
MORTGAGE

HSBC REALTY CREDIT CORPORATION (USA), a
corporation organized and existing under the laws of the State of Delaware

-With-

G&I III MEADOWS LLC, a
Delaware limited liability company

The land affected by the within
Instrument lies in

Tax Parcel Nos.: 03-9-31-0-001-018.002 and
03-9-31-0-001-014.001
On the Land Map of the County of Shelby

Street Address: The Meadows at Brook Highland
One Meadow Drive
Birmingham, Alabama 35243

Title Co.: Chicago Title Insurance Company
Title No.: 6125-K2
HSBC Loan No.: 11-4000804
CC&J No.: 243/445

Prepared by and Record and Return To:

Cassin Cassin & Joseph LLP
300 East 42nd Street
New York, New York 10017
Attn: Carol M. Joseph, Esq.

Dated As of March 20, 2003

Handwritten
7/10/03

TABLE OF CONTENTS

	<u>Page</u>
1. Payment of the Indebtedness	3
2. Insurance.....	3
3. Maintenance of Mortgaged Property	4
4. Receiver	5
5. Real Estate Taxes.....	5
6. Estoppel	5
7. Ownership of Premises	5
8. Warranty of Title	5
9. Sale in one Parcel	5
10. Authority.....	5
11. Use and Occupancy	6
12. Litigation	6
13. Intentionally Omitted.....	6
14. Assignment of Leases and Rents	6
15. Foreign Governments; Leases	7
16. Mortgage or Other Taxes.....	7
17. Intentionally Omitted.....	7
18. Financial Statements.....	7
19. Default Rate	8
20. Subordinate Mortgage	9
21. Partial Foreclosure	10
22. Late Charge.....	10
23. Events of Defaults	10
24. Deposits for Real Estate Taxes, Insurance Premiums and Replacement Reserves	12
25. Impairment of Security	15
26. Intentionally Omitted.....	15
27. Intentionally Omitted.....	15
28. No Waiver.....	15
29. Severability	16
30. Due on Sale/Encumbrance.....	16
31. Notices	17
32. Undertaking to Cure Violations.....	17
33. Maximum Debt Secured.....	17
34. Compliance with Usury Laws	18
35. Hazardous Substance/ADA Compliance	18
36. Application of Insurance and Condemnation Proceeds.....	21
37. Recording of Mortgage, etc	24
38. No Oral Waiver; Successors and Assigns	24
39. Captions and Subheadings.....	24
40. Satisfaction	24
41. Satisfaction of Other Loans	24
42. Counterparts.....	25
43. Applicable Law; Consent to Jurisdiction.....	25

44. Security Agreement	26
45. Exculpation.....	27
46. Publicity.....	27
47. Security Deposits.....	28
48. Intentionally Omitted.....	28
49. State Specific Provisions	28

THIS MORTGAGE, made as of the 20th day of March, 2003 BETWEEN **G&I III MEADOWS LLC**, a Delaware limited liability company, having an office at c/o DRA Advisors LLC, 220 East 42nd Street, New York, New York 10017, hereinafter designated as the "**Mortgagor**", and **HSBC REALTY CREDIT CORPORATION (USA)**, a corporation organized and existing under the laws of the State of Delaware, having an office at 452 Fifth Avenue, New York, New York 10018, Attn: Commercial Real Estate, hereinafter designated as the "**Mortgagee**".

WITNESSETH that to secure the payment of an indebtedness in the sum of FIFTEEN MILLION AND 00/100 (\$15,000,000.00) DOLLARS, lawful money of the United States of America, to be paid with interest thereon, according to a certain note or obligation bearing even date herewith (as modified from time to time, the "Note"), **THE MORTGAGOR HEREBY MORTGAGES, GRANTS, BARGAINS, SELLS AND CONVEYS TO THE MORTGAGEE** all of the following (collectively, the "**Mortgaged Property**"):

ALL that certain land, with the buildings and improvements thereon erected, more particularly described in **Schedule "A"** annexed hereto and by this reference made a part hereof (hereinafter referred to as the "**said premises**")

TOGETHER with all of the estate and all right, title and interest of the Mortgagor in and to: the appurtenances in and to said premises, all land lying in the bed of all streets, roads, and public places, opened or proposed, in front of and adjoining the said premises and all easements and rights of way, public or private, now or hereafter used in connection with the said premises; all buildings, improvements, fixtures, equipment, inventory, computer software and hardware and other articles of personal property now or hereafter affixed to, placed upon or used in connection with the operation of the said premises, and the proceeds thereof, including the proceeds of hazard and title insurance relating thereto; all awards heretofore and hereafter made by reason of the taking by eminent domain of the whole or any part of the said premises or of any right appurtenant thereto, including any awards or payments for use and occupation and for change of grade of streets; all rents, issues and profits, general intangibles, chattel paper, accounts (including all deposit accounts, securities accounts, accounts receivables, credit card receivables and reserve accounts), inventory, revenues, income and other benefits due or to become due to the Mortgagor for the use, operation or occupancy of the said premises and all franchises, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, permits, consents, licenses, management agreements, franchise agreements, contract rights (including, without limitation, any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair, or other work upon the said premises), approvals, actions and causes of action that now or hereafter relate to, are derived from or are used in connection with the said premises, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon or any of the items covered hereby; all amounts refunded, or to be refunded, by taxing authorities from amounts paid for real estate taxes, water and sewer rental charges affecting the said premises and any amounts refunded, or to be refunded, by any insurer from amounts paid for insurance premiums for insurance affecting the said premises; all leases of the said premises or any part thereof now or hereafter entered into, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder (whether such cash or securities are to be held until the expiration of the terms of

such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms) and guarantees thereof; all certificates of deposit of Mortgagor in the possession of Mortgagee and the proceeds therefrom; all other rights and easements of Mortgagor or hereafter existing pertaining to the use and enjoyment of the said premises, including, without limitation, all declarations of covenants, conditions and restrictions as may affect or otherwise relate to the said premises; and all proceeds and products of the foregoing; all of which are covered by this mortgage, which mortgage, shall also constitute a security agreement. This provision shall be self-operative, but the Mortgagor will execute and deliver to the Mortgagee on demand, and hereby irrevocably appoints and authorizes the Mortgagee the attorney-in-fact of the Mortgagor to execute, deliver and file, such financing statements and other instruments as the Mortgagee may require in order to impose the lien of this mortgage upon said fixtures and personal property. If the lien of this mortgage on any fixtures or personal property is subject to a security interest covering such fixtures or personal property, then upon the occurrence of any Event of Default (as defined in paragraph 23 hereof), all the right, title and interest of the Mortgagor in and to any and all deposits being held by the holder of such security interest are hereby assigned to the Mortgagee, together with the benefit of any payments now or hereafter made thereon.

TOGETHER with all awards heretofore and hereafter made by reason of the taking by eminent domain of the whole or any part of said premises or of any right appurtenant thereto, including any awards or payments for use and occupation and for change of grade of streets, which awards are hereby assigned to the Mortgagee, which is hereby irrevocably authorized and appointed attorney-in-fact of the Mortgagor to collect and receive any such awards from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of the debt secured hereby, whether then matured or not, and the Mortgagor will execute and deliver to the Mortgagee on demand such assignments and other instruments as the Mortgagee may require for said purposes and will reimburse the Mortgagee for its costs (including counsel fees) in the collection of such awards. In the event of any such taking, the Mortgagor agrees to pay, and agrees that any award shall be apportioned so that there shall first be paid therefrom in the order below named, to the Mortgagee, accrued interest at the rate herein specified on all principal amounts from time to time outstanding thereunder to the date of receipt of such payment by the Mortgagee, notwithstanding any lesser interest rate required to be paid by the authorities making the awards, plus the entire principal balance secured by this mortgage plus any other amounts due from Mortgagor to Mortgagee under the Loan Documents.

TOGETHER with any and all air rights, development rights, zoning rights or other similar rights or interest that benefit or are appurtenant to the mortgaged premises and any proceeds arising therefrom, including, among other things, the Mortgagor's right to initiate, join in or consent to any change in any zoning ordinance, restrictive covenant, zoning lot merger agreement or other public or private restriction limiting or defining the uses which may be made of the premises or any part thereof.

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

This mortgage shall sometimes hereinafter be referred to as "**this Mortgage**" or "**said mortgage**" and the bonds obligations evidenced by the bond or note secured hereby shall hereinafter be referred to as "**said obligation**" or the "**Loan**" and the term "**indebtedness**" when used herein shall mean said obligation together with all other amounts due and owing under this mortgage and all other documents and instruments delivered in connection herewith and with the Loan. This Mortgage, any document or instrument evidencing the indebtedness and all other documents and instruments evidencing or securing the indebtedness or delivered in connection herewith or with the Loan shall hereinafter be referred to as the "**Loan Documents**").

AND the Mortgagor covenants with the Mortgagee as follows:

1. **Payment of the Indebtedness.** The Mortgagor will pay the indebtedness secured hereby, as hereinbefore provided.

2. **Insurance.** The Mortgagor will keep the buildings and improvements now or hereafter erected on said premises and all fixtures and articles of personal property covered by this Mortgage insured against loss and damage (including law and ordinance coverage) by fire, by flood if said premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of Nineteen Hundred Sixty-Eight, as amended from time to time or is available from private insurers, and by such other hazards as the Mortgagee may require including, without limitation, to the extent available at commercially reasonable rates and customarily required by mortgage lenders on similarly situated properties in Shelby County, Alabama, acts of war and acts of terrorism, in amounts, with insurers and under forms of policies (including a standard mortgagee clause unless otherwise required) satisfactory to the Mortgagee; will deliver all such policies and, at least 15 days prior to their expiration dates, all renewals thereof to the Mortgagee; and will pay all premiums thereon. The amount of insurance coverage for loss and damage by fire shall be equal to the greater of (A) the replacement cost of the structure erected on said premises and (B) the amount required to avoid coinsurance. The Mortgagor shall also maintain a public liability policy or policies in such coverage amounts, including deductible provisions, covering such risks, issued by such companies and in such form, all as the Mortgagee may require from time to time. Upon any default under this Mortgage beyond the expiration of any applicable notice, grace or cure period, all of the Mortgagor's right, title and interest in and to all such policies are hereby assigned to the Mortgagee, including unearned premiums on such policies. The Mortgagor will not permit any condition to exist on said premises which would wholly or partially invalidate the insurance thereon. The Mortgagee may on behalf of the Mortgagor adjust and compromise any claims under such insurance and collect and receive the proceeds thereof and is hereby irrevocably appointed attorney-in-fact of the Mortgagor for such purposes, and may deduct from such proceeds any expense so incurred by it. Subject to the provisions of Paragraph 36, hereof, Mortgagee may at its option either apply such proceeds in reduction of the indebtedness secured by this Mortgage, whether then matured or not, or release such proceeds to the Mortgagor in whole or in part upon conditions satisfactory to the Mortgagee.

Subject to the provisions of Paragraph 36 hereof, Mortgagor covenants and agrees that in case of damage to or destruction of any building or the building service equipment on said premises by fire or otherwise, or in the case of the taking by a condemning authority (other than by a temporary taking) it will promptly, at its sole cost and expense, restore, repair, replace,

rebuild or alter the same as nearly as possible to the condition they were in immediately prior to such damage or destruction. Such restoration, repairs, replacements, rebuilding or alterations shall be commenced promptly and prosecuted with reasonable diligence.

Notwithstanding anything to the contrary contained herein, upon the foreclosure of this Mortgage, and whether or not the Mortgagee seeks or obtains a deficiency judgment in such foreclosure proceedings, all of the Mortgagor's right title and interest in and to the insurance policies covering the Mortgaged Property then in force are hereby assigned to and shall pass to the purchaser of said premises at the foreclosure sale.

3. **Maintenance of Mortgaged Property.** The Mortgagor will not cause or permit any building or improvement upon said premises to be erected, removed, demolished or structurally altered, in whole or in part, or any fixture or article of personal property covered by this Mortgage to be removed or destroyed, without the prior written consent of the Mortgagee. The Mortgagor will not abandon the Mortgaged Property or cause or permit any waste to the buildings, improvements, fixtures or articles of personal property covered by this Mortgage and will at all times maintain them in a reasonably good condition, and will comply, and cause all occupants of said premises to comply, with all laws and ordinances relating to the maintenance or use of said premises and with all requirements, orders and notices of violation thereof issued by any governmental department. The Mortgagor will pay all license fees and similar municipal charges for the use of vaults or other areas now or hereafter used in connection with said premises and will not, unless so required by any governmental agency having jurisdiction, discontinue such use without the prior written consent of the Mortgagee. Mortgagor covenants and agrees that in case of damage to or destruction of any building or the building service equipment on said premises by fire or otherwise, or in the case of the taking by a condemning authority (other than by a temporary taking) it will, subject to the provisions of Paragraph 36, promptly, at its sole cost and expense, restore, repair, replace, rebuild or alter the same as nearly possible to the condition they were in immediately prior to such damage or destruction. Such restoration, repairs, replacements, rebuilding or alterations shall be commenced promptly and prosecuted with reasonable diligence. Within 60 days after notice and demand by the Mortgagee as to Mortgagor's failure to perform the foregoing, the Mortgagor will restore or repair said buildings, improvements, fixtures and articles of personal property as specified in such notice and demand. The Mortgagor will permit the Mortgagee and its representatives to enter said premises and the improvements thereon at reasonable times to inspect the same, and in case of any default under this paragraph, to enter said premises and the improvements thereon to protect, restore or repair any part thereof. The Mortgagee may, at any time, cause a survey to be made of the Mortgaged Property to determine the nature and estimated cost of the maintenance required hereunder and not performed, and a written report thereof shall be furnished to the Mortgagor. The Mortgagor hereby admits that the security of this Mortgage is impaired if such estimated cost shall exceed 10% of the principal indebtedness secured by this Mortgage as hereinabove set forth, and in such event, without limiting Mortgagee's other remedies hereunder, and without relieving Mortgagor from its obligation to perform such maintenance, (i) an amount of the indebtedness secured by this Mortgage equal to the amount of such estimated cost shall at the option of the Mortgagee become due and payable upon 30 days' written notice to the Mortgagor, and (ii) the cost of the aforementioned survey shall be paid by the Mortgagor to the Mortgagee on demand and be secured by this Mortgage. If the estimated cost of maintenance shall not exceed 10% of the said indebtedness, the Mortgagee shall pay the cost of the said survey. The

Mortgagor covenants and agrees to discharge (by bond or otherwise) any mechanic's lien or claim therefor filed against the said premises within sixty (60) days after notice that a mechanic's lien or such claim has been filed.

4. **Receiver.** The Mortgagee, in any action to foreclose this Mortgage, shall be entitled (without notice, without regard to the adequacy of any security for the debt and without regard to the solvency of any person, firm or corporation liable for the payment thereof) to the appointment of a receiver of the rents and profits of the Mortgaged Property.

5. **Real Estate Taxes.** The Mortgagor will, except to the extent the same are covered by amounts actually paid to the Mortgagee pursuant to Paragraph 24 hereof, pay all taxes, assessments and water charges and sewer rents upon the Mortgaged Property prior to the date penalties accrue for failure to pay said charges. The Mortgagor will pay any installments of any assessments made against the Mortgaged Property for local improvements within 60 days after notice and demand by the Mortgagee notwithstanding the same may not be due and payable at the time of such notice and demand. The Mortgagor will exhibit to the Mortgagee within 10 days after demand, receipted bills or satisfactory proofs of all such payments. After any Event of Default hereunder, the Mortgagee shall be entitled to any refunds made or to be made by any taxing authority to be applied in reduction of the indebtedness.

6. **Estoppel.** The Mortgagor within 10 days upon request in person or by mail will furnish a duly acknowledged written statement setting forth the amount of the indebtedness secured by this Mortgage, and stating either that no offsets or defenses exist against the mortgage indebtedness, or, if such offsets or defenses are alleged to exist, the nature thereof. Notice and demand or request may be made in writing and may be served in person or by mail.

7. **Ownership of Premises.** The Mortgagor covenants and agrees for itself and any subsequent owner of said premises that the Mortgagee shall have the right to declare the entire mortgage indebtedness due and payable if the owner of record of the Mortgaged Property shall at any time hereafter be comprised of more than three persons, firms, corporations or entities unless all of such persons, firms, corporations or entities comprising the owner of record shall, by an instrument in recordable form, designate one of their number to act for and on behalf of all of them for all purposes and to receive and accept any notices required or permitted to be given hereunder by the Mortgagee and any service of process in connection with any action or proceeding commenced by the Mortgagee to enforce any of its rights hereunder.

8. **Warranty of Title.** The Mortgagor warrants the title to the Mortgaged Property, subject to the exceptions to title contained in the policy of title insurance insuring the Loan dated the date hereof.

9. **Sale in one Parcel.** In case of sale under foreclosure, the Mortgaged Property, including the improvements, fixtures and articles of personal property covered by this Mortgage, may be sold in one parcel.

10. **Authority.** The Mortgagor represents that it is duly organized and presently existing and that this Mortgage and all other Loan Documents executed in connection herewith have been duly authorized, executed and delivered and, if Mortgagor is a corporation, this Mortgage and such Loan Documents have been executed by authority of its board of

directors and with such consent of its stockholders as is required by its certificate of incorporation and by-laws.

11. **Use and Occupancy.** If at any time the then existing use or occupancy of the Mortgaged Property shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Mortgagor will not cause or permit such use or occupancy to be discontinued without the prior written consent of the Mortgagee.

12. **Litigation.** If any action or proceeding be commenced by or against the Mortgagee, or the Mortgagor, including an action to foreclose this Mortgage, affecting the Mortgaged Property or the lien of this Mortgage, or if any action or proceeding be commenced which would affect any of the Mortgagee's rights in the Mortgaged Property, the Mortgagee may appear, defend, prosecute, retain counsel, and take such action as the Mortgagee shall deem advisable, and the costs thereof (including all counsel fees and all applicable statutory costs, allowances and disbursements) together with interest thereon at the interest rate under the Note or, if an Event of Default shall have occurred at the Involuntary Rate (as defined in the Note) but in no event in excess of the maximum rate permitted by law, shall be paid by the Mortgagor to the Mortgagee on demand and shall be secured by this Mortgage. The costs incurred by Mortgagee in connection with a foreclosure of this Mortgage shall also include the costs of obtaining any engineering, appraisal or environmental audit reports which Mortgagee deems necessary, in its sole discretion; which costs shall also be secured by this Mortgage.

13. **Intentionally Omitted.**

14. **Assignment of Leases and Rents.** The Mortgagor hereby assigns to the Mortgagee, effective irrespective of any default hereunder, the rents and profits, including use and occupancy payments, from the Mortgaged Property and all leases now or hereafter affecting the Mortgaged Property as further security for the payment of the indebtedness to the Mortgagee, provided, however, that until the occurrence of an Event of Default, the Mortgagor may collect and apply all rents and other such payments, and the Mortgagee hereby appoints the Mortgagor its attorney-in-fact for such purpose. The Mortgagee shall have the right forthwith after the occurrence of an Event of Default, with or without notice or demand, with or without the commencement of any action to foreclose this Mortgage and without the appointment of a receiver, to enter upon the Mortgaged Property, let the same, collect all rents therefrom and apply the rents, after payment of all charges and expenses, on account of the indebtedness secured hereby, whether then matured or not, and the Mortgagor hereby irrevocably appoints the Mortgagee its attorney-in-fact to institute summary proceedings against any tenant of the Mortgaged Property who fails to comply with any lease provisions. In the event that the Mortgagor is an occupant of the Mortgaged Property, the Mortgagor agrees to surrender the possession of the Mortgaged Property to the Mortgagee immediately upon the occurrence of an Event of Default upon demand by the Mortgagee and if the Mortgagor remains in possession after such demand, such possession shall be as tenant of the Mortgagee, and the Mortgagor agrees to pay monthly in advance to the Mortgagee such rent for the Mortgaged Property so occupied as the Mortgagee may demand, and in default of so doing, the Mortgagor may also be dispossessed by summary proceedings or otherwise. In case of the appointment of a receiver of rents and profits of said premises, the covenants of this paragraph may be enforced by such receiver. The Mortgagee may, but shall not be obligated to make any tenant, licensee or other

person in possession or occupancy under a written lease or otherwise, a party defendant to any foreclosure proceeding, and the Mortgagor, for itself and any subsequent owner of the Mortgaged Property, hereby waives any right it may have to require that any such tenant, licensee or person be made a party defendant in such proceeding. If any provision hereof is inconsistent with any separate assignment of leases and/or rents delivered to Mortgagee by Mortgagor, the provisions of such separate assignment shall control.

15. **Foreign Governments; Leases.** The Mortgagor covenants and agrees not to lease the whole or any part of the Mortgaged Property to the United States of America, any state, any political subdivision thereof or any of their respective agencies, or to any person or entity having diplomatic or sovereign immunity, without the prior written consent of the Mortgagee. With regard to future tenants (or purchasers of apartments, if the said premises have been converted to cooperative or condominium ownership), mortgagor covenants and agrees that no accredited representative or employee of a foreign government or international organization shall become a tenant under a lease (or proprietary lease, as the case may be) unless the appropriate representative of such foreign government or international organization shall, in writing to the lessor (or proprietary landlord as the case may be), either expressly waive diplomatic immunity or certify that such employee or representative would not enjoy diplomatic immunity with regard to any action brought under the lease (or proprietary lease, as the case may be) and the person so certifying states that he is authorized to do so, except to the extent that the lessor or proprietary landlord as the case may be), is required by law to lease to such a person.

The Mortgagor will not, without the prior written consent of the Mortgagee, assign the rents or any part thereof, from the Mortgaged Property. The Mortgagor will perform and comply with the terms of all leases covering the Mortgaged Property or any part thereof on its part to be performed or complied with. If any provision hereof is inconsistent with any separate assignment of leases and/or rents delivered to Mortgagee by Mortgagor, the provisions of such separate assignment shall control.

Any such new leases shall, among other things, be fully subordinate to the lien of all mortgages now or hereafter a lien on the said premises and to all extensions, modifications, renewals, replacements or increases thereof. If such subordination is to be conditioned upon receipt of a non-disturbance agreement ("SNDA") from Mortgagee, such SNDA, if approved by Mortgagee, shall be prepared on Mortgagee's standard forms.

16. **Mortgage or Other Taxes.** If it shall be determined by the governmental authority having jurisdiction that mortgage or other taxes are due on this Mortgage or on the note or obligation secured by this Mortgage, the Mortgagor will pay the same.

17. **Intentionally Omitted.**

18. **Financial Statements.** The Mortgagor will maintain full and correct books and records showing in detail the earnings and expenses of the Mortgaged Property; will permit the Mortgagee and its representatives to examine said books and records and all supporting vouchers and data at any time and from time to time upon request by the Mortgagee at the Mortgaged Property or at such other place in the city and county in which said premises are located as such books and records are customarily kept; and the Mortgagor at any time and from time to time will furnish to the Mortgagee at its request a statement showing in detail all

such earnings and expenses since the last such statement, verified by the affidavit of the Mortgagor or then owner, or if the owner is a corporation by an affidavit of its principal executive officer.

The Mortgagor shall furnish the following statements (collectively, the "**Financial Statements**") to the Mortgagee, as to items a, b, c and d within 90 days of the end of each fiscal year of the Mortgagor:

- (a) a profit and loss statement;
- (b) a balance sheet;
- (c) a statement of change in financial condition;
- (d) a written statement of the receipts and disbursements of the Mortgaged Property for such fiscal year.

Each such statement shall be in scope and detail reasonably satisfactory to the Mortgagee and shall be certified by a principal officer of Mortgagor, if a corporation, or a general partner of the Mortgagor, if a partnership, or by a managing member, if a limited liability company, or by each individual Mortgagor, if individuals; provided, however, the annual Financial Statements shall be prepared by and certified by an independent certified public accountant of recognized standing and satisfactory to the Mortgagee and provided, further, however, that the Mortgagee may request such Financial Statements more often upon the occurrence of an Event of Default hereunder, or if the Mortgaged Property shall not, in the sole determination of the Mortgagee, be performing satisfactorily and, upon such request, the Mortgagor shall provide same within thirty (30) days thereafter.

If requested by the Mortgagee, the Mortgagor further agrees that within ten (10) days after such request, it shall furnish a written statement containing the names of all tenants of the Mortgaged Property, the terms of their respective tenancies, the spaces occupied, the rentals paid therefor and any defaults with respect thereto, which statement shall be certified by the Mortgagor in the same manner as is required in the preceding sentence.

The Mortgagor shall cause any guarantor of the indebtedness and any indemnitor under any indemnity given in connection herewith or with the indebtedness to furnish, to the Mortgagee, within 90 days after the end of each fiscal year of such guarantor and such indemnitor, as the case may be, the annual Financial Statements referred to above in items (a), (b) and (c) of such guarantor and such indemnitor. All such Financial Statements shall be certified in the same manner as the annual Financial Statements required from Mortgagor as set forth above, provided, however, that the Mortgagee may request such statements more often upon the occurrence of a default hereunder or if the Mortgaged Property shall not, in the sole determination of the Mortgagee, be performing satisfactorily and, upon such request, the Mortgagor shall provide same within thirty (30) days thereafter.

19. **Default Rate.** Upon the occurrence of any Event of Default, the Mortgagee may, at the Mortgagee's option, comply with or perform the same, and the cost thereof, together with interest thereon at a rate equal to the Involuntary Rate (as defined in the

Note), but in no event in excess of the maximum rate permitted by law, shall be paid by the Mortgagor to the Mortgagee on demand and shall be secured by this Mortgage. Notwithstanding that the indebtedness secured by this Mortgage shall not have been declared due and payable upon the occurrence of an Event of Default, the indebtedness shall bear interest at the rate specified in the preceding sentence from the date of notice and demand therefor by the Mortgagee until said Event of Default shall have been completely cured and removed to the satisfaction of the Mortgagee. On and after the maturity of the indebtedness secured by this Mortgage, or upon the exercise by the Mortgagee of any option to declare the indebtedness due and payable as provided in this Mortgage, said indebtedness shall, without any notice or demand by Mortgagee, bear interest at the rate specified in the first sentence of this paragraph, but nothing herein contained shall be deemed to extend the maturity of the indebtedness.

20. **Subordinate Mortgage.** The Mortgagor will not hereafter execute or deliver any mortgage (as used in this paragraph, a “**subordinate mortgage**”) covering the Mortgaged Property or any part thereof unless such subordinate mortgage shall contain express covenants to the effect that (i) such subordinate mortgage and all of its terms and provisions and the loan it secures are and shall remain in all respects subject and subordinate to this Mortgage, its lien and all of its terms and provisions and to the loan it secures and to any modifications, consolidations, extensions or renewals thereof and to any increases therein resulting from advances to protect or preserve the lien of this Mortgage or the property encumbered thereby, (ii) no tenant under any lease of any portion of the Mortgaged Property will be made a party defendant in any foreclosure of such subordinate mortgage, nor will any other action be taken in connection with such foreclosure which would have the effect of terminating any such lease, (iii) no portion of accounts, accounts receivable, the rents, issues and profits of the Mortgaged Property shall be collected in connection with the foreclosure of such subordinate mortgage or any other enforcement action except through a receiver appointed by the court in which such foreclosure action is brought, after due notice of the application for the appointment of such receiver shall have been given to the Mortgagee, (iv) the accounts, accounts receivable, rents, issues and profits collected by any such receiver (or which shall under any circumstances come into possession of the holder of such mortgage) shall be applied first to the payment of taxes, maintenance and operating charges and disbursements incurred in connection with the operation and maintenance of the Mortgaged Property, and next to the payment of principal and interest due under this Mortgage at the time of such application, before any portion of such accounts, accounts receivable, rents, issues and profits shall be applied to such subordinate mortgage, (v) if during the pendency of any such foreclosure action, an action shall be brought for the foreclosure of this Mortgage and an application shall be made for an extension of such receivership for the benefit of the Mortgagee, all such accounts, accounts receivable, rents, issues and profits held by such receiver as of the date of such application shall be applied by the receiver solely for the benefit of the Mortgagee, and the holder of such mortgage shall not be entitled to any portion thereof, (vi) due notice of the commencement of any foreclosure of such subordinate mortgage shall be given to the Mortgagee and true copies of all papers served or entered in such action will be delivered to the Mortgagee, (vii) no payments shall be made to the holder of such subordinate mortgage during the period in which any material default exists under this Mortgage and all payments otherwise payable to the holder of such subordinate mortgage shall be paid to the Mortgagee and, if any such payments are received by the holder of such subordinate mortgage at any time after which the holder of such subordinate mortgage has received notice of the existence of such default, they shall be held in trust for the Mortgagee and turned over to the

Mortgagee on demand; (viii) all condemnation, casualty or similar payments with respect to the Mortgaged Property shall be paid in accordance with this Mortgage, and (ix) this paragraph has been inserted into such subordinate mortgage for the benefit of the Mortgagee and may be amended only with the written consent of the Mortgagee and failure to obtain such consents shall cause such subordinate mortgage to be deemed null and void and of no further force or effect. Notwithstanding the provisions of this paragraph, the Mortgagor shall not hereafter execute or deliver any such subordinate mortgage unless permitted to do so, if at all, by paragraph 30 hereof.

21. **Partial Foreclosure.** The Mortgagee may, at the Mortgagee's option, foreclose this Mortgage for any portion of the indebtedness or any other sums secured thereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the mortgage indebtedness not then due.

22. **Late Charge.** In the event that any payment herein provided for shall become overdue for a period in excess of 10 days, a "late charge" of four cents (\$.04) for each dollar (\$1.00) so overdue shall become immediately due to the holder of this Mortgage as liquidated damages for failure to make prompt payment, and the same shall be secured by this Mortgage. Said charge shall be payable in any event not later than the due date of the next subsequent installment due hereunder.

23. **Events of Defaults.** The whole of the indebtedness secured by this Mortgage shall immediately become due and payable at the option of the Mortgagee, and thereupon the Mortgagee shall have the right, among others, to foreclose this Mortgage or may sell the Mortgaged Property in accordance with applicable law, upon the happening of any one or more of the following (each an "**Event of Default**" and collectively "**Events of Default**"):

(a) Failure of the Mortgagor to pay any installment of principal or interest due under the note secured hereby or to pay real estate taxes within 10 days after the due date thereof;

(b) Failure of the Mortgagor to pay within ten (10) days after written demand from Mortgagee any other amounts required to be paid under the Loan Documents (including, without limitation, the amount of any costs of the Mortgagee) with interest thereon;

(c) Failure of the Mortgagor to comply with or perform any other warranty or covenant of this Mortgage or in the obligation secured thereby within the grace period, if any, herein specified;

(d) Failure of the Mortgagor to maintain in full force and effect all insurance policies required to be maintained hereunder and under the other Loan Documents;

(e) Enactment of any law deducting from the value of land for the purposes of taxation any lien thereon or changing in any way the taxation of mortgages or debts secured thereby for federal, state or local purposes and the passage of 30 days after notice from Mortgagee to Mortgagor of such the enactment of such law without removal or stay of such law;

(f) Commencement of any action to foreclose any lien upon said premises or any part thereof including the improvements, fixtures and articles of personal property covered by this Mortgage;

(g) The execution of any instrument or the taking of any action which results or may result in the use or transfer of air, development or zoning rights appurtenant to any part of the premises to or for the benefit of any other premises or in the imposition of any restriction on the future development of any part of the premises, the Mortgagor hereby agreeing that such sale or lease or other instrument or action shall be deemed conclusively to impair the security interest of the Mortgagee;

(h) Any event occurs which pursuant to paragraph 30 hereof would entitle Mortgagee to call for the immediate payment of the entire mortgage indebtedness;

(i) Failure to discharge (by bond or otherwise) any mechanic's or other lien filed against the said premises within sixty (60) days after Mortgagor obtains knowledge that a mechanic's lien has been filed;

(j) (i) Notwithstanding the existence of paragraph 20 herein, the execution and delivery of any mortgages encumbering said premises without the prior written consent of the Mortgagee, except to the extent, if any, that same is expressly permitted by the terms of paragraph 30 hereof, or (ii) the financing, sale or other transfer of air rights or development rights without the prior written consent of the Mortgagee, the Mortgagor agreeing that any or all of said events shall significantly impair the security of the Mortgagee;

(k) The occurrence of an event which would, pursuant to the terms hereof, entitle the Mortgagee to advance sums which would, when advanced, be secured by this Mortgage pursuant to the terms hereof;

(l) Any event of default or default beyond the expiration of any applicable notice, grace or cure period contained therein under any Loan Document;

(m) Any material misrepresentation made by the Mortgagor, or any principal of the Mortgagor, to the Mortgagee prior to or at the closing of the Loan secured by this Mortgage;

(n) The occurrence of any default, beyond the expiration of any applicable notice, grace or cure period, under any other mortgage covering the said premises giving rise to a right to accelerate payment thereof;

(o) Any improvement on said premises is substantially damaged or destroyed by a casualty which is partly or totally uninsured and Mortgagor fails to provide satisfactory evidence to Mortgagee within twenty days of such casualty that the necessary funds for satisfactory restoration of the improvement will be available at the time of restoration;

(p) The institution against Mortgagor or any person or entity with an interest in Mortgagor of criminal proceedings for which the forfeiture of assets is a potential penalty, if the assets potentially subject to such forfeiture could include any of the said premises;

(q) If a receiver, liquidator or trustee of Mortgagor or any indemnitor or guarantor of any of Mortgagor's obligations under any Loan Documents shall be appointed or if Mortgagor or any such indemnitor or guarantor shall be adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, shall be filed by or against, consented to, or acquiesced in by, Mortgagor or any such indemnitor or guarantor or if any proceeding for the dissolution or liquidation of Mortgagor or any such indemnitor or guarantor shall be instituted; however, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by Mortgagor or any such indemnitor or guarantor, upon the same not being discharged, stayed or dismissed within ninety (90) days; and

(r) Failure to comply with paragraph 35 hereof.

Anything to the contrary herein notwithstanding, before exercising its rights under paragraph 23(c) hereof, the Mortgagee shall give to Mortgagor notice in writing with respect to any non-monetary defaults (other than those defaults covered by the other provisions of paragraph 23) and Mortgagor shall have thirty (30) days from the date of such notice to cure the default, except that, with respect to such defaults which are curable but which are incapable of being cured in said thirty (30) day period, the Mortgagor shall commence to cure such default within thirty (30) days, shall proceed promptly and diligently to cure the same and shall complete such cure within ninety (90) days after such notice date. Notwithstanding the foregoing, the provisions of this paragraph will not be applicable to any default which pursuant to the terms hereof or any other Loan Document has a specifically stated notice requirement and/or grace period. Failure to obtain and maintain the casualty and liability insurance required under this Mortgage shall be deemed a monetary default for the purposes of this paragraph.

24. **Deposits for Real Estate Taxes, Insurance Premiums and Replacement Reserves.** In order to more fully protect the security of this Mortgage, together with, and in addition to, the monthly payments of principal and interest payable under the terms hereof, the Mortgagor will pay the following payments to the Mortgagee on the first day of the calendar month next succeeding the date hereof and on the first day of each month thereafter until the indebtedness secured by this Mortgage shall have been paid in full

(i) a sum equal to the real estate taxes next due on the Mortgaged Property (as estimated by the Mortgagee) less all sums already paid therefor divided by the number of the monthly installments of principal and interest due hereunder before one month prior to the date on which such real estate taxes shall be due and payable, which sums to the extent received are to be held not as a trust fund and without interest or other payment of any kind but to be applied by the Mortgagee to the payment of such real estate taxes, as the same become due and payable. If such monthly payments become due at a time when the tax rate shall not have been fixed the monthly payment shall be estimated on the basis of the tax for the preceding year applied to the most recent assessed valuation, as adjusted by the Mortgagee. If the tax when paid varies from

the tax as estimated in accordance with the preceding sentence, (i) any excess arising from said monthly payments shall be retained by the Mortgagee to be applied in reduction of subsequent monthly payments and (ii) any deficiency in the amount of such monthly payments below the tax as fixed shall be paid by Mortgagor to the Mortgagee on demand. **"Real estate taxes"** shall be deemed to include assessments, water charges and sewer rentals.

(ii) a sum equal to the fire insurance premiums next due on the insurance policies required to be maintained hereunder less all sums already paid therefor divided by the number of the monthly installments of principal and interest due hereunder before one month prior to the date on which such fire insurance premiums shall be due and payable, which sums to the extent received are to be held not as a trust fund and without interest or other payment of any kind but to be applied by the Mortgagee to the payment of such fire insurance premiums, as the same become due and payable. The monthly payment shall be estimated on the basis of the fire insurance premiums for the preceding policy term, as adjusted by the Mortgagee. If the fire insurance premiums when paid varies from the fire insurance premiums as estimated in accordance with the preceding sentence, (i) any excess arising from said monthly payments shall be retained by the Mortgagee to be applied in reduction of subsequent monthly payments and (ii) any deficiency in the amount of such monthly payments below the fire insurance premiums as paid shall be paid to the Mortgagee on demand; and

(iii) a sum equal to the annual costs for replacements or alterations which are required to be capitalized according to the generally accepted accounting principals promulgated by the American Institute of Certified Public Accountants (the **"Replacement Costs"**) which, in the judgment of the Mortgagee, are needed to maintain the buildings, improvements, equipment and other personal property constituting the Mortgaged Property in good condition and in compliance with all laws and ordinances relating to the maintenance and use of the Mortgaged Property (amounts deposited for Replacements Costs shall be referred to herein as the **"Replacement Reserves"**). The term **"Replacement Cost Work"** when used herein shall mean any labor or materials installed in connection with Replacement Costs.

Mortgagee shall disburse to Mortgagor the Replacement Reserves upon satisfaction by Mortgagor of each of the following conditions: (i) Mortgagor shall submit a request for payment to Mortgagee at least ten (10) days prior to the date on which Mortgagor requests such payment be made and specifies the Replacement Costs to be paid, (ii) on the date such request is received by Mortgagee and on the date such payment is to be made, no Event of Default hereunder or under any of the other Loan Documents shall exist and remain uncured, (iii) Mortgagee shall have received a certificate from Mortgagor (A) stating that the items to be funded by the requested disbursement are Replacement Costs, (B) stating that all Replacement Costs at the Mortgaged Property to be funded by the requested disbursement have been completed in a good and workmanlike manner and in accordance with all applicable law, such certificate to be accompanied by a copy of any license, permit or other approval required by any municipal agency having jurisdiction over the Mortgaged Property in connection with the Replacement Costs, (C) identifying each contractor that supplied materials or labor in connection with the Replacement Costs to be funded by the requested disbursement, and (D) stating that each such contractor has been paid in full or will be paid in full upon such disbursement, such certificate to be accompanied by lien waivers or other evidence of payment satisfactory to Mortgagee, (iv) at Mortgagee's option, a title search for the Mortgaged Property indicating that

the Mortgaged Property is free from all liens, claims and other encumbrances not previously approved by Mortgagee, and (v) at Mortgagee's option, if any individual Replacement Costs exceeds \$25,000, Mortgagee shall have received a report satisfactory to Mortgagee in its reasonable discretion from an architect or engineer approved by Mortgagee in respect of such architect's or engineer's inspection of the required Replacement Cost Work, and (vi) Mortgagee shall have received such other evidence as Mortgagee shall reasonably request that the Replacement Costs at the Mortgaged Property to be funded by the requested disbursement have been completed and are paid for or will be paid upon such disbursement to Mortgagor. Mortgagee shall not be required to disburse Replacement Reserves more frequently than once each calendar month.

Nothing in this Section shall (i) make Mortgagee responsible for making or completing the Replacement Cost Work; (ii) require Mortgagee to expend funds in addition to the Replacement Reserves to complete any Work; (iii) obligate Mortgagee to proceed with the Replacement Cost Work; or (iv) obligate Mortgagee to demand from Mortgagor additional sums to complete any Work.

Mortgagor shall permit Mortgagee and Mortgagee's agents and representatives (including, without limitation, Mortgagee's engineer, architect, or inspector) or third parties to enter onto the Mortgaged Property during normal business hours (subject to the rights of tenants under their Leases) to inspect the progress of any Work and all materials being used in connection therewith and to examine all plans and shop drawings relating to such Replacement Cost Work. Mortgagor shall cause all contractors and subcontractors to cooperate with Mortgagee or Mortgagee's representatives in connection with inspections described above. Mortgagor shall pay the expenses of such inspection, whether such inspection is conducted by Mortgagee or by an independent consultant.

If a disbursement will exceed \$25,000, Mortgagee may require an inspection of the Mortgaged Property at Mortgagor's expense prior to making a disbursement of Replacement Reserves in order to verify completion of the Replacement Cost Work for which reimbursement is sought. Mortgagee may require that such inspection be conducted by an appropriate independent qualified professional selected by Mortgagee and may require a certificate of completion by an independent qualified professional architect acceptable to Mortgagee prior to the disbursement of Replacement Reserves. Mortgagor shall pay the expense of the inspection as required hereunder, whether such inspection is conducted by Mortgagee or by an independent qualified professional architect.

In addition to any insurance required hereunder, Mortgagor shall provide or cause to be provided workmen's compensation insurance, builder's risk, and public liability insurance and other insurance to the extent required under applicable law in connection with Replacement Cost Work. All such policies shall be in form and amount reasonably satisfactory to Mortgagee.

Mortgagor hereby conveys, pledges, transfers and grants to Mortgagee a security interest pursuant to the Uniform Commercial Code of the State of Alabama or any other applicable law in and to all of the Replacement Reserves, as same may increase or decrease from time to time, for the purpose of securing Mortgagor's obligations hereunder and to further secure Mortgagor's obligations under the other Loan Documents.

Mortgagor and Mortgagee agree that all moneys deposited into the Replacement Reserves shall be held by Mortgagee in an interest bearing account, and any interest earned on such moneys shall be added to the principal balance of the Replacement Reserve and disbursed in accordance with the provisions hereunder. Mortgagee shall not be responsible for any losses resulting from investment of moneys in the Replacement Reserve or for obtaining any specific level or percentage of earnings on such investment. Mortgagee shall be entitled to deduct from the Replacement Reserves a one time fee for establishing the Replacement Reserve in an amount not to exceed \$0.00.

If an Event of Default exists, Mortgagee and its successors and assigns shall have all remedies available to them under Article 9 of the Uniform Commercial Code of the State of New York and under any other applicable law and, in addition, may retain all money in the Replacement Reserves, including interest and all money held by Mortgagee for the payment of taxes and/or insurance premiums, and in Mortgagee's discretion, may apply such amounts, without restriction and without any specific order of priority, to the payment of any and all indebtedness or obligations of Mortgagor set forth in any of the Loan Documents, including, but not limited to, principal, interest, taxes, insurance, attorneys' fees actually incurred and/or repairs to the Mortgaged Property.

The Mortgagee will initially waive such insurance payments and Replacement Reserves, but will reserve the right to require such payments if an Event of Default occurs, or if (i) with respect to the insurance deposits, Mortgagor fails to pay the insurance premiums required under the insurance policies required hereunder and furnish proof of such payment to Mortgagee at least ten (10) days prior to the due date of same and (ii) with respect to the Replacement Reserves, Mortgagor fails to maintain the condition of the Mortgaged Property in accordance with the provisions of the Loan Documents.

25. **Impairment of Security.** The Mortgagor acknowledges that the security of the Mortgagee for the indebtedness will be materially impaired, and the rights of the Mortgagee will not be adequately protected, if, any time the remaining principal indebtedness hereunder exceeds the percent of the appraised value of said premises on which the Mortgagee relied in making this Mortgage. This acknowledgment in itself does not give the Mortgagee any right to accelerate the payment of the indebtedness.

26. **Intentionally Omitted.**

27. **Intentionally Omitted.**

28. **No Waiver.** The acceptance by the Mortgagee of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by the Mortgagee of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon the condition that it shall not constitute a waiver of the obligations of the Mortgagor to pay the entire sum then due, and the Mortgagor's failure to pay said entire sum then due shall be and continue to be a default notwithstanding such acceptance or such amount on account, as aforesaid, and the Mortgagee shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by the Mortgagee

thereafter of further sums on account, or otherwise, entitled to exercise all rights hereunder conferred upon the Mortgagee, upon the occurrence of a default.

29. **Severability**. Should any term, provision, covenant or condition hereof be held to be void or invalid the same shall not affect any other term, provision, covenant or condition of this Mortgage, but the remainder hereof shall be effective as though such void or invalid term, provision, covenant or condition had not been contained herein.

30. **Due on Sale/Encumbrance**. The Mortgagor hereby covenants and agrees that the commitment issued to Mortgagor by the Mortgagee for the Loan on the Mortgaged Property was predicated on the continuation of the present ownership and management of the said premises, the same being a material inducement to the Mortgagee in the granting of the Loan and the Mortgagor agrees that the Mortgagee shall have the right and is hereby granted the right to call for the immediate payment of the entire mortgage indebtedness, together with interest thereon and together with all other sums secured hereby, in the event that the Mortgaged Property shall cease, without Mortgagee's prior written consent, to be owned and managed by the present owners, or in the event title to or any interest in the said premises and/or the air rights relating thereto and/or any other development rights relating thereto and/or the Mortgagor is directly or indirectly transferred, conveyed, assigned, mortgaged, encumbered or leased whether by deed, assignment, lease, transfer of stocks, security agreement, transfer of any partnership or limited liability company member interest or by operation of law or other wise, without the Mortgagee's prior written consent. It is also agreed that the Mortgagor, or any successors in interest, will not, without the prior written consent of the Mortgagee execute, deliver and record any subordinate mortgage or other instrument encumbering the said premises including a purchase money wraparound mortgage, assignment of rents or of the Mortgagor's interest in leases. In the event of a default under the provisions of this paragraph, the Mortgagor agrees that the Mortgagee shall have the right and is hereby granted the right to declare the entire mortgage indebtedness due and payable and to avail itself of all provisions set forth in this Mortgage, including Paragraph 23 herein, for the collection of same including, without limitation, the right of foreclosure and the appointment of a receiver.

Notwithstanding the foregoing or any other contrary provision in this Mortgage, upon the consent of the Mortgagee which consent shall not be unreasonably withheld, (i) direct or indirect ownership interests in Mortgagor shall be permitted to be transferred among existing direct or indirect owners of Mortgagor as of the date hereof and (ii) direct or indirect ownership interests in Mortgagor shall be permitted to be transferred to third parties so long as DRA Advisors LLC shall retain management control of Mortgagor.

Notwithstanding the foregoing, without the consent of Mortgagee, but upon the prior written notice to Mortgagee, (i) a direct or indirect twenty (20%) percent or less ownership interest (with additional rights to profits) in Mortgagor may be transferred to Colonial Realty Limited Partnership or any entity directly or indirectly owned by Colonial Realty Limited Partnership, or (ii) the Mortgage Property may be conveyed to a new entity in which Colonial Realty Limited Partnership shall have a direct or indirect twenty (20%) percent or less ownership interest (with additional rights to profits) in such new entity with the remainder of the ownership interest in said new entity being owned by the same direct and indirect owners who own one hundred (100%) percent of the Mortgagor on the date hereof (or other transferee's consented to by Mortgagee in accordance with the terms of this Section 30), provided, however, that (i) such

new entity shall assume all of the obligations of the Borrower under the Note, this Mortgage and the other Loan Documents from the date of the assignment pursuant to agreements in form and substance reasonably acceptable to Mortgagee and (ii) Mortgagor shall pay all reasonable out of pocket costs and expenses of the Mortgagee incurred in such transfers, including, without limitation, reasonable attorneys fees. Upon such assignment, Mortgagor shall be released from all liability under this Note, the Mortgage and all other Loan Documents.

31. **Notices.** All notices to be given hereunder shall be delivered by hand, or sent to the party to be notified, via certified mail, return receipt requested or sent by recognized overnight courier which provides evidence of receipt and shall be deemed given when delivered by hand or one (1) business day after delivery to such recognized overnight courier or three (3) days after being posted with the United States Postal Service addressed to the parties as follows:

If to the Mortgagee:

HSBC Bank USA
452 Fifth Avenue
New York, New York 10018
Attn.: Mortgage Servicing Dept.

If to the Mortgagor:

G&I III Meadows LLC
c/o DRA Advisors LLC
220 East 42nd Street
New York, New York 10017
Attn: Mr. David Gray

32. **Undertaking to Cure Violations.** The Mortgagor covenants and undertakes (i) to cure all currently outstanding notices of violations with any municipal department having jurisdiction over the Mortgaged Property, and file all applications for the removal of such violations and to furnish Mortgagee with evidence of such cure and the filing of such applications within six (6) months from the date hereof and (ii) to continue to make diligent efforts to have such violations removed of record thereafter. Failure to comply with the above shall constitute an Event of Default under this Mortgage as if such Event of Default were specifically contained in paragraph 23 hereof and the Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any loss, liability, damage or expense suffered or incurred by Mortgagee arising out of or by reason of Mortgagor's failure to comply with the above.

33. **Maximum Debt Secured.** Notwithstanding anything contained herein to the contrary, the maximum amount of principal indebtedness secured by this Mortgage at execution or which under any contingency may become secured hereby at any time hereafter is \$15,000,000.00 plus all amounts expended by Mortgagee, after an Event of Default by the Mortgagor hereunder, to enforce, defend and/or maintain the lien of this Mortgage or to protect the property encumbered by this Mortgage, or the value thereof, including, without limitation, all amounts in respect of insurance premiums and all real estates taxes, charges or assessments imposed by law upon said premises, or any other amount, cost or charge to which the Mortgagee may become subrogated upon payment as a result of Mortgagor's failure to pay after the expiration of any applicable notice and/or grace period as required by the terms of this Mortgage plus all accrued but unpaid interest on the obligations secured hereby.

34. **Compliance with Usury Laws.** It is the intention of the parties to conform strictly to the usury laws, whether state or federal, that are applicable to the loan. All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether oral or written, are hereby expressly limited so that in no contingency or event whatsoever, whether by acceleration of maturity hereof or otherwise, shall the amount paid or agreed to be paid to Mortgagee, or collected by Mortgagee, for the use, forbearance or detention of the money to be loaned hereunder or otherwise, or for the payment or performance of any covenant or obligation contained herein or in any of the other Loan Documents exceed the maximum amount permissible under applicable federal or state usury laws. If under any circumstances whatsoever fulfillment of any provision hereof or any of the other Loan Documents, at the time performance of such provision shall be due, shall involve exceeding the limit of validity prescribed by law, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if under any circumstances Mortgagee shall ever receive an amount deemed interest by applicable law, which would exceed the highest lawful rate, such amount that would be excessive interest under applicable usury laws shall be applied to the reduction of the principal amount owing hereunder or to other indebtedness secured by this Mortgage and/or the other loan documents and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal and such other indebtedness, the excess shall be deemed to have been a payment made by mistake and shall be refunded to Mortgagor or to any other person making such payment on Mortgagor's behalf. All sums paid or agreed to be paid to the Mortgagee for the use, forbearance or detention of the indebtedness of Mortgagor evidenced hereby, outstanding from time to time shall, to the extent permitted by applicable law, and to the extent necessary to preclude exceeding the limit of validity prescribed by law, be amortized, pro-rated, allocated and spread from the date of disbursement of the proceeds of the loan until payment in full of the loan so that the actual rate of interest on account of such indebtedness is uniform throughout the term hereof and thereof. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Mortgagor and Mortgagee and any endorser or guarantor.

35. **Hazardous Substance/ADA Compliance.** (a) The Mortgagor represents, covenants and warrants that, except as provided in any environmental report or environmental assessment delivered to Mortgagee in connection with the closing of the Loan: (i) to the best of Mortgagor's knowledge, the Mortgaged Property encumbered hereby, have been at all times during Mortgagor's ownership thereof, and presently are, except as shown in any environmental audit report prepared by Mortgagee's consultant in connection herewith, free of contamination arising out of or resulting from: (x) any petroleum or petroleum derivatives; (y) any substance or material presently identified or deemed to be toxic or hazardous under or pursuant to 42 U.S.C. §§ 9601-9675 or any other applicable federal, state or local law, statute, rule or regulation (any and all federal, state or local laws, statutes, rules, orders or regulations, now or hereafter in effect, dealing with matters involving toxic or hazardous substances, the use, discharge or release of same, the environment or health or safety, are hereinafter collectively, referred to as the "**Law**"), including, without limitation, whether or not defined as such by the Law, any asbestos, polychlorinated biphenyls ("**PCBs**"), radioactive substance, methane, volatile hydrocarbons, industrial solvents, lead or lead based paint; or (z) any other material or substance which has in the past or could presently cause or constitute a health, safety or other environmental hazard to any person or property (all of the foregoing described in (x), (y) or (z) above and any other material which in the future could cause or

constitute a health, safety or other environmental hazard to any person or property shall hereinafter be referred to as "**Hazardous Substances**" and any one of same as a "**Hazardous Substance**"; (ii) the Mortgagor has not caused or, to the best of the Mortgagor's knowledge, suffered to occur, and the Mortgagor will not hereafter cause or suffer to occur, a disposal or release of any Hazardous Substance in violation of the Law at, upon, under or within the Mortgaged Property or any contiguous or adjacent real estate; (iii) neither the Mortgagor nor, to the best of the Mortgagor's knowledge, any other party has been, is or will be involved in operations or activities at or near the Mortgaged Property that could result in, give rise to, or lead to the imposition of liability upon Mortgagor or any other owner of the Mortgaged Property or the creation of a lien on the Mortgaged Property, under the Law; (iv) the Mortgagor has not, to the best of Mortgagor's knowledge, permitted, and will not knowingly permit, any tenant or occupant of the Mortgaged Property to engage in any operation or activity that could result in, give rise to, or lead to the imposition of liability on such tenant or occupant, Mortgagor or any other owner of any of the Mortgaged Property, or the creation of a lien on the Mortgaged Property, under the Law; (v) neither the Mortgagor nor, to the best of the Mortgagor's knowledge, any other party, has received any notice or inquiry pursuant to the Law pertaining to Hazardous Substances either at the Mortgaged Property or, with respect to the disposal of same, off the Mortgaged Property, or any notice from any party of any violation of the Law, and (vi) except as previously disclosed to the Mortgagee, to the best of the Mortgagor's knowledge, no authority, including, without limitation, the Federal Environmental Protection Agency ("**EPA**") has ever cited the Mortgaged Property for violation of the Law. The "**Mortgagor's knowledge**", as such term is used herein, shall include, if the Mortgagor is not actively involved in the day to day operations of the Mortgaged Property, the actual knowledge of the individuals who, in a management or supervisory capacity, are actively involved in such day to day operations.

(b) The Mortgagor further represents that the Mortgagor shall: (1) comply strictly and in all respects with the requirements of the Law and the Americans with Disabilities Act of 1990 ("**ADA**"); (2) notify Mortgagee promptly following receipt of knowledge by the Mortgagor in the event of any disposal, release or threatened release of any Hazardous Substance at, upon, under, from or within the said premises or non-compliance with any provision of the ADA; (3) remediate in compliance with all requirements of Law any disposal, release, threatened release or existence of any Hazardous Substance at, upon, under or within the Mortgaged Property which constitutes a health, safety or other environmental hazard to any person or property; and (4) promptly forward to Mortgagee copies of all orders, notices, permits, applications, and other communications and reports in connection with any such disposal, release or threatened release of any Hazardous Substance or any other matters relating to the Law or non-compliance with any provision of the ADA, as they may affect the Mortgaged Property.

(c) The Mortgagor, promptly upon the written request of the Mortgagee, from time to time, shall, at the Mortgagor's expense, provide the Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to the Mortgagee; such notice from the Mortgagee shall be based upon reasonable cause and shall set forth the Mortgagee's reason for requesting such assessment.

(d) The Mortgagor hereby indemnifies the Mortgagee and agrees to hold the Mortgagee harmless from and against all loss, liability, damage and expense, including attorneys' fees and expenses suffered or incurred by the Mortgagee, including but not limited to any and all costs and expenses incurred by Mortgagee (including but not limited, the cost of any investigation to determine whether a cleanup of the Mortgaged Property is necessary, the costs of cleanup, payment of fines or penalties and payment of damages to third parties) whether as holder of this Mortgage, as mortgagee in possession or as successor in interest to the Mortgagor or as owner of the said premises by virtue of foreclosure or acceptance of a deed in lieu of foreclosure or in any other capacity, (i) under or on account of the Law or related regulations or any similar applicable laws or regulations, including the assertion of any lien against the said premises thereunder (ii) with respect to the existence of, or any disposal, release or threatened release of, any Hazardous Substance affecting the said premises whether or not the same originates or emanates from the Mortgaged Property or any other source, including any loss of value of the Mortgaged Property as a result of such existence, disposal, release or threatened release of any Hazardous Substance, (iii) with respect to any other matter affecting the said premises within the jurisdiction of the Environmental Protection Agency of the United States of America or the agencies having authority for environmental protection or conservation in the State in which the Mortgaged Property is situated; (iv) with respect to any past, present or future non-compliance with the ADA, including any loss of value of the Mortgaged Property and (v) with respect to Mortgagee's reliance on any representation or warranty of the Mortgagor herein. This indemnification shall not cover any loss occasioned solely by acts committed (i) after the Mortgagor or any subsequent owner is no longer the owner of the Mortgaged Property by reason of a sale pursuant to a foreclosure of this Mortgage or a deed in lieu of foreclosure of this Mortgage or (ii) during the period Mortgagee has actual physical possession of the Mortgaged Property, but it will cover a loss occasioned by acts committed or matters arising prior to or during any period in which a court appointed receiver is in possession of the Mortgaged Property. The term "loss" shall include any amounts paid by Mortgagee in connection with any settlement or compromise made by Mortgagee in good faith, upon giving the undersigned ten (10) days prior notice, of any claim, demand, loss, liability, cost, charge, suit, order, judgment or adjudication, in connection with the foregoing, under the belief that it is liable therefor, whether liable or not, without the consent or approval of the Mortgagor unless the Mortgagor within such ten (10) day period shall protest in writing and simultaneously with such protest deposit with Mortgagee collateral satisfactory to Mortgagee sufficient to pay and satisfy in Mortgagee's opinion any damages, penalty and interest which may accrue as a result of such claim, demand, loss, liability, cost, charge, attorney's fee, expense, suit, order, judgment or adjudication and any judgment or judgments as may result. The term "Mortgagee" shall include any successor, assignee or designee of Mortgagee, which becomes the owner of this Mortgage or the owner of the Mortgaged Property through foreclosure or acceptance of a deed in lieu thereof and shall include any directors, officers, employees, partners or agents of Mortgagee and any of the foregoing. All representations, covenants and indemnifications herein shall survive the repayment of the indebtedness hereby secured and the satisfaction of this Mortgage.

(e) In the event of any existence, disposal, release or threatened release of any Hazardous Substance affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any other source, and/or if the Mortgagor shall fail to comply with any of the requirements of the Law or related regulations or any other environmental law or regulation, the Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Mortgaged Property and/or take any and all other actions as the Mortgagee shall deem necessary or advisable in order to remedy said existence, disposal, release or threatened release of any Hazardous Substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the default interest rate provided in paragraph 19 hereof from the date of payment by the Mortgagee, shall be immediately due and payable by the Mortgagor to the Mortgagee and until paid shall be secured by this Mortgage and shall have the benefit of the lien hereby created as a part thereof.

(f) Nothing herein contained shall be construed to limit the effectiveness of the representations, covenants warranties and indemnification provisions contained in (a) through (e) above to the period during which any amounts due and payable under the Loan Documents remain outstanding and they shall survive the repayment of such amounts or the extinguishment of the Mortgage and shall continue in full force and effect so long as any matters shall exist against which Mortgagor has indemnified Mortgagee pursuant thereto and such representations, covenants, warranties and indemnity shall be in addition to, and not in lieu of, any rights granted to Mortgagee in this Mortgage or any of the other Loan Documents.

36. **Application of Insurance and Condemnation Proceeds.** (a) Except as set forth in subparagraph (c) hereof, insurance or condemnation proceeds shall, at the option of the Mortgagee, be applied (i) to the indebtedness or (ii) to restoration with any remainder to the indebtedness secured by this Mortgage.

(b) Mortgagor covenants and agrees that in case of damage to or destruction of any of the Mortgaged Property by fire or otherwise, or in the case of the taking by a condemning authority (other than by a temporary taking) it will promptly, at its sole cost and expense, restore, repair, replace or rebuild the same as nearly as possible to the condition they were in immediately prior to such damage or destruction. Such restoration, repairs, replacements, rebuilding or alterations (hereinafter referred to as the “Work”) shall be commenced promptly and prosecuted with reasonable diligence.

(c) Provided (i) no Event of Default exists, (ii) the cost of the Work is less than \$100,000.00, (iii) the rents receivable from the tenants whose leases are not terminable by reason of the damage or destruction plus the available proceeds from any rent loss insurance and any other security deposited with Mortgagee by Mortgagor are sufficient to pay the operating expenses of the Mortgaged Property until the Work is completed, including, but not by way of limitation, real estate taxes, insurance premiums and the debt service on all mortgage liens, (iv) the structure erected on said premises can be reconstructed to the same square footage and number of units that existed prior to the fire or casualty, (v) in the opinion of the Mortgagee the Work can be repaired prior to the maturity date of this Mortgage, and (vi) in connection with a taking provided (y) not

more than 10% of the building, or the parking area serving the building, on the said premises is taken or rendered unusable, and (z) the value of the remaining collateral after paydown of any portion of the loan and after restoration shall result, in the Mortgagee's opinion, in a loan to value ratio no higher than the loan to value ratio existing on the date hereof, the insurance proceeds and the condemnation awards recovered by the Mortgagor or Mortgagee, on account of such damage or destruction or condemnation, less the expenses incurred, if any, in connection with such recovery, shall be applied to the payment of the cost of the Work. The term "**cost of the Work**", when used herein shall be deemed to include the hard costs of construction to complete the Work and the soft costs incurred in connection therewith, which shall be deemed for the purposes of this paragraph to include, but not by way of limitation, the fees and expenses of all attorneys, experts, architects and engineers of the Mortgagor and the Mortgagee. The net proceeds will be disbursed by the Mortgagee to Mortgagor as hereinafter provided from time to time as the Work progresses, upon receipt by the Mortgagee of the following, except where the insurance money or condemnation award is equal to the lesser of \$100,000 or five percent of the unpaid principal balance secured hereby in which case disbursement shall be made directly to the Mortgagor against a written undertaking to comply with the foregoing provisions of subparagraph (b):

(i) A certificate of an independent architect or engineer selected by the Mortgagor, who shall be reasonably satisfactory to Mortgagee, dated not more than 30 days prior to the application for such disbursement, setting forth the following:

1. That the sum then requested to be disbursed either has been paid by the Mortgagor and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (whose names and addresses shall be stated), who have rendered or furnished certain services or materials for the Work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of said persons in respect thereof, and stating the progress of the Work up to the date of said certificate;

2. That the sum then requested to be disbursed, plus all sums previously disbursed, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate, and that the remainder of the insurance or condemnation moneys will be sufficient to pay in full for the completion of the Work;

3. That no part of the expenses for the services and materials described in the foregoing Clause 1 of this Subsection has previously been made the basis of the disbursement of any part of insurance or condemnation moneys or any pending application for the same; and

4. That, except for the amounts, if any, stated in said certificate pursuant to the foregoing Clause 1 of this Subsection (i) to be due for services or materials, there is no outstanding indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the Work which, if unpaid, might become the basis of a vendor's, mechanic's, laborer's or materialman's statutory or other similar lien upon the Mortgaged Property or any part thereof.

(ii) A certificate signed by the Mortgagor stating in substance that:

1. All materials and all property described in the certificate furnished pursuant to Clause 1 of the foregoing Subsection (i) and every part thereof, are free and clear of all mortgages, liens, charges or encumbrances, except encumbrances, if any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate pursuant to Clause 1 of the foregoing Subsection (i), which encumbrances will be discharged upon payment of such indebtedness; and

2. No Event of Default exists.

(iii) An official search, or a certificate of a title company satisfactory to Mortgagee, showing that no matter appears of record which has not been approved by the Mortgagee and, in particular that there has not been filed with respect to Mortgagor's interest in the Mortgaged Property any vendor's, mechanic's, laborer's or materialman's statutory or other similar lien which has not been discharged of record, except such as will be discharged upon payment of the amount then requested to be disbursed.

Upon compliance with the foregoing provisions and upon confirmation by the Mortgagee's consulting engineer as to the accuracy of all of the foregoing, Mortgagee shall, out of such condemnation or insurance money on request of Mortgagor, pay to the Mortgagor for payment to the persons named in the certificate, pursuant to the foregoing Clause 1 of Subsection (i), the respective amounts stated in said certificate to be due to them, and/or shall pay or cause to be paid to Mortgagor the amount stated in said certificate to have been paid by Mortgagor, provided, however, if in the opinion of the Mortgagee it is desirable to do so, the Mortgagee shall have the right to disburse directly to the parties having performed the work or services in question. The Mortgagor shall, within five (5) days after notice from Mortgagee, pay to Mortgagee the fees and expenses of Mortgagee's consulting engineer.

If the insurance or condemnation money in the hands of Mortgagee shall be insufficient to pay the entire cost of the Work, Mortgagor agrees to pay the deficiency before any disbursement to the Mortgagor or the other parties is made hereunder. Notwithstanding anything to the contrary contained herein, the proceeds of any rent insurance policies shall not be deemed available, or included in, the calculation of the funds required to complete the Work.

At any time after the completion in full of the Work and release of the proceeds for payment of same in accordance with the foregoing, the whole balance of the insurance or condemnation money not theretofore withdrawn pursuant to the foregoing provisions shall, at the option of the Mortgagee, be retained by the Mortgagee and applied to the reduction of the mortgage indebtedness in any order the Mortgagee desires, or be paid to the Mortgagor upon (a) receipt by the Mortgagee of (y) a certificate, signed by the Mortgagor, stating in substance as follows: (i) that the Work has been completed in full, (ii) that all amounts which Mortgagor is or may be entitled to withdraw under the foregoing provisions on account of services rendered or materials furnished in connection with the Work have been withdrawn under said provisions, (iii) that all amounts for whose payment the Mortgagor is or may become liable in respect of the Work have been paid in full, and (iv) that there is no default under the terms of this Mortgage and (z) confirmation of the accuracy of the foregoing by Mortgagee's consulting engineer and (b) confirmation by Mortgagee of same.

Notwithstanding anything to the contrary herein contained, if the Mortgagor fails to or does not undertake the restoration of the Mortgaged Property, or if an Event of Default exists, then the Mortgagee shall have the right to apply the insurance loss proceeds or condemnation award to the entire indebtedness secured by this Mortgage in any order the Mortgagee desires, and remit the balance, if any, to the Mortgagor.

37. **Recording of Mortgage, etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, will cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the said premises and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in the Mortgaged Property. Mortgagor will pay all filing, registration or recording taxes or fees, and all expenses incident to the preparation, execution and acknowledgment of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property and any instrument of further assurance, and all federal, state, county and municipal, taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of this Mortgage, any mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee, its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

38. **No Oral Waiver; Successors and Assigns.** This Mortgage may not be waived, changed or discharged orally, but only by an agreement in writing and signed by the party against whom enforcement of any waiver, change or discharge is sought. If there be more than one Mortgagor the covenants and warranties of this Mortgage shall be joint and several. The covenants of this Mortgage shall run with the land and bind the Mortgagor, the heirs, distributees, legal representatives, successors, and assigns of the Mortgagor and all subsequent owners, encumbrancers, tenants and subtenants of said premises, and shall inure to the benefit of the Mortgagee, the successors and assigns of the Mortgagee and all subsequent holders of this Mortgage. As used herein the singular shall include the plural as the context requires.

39. **Captions and Subheadings.** The captions and subheadings used herein are solely for the convenience of the parties and shall not be deemed to limit or affect the terms contained herein.

40. **Satisfaction.** Upon the payment in full of all amounts due under, evidenced or secured by this Mortgage, the Mortgagee shall deliver a satisfaction instrument, or at the request of the Mortgagor, an assignment of this Mortgage. In the event that the Mortgagee shall deliver an assignment of this Mortgage, Mortgagor shall pay all of Mortgagee's costs and expenses incurred in connection with the preparation and delivery of said assignment, including, without limitation, reasonable attorney's fees.

41. **Satisfaction of Other Loans.** Upon the maturity of this Mortgage or if the Mortgagor elects to prepay the Loan, the Mortgagor shall also be required to prepay all outstanding loans owed by Mortgagor to Mortgagee.

42. **Counterparts.** This Mortgage may be executed in two or more counterparts which together shall constitute one integrated document. Upon executing any one counterpart hereof, a Mortgagor shall be fully bound and liable hereunder irrespective of whether any or all of the other Mortgagors shall have signed such or any other counterpart hereof.

43. **Applicable Law; Consent to Jurisdiction.** This Mortgage was negotiated in the State of New York, the Loan was made and accepted by Mortgagor in the State of New York, and the proceeds of the Loan were disbursed from the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction. Pursuant to Section 5-1401 of the New York General Obligations Law, this Mortgage, and the interpretation and enforcement hereof, and all rights and duties of the parties hereunder, and all matters and issues arising out of or relating to this Mortgage, except with regard to paragraph 49 hereof, shall be governed exclusively by the law of the State of New York without regard to the conflict of laws provisions thereof except that at all times the provisions for the creation, perfection, and enforcement of the liens and security interests created pursuant hereto and pursuant to the other Loan Documents shall be governed by and construed according to the law of the State in which the Mortgaged Property is located. Whether or not a Mortgagor is an entity not organized under the laws of the State of New York, or is an individual who is a non-resident of the State of New York, and except as otherwise provided below, any claim, action or proceeding arising out of or relating to this Mortgage shall be commenced and maintained exclusively in the courts of the State of New York pursuant to Section 5-1402 of the New York General Obligations Law, or the courts of the State of Alabama or in any federal court in the State of New York or the State of Alabama, and in no other court or forum. Each Mortgagor hereunder hereby (i) irrevocably submits to the exclusive personal jurisdiction of the courts of the State of New York and the State of Alabama and any federal court in the State of New York and the State of Alabama, and any appellate courts to which appeals may be taken therefrom, in or for the purposes of any claim, action or proceeding to be brought against the Mortgagors (or any of them), for the enforcement of any of their duties or obligations and/or the Mortgagee's rights under this Mortgage or under the other Loan Documents, and (ii) waives any and all rights under the laws of the State of New York, the State of Alabama and any other jurisdiction to object to the exclusive jurisdiction of, or the commencement of any such claim, action or proceeding in, the courts of the State of New York or the State of Alabama or the federal courts in the State of New York or the State of Alabama as hereinabove set forth.

Notwithstanding any of the foregoing provisions of this paragraph, the Mortgagee shall have the right against any Mortgagor in any other jurisdiction to (i) seek interim, interlocutory and/or provisional relief, (ii) take measures to secure and/or preserve assets, and/or (iii) seek enforcement of any judgment relating to this Mortgage. Each Mortgagor hereby waives and agrees not to assert, as a defense in or to any claim, action, or proceeding in the state or federal courts of or in New York and Alabama as aforesaid, (i) that such Mortgagor is not subject to the exclusive jurisdiction hereinabove submitted to or that such claim, action, or proceeding may not be brought or is not maintainable in the courts hereinabove identified, or that this Mortgage may not be enforced in or by such courts or that such Mortgagor is exempt or immune from execution, (ii) that such claim, action, or proceeding is brought in an inconvenient forum, or (iii) that the venue of such claim, action, or proceeding is improper.

44. **Security Agreement.** This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the Uniform Commercial Code. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the indebtedness, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the Uniform Commercial Code (said portion of said premises so subject to the Uniform Commercial Code being called in this paragraph the “**Collateral**”). Mortgagor hereby authorizes Mortgagee to file such financing statements as Mortgagee may from time to time reasonably considers necessary to create, perfect, and preserve Mortgagee’s security interest herein granted. This Mortgage shall also constitute a “fixture filing” for the purposes of the Uniform Commercial Code. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the Uniform Commercial Code, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee or Trustee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee or Trustee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including attorneys’ fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten (10) days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the indebtedness in such priority and proportions as Mortgagee in its sole discretion shall deem proper. In the event of any change in name, identity or structure of any Mortgagor, such Mortgagor shall notify Mortgagee thereof, in which case Mortgagee may file and/or record such Uniform Commercial Code forms as are necessary to maintain the perfection and priority of Mortgagee’s lien upon and security interest in the Collateral, and Mortgagor shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional Uniform Commercial Code forms or continuation statements, Mortgagee may file and/or record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, all without any further consent or authorization of Mortgagor, and Mortgagor shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor’s obligations under the note, this Mortgage and any of the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, and hereby authorizes Mortgagee, to file with the appropriate public office on its behalf any financing or other statements in connection with the Collateral covered by this Mortgage.

45. **Exculpation.** The Mortgagee agrees that (1) in any action brought to foreclose this Mortgage, the Mortgagor shall not be liable for any deficiency between the total amount secured by this Mortgage on the date of sale pursuant to judgment entered in such action and the proceeds of such sale, and no deficiency or personal judgment will be sought against the Mortgagor in such action, and (2) no action shall be brought against the Mortgagor, or any principal disclosed or undisclosed of Mortgagor, on this Mortgage or on any covenant contained herein or the obligation which it secures unless required to foreclose the lien of this Mortgage, provided, however, that nothing contained in this paragraph (a) shall impair the validity of the indebtedness hereby evidenced, (b) shall in any way affect or impair the lien of this Mortgage or the right of the holder of the obligation and this Mortgage to foreclose this Mortgage, or to foreclose or otherwise enforce any security agreement covering any personal property located on, at, or in the Mortgaged Property, following a default by the Mortgagor in the making of the payments herein required to be made, or in the performance of any of the terms, covenants and conditions of this Mortgage following the expiration of any relevant periods of grace herein, or (c) shall be construed or be deemed to relieve or release the guarantor(s), if any, or any indemnitor(s), if any, or any partners of such guarantor(s) or indemnitor(s) from personal liability contained in any guaranty or indemnity or in any provision in any Loan Document providing for any guaranty or indemnity and the holder of this Mortgage expressly reserves all rights and claims against any such guarantor(s) or indemnitor(s) or any partners of such guarantor(s) or indemnitor(s) as set forth in any such guaranty or indemnity or provision. In addition, Mortgagor shall not be exculpated as hereinabove set forth for any liability, loss, or damage and an action may be brought for same, arising out of (i) fraud or misappropriation of insurance proceeds, condemnation awards, security deposits or trust funds in violation of applicable law or the provisions of this Mortgage, (ii) entering into or modifying leases in violation of the provisions hereof or of any assignment of leases and rents or any other Loan Document executed in connection with this Mortgage, (iii) any representation, warranty or covenant contained in this Mortgage with respect to the environmental condition of the said premises, (iv) Mortgagor's failure to use, during the period of any Event of Default hereunder, current income, rents, issues and profits arising from said premises toward current costs of maintenance and operation of said premises and toward the fulfillment of the other obligations of the Mortgagor under this Mortgage and any other Loan Documents executed in connection therewith, (v) any loss, liability, damage, costs and expenses, including but not limited to reasonable attorneys' fees and the costs and expenses associated with clean-up, incurred by Mortgagee in connection with any order, consent, decree, settlement, judgment or verdict arising from the existence, deposit, storage, disposal, dumping, injecting, spilling, leaking or other placement or release upon or in the Mortgagee's collateral of a hazardous or toxic waste, waste product or substance as defined in 42 U.S.C. §9601 or as defined in any other statute, rule or regulation of any governmental authority or herein. Nothing herein shall be deemed to be a waiver of any right which the Mortgagee may have under any bankruptcy law of the United States or any State thereof, to file a claim for the full amount of the indebtedness owing to the Mortgagee by the Mortgagor or to require that all of the collateral securing the indebtedness now secured by this Mortgage shall continue to secure all such indebtedness.

46. **Publicity.** Mortgagor hereby authorizes Mortgagee, without charge and without notice, to include a description of the Loan and photographs of the Mortgaged Property in its advertising material and in any brochures it distributes to the public.

47. **Security Deposits.** The Mortgagor covenants and agrees that it shall deposit all security monies held by the Mortgagor pursuant to leases of the Mortgaged Property into a day-of-deposit/day-of-withdrawal account bearing the prevailing rate of interest for such accounts at a banking office of the Mortgagee. Failure to maintain these accounts shall be deemed a default under the terms of this Mortgage.

48. **Intentionally Omitted.**

49. **State Specific Provisions.** In the event of any inconsistencies between the terms and conditions of this Paragraph 49 and the other provisions of this Mortgage, the terms and conditions of this Paragraph 49 shall control.

(a) **Acceleration; Remedies.** At any time during the existence of an Event of Default, Mortgagee, at Mortgagee's option, may declare the indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any one or more other remedies permitted by applicable law or provided in this Mortgage or in any other Loan Document. Mortgagor acknowledges that the power of sale granted in this Mortgage may be exercised by Mortgagee without prior judicial hearing. Mortgagee shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Mortgagee invokes the power of sale, Mortgagee shall mail a copy of a notice of sale to Mortgagor in the manner provided in Section 31. Mortgagee shall publish the notice of sale once a week for three consecutive weeks in a newspaper published in Shelby County, Alabama, and thereupon shall sell the Mortgaged Property to the highest bidder at public auction at the front door of the County Courthouse of that County. Mortgagee may sell the Mortgaged Property in one or more parcels and in such order as Mortgagee may determine. Mortgagee may postpone sale of all or any parcel of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale and by re-publication of notice announcing the new sale date. Mortgagee or Mortgagee's designee may purchase the Mortgaged Property at any sale.

Mortgagee shall deliver to the purchaser Mortgagee's deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Mortgagee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Mortgagor covenants and agrees that the proceeds of any sale shall be applied in the following order or as otherwise prescribed by law: (a) to all costs and expenses of the sale, including reasonable attorneys' fees and costs of title evidence; (b) to the indebtedness in such order as Mortgagee, in Mortgagee's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it.

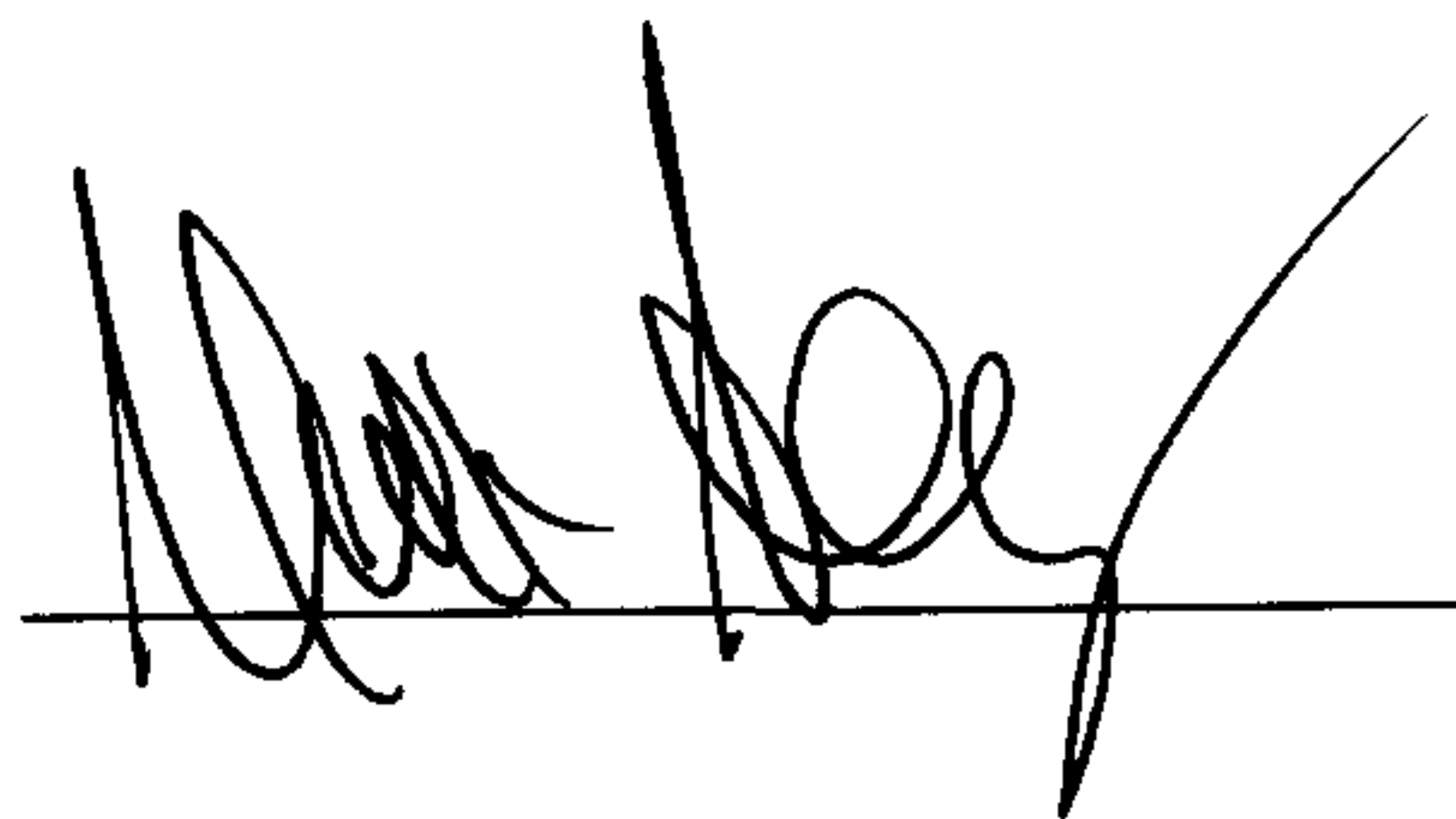
(b) **Defeasance.** Upon payment of the indebtedness, this Mortgage shall become null and void, and Mortgagee shall release this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Mortgage. No right to prepay shall be created by this paragraph, however.

(c) **Waiver of Exemptions.** Mortgagor waives all rights of exemptions as to personal property. If Mortgagor is an individual, Mortgagor represents and warrants to Mortgagee that the Mortgaged Property is not the homestead of Mortgagor or Mortgagor's spouse.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF this Mortgage has been duly executed by the parties hereto as of the date first written above.

WITNESS/ATTEST:



BORROWER:

G&I III MEADOWS LLC, a
Delaware limited liability company

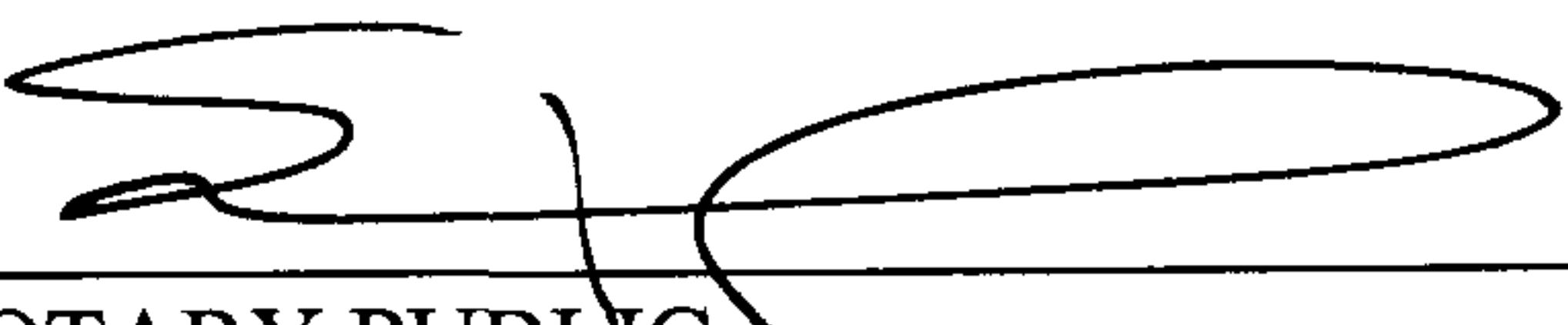
By: **G&I III INVESTMENT MEADOWS
LLC**, a Delaware limited liability
company, its managing member

By: 
Name: Brian T. Summers
Title: Vice President

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

I, Sherla Lopez, a Notary Public, in and for said County, in said State, hereby certify that **BRIAN T. SUMMERS**, as Vice President of **G&I III INVESTMENT MEADOWS LLC**, a Delaware limited liability company, whose name as the Managing Member of **G&I III MEADOWS LLC**, a Delaware limited liability company, is signed to the foregoing conveyance and who is known to me, acknowledged before me in this day that, being informed of the contents of the conveyance, he, as such Vice President and with full authority, executed the same voluntarily for and as the act of said limited liability company, acting in its capacity as Managing Member as aforesaid.

Given under my hand and official seal this the 20th day of March, 2003.



NOTARY PUBLIC
My Commission Expires: 8/30/05
[SEAL]

SHEILA LOPEZ
Notary Public, State of New York
No. 01LO6029906
Qualified in Bronx County
Commission Expires August 30, 2005

SCHEDULE A

PARCEL I (Meadows in the Park):

Part of the North $\frac{1}{2}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

From the Northwest corner of Lot 12, Jessica Ingram Property, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 3, page 54, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet to an existing old iron rebar being the point of beginning; thence turn an angle to the left of $89^{\circ}23'50''$ and run in an Easterly direction for a distance of 1236.08 feet to an existing old iron rebar and being on the West right of way line of Shelby County Road No. 495; thence turn an angle to the right of $85^{\circ}56'17''$ and run in a Southerly direction along the West right of way line of said Shelby County Road No. 495 for a distance of 626.46 feet to an existing old iron rebar; thence turn an angle to the right of $94^{\circ}15'23''$ and run in a Westerly direction for a distance of 1373.90 feet, more or less, to an existing old iron pin being on the East right of way line of Brook Highland Drive; and also being on a curve, said curve being concave in a Westerly direction and having a central angle of $17^{\circ}50'56''$ and a radius of 621.12 feet; thence turn an angle to the right ($99^{\circ}36'27''$ to the chord of said curve) and run in a Northerly direction along the East right of way line of said Brook Highland Drive and along the arc of said curve for a distance of 193.49 feet to the point of ending of said curve; thence continue in a Northerly direction along the East right of way line of said Brook Highland Drive and along a line tangent to the end of said curve for a distance of 324.02 feet to the point of beginning of a new curve, said newest curve being concave in a Westerly direction and having a central angle of $3^{\circ}9'36''$ and a radius of 1169.80 feet; thence turn an angle to the left and run along the arc of said curve and along the East right of way line of said Brook Highland Drive for a distance of 64.52 feet to an existing iron pin; thence turn an angle to the right ($54^{\circ}07'17''$ from the chord of the last mentioned curve) and run in a Northeasterly direction for a distance of 70.27 feet, more or less, to an existing iron pin being the point of beginning; being situated in Shelby County, Alabama.

TOGETHER WITH the rights of ingress, egress and other rights set forth in that certain Non-Exclusive Access Easement Agreement recorded in Real Record 155, page 540, in the Probate Office of Shelby County, Alabama, over and across the following land:

A parcel of land located in the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said parcel being 16 feet in width and lying adjacent to the East right of way line of Brook Highland Drive as shown on the map of the "The Meadows Residential Sector One", as recorded in Map Book 9, page 142, in the Probate Office of Shelby County, Alabama, and being more particularly described as follows:

From the Northwest corner of Lot 12, Jessica Ingram property, as recorded in Map Book 3, page 54, in the Office of the Judge of Probate of Shelby County, Alabama, run in a Southerly direction along the West lot line of said Lot 12 for a distance of 30.26 feet; thence turn an angle to the right of $54^{\circ}03'52''$ and run in a Southwesterly direction for a distance of 70.27 feet to the point of beginning of the property herein described; from the point of beginning thus obtained continue along the last described course for a distance of 19.42 feet to a point on the East right of way line of Brook Highland Drive as shown on the map of "The Meadow Residential Sector One", as recorded in Map Book 9, page 142, in the Probate Office of Shelby County, Alabama, said point being on a curve to the right, said curve being concave to the West and having a radius of 1,153.80 feet, a central angle of $2^{\circ}37'02''$ and a chord of 52.70 feet, which forms an interior angle to the right of $126^{\circ}06'26''$ with the last described course; run thence in a Southerly direction along the arc of said curve for a distance of 52.70 feet to the end of said curve; run thence in a Southerly direction tangent to said curve for a distance of 324.02 feet to the beginning of a curve to the right, said curve being concave to the Northwest and having a radius of 605.12 feet, a central angle of $18^{\circ}21'26''$ and a chord of 193.05 feet; run thence in a

SCHEDULE A - Continued

Southwesterly direction along the arc of said curve for a distance of 193.88 feet to a point; thence turn an interior angle to the right of $80^{\circ}08'18''$ from the chord of the last described curve and departing said right of way line run in an Easterly direction for a distance of 16.90 feet to a point on a curve to the left, said curve being concave to the Northwest and having a radius of 621.12 feet, a central angle of $17^{\circ}50'56''$ and a chord of 192.71 feet which forms an interior angle to the right of $99^{\circ}36'27''$ with the last described course; run thence in a Northeasterly direction along the arc of said curve for a distance of 193.49 feet to the end of said curve; run thence in a Northerly direction, tangent to said curve, for a distance of 324.02 feet to the beginning of a curve to the left, said curve being concave to the West and having a radius of 1,169.80 feet, a central angle of $3^{\circ}09'36''$ and a chord of 64.51 feet; run thence in a Northerly direction along the arc of said curve for a distance of 64.52 feet to the point of beginning.

All being situated in Shelby County, Alabama.

PARCEL II (Meadows on the Lake):

TRACT I:

Description of a parcel of land situated in the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows:

From the Southwest corner of said $\frac{1}{4}$ $\frac{1}{4}$ section, run thence in a Northerly direction along the West line of said $\frac{1}{4}$ $\frac{1}{4}$ section for a distance of 882.30 feet; thence turn an angle to the right of $91^{\circ}17'06''$ and run in an Easterly direction for a distance of 198.02 feet to the point of beginning of the parcel herein described; thence continue in an Easterly direction along the same course as before for a distance of 1001.66 feet; thence turn an angle to the right of 90° and run in a Southerly direction for a distance of 307.97 feet to the beginning of a curve to the right, said curve to the right having a radius of 548.12 feet, and a central angle of $62^{\circ}38'49''$ and being concave to the Northwest; thence run along the arc of said curve in a Southerly to Southwesterly direction for a distance of 596.03 feet to the end of said curve; thence run in a Southwesterly direction tangent to said curve for a distance of 166.48 feet thence turn an angle to the right of $26^{\circ}18'34''$ and run in a Westerly direction for a distance of 347.77 feet; thence turn an angle to the right of $63^{\circ}41'26''$ and in a Northwesterly direction for a distance of 136.63 feet to the beginning of a curve to the right, said curve to the right having a radius of 1682.21 feet and a central angle of $17^{\circ}35'45''$ and being concave to the Northeast; thence run in a Northwesterly direction along the arc of said curve for a distance of 516.62 feet to end of said curve and the beginning of a second curve to the right, said second curve to the right having a radius of 537.13 feet and a central angle of 20° and being concave to the East; thence run in a Northwesterly and Northerly direction along the arc of said curve for a distance of 187.49 feet to the end of said curve; thence run in a Northerly direction tangent to said curve for a distance of 80.52 feet to the point of beginning; being situated in Shelby County, Alabama.

SCHEDULE A - Continued

TRACT II:

(A) Description of a parcel of land situated in the West $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; and being more particularly described as follows:

From the Northwest corner of the Northeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said section run thence in an Easterly direction along the North line of said $\frac{1}{4}$ $\frac{1}{4}$ section for a distance of 389.72 feet to the point of beginning of the parcel herein described; thence continue in an Easterly direction along the North line of said $\frac{1}{4}$ $\frac{1}{4}$ section for a distance of 347.77 feet; thence turn an angle to the right of $153^{\circ}41'26''$ and run in a Southwesterly direction for a distance of 286.75 feet to the beginning of a curve to the right, said curve to the right having a radius of 25 feet, a central angle of 90° and being concave Northward; thence run in a Westerly to Northwesterly direction along the arc of said curve for a distance of 39.27 feet to the end of said curve; thence run in a Northwesterly direction tangent to said curve for a distance of 129.14 feet to the point of beginning; being situated in Shelby County, Alabama.

THE ABOVE DESCRIBED PROPERTY is also known as Lot 1, THE MEADOWS RESIDENTIAL SECTOR ONE, as recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Map Book 9, page 142.

(B) Together with all beneficial rights granted to Daniel Meadows Partnership pursuant to that certain storm sewer easement recorded in Real Record 43, page 608, over and across the following property, described as follows:

The following is a description of a 20-foot wide storm sewer easement being 10 feet on either side of centerline, said centerline being more particularly described as follows:

Part of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

From the Northwest corner of said Southeast $\frac{1}{4}$ of Northwest $\frac{1}{4}$ run in a Southerly direction along the West line of said $\frac{1}{4}$ $\frac{1}{4}$ section for a distance of 453.75 feet; thence turn an angle to the left of $88^{\circ}42'54''$ and run in an Easterly direction for a distance of 436 feet, more or less, to the point of beginning of said centerline; thence turn an angle to the left of $142^{\circ}30'$ and run in a Northwesterly direction for a distance of 62 feet, more or less, to the point of beginning.

All being situated in Shelby County, Alabama.