AND AGREES, AT BORROWER'S SOLE COST AND EXPENSE, TO INDEMNIFY, DEFEND (AT TRIAL AND APPELLATE LEVELS, AND WITH ATTORNEYS, CONSULTANTS AND EXPERTS ACCEPTABLE TO LENDER), AND HOLD LENDER HARMLESS FROM AND AGAINST ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS AND EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS', CONSULTANTS' AND



EXPERTS' FEES AND DISBURSEMENTS ACTUALLY INCURRED IN INVESTIGATING, DEFENDING, SETTLING OR PROSECUTING ANY CLAIM, LITIGATION OR PROCEEDING) WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST LENDER OR THE PROPERTY, AND ARISING DIRECTLY OR INDIRECTLY FROM OR OUT OF: (A) THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER, AFFECTING OR THREATENING TO AFFECT ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF BORROWER; (B) THE VIOLATION OF ANY ENVIRONMENTAL LAWS RELATING TO OR AFFECTING OR THREATENING TO AFFECT THE PROPERTY, WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF BORROWER; (C) THE FAILURE BY BORROWER TO COMPLY FULLY WITH THE TERMS AND CONDITIONS OF THIS SECTION 1.30; (D) THE BREACH OF ANY REPRESENTATION OR WARRANTY CONTAINED IN THIS SECTION 1.30; OR (E) THE ENFORCEMENT OF THIS SECTION 1.30, INCLUDING, WITHOUT LIMITATION, THE COST OF ASSESSMENT, CONTAINMENT AND/OR REMOVAL OF ANY AND ALL HAZARDOUS SUBSTANCES ON AND/OR FROM ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS, THE COST OF ANY ACTIONS TAKEN IN RESPONSE TO THE PRESENCE, RELEASE OR THREAT OF RELEASE OF ANY HAZARDOUS SUBSTANCES ON, IN, UNDER OR AFFECTING ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS TO PREVENT OR MINIMIZE SUCH RELEASE OR THREAT OF RELEASE SO THAT IT DOES NOT MIGRATE OR OTHERWISE CAUSE OR THREATEN DANGER TO PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE ENVIRONMENT, AND COSTS INCURRED TO COMPLY WITH THE ENVIRONMENTAL LAWS IN CONNECTION WITH ALL OR ANY PORTION OF THE PROPERTY OR ANY SURROUNDING AREAS. THE INDEMNITY SET FORTH IN THIS SECTION 1.30(c) SHALL ALSO INCLUDE ANY DIMINUTION IN THE VALUE OF THE SECURITY AFFORDED BY THE PROPERTY OR ANY FUTURE REDUCTION IN THE SALES PRICE OF THE PROPERTY BY REASON OF ANY MATTER SET FORTH IN THIS SECTION 1.30(c), AND ANY AND ALL LIENS, DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, SETTLEMENT PAYMENTS, PENALTIES, ASSESSMENTS, CITATIONS, DIRECTIVES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, PROCEEDINGS, COSTS, DISBURSEMENTS OR EXPENSES OF ANY KIND OR OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO INJURY OR DEATH DUE TO EXPOSURE FROM HAZARDOUS SUBSTANCES THAT MAY BE PRESENT OR RELEASED AT, ON, UNDER OR FROM THE PROPERTY. LENDER'S RIGHTS UNDER THIS SECTION SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY AND SHALL BE IN ADDITION TO ALL OTHER RIGHTS OF LENDER UNDER THIS SECURITY INSTRUMENT, THE NOTE, AND THE OTHER LOAN DOCUMENTS.

(d) Upon Lender's request, at any time after the occurrence of a default hereunder or at such other time as Lender has reasonable grounds to believe that Hazardous Substances are or have been handled, generated, stored, processed, transported to or from, or released or discharged from or disposed of on or around the Property (other than in the normal course of Borrower's or the tenants' business or activities, respectively, and in compliance with all Environmental Laws) or that Borrower, any tenant or the Property may be in violation of Environmental Laws, Borrower shall provide, at Borrower's sole cost and expense, an environmental site assessment or environmental compliance audit of the Property prepared by a hydrogeologist or environmental engineer or other appropriate consultant approved by Lender to determine (i) whether there has been a Release or threatened Release of Hazardous Substances at, on, under or from the Property onto adjoining properties, and (ii) if the Property is in full compliance with Environmental Laws (including as to asbestos-containing material and lead-based paint). If Borrower fails to provide such assessment or audit within thirty (30) days after such request, Lender may order the same, and Borrower hereby grants to Lender and its employees and agents access to the Property and a license to undertake such

assessment or audit. The cost of such assessment or audit, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date incurred by Lender until actually paid by Borrower, shall be immediately paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(e) Without limiting the foregoing, Lender and its authorized representatives may, during normal business hours and at its own expense, inspect the Property and Borrower's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section 1.30.

(f) As used herein, the term "Release" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance.

#### 1.31. INDEMNIFICATION; SUBROGATION.

(a) **BORROWER SHALL INDEMNIFY, DEFEND AND HOLD LENDER HARMLESS AGAINST: (i) ANY AND ALL CLAIMS FOR BROKERAGE, LEASING, FINDER'S OR SIMILAR FEES WHICH MAY BE MADE RELATING TO THE PROPERTY OR THE SECURED INDEBTEDNESS, (ii) ANY AND ALL LIABILITY, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, CLAIMS, ACTIONS, SUITS, LIENS, CHARGES, ENCUMBRANCES, COSTS AND EXPENSES (INCLUDING LENDER'S ATTORNEYS' FEES, TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY) OF WHATEVER KIND OR NATURE WHICH MAY BE ASSERTED AGAINST, IMPOSED ON OR INCURRED BY LENDER UNDER ANY LEASE OR OCCUPANCY AGREEMENT, FOR ANY LOSS ARISING FROM A FAILURE OR INABILITY TO COLLECT RENTS AND PROFITS OR IN CONNECTION WITH THE SECURED INDEBTEDNESS, THIS SECURITY INSTRUMENT, THE PROPERTY, OR ANY PART THEREOF, OR THE EXERCISE BY LENDER OF ANY RIGHTS OR REMEDIES GRANTED TO IT UNDER THIS SECURITY INSTRUMENT, AND ANY DEFAULT UNDER THIS SECURITY INSTRUMENT, (iii) ANY LIENS (WHETHER JUDGMENTS, MECHANICS', MATERIALMEN'S OR OTHERWISE), CHARGES AND ENCUMBRANCES FILED AGAINST THE PROPERTY, AND (iv) ANY CLAIMS AND DEMANDS FOR DAMAGES OR INJURY, INCLUDING CLAIMS FOR PROPERTY DAMAGE, PERSONAL INJURY OR WRONGFUL DEATH, ARISING OUT OF OR IN CONNECTION WITH ANY ACCIDENT OR FIRE OR OTHER CASUALTY ON THE LAND OR THE IMPROVEMENTS OR ANY NUISANCE OR TRESPASS MADE OR SUFFERED THEREON, INCLUDING, IN ANY CASE, ATTORNEY'S FEES, COSTS AND EXPENSES AS AFORESAID, WHETHER AT PRETRIAL, TRIAL OR APPELLATE LEVEL FOR ANY CIVIL, CRIMINAL OR ADMINISTRATIVE PROCEEDINGS. SHOULD LENDER INCUR ANY LIABILITY UNDER THIS SECURITY INSTRUMENT OR ANY OF THE OTHER LOAN DOCUMENTS, THE AMOUNT THEREOF, INCLUDING, WITHOUT LIMITATION, COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES, TOGETHER WITH INTEREST THEREON AT THE DEFAULT INTEREST RATE (AS DEFINED IN THE NOTE) FROM THE DATE INCURRED BY LENDER UNTIL ACTUALLY PAID BY BORROWER, SHALL BE IMMEDIATELY DUE AND PAYABLE TO LENDER BY BORROWER ON DEMAND AND SHALL BE SECURED HEREBY AND BY ALL OF THE OTHER LOAN DOCUMENTS SECURING ALL OR ANY PART OF THE INDEBTEDNESS EVIDENCED BY THE NOTE. HOWEVER, NOTHING HEREIN SHALL BE CONSTRUED TO OBLIGATE BORROWER TO INDEMNIFY, DEFEND AND HOLD HARMLESS LENDER FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES,**



**PENALTIES, CLAIMS, ACTIONS, SUITS, COSTS AND EXPENSES ENACTED AGAINST, IMPOSED ON OR INCURRED BY LENDER BY REASON OF LENDER'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. THIS INDEMNITY SHALL SURVIVE PAYMENT IN FULL OF THE INDEBTEDNESS SECURED HEREBY.**

**(b) LENDER MAY ENGAGE THE SERVICES OF ATTORNEYS IF IT IS MADE A PARTY DEFENDANT TO ANY LITIGATION (OR THREATENED ACTION OR CLAIM) OR TO ENFORCE THE TERMS OF THIS SECURITY INSTRUMENT OR TO PROTECT ITS RIGHTS HEREUNDER, AND IN THE EVENT OF ANY SUCH ENGAGEMENT, BORROWER SHALL PAY LENDER'S ATTORNEYS' FEES (TOGETHER WITH REASONABLE APPELLATE COUNSEL FEES, IF ANY), CONSULTANTS' FEES, EXPERTS' FEES, AND EXPENSES REASONABLY INCURRED BY LENDER, WHETHER OR NOT SUCH ACTION IS ACTUALLY COMMENCED AGAINST BORROWER. ALL REFERENCES TO "ATTORNEYS" IN THIS SUBSECTION AND ELSEWHERE IN THIS SECURITY INSTRUMENT SHALL INCLUDE WITHOUT LIMITATION ANY ATTORNEY OR LAW FIRM ENGAGED BY LENDER AND LENDER'S IN-HOUSE COUNSEL, AND ALL REFERENCES TO "FEES AND EXPENSES" IN THIS SUBSECTION AND ELSEWHERE IN THIS SECURITY INSTRUMENT SHALL INCLUDE WITHOUT LIMITATION ANY FEES OF SUCH ATTORNEY OR LAW FIRM AND ANY ALLOCATION CHARGES AND ALLOCATION COSTS OF LENDER'S IN-HOUSE COUNSEL.**

**(c) A WAIVER OF SUBROGATION SHALL BE OBTAINED BY BORROWER FROM ITS INSURANCE CARRIER AND, CONSEQUENTLY, BORROWER WAIVES ANY AND ALL RIGHT TO CLAIM OR RECOVER AGAINST LENDER, ITS OFFICERS, EMPLOYEES, AGENTS AND REPRESENTATIVES, FOR LOSS OF OR DAMAGE TO BORROWER, THE PROPERTY, BORROWER'S PROPERTY OR THE PROPERTY OF OTHERS UNDER BORROWER'S CONTROL FROM ANY CAUSE INSURED AGAINST OR REQUIRED TO BE INSURED AGAINST BY THE PROVISIONS OF THIS SECURITY INSTRUMENT.**

1.32. Covenants with Respect to Indebtedness; Operations and Fundamental Changes of Borrower. Borrower represents, warrants and covenants as of the date hereof and until such time as the indebtedness secured hereby is paid in full, that Borrower:

(a) does not own and will not own any encumbered asset other than (i) the Property, and (ii) incidental personal property necessary for the operation of the Property;

(b) is not engaged and will not engage in any business other than the ownership, management and operation of the Property;

(c) will not enter into any contract or agreement with any member, manager, general partner, principal, or affiliate of Borrower or any affiliate thereof, except in the ordinary course of business and upon terms and conditions that are intrinsically fair and are no less favorable to it than those that would be obtained in a comparable arms-length transaction with an unrelated third party;

(d) has not incurred and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than (i) the secured indebtedness, and (ii) unsecured trade and operational debt incurred in the ordinary course of business; no debt whatsoever may be secured (senior, subordinate or pari passu) by the Property, except the Indebtedness;

(e) has not made and will not make any loans or advances to any third party (including any member, manager, general partner, principal, or affiliate of Borrower, or any guarantor);

(f) is and will be solvent and pay its debts from its assets as the same shall become due;

(g) has done or caused to be done and will do all things necessary to preserve its existence and corporate, limited liability company and partnership formalities (as applicable), and will not, nor will any partner, limited or general, shareholder or member thereof, amend, modify or otherwise change its partnership certificate, partnership agreement, certificate or articles of incorporation, by-laws, certificate of organization or formation, or articles of organization, or operating agreement or regulations, in a manner which adversely affects Borrower's, or any such partner's, member's or shareholder's existence as a single-purpose, single-asset "bankruptcy remote" entity;

(h) will conduct and operate its business as presently conducted and operated;

(i) has maintained, and will maintain, books and records and bank accounts separate from those of its affiliates, including its general partners, principals and members;

(j) will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any affiliate of Borrower, any constituent party of Borrower, any guarantor, or any affiliate of any constituent party or guarantor); has corrected, and shall correct, any known misunderstanding regarding its status as a separate entity; has conducted, and shall conduct, its business in its own name; has paid, and will pay, its own liabilities out of its own funds and assets; has not, and shall not, identify itself or any of its affiliates as a division or part of the other; and has maintained and utilized, and shall maintain and utilize, a separate telephone number and separate stationery, invoices and checks from any other entity;

(k) will file its own tax returns;

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

(m) will not, nor will any member, manager, shareholder, partner, principal or affiliate, seek the dissolution or winding up, in whole or in part, of Borrower;

(n) will not enter into any transaction of merger or consolidation, or acquire by purchase or otherwise all or substantially all of the business or assets of, or any stock or beneficial ownership of, any entity;

(o) has not, and will not, commingle the funds and other assets of Borrower with those of any member, manager, general partner, principal or affiliate, or any other person;

(p) has maintained, and will maintain, its assets in such a manner that it is not costly or difficult to segregate, ascertain or identify its individual assets from those of any affiliate or any other person;

(q) has, and any general partner or managing member of Borrower has, at all times since its respective formation, observed all legal and customary formalities regarding its respective formation and will continue to observe all legal and customary formalities;



(r) has not and will not hold itself out to be responsible for the debts or obligations of any other person;

(s) upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. 105 or any other provision of the Act, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against any guarantor or indemnitor of the secured obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

1.33. Litigation. Borrower will give prompt written notice to Lender of any litigation or governmental proceedings pending or threatened (in writing) against Borrower which might have a Material Adverse Effect.

1.34. ERISA.

(a) Borrower shall not engage in any transaction which would cause any obligation, or action taken or to be taken, hereunder (or the exercise by Lender of any of its rights under the Note, this Security Instrument or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(b) Borrower further covenants and agrees to deliver to Lender such certifications or other evidence from time to time throughout the term of this Security Instrument, as requested by Lender in its sole discretion, that (i) Borrower is not an "employee benefit plan" as defined in Section 3(3) of ERISA, which is subject to Title I of ERISA, or a "governmental plan" within the meaning of Section 3(3) of ERISA; (ii) Borrower is not subject to state statutes regulating investments and fiduciary obligations with respect to governmental plans; and (iii) one or more of the following circumstances is true:

(1) Equity interests in Borrower are publicly offered securities within the meaning of 29 C.F.R. Section 2510.3-101(b)(2);

(2) Less than twenty-five percent (25%) of each outstanding class of equity interests in Borrower are held by "benefit plan investors" within the meaning of 29 C.F.R. Section 2510.3-101(f)(2); or

(3) Borrower qualifies as an "operating company" or a "real estate operating company" within the meaning of 29 C.F.R. Section 2510.3-101(c) or (e) or an investment company registered under the Investment Company Act of 1940.

(c) BORROWER SHALL INDEMNIFY LENDER AND DEFEND AND HOLD LENDER HARMLESS FROM AND AGAINST ALL CIVIL PENALTIES, EXCISE TAXES, OR OTHER LOSS, COST DAMAGE AND EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND DISBURSEMENTS AND COSTS INCURRED IN THE INVESTIGATION, DEFENSE AND SETTLEMENT OF CLAIMS AND LOSSES INCURRED IN CORRECTING ANY PROHIBITED TRANSACTION OR IN THE SALE OF A PROHIBITED LOAN, AND IN OBTAINING ANY INDIVIDUAL PROHIBITED TRANSACTION EXEMPTION UNDER ERISA THAT MAY BE REQUIRED, IN LENDER'S SOLE DISCRETION) THAT LENDER MAY INCUR, DIRECTLY OR INDIRECTLY, AS A RESULT OF A DEFAULT UNDER THIS SECTION 1.34. THIS INDEMNITY

SHALL SURVIVE ANY TERMINATION, SATISFACTION OR FORECLOSURE OF THIS SECURITY INSTRUMENT.

1.35 Defeasance.

(a) Notwithstanding anything to the contrary contained in the Note, this Security Instrument or the other Loan Documents, at any time after the second (2nd) anniversary of the date that is the "startup day," within the meaning of Section 860G(a)(9) of the Internal Revenue Code of 1986, as amended from time to time or any successor statute (the "Code"), of a "real estate mortgage investment conduit" ("REMIC") within the meaning of Section 860D of the Code, that holds the Note and this Security Instrument, and provided (unless Lender shall otherwise consent, in its sole discretion) no default has occurred and is continuing hereunder or under any of the other Loan Documents, Borrower shall have the right to obtain the release of the Property from the lien of this Security Instrument and the other Loan Documents upon the satisfaction of each of the following conditions precedent (such transaction being referred to herein as a "Defeasance"):

(1) not less than thirty (30) days' prior written notice to Lender specifying a regular Payment Date under the Note (the "Release Date") on which the Defeasance Collateral (hereinafter defined) is to be delivered;

(2) the remittance to Lender on the related Release Date of interest accrued and unpaid on the outstanding principal amount of the Note to and including the Release Date and the scheduled amortization payment due on such Release Date, together with all other amounts then due and payable under the Note, this Security Instrument and the other Loan Documents;

(3) the delivery on or prior to the Release Date to Lender of:

(A) an amount equal to that which is sufficient to purchase U.S. Government Securities (hereinafter defined) that provide for payments prior, but as close as possible, to all successive monthly Payment Dates (as defined in the Note) occurring after the Release Date including the payment made on the Maturity Date, with each such payment being equal to or greater than the amount of the corresponding installment of principal, interest and, if applicable, the fee of the Servicer required to be paid hereunder and/or under the Note (the "Defeasance Collateral"), each of which shall be duly endorsed by the holder thereof as directed by Lender or accompanied by a written instrument of transfer in form and substance wholly satisfactory to Lender (including, without limitation, such instruments as may be required by the depository institution holding such securities to effectuate book-entry transfers and pledges through the book-entry facilities of such institution) in order to create a first priority security interest therein in favor of Lender in conformity with all applicable state and federal laws governing granting of such security interests;

(B) a pledge and security agreement, in form and substance satisfactory to Lender, creating a first priority security interest in favor of Lender in the Defeasance Collateral (the "Defeasance Security Agreement"), which Defeasance Security Agreement shall (i) provide, among other things, that any excess received by Lender from the Defeasance Collateral over the amounts payable by Borrower hereunder shall be refunded to Borrower promptly after each Payment Date, and (ii) be included within the definition of "Security Instrument" for purposes of each Loan Document from and after the date of its execution;



(C) a certificate of an authorized representative of Borrower certifying that the requirements set forth in this Section 1.35(a) have been satisfied;

(D) an opinion of counsel for Borrower in form and substance satisfactory to Lender to the effect that Lender has a perfected first priority security interest in the Defeasance Collateral and the Defeasance Security Agreement is enforceable against Borrower in accordance with its terms;

(E) an opinion of counsel for Lender, prepared and delivered by counsel for the Servicer at Borrower's reasonable expense, stating that any trust formed as a REMIC in connection with any Secondary Market Transaction (as defined in Section 4.32 hereof) will not fail to maintain its status as a REMIC as a result of such Defeasance;

(F) a certificate from a firm of independent public accountants acceptable to Lender certifying that the Defeasance Collateral is sufficient to satisfy the requirements of Section 1.35(a)(3)(A) hereinabove;

(G) a proposed release of the Property from this Security Instrument, the Assignment and any UCC Financing Statements relating thereto (for execution by Lender) in a form appropriate for cancellation of such documents in the jurisdiction in which the Property is located;

(H) such other certificates, documents or instruments as Lender may reasonably request;

(4) the payment by Borrower to Lender of all reasonable out-of-pocket costs and expenses (including, without limitation, attorneys' and accountants' fees and disbursements, and Rating Agency fees and expenses, if any) incurred or anticipated to be incurred by Lender in connection with the satisfaction of the conditions and requirements described in this Section 1.35.

(b) Upon compliance with the requirements of this Section 1.35, the Property shall be released from the lien of this Security Instrument, the Assignment and any UCC Financing Statements related thereto, the obligations hereunder and under the other Loan Documents with respect to the Property shall no longer be applicable and the Defeasance Collateral shall be the sole source of collateral securing the Note and all other obligations under the Loan Documents. Lender shall apply the Defeasance Collateral and the payments received therefrom to the payment of all scheduled principal and interest payments (the "Scheduled Defeasance Payments") due on all successive Payment Dates under the Note after the Release Date including the payment due on the Maturity Date (as defined in the Note). Borrower, pursuant to the Defeasance Security Agreement or other appropriate document, shall direct that the payments received from the Defeasance Collateral shall be made directly to Lender and applied to satisfy the obligations of Borrower under the Note and Defeasance Security Agreement.

(c) In connection with the release of the Property in accordance with this Section 1.35, if Borrower shall continue to own any assets other than the Defeasance Collateral, Borrower shall establish or designate a single-purpose, bankruptcy-remote successor entity acceptable to Lender (the "Successor Borrower"), with respect to which a nonconsolidation opinion satisfactory in form and substance to Lender has been delivered to Lender (if such nonconsolidation opinion was required in connection with the origination of the indebtedness secured hereby) in which case Borrower shall transfer and assign to the Successor Borrower all obligations, rights and duties under the Defeasance Security Agreement and the Note, together with the pledged Defeasance Collateral. The Successor Borrower shall assume the obligations of

Borrower under the Note and Defeasance Security Agreement pursuant to an assumption agreement satisfactory to Lender in its sole discretion. As a condition to such assignment and assumption, Borrower shall (i) deliver to Lender an opinion of counsel in form and substance and delivered by counsel satisfactory to Lender in its sole discretion stating, among other things, that such assumption agreement is enforceable against Borrower and such successor entity in accordance with their respective terms, and (ii) pay all costs and expenses incurred by Lender or its agents in connection with such assignment and assumption (including, without limitation, the review of the proposed transferee and the preparation of the assumption agreement and related documentation). Upon such assumption, Borrower shall be relieved of its obligations hereunder, under the other Loan Documents and under the Defeasance Security Agreement other than those obligations which are specifically intended to survive the termination, satisfaction or assignment of this Security Instrument or the exercise of Lender's rights and remedies hereunder.

(d) Upon the release of the Property in accordance with this paragraph, Borrower shall have no further right to prepay the Note pursuant to the other provisions of this paragraph or otherwise. In connection with the conditions set forth in Section 1.35(a)(3)(A) above, Borrower hereby appoints Lender as its agent and attorney-in-fact for the purpose of purchasing the Defeasance Collateral with funds provided by Borrower. Borrower shall pay any and all expenses incurred in the purchase of the Defeasance Collateral and any revenue, documentary stamp or intangible taxes or any other tax or charge due in connection with the transfer of the Note or otherwise required to accomplish the agreements of this paragraph.

(e) As used herein, the term "U.S. Government Securities" shall mean non-redeemable securities evidencing an obligation to timely pay principal and/or interest in a full and timely manner that are (a) direct obligations of the United States of America for the full and timely payment of which its full faith and credit is pledged, or (b) to the extent acceptable to the Rating Agency, other "government securities" within the meaning of Section 2(a)(16) of the Investment Company Act of 1940, as amended.

1.36. Expense Reimbursement. Borrower shall reimburse Lender for any and all costs and expenses incurred by Lender with respect to the administration of the indebtedness secured hereby including, without limitation, the fees of Lender's legal counsel. Without limiting the generality of the foregoing sentence, it is expressly agreed that Borrower shall reimburse Lender with respect to any fees or expenses incurred by Lender with respect to the administration of the Reserves, ad valorem tax disputes, insurance concerns or the evaluation of any proposed Sale pursuant to Section 1.13 hereof or other assignment or conveyance.

## ARTICLE II EVENTS OF DEFAULT

2.1. Events of Default. The occurrence of any of the following events shall be a default hereunder:

- (a) Borrower fails to make any payment under the Note when due.
- (b) Borrower fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Lender (except those regarding payments to be made under the Note, which failure is subject to any grace periods set forth in the Note).



(c) Borrower fails to provide insurance as required by Section 1.4 hereof or fails to perform any covenant, agreement, obligation, term or condition set forth in Section 1.16 or Section 1.30 hereof.

(d) Borrower fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section 2.1 and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Lender to Borrower; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Borrower commences to cure such default promptly after receipt of notice thereof from Lender, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(e) Any representation or warranty made herein, in or in connection with any application or commitment relating to the Loan, or in any of the other Loan Documents to Lender by Borrower, by any principal, managing member or general partner in Borrower or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan is determined by Lender to have been false or misleading in any material respect at the time made.

(f) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property, Borrower or its owners, or any portion thereof or any interest therein, in violation of Section 1.13 hereof.

(g) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(h) Borrower, any principal, general partner or managing member (as applicable) in Borrower or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Borrower, for any such principal, general partner or managing member of Borrower or for any such indemnitor or guarantor or for a substantial part of the assets of Borrower, of any such principal, general partner or managing member of Borrower or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(i) A petition ("Petition") is filed or any case, proceeding or other action is commenced against Borrower, against any principal, general partner or managing member of Borrower or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Borrower, against any principal, general partner or managing member of Borrower or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the Loan, as debtor,

or an order, judgment or decree is entered appointing, with or without the consent of Borrower, of any such principal, general partner or managing member of Borrower or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Borrower, for any such principal, general partner or managing member of Borrower or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Borrower, of any such principal, general partner or managing member of Borrower or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(j) Borrower solicits or aids the solicitation of the filing of any Petition against Borrower including, without limitation: (i) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated by a governmental agency, or (ii) paying the legal fees or expenses of any creditor of or interest holder in Borrower with respect to any matter whatsoever.

(k) The Property or any part thereof shall be taken on execution or other process of law in any action against Borrower.

(l) Borrower abandons all or a portion of the Property.

(m) The holder of any lien or security interest on the Property (without implying the consent of Lender to the existence or creation of any such lien or security interest), whether superior or subordinate to this Security Instrument or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(n) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Lender determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.

(o) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Borrower, any of its general partners or managing members.

### **ARTICLE III. REMEDIES**

3.1. Remedies Available. If there shall occur a default under this Security Instrument, and such default has not been cured within any applicable grace or cure period, then this Security Instrument is subject to foreclosure as provided by law and Lender may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently.

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.



(b) Entry on the Property. Without in any way curing or waiving any default of Borrower, either in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Land, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Lender therefor, together with interest thereon at the Default Interest Rate (as defined in the Note), shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, all in such order as Lender in its discretion may determine.

(d) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, ex-parte, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Borrower or any person or persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions of this Security Instrument or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Security Instrument or deed in lieu of foreclosure.

(e) Foreclosure. Immediately commence an action to foreclose this Security Instrument or to specifically enforce its provisions or any of the indebtedness secured hereby pursuant to the statutes in such case made and provided and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Lender. If an event of default should occur as provided in this paragraph or in any of the other covenants, conditions herein contained or contained in any other instrument evidencing or securing the indebtedness described herein, Lender shall have the right to sell the Property at public outcry, in front of the Court House door of the county wherein the Property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase

money, the Lender or any person conducting said sale for Lender, is authorized and empowered to execute to the purchaser at said sale a deed to the Property so purchased in the name and on behalf of Borrower, and the certificate of the Lender appointing said auctioneer shall be prima facie evidence of his authority in the premises. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any manner or may be offered for sale and sold in any other manner Lender may elect. The proceeds of any foreclosure sale shall be applied as follows: (a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of the secured indebtedness, or the foreclosure of this Security Instrument; (b) Second to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or like charges, liens, or debts, as hereinabove provided; (c) Third, to the payment and satisfaction of the indebtedness secured hereby with interest to the date of sale; and (d) Fourth, the balance if any, shall be paid to those entitled by law to receive the same, after deducting any expense of ascertaining who is entitled to receive the same. At the option of the Lender, this Security Instrument may be foreclosed as provided by law or in equity in which event, a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale.

In the event foreclosure proceedings are instituted or filed by Lender, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Borrower and secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Interest Rate (as defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Lender under the Loan Documents, may be bid by Lender in the event of a foreclosure sale hereunder.

(f) Judicial Remedies. Proceed by suit or suits, at law or in equity, to enforce the payment of the indebtedness secured hereby or the other obligations of Borrower hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Security Instrument as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Lender or its assigns may become the purchaser of the Property or any part thereof. This remedy shall be cumulative of any other non-judicial remedies available to the Lender with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of the Lender.

(g) Other. Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

3.2. Application of Proceeds. To the fullest extent permitted by law, the proceeds of any sale under this Security Instrument shall be applied to the extent funds are so available to the following items in such order as Lender in its discretion may determine:

(a) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', auctioneers', managers' and other professional fees, title charges and transfer taxes.



(b) To payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Interest Rate (as defined in the Note).

(c) To payment of the secured indebtedness and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Interest Rate (as defined in the Note) and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(d) The remainder, if any, of such funds shall be disbursed to Borrower or to the person or persons legally entitled thereto.

**3.3. Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney.** Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(b) hereof or appointment of a receiver pursuant to Section 3.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Borrower and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Lender as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Lender by this Security Instrument; and (r) do any acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender, to pay all amounts owing under any lease, contract, concession, license or other agreement to Lender without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request,

notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Security Instrument or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property, in Borrower's name, place and stead, to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Lender in connection with any action taken under this Section 3.3, together with interest thereon at the Default Interest Rate (as defined in the Note) from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Security Instrument and by every other instrument securing the secured indebtedness.

3.4. Occupancy After Foreclosure. In the event there is a foreclosure or comparable sale or sales hereunder and at the time of such sale or sales, Borrower or Borrower's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Borrower (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Land is located.

3.5. Notice to Account Debtors. Lender may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

3.6. Cumulative Remedies. All remedies contained in this Security Instrument are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Security Instrument to the exclusion of any other provision of this Security Instrument or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Security Instrument shall be construed to be a waiver of that right or remedy or of any default hereunder. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.7. Payment of Expenses. Borrower shall pay on demand all of Lender's expenses reasonably incurred in any efforts to enforce any terms of this Security Instrument, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after



the date incurred by Lender until actually paid by Borrower at the Default Interest Rate (as defined in the Note), and the same shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

**ARTICLE IV.  
MISCELLANEOUS TERMS AND CONDITIONS**

4.1. Time of Essence. Time is of the essence with respect to all provisions of this Security Instrument.

4.2. Release of Security Instrument. If and when Borrower has paid all of the secured indebtedness as the same becomes due and payable, or there is a Defeasance regarding the lien of this Security Instrument in accordance with, and in satisfaction of, the provisions of Section 1.35 of this Security Instrument, then, and in such event only, all rights under this Security Instrument shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender in due form at Borrower's cost. Borrower shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

4.3. Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the indebtedness secured hereby, Lender may from time to time and without notice to Borrower: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Security Instrument or any agreement subordinating the lien hereof.

4.4. Notices. Any notice, report, demand or other instrument authorized or required to be given or furnished hereunder or as required by law ("Notices") shall be in writing and shall be given as follows: (a) by hand delivery; (b) by deposit in the United States mail as first class certified mail, return receipt requested, postage paid; (c) by overnight nationwide commercial courier service; or (d) by telecopy transmission (other than for notices of default) with a confirmation copy to be delivered by duplicate notice in accordance with any of clauses (a)-(c) above, in each case, addressed to the party intended to receive the same at the following address(es):

Lender:           Column Financial, Inc.  
Eleven Madison Avenue  
5th Floor  
New York, New York 10010-3629  
Attention: Edmund Taylor  
Re: Colonial Promenade, Hoover, Alabama  
Loan Amount: \$17,775,000.00  
Column Loan Number: 503779  
Telecopier:       (212) 325-8106

with copies to: Credit Suisse First Boston  
One Madison Avenue  
New York, New York 10010  
Attention: Pamela L. McCormack, Esq.  
Vice President and Counsel  
Re: Colonial Promenade, Hoover, Alabama  
Loan Amount: \$17,775,000.00  
Column Loan Number: 503779  
Telecopier: (917) 326-7805

and: Key Commercial Mortgage  
911 Main Street  
Suite 1500  
Kansas City, MO 64105  
Att: Diane Haislip  
Re: Colonial Promenade, Hoover, Alabama  
Loan Amount: \$17,775,000.00  
Column Loan Number: 503779  
Telecopier: 816-460-2140

or any successor servicer of the Loan.

Borrower: Highway 150, LLC  
2101 6th Avenue, Suite 900  
Birmingham, Alabama 35203  
Attention: William Leitner  
Telecopier: 205-250-8890

Any party may change the address to which any such Notice is to be delivered to any other address within the United States of America, by furnishing ten (10) days written notice of such change to the other parties in accordance with the provisions of this Section. All notices, demands and requests shall be effective upon personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. The inability to deliver Notices because of a changed address of which no Notice was given, or rejection or refusal to accept any Notice offered for delivery shall be deemed to be receipt of the Notice as of the date of such inability to deliver or rejection or refusal to accept delivery. Notice for either party may be given by its respective counsel. Additionally, notice from Lender may also be given by the Servicer.

4.5. Successors and Assigns. The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Borrower and the successors and assigns of Borrower, including all successors in interest in and to all or any part of the Property, and shall inure to the benefit of Lender, and its successors and assigns and shall constitute covenants running with the land. If Borrower consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Borrower.

4.6. Severability. A determination that any provision of this Security Instrument is unenforceable or invalid shall not affect the enforceability or validity of any other provision.



4.7. Gender. Within this Security Instrument, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

4.8. Waiver; Discontinuance of Proceedings. Lender may waive any single default by Borrower hereunder without waiving any other prior or subsequent default, and may remedy any default by Borrower hereunder without waiving the default remedied. Neither the failure or delay by Lender in exercising, any right, power or remedy upon any default by Borrower hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

4.9. Section Headings. The headings of the sections and paragraphs of this Security Instrument are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

4.10. GOVERNING LAW. THIS SECURITY INSTRUMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA, PROVIDED HOWEVER THAT TO THE EXTENT THAT ANY OF SUCH LAWS MAY NOW OR HEREAFTER BE PREEMPTED BY FEDERAL LAW, IN WHICH CASE SUCH FEDERAL LAW SHALL SO GOVERN AND BE CONTROLLING.

4.11. Counting of Days. The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Land is located, the period shall be deemed to end on the next succeeding business day provided, however, that in the case of payments due by Borrower to Lender on a Saturday, Sunday or holiday (e.g., monthly deposits into Reserves, payments on the Note, etc.) such payments shall be deemed due on the immediately preceding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

4.12. Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

4.13. Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be

applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

4.14. Cross Default. A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

4.15. Interest After Sale. In the event the Property or any part thereof shall be sold upon foreclosure as provided hereunder, to the extent permitted by law, the sum for which the same shall have been sold shall, for purposes of redemption (if applicable pursuant to the laws of the state in which the Property is located), bear interest at the Default Interest Rate (as defined in the Note).

4.16. Construction of this Document. This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

4.17. No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Property.

4.18. Rights With Respect to Junior Encumbrances. Any person or entity purporting to have or to take a junior mortgage or other lien upon the Property or any interest therein shall be subject to the rights of Lender to amend, modify, increase, vary, alter or supplement this Security Instrument, the Note or any of the other Loan Documents, to extend the maturity date of the indebtedness secured hereby, to increase the amount of the indebtedness secured hereby, to waive or forebear the exercise of any of its rights and remedies hereunder or under any of the other Loan Documents and to release any collateral or security for the indebtedness secured hereby, in each and every case without obtaining the consent of the holder of such junior lien and without the lien or security interest of this Security Instrument losing its priority over the rights of any such junior lien.

4.19. Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals, members or general partners in Borrower, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

4.20. After-Acquired Property. All property acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further mortgage, deed, conveyance or assignment become subject to the lien and security interest created by this Security Instrument.

4.21. No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but not limited to, 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, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such



acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

4.22. Counterparts. This Security Instrument may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

4.23. Personal Liability. Notwithstanding anything to the contrary contained in this Security Instrument, the liability of Borrower and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Lender in accordance with the Note, this Security Instrument and the other Loan Documents.

4.24. Recording and Filing. Borrower will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Lender shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges. Borrower shall reimburse Lender, or its servicing agent, for the costs incurred in obtaining a tax service company to verify the status of payment of taxes and assessments on the Property.

4.25. Entire Agreement and Modifications. This Security Instrument and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

4.26. Maximum Interest. The provisions of this Security Instrument and of all agreements between Borrower and Lender, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of demand or acceleration of the maturity of the Note or otherwise, shall the amount paid, or agreed to be paid ("Interest"), to Lender for the use, forbearance, retention or detention of the money loaned under the Note exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, performance or fulfillment of any provision hereof or of any agreement between Borrower and Lender shall, at the time performance or fulfillment of such provision shall be due, exceed the limit for Interest prescribed by law or otherwise transcend the limit of validity prescribed by applicable law, then ipso facto the obligation to be performed or fulfilled shall be reduced to such limit and if, from any circumstance whatsoever, Lender shall ever receive anything of value deemed Interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive Interest shall be applied to the reduction of the principal balance owing under the Note in the inverse order of its maturity (whether or not then due) or at the option of Lender be paid over to Borrower, and not to the payment of Interest. All Interest (including any amounts or payments judicially or otherwise under law deemed to be Interest) contracted for, charged, taken, reserved, paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Note, including any extensions and renewal thereof, until payment in full of the principal balance of the Note so that the Interest thereon for such full term will not at any time exceed the

maximum amount permitted by applicable law. This Section 4.26 will control all agreements between Borrower and Lender.

4.27. Application of Default Interest Rate Not a Waiver. Application of the Default Interest Rate (as defined in the Note) shall not be deemed to constitute a waiver of any default or any rights or remedies of Lender under this Security Instrument, any other Loan Document or applicable legal requirements, or a consent to any extension of time for the payment or performance of any obligation with respect to which the Default Interest Rate (as defined in the Note) may be invoked.

4.28. Interest Payable by Lender. Lender shall cause funds in the TILC Reserve and the Lease Termination Payment Reserve (the "Funds") to be deposited into interest bearing accounts of the type customarily maintained by Lender or its servicing agent for the investment of similar reserves, which accounts may not yield the highest interest rate then available. The Funds shall be held in an account in Lender's name (or such other account name as Lender may elect) at a financial institution or other depository selected by Lender (or its servicer) in its sole discretion (collectively, the "Depository Institution"). Borrower shall earn no more than an amount of interest on the Funds equal to an amount determined by applying to the average monthly balance of such Funds the quoted interest rate for the Depository Institution's money market savings account, as such rate is determined from time to time (such allocated amount being referred to as "Borrower's Interest"). Lender or its Depository Institution shall be entitled to report under Borrower's Federal tax identification number, Borrower's Interest on the Funds. If the Depository Institution does not have an established money market savings account (or if an interest rate for such account cannot otherwise be determined in connection with the deposit of such Funds), a comparable interest rate quoted by the Depository Institution and acceptable to Lender (or its servicer) in its reasonable discretion shall be used. The amount of Borrower's Interest allocated to Funds shall be added to the balance in the TILC Reserve and the Lease Termination Payment Reserve, and shall be disbursed for payment of the items for which other Funds in the TILC Reserve and the Lease Termination Payment Reserve are to be disbursed. Furthermore, reference is also made to Section C-1 of this Security Instrument with respect to the inclusion of certain additional monies from the Cash Collateral Account (as defined in the Cash Management Agreement) with the term "Funds" for purposes of this Section.

4.29. Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit C attached hereto, if any, shall be a part of this Security Instrument and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Security Instrument, be deemed to control.

4.30. Relationship of the Parties. The relationship between Borrower and Lender is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

4.31. Fixture Filing. This Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures. The mailing address of Borrower and the address of Lender from which information concerning the security interests may be obtained are set forth in Section 1.22 above.

4.32. Cooperation With Rating Agencies and Investors. Borrower covenants and agrees that in the event Lender decides to include the Loan as an asset of a Secondary Market Transaction, Borrower shall (a) at Lender's request, meet with representatives of the Rating Agencies and/or investors to discuss the business and operations of the Property, and (b) permit Lender or its representatives to provide related information to the Rating Agencies and/or investors, and (c) cooperate with the reasonable requests of the



Rating Agencies and/or investors in connection with all of the foregoing; and (d) amend the Loan Documents and organizational documents of Borrower as may be required by the Rating Agencies and reviewing the offering document relating to the Secondary Market Transaction to ensure that all information concerning Borrower, the Property and the Loan is correct. Borrower shall indemnify Lender for any losses that relate to any intentionally misleading or incorrect information provided by Borrower and included in the offering document and not brought to the attention of Lender after Borrower has an opportunity to review such information. Any amendment of the Loan Documents or the organizational documents will not materially alter the payment terms thereof or materially and adversely affect Borrower.

For purposes hereof, a "Secondary Market Transaction" shall be (a) any sale or assignment of this Security Instrument, Note and other Loan Documents to one or more investors as a whole loan; (b) a participation of the Loan to one or more investors, (c) any deposit of this Security Instrument, the Note and the other Loan Documents with a trust or other entity which may sell certificates or other instruments to investors evidencing an ownership interest in the assets of such trust or other entity, or (d) any other sale, assignment or transfer of the Loan or any interest therein to one or more investors. If at any time during which the Loan is an asset of a securitization or is otherwise an asset of any rated transaction, "Rating Agency" shall mean the rating agency or rating agencies that from time to time rate the securities, certificates or other instruments issued in connection with such securitization or other transaction.

*Signatures On Next Page*

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Security Instrument under seal as of the day and year first above written.

WITNESSES:

Bly C fl  
Name:

James Epperson  
Name:

WITNESSES:

Bly C fl  
Name:

James Epperson  
Name:

WITNESSES:

Eugene Penney  
Name:

Walter M. Kinley  
Name:

WITNESSES:

Eugene Penney  
Name:

Walter M. Kinley  
Name:

BORROWER:

HIGHWAY 150, LLC, an Alabama limited liability company, by its Managers

By: Daryl Mangan  
Daryl Mangan, Manager

By: John Moss  
John Moss, Manager

By: Michael Yarbrough  
Michael Yarbrough, Manager

By: Scott Marcum  
Scott Marcum, Manager



ALABAMA ACKNOWLEDGMENT

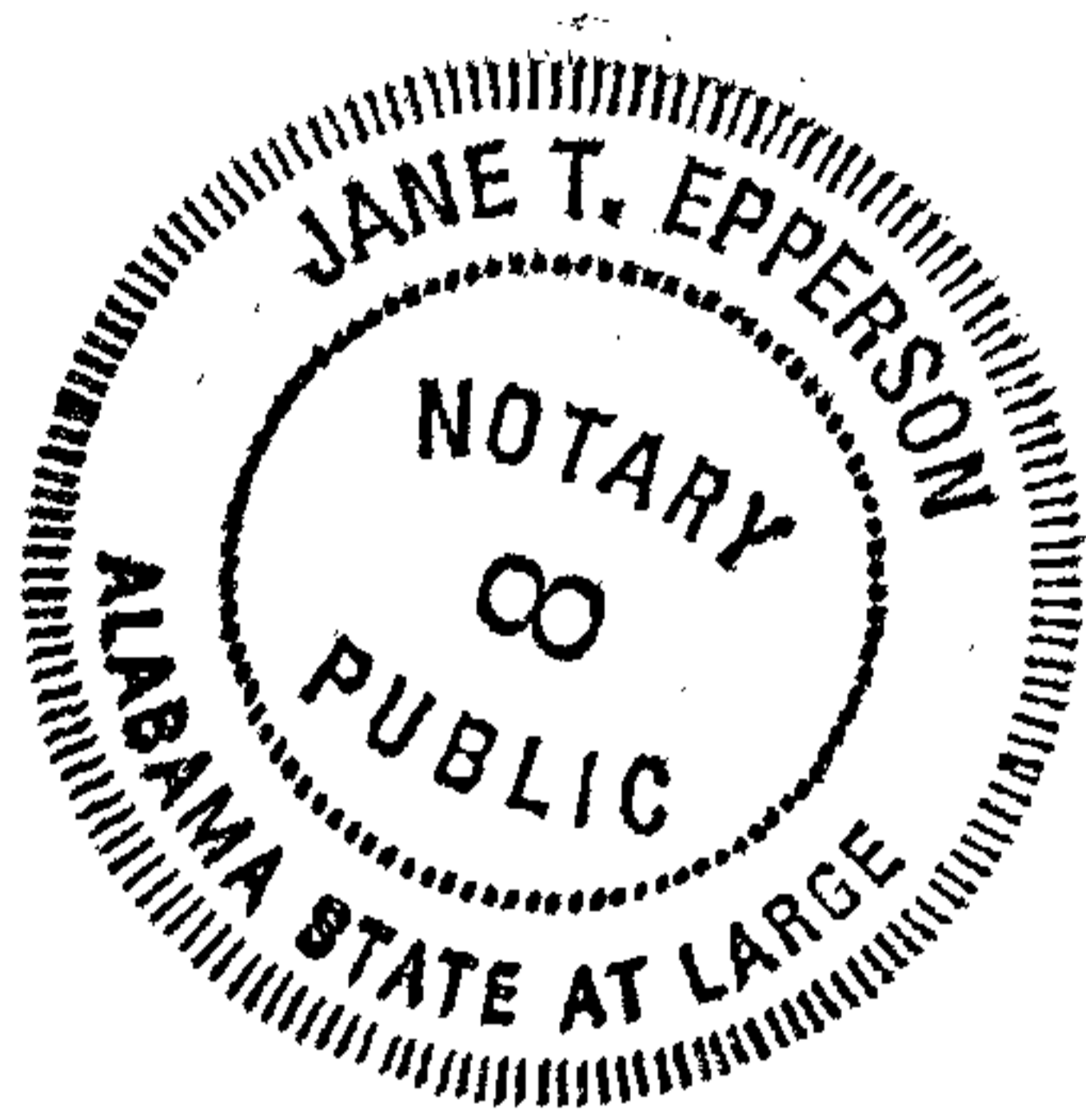
STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Daryl Mangan, whose name as Manager of Highway 150, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they he as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 13 day of December, 2002.

James J. Epperson  
Notary Public  
My Commission Expires ~~.....~~ JAN. 15, 2004



ALABAMA ACKNOWLEDGMENT

STATE OF Alabama

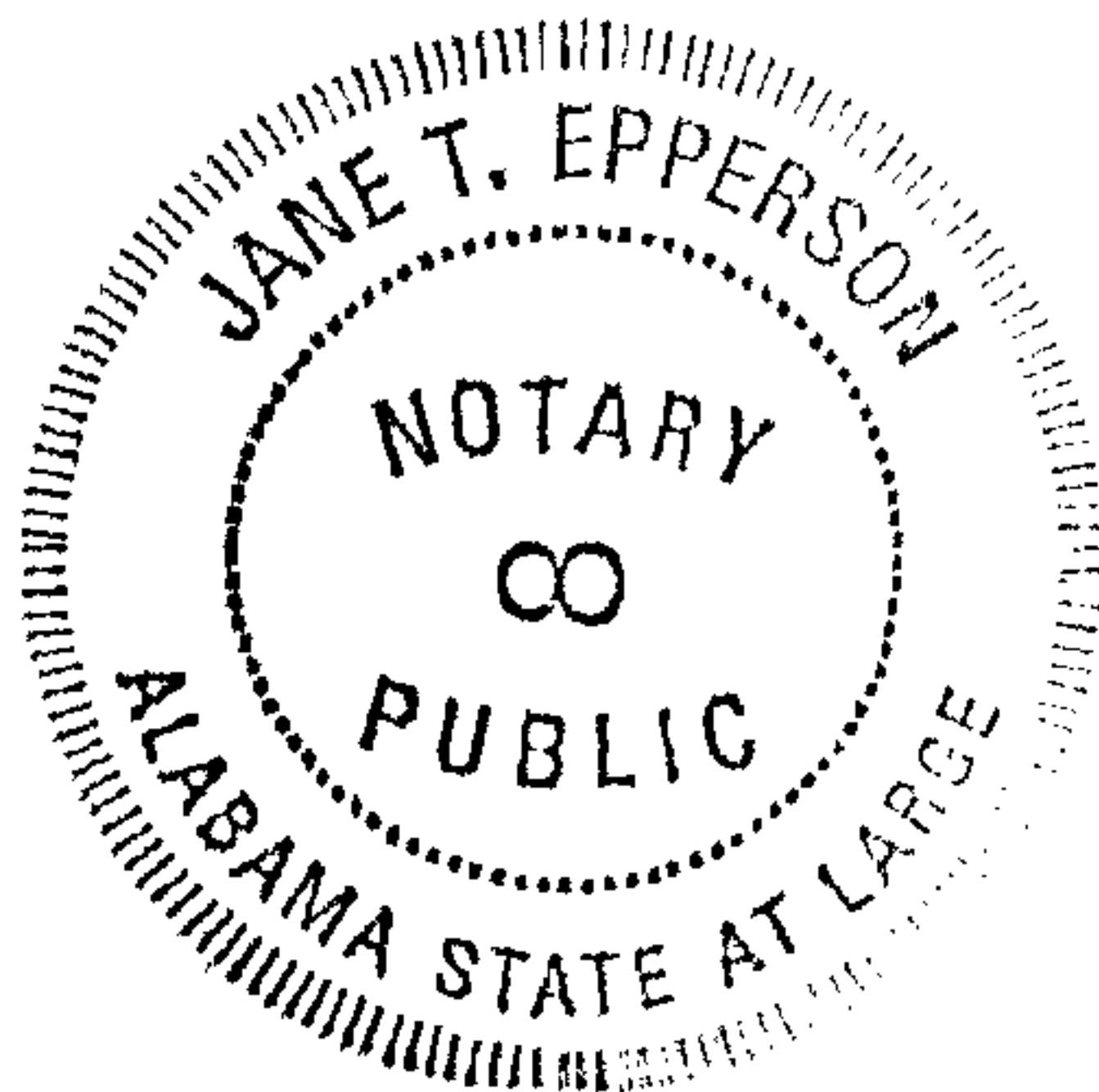
COUNTY OF Jefferson

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that John Moss whose name as Manager of Highway 150, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 13th day of December, 2002.

Jane T. Epperson  
Notary Public

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





**ALABAMA ACKNOWLEDGMENT**

STATE OF ALABAMA )

COUNTY OF HOUSTON )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Michael Yarbrough, whose name as Manager of Highway 150, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 12<sup>th</sup> day of December, 2002.

Marilyn C. C. Vancey  
Notary Public

My Commission Expires: 1/18/04

**ALABAMA ACKNOWLEDGMENT**

STATE OF ALABAMA )

COUNTY OF HOUSTON )

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Scott Marcum, whose name as Manager of Highway 150, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 12<sup>th</sup> day of December, 2002.

Marilyn C. Chancy  
Notary Public

My Commission Expires: 1/18/04



**EXHIBIT A**  
**COLONIAL PROMENADE**

Lots 1, 3, 5 and 6, according to the Final Plat of Colonial Promenade Hoover, Phase III, as recorded in Map Book 37, page 15, in the Probate Office of Jefferson County, Alabama, Bessemer Division and also recorded in Map Book 29, Page 149, in the Probate office of Shelby County, Alabama. TOGETHER WITH the non-exclusive easements appurtenant to each of the above described Lots for ingress, egress, parking of motor vehicles and the installation, use, maintenance and repair of utility lines over Lot 2 (as such Lot 2 is shown on the plat recorded in Map Book 37, Page 6, in the Probate Office of Jefferson County, Alabama, Bessemer Division), which easements are created by and more particularly described in the Easement with Covenants and Restrictions Affecting Land, dated March 1, 2001, recorded in Bessemer Instrument 200162/4737 in the Probate Office of Jefferson County, Alabama, Bessemer Division and refilled in Instrument 2001-37349 in the Probate Office of Shelby County, Alabama.

**EXHIBIT B**  
**COLONIAL PROMENADE**

1. Taxes and assessments for the year 2003 and subsequent years, which are not yet due and payable.
2. Building lines and easements, as shown by map recorded in Map Book 37, Page 15, and as shown on the survey of Walter Schoel Engineering Company, Inc., dated November 15, 2002 (the "Survey").
3. Mineral and mining rights and rights incident thereto recorded in Bessemer Volume 674, page 557, in the Probate Office of Jefferson County, Alabama.
4. Rights of tenants in possession under any unrecorded leases, as tenants only with no option to purchase.
5. Easement with restrictions, recorded in Bessemer Instrument 200162/4737, in the Probate Office on Jefferson County, Alabama and refilled in Instrument 2001-37349, in the Probate Office of Shelby County, Alabama.
6. Right of way to Water Works and Sewer Board of the City of Birmingham, recorded in Bessemer Instrument 200262/8143 in the Probate Office of Jefferson County, Alabama and as shown on the Survey.
7. 20 foot sanitary sewer Easement created by instruments recorded in 200161/6124 and 200161/6125, in the Probate Office of Jefferson County, Alabama and as shown on the Survey.



## EXHIBIT C

### ADDITIONAL STIPULATIONS

C-1 Cash Management Stipulations. Borrower, Lender and any Manager have, of even date herewith, entered into that certain Cash Management Agreement (the "Cash Management Agreement") of even date herewith which, upon the inception and during the continuation of a Sweep Period (as defined in the Cash Management Agreement), provides for the disposition of Rents and Profits from the Property. It is specifically agreed that (i) the Cash Management Agreement is one of the Loan Documents (as defined in this Security Instrument), and (ii) during a Sweep Period, the Clearing Account, the Cash Collateral Account and all other Accounts and Sub-Accounts (as such terms are described or defined in the Cash Management Agreement) shall be included within the Reserves (as defined in this Security Instrument). The Reserves and any disbursement therefrom shall be subject to both this Security Instrument, the Cash Management Agreement and the other Loan Documents. During any Sweep Period (as defined in the Cash Management Agreement), all references in this Security Instrument to the Impound Account and to the other Reserves shall be deemed to refer to the Sub-Account of the Cash Collateral Account (as defined in the Cash Management Agreement) into which the proceeds of each such Reserve have been deposited pursuant to the Cash Management Agreement. During any Sweep Period, all payments from Borrower to Lender with respect to Reserves shall be made by disbursement from the Clearing Account or as otherwise provided in the Cash Management Agreement. During any Sweep Period, all sums held in the Cash Collateral Account prior to being allocated into the Sub-Accounts shall also be considered "Funds" for purposes of Section 4.28 hereof and shall bear interest to be added to the Cash Collateral Account in accordance with that provision; provided, however, once such monies in the Cash Collateral Account have been allocated to Sub-Accounts pursuant to the terms of the Cash Management Agreement, such Sub-Accounts shall bear interest for the ultimate benefit of Borrower only to the extent required by Section 4.28 hereof or by the Cash Management Agreement.

C-2 Repair Reserve. [INTENTIONALLY OMITTED]

C-3 Lease Termination Payment Reserve.

(a) For purposes of this Security Instrument, the capitalized terms defined in this Section shall have the meanings ascribed to them as follows:

(i) "Lease Termination Expenditures" shall mean the costs and expenses incurred by Borrower for payment of leasing commissions, lease buy-outs and expenditures related to tenant finish, repairs, replacements and improvements (or allowances to the tenant for any such items) to Lease Termination Space in connection with releasing such Lease Termination Space.

(ii) "Lease Termination Payment" shall mean any amounts paid in consideration of an early lease termination including, without limitation, payments made under leases containing early lease termination options in favor of tenants thereunder, in connection with the exercise of such tenant's lease termination rights. Amounts paid for rent and other charges in respect of periods prior to the lease termination date, and collection expenses, shall be excluded from the Lease Termination Payment.

(iii) "Lease Termination Payment Reserve" shall have the meaning set forth in subparagraph (b) below.

(iv) "Lease Termination Space" shall mean any space at the Improvements subject to a lease as to which a Lease Termination Payment is received.

(b) As additional security for the indebtedness secured hereby, Borrower shall establish, immediately upon receipt of a Lease Termination Payment, a reserve (the "Lease Termination Payment Reserve") with Lender for payment of Lease Termination Expenditures. Notwithstanding any provision of this Security Instrument or the other Loan Documents to the contrary, Borrower shall, within one (1) business day of receipt thereof, deliver all Lease Termination Payments (or cause the Manager to deliver all such Lease Termination Payments) to Lender for deposit into the Lease Termination Payment Reserve.

(c) (1) Borrower shall pay all Lease Termination Expenditures without regard to the amount then available in the Lease Termination Payment Reserve. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, and, subject to the provisions of this Security Instrument, Lender shall, to the extent funds are available for such purpose in the Lease Termination Payment Reserve, make disbursements to Borrower for payment of the Lease Termination Expenditures. Lender shall disburse amounts for Lease Termination Expenditures within 10-days of Borrower's satisfaction of the following conditions and the provision of suitable documentation relative thereto: (i) a new lease has been fully executed and approved by Lender pursuant to the terms of Section 1.12 hereof (or which does not require any such approval pursuant to the terms of section 1.12 hereof) with respect to all or any portion of the Lease Termination Space; (ii) Borrower furnishes Lender with a written disbursement request for the payment or reimbursement of such Lease Termination Expenditures; (iii) Borrower shall have theretofore furnished Lender with satisfactory evidence of the progress and/or completion of tenant improvement work, the cost of tenant improvement work, satisfactory evidence that any and all completed tenant improvement work complies with law, lien waivers for lienable work, copies of bills, invoices and other reasonable documentation as may be required by Lender to substantiate the use of such funds and establish that the Lease Termination Expenditures which are the subject of such disbursement request represent completed or partially completed capital work and improvements performed at all or any portion of the applicable Lease Termination Space; and (iv) there are sufficient funds available in the Lease Termination Payment Reserve. Lender may require, as a further condition to any disbursement from the Lease Termination Payment Reserve reasonable evidence that the tenant finish complies with the terms and provisions of subparagraph (d) of this section. Lender shall further be entitled to require access to the Property by Lender and/or an architect and/or engineer specified by Lender for the purpose of inspecting the work done, at Borrower's expense, for which disbursement is requested hereunder. Borrower shall only be entitled to disbursements for payment of Lease Termination Expenditures from the Lease Termination Payment occurring with respect to the corresponding Lease Termination Space. Furthermore, Borrower shall not be entitled to a disbursement of the final twenty percent (20%) of any Lease Termination Payment unless and until Borrower has satisfied the requirements described in paragraph (2) immediately following.

(2) Notwithstanding anything contained herein to the contrary, Lender shall disburse to Borrower any portion of any Lease Termination Payment remaining on deposit in the Lease Termination Payment Reserve promptly after Borrower's provision of (i) if not earlier provided, a fully executed copy of the new lease with respect to the related Lease Termination Space which such lease must have been entered into in accordance with the terms of this Security Instrument, including Section 1.12 hereof, (ii) an original estoppel certificate in a form acceptable to Lender executed by the tenant under such lease stating that the leased premises have been completed, fully accepted and occupied by such tenant and that such tenant is open for business therein and that there are no defaults under such lease (nor does there exist any event or condition, which with the passage of time or the giving of notice, or both, could result in such a default), (iii) to the extent required by Lender, an original subordination, non-disturbance and attornment agreement in



form acceptable to Lender executed by such tenant in favor of Lender, (iv) evidence that such tenant's actual payment of ordinary monthly rental has commenced, and (v) all applicable permanent certificates of occupancy and other governmental permits, if any may be required, issued by applicable governmental authorities with respect to such tenant improvement work, which certificates and permits allow the tenant to open for business as contemplated under such lease.

(3) Lender shall not be required to make advances from the Lease Termination Payment Reserve more frequently than once in any thirty (30) day period. In making any payment from the Lease Termination Payment Reserve, Lender shall be entitled to rely on such request from Borrower without any inquiry into the accuracy, validity or contestability of any such amount. Lender may (but without any obligation to do so), at Borrower's expense, make or cause to be made during the term of this Security Instrument an inspection of the Property to verify the scope, nature and quality of the work for which payment is being requested from the Lease Termination Payment Reserve.

(d) Borrower shall construct and complete all tenant improvements or similar construction work within the time periods and as required by, and in accordance with, the applicable lease. Borrower or such tenant shall pay for and obtain or cause to be paid for and obtained all permits, licenses and approvals required by all applicable laws with regard to such tenant improvements, whether necessary for commencement, completion, use or otherwise. Borrower shall perform or cause to be performed all work in connection with such tenant improvements in a good and workmanlike manner in compliance with all applicable laws (including, without limitation, any and all applicable life safety laws, environmental laws and laws for the handicapped and/or disabled) and, with respect to those leases requiring Lender approval, with the plans and specifications approved by Lender for such work, all of which performance by Borrower shall be without regard to the sufficiency of funds in the Lease Termination Payment Reserve. Borrower covenants and agrees that any such tenant improvement or similar work shall be constructed, installed or completed, as applicable, free and clear of any and all liens (including mechanics, materialmen or other liens), claims and encumbrances whatsoever.

(e) Notwithstanding anything seemingly to the contrary in this Section, Borrower shall not be entitled to terminate or agree to terminate any lease in consideration for a Lease Termination Payment or otherwise without first obtaining Lender's prior written consent.

**C-4 Terrorism Insurance.** Pursuant to the Terrorism Insurance Act of 2002 (the "Act"), Borrower's insurance carrier is entitled to give Borrower a notice of additional premiums to be charged for terrorism insurance. Pursuant to the Act, if Borrower receives any such notice, Borrower will be given 30 days to pay any such additional premium by Borrower's insurance carrier, and if such additional premium is not paid, Borrower's insurance carrier will be entitled to reinstate an exclusion for terrorism. In the event that Borrower receives any such notice from its insurance carrier, Borrower shall promptly deliver to Lender a copy of any such notice. Except as set forth below with respect to a "Terrorism Policy," Borrower shall pay any such additional premium within the specified time period and, to the extent that funds have been deposited into the Impound Account at closing for such purpose, Borrower shall be entitled to a disbursement from the Impound Account to pay any such additional premium. Notwithstanding the above, Borrower's insurance coverage may exclude perils and acts of terrorism if Borrower obtains, at Borrower's sole cost and expense, a Terrorism Policy (hereinafter defined). The term "Terrorism Policy", as used herein, shall mean a separate stand-alone terrorism insurance policy obtained by Borrower which corresponds to Borrower's primary insurance exclusion relating to acts or perils of terrorism such that there are no gaps in coverage and being otherwise acceptable to Lender and consistent as to coverage amounts, ratings and conditions with the requirements of Section 1.4 of this Security Instrument as it relates to other types of insurance coverage.

State of Alabama - Jefferson County

I certify this instrument filed on:

2002 DEC 20 P.M. 14:30

Recorded and \$ 26,662.50 Mtg. Tax

and \$ Deed Tax and Fee Amt.

\$ 159.50 Total \$ 26,822.00

MICHAEL F. BOLIN, Judge of Probate



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