

This instrument prepared by and RETURNED TO:
DON DOUGLAS RAMSAY
Powell, Carney, Gross, Maller & Ramsay, P.A.
Post Office Box 1689
St. Petersburg, FL 33731-1689

(Space above reserved for Clerk's Office)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, executed the 30th day of June, 2003, by **LEE BRANCH LLC**, an Alabama limited liability company, whose address is Suite 204 North, 100 Second Avenue South, St. Petersburg, Florida 33701 (hereinafter called the "Mortgagor"), and **AMSOUTH BANK**, an Alabama state chartered bank, whose address is Suite 610, 13535 Feather Sound Drive, Clearwater, Florida 33762 (hereinafter called the "Mortgagee") (which term as used in every instance shall include the Mortgagee's successors and assigns).

W I T N E S S E T H:

That for valuable considerations, and also in consideration of the aggregate sum of money described in that certain Construction Note dated of even date herewith in the principal amount of Three Million Five Hundred Twenty-Five Thousand and No/100 Dollars (\$3,525,000.00) (the "Note"), the Mortgagor does grant, bargain, sell, alien, remise, release, convey and confirm unto the Mortgagee, in fee simple, together with the power of sale, a lien upon and security interest in all of Mortgagor's present and future estate, rights, title, claim, interest and demand, either in law or in equity, in and to that certain real estate, of which the Mortgagor is now seized and possessed and in actual possession, situate in the County of Shelby, State of Alabama, which is described in Exhibit "A" attached hereto and made a part hereof. Hereinafter said real estate, buildings, improvements (including improvements to be made hereafter), and fixtures hereinbelow described and located on said real estate are sometimes collectively referred to as the "Premises".

TOGETHER with all of Mortgagor's gas and electrical fixtures, heaters, space heaters, engines and machinery, boilers, ranges, elevators and motors,

bathtubs, sinks, water closets, basins, pipes, faucets and other air conditioning, plumbing and heating fixtures, drapes, mirrors, mantles, refrigerating plants, dishwashers and appurtenances, and all building material and equipment now or hereafter delivered to the Premises and intended to be installed therein; such other goods, furnishings, equipment now or hereafter delivered to the Premises and intended to be installed therein; such other furniture, fixtures, goods, equipment, chattels and personal property as are usually furnished by landlords in the letting of all or any portion of the Premises of the character currently owned by Mortgagor (or as hereafter improved) and all renewals or replacements thereof or articles in substitution thereof and all of the estate, right, title and interest of the Mortgagor in and to all property of any nature whatsoever, now or hereafter situated on the Premises or intended to be used in connection with the operation thereof, all of which shall be deemed to be fixtures and an accession to the freehold and a part of the realty as between the parties hereto and all persons claiming by, through or under them and shall be deemed to be a portion of the security for the indebtedness herein mentioned and secured by this Mortgage.

TOGETHER with all and singular the rights, interests and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the Premises hereinabove mentioned or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Mortgagor, including but not limited to, all of Mortgagor's sewer capacity rights, all other capacity rights, and Mortgagor's rights under contracts, all building permits, D.O.T. driveway permits, and other permits, agreements, approvals, utility commitments, licenses and all other documents, payments, fees, impact fees, prepaid tap fees, commitment fees, deposits and sums paid affecting the Premises, and all rents, accounts and accounts receivable, profits, issues, revenues of the Premises from time to time accruing, whether under leases or tenancies or other agreements now existing or hereafter created, including the Collateral Assignment of Leases, Rents and Contract Rights of even date herewith between Mortgagor and Mortgagee (hereinafter the "Assignment"), reserving only the right to the Mortgagor to collect the same so long as the Mortgagor is not in default hereunder (subject to the qualification set forth in that certain Assignment) and so long as the same are not subjected to garnishment levy, attachment or lien. In addition, the Mortgagor hereby assigns, transfers and conveys to Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in, to and under all leases now or hereafter leasing or affecting the Premises or any part hereof.

TOGETHER with all electric chattel paper, investment property, deposit accounts, and Letter of Credit rights relating to the Premises now owned or hereafter acquired by Mortgagor.

TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behalf of the Mortgagee, its successors and assigns in fee simple forever, and the Mortgagor covenants that the Mortgagor is lawfully seized and possessed of the Premises in fee simple and has good right to convey the same, that the same are unencumbered excepting taxes accruing subsequent to December 31, 2002, and those certain exceptions appearing on the Mortgagee's Title Insurance Policy given in connection herewith and specifically approved by Mortgagee, and that the Mortgagor will warrant and defend the title thereto against the claims of all persons whomsoever, except as hereinafter expressly provided.

PROVIDED ALWAYS that if the Mortgagor shall pay unto the Mortgagee all sums required under the terms of the Note, which Note is in the principal amount of Three Million Five Hundred Twenty-Five Thousand and No/100 Dollars (\$3,525,000.00) and shall comply with and abide by each and every one of the stipulations, agreements, conditions and covenants of the Loan Documents (as such term is hereinafter defined), then in such event this Mortgage and Security Agreement and the estate hereby created shall cease and be null and void.

The Mortgagor covenants with the Mortgagee as follows:

ARTICLE I

1.1 **Payment of Indebtedness.** The Mortgagor will pay the Note according to the tenor thereof and all other sums secured hereby promptly as the same shall become due.

1.2 **Monthly Escrows.** To further secure the payment of the taxes and assessments hereinafter referred to, Mortgagor shall deposit with Mortgagee on the first day of each and every month a sum which, in the estimation of the Mortgagee, shall be equal to one-twelfth (1/12) of the annual taxes and assessments for the Premises, provided, however, so long as no event of default exists under this Mortgage, the Note or any other Loan Document, Mortgagor shall not be required to make the monthly escrow deposit. The deposits are to be held by the Mortgagee in a non-interest bearing account and free of any liens or claims on the part of the creditors of Mortgagor and as part of the security of the Mortgage, and are to be used by the Mortgagee to pay current taxes and assessments on the Premises as the same accrue and are payable. Additionally, upon the occurrence of an event of default under any of the loan documents or instruments securing Mortgagor's obligations under the Note or otherwise executed in connection with the loan evidenced thereby (hereinafter the "Loan Documents"), or a material adverse change in the financial condition of Mortgagor or any Guarantor thereof, Mortgagee shall have the right, in its sole discretion, to require that Mortgagor thereafter

deposit with Mortgagee, on the first day of each month, a sum which in the estimation of Mortgagee shall equal one-twelfth (1/12) of the annual insurance premiums for the Premises. Said additional escrow deposit shall be treated in the same manner as the escrow for taxes and assessments, as more fully described in this paragraph 1.2. The deposits shall not be, nor be deemed to be, trust funds but may be co-mingled with the general funds of the Mortgagee. If the deposits are insufficient to pay the taxes and assessments (and insurance premiums, if applicable) in full as the same become payable, then Mortgagor shall deposit with the Mortgagee such additional sum or sums as may be required in order for the Mortgagee to pay such taxes and assessments and insurance premiums in full. Upon any default under any of the Loan Documents, the Mortgagee may, at its option, apply any money in the fund resulting from said deposits to the payment of the indebtedness secured by the Mortgage in such manner as it may elect.

1.3 ***Taxes, Liens and Other Charges.***

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Mortgagee, the Mortgagor will promptly pay any such tax; if the Mortgagor fails to make such prompt payment or if any such state, federal, municipal or other governmental law, order, rule or regulation prohibits the Mortgagor from making such payment or would penalize the Mortgagee from making such payment or would penalize the Mortgagee if the Mortgagor makes such payment, then the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, without notice, immediately become due and payable at the option of the Mortgagee.

(b) The Mortgagor will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Premises and all utility charges, whether public or private; and upon demand will furnish the Mortgagee receipted bills evidencing such payment.

(c) The Mortgagor will not suffer any mechanic's, materialmen's, laborer's, statutory or other lien which might or could be prior to or equal to the security interest and mortgage liens of this Mortgage to be created or to remain outstanding upon any part of the Premises.

1.4 **Insurance.** Mortgagor shall maintain the following insurance on the Premises:

(a) **Builder's Risk.** Builder's Risk insurance shall be maintained during construction of improvements on the Premises. The deductible for said insurance shall not exceed \$1,000.00.

(b) **Flood.** If the Premises are located in an area designated by the Director of Federal Emergency Management Agency as a special flood hazard area, Borrower shall provide evidence of flood insurance which shall be in an amount equal to the maximum insurable value of any vertical improvements if required by Lender.

(c) **Intentionally Deleted.**

(d) **Public Liability.** Public liability insurance insuring against all claims for personal or bodily injury, death or property damage occurring upon, in or about the Premises in an amount of not less than Two Million and No/100 Dollars (\$2,000,000.00) single limit coverage.

(e) **General Requirements.** All such insurance at all times will be in an insurance company or companies in such amounts and with terms acceptable to the Mortgagee, with loss, if any, payable to the Mortgagee as its interest may appear, pursuant to a noncontributory mortgagee clause which shall be satisfactory to the Mortgagee and addressed to: AmSouth Bank, Feather Sound Corporate Center, Building 1, Suite 610, 13535 Feather Sound Drive, Clearwater, Florida 33762, Attention: David J. Kern. All policies shall provide that they will not be canceled without thirty (30) days notice to Mortgagee. Upon the issuance of such policies the Mortgagor will deliver to the Mortgagee receipts for the premiums paid thereon and certificates of insurance and certified copies of such policies. Any policies furnished the Mortgagee shall become its property in the event the Mortgagee becomes the owner of the Premises by foreclosure or otherwise. The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Premises, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Mortgagee. In case of loss under any such policy of insurance, the Mortgagee may apply the net proceeds to the payment of the indebtedness hereby secured, whether due or not until the indebtedness is fully paid and provided further that Mortgagor has no further obligations under the Loan Documents, the remainder shall go to the Mortgagor. Notwithstanding the foregoing, however, in the event that certain lease by and between Mortgagor and Walgreen Co., an Illinois corporation (the "Walgreens Lease"), remains in full force and effect despite a casualty occurrence, Mortgagee agrees to disburse

any net insurance proceeds received by Mortgagee to Mortgagor for repair or restoration of such improvements. In the event Mortgagee in its sole discretion elects to have the funds disbursed for construction purposes, such funds shall be disbursed in accordance with the usual and customary construction disbursement procedures of Mortgagee, which procedures may include, but shall not be limited to, draw requests, retainage requirements, sufficient evidence of necessary equity to complete the project, lien waivers, title insurance endorsements and inspections, which title insurance endorsements and inspections shall be paid for by Mortgagor, which shall be first paid from proceeds of insurance to the extent available and then from Mortgagor. Notwithstanding the foregoing, Mortgagee agrees that, while the casualty insurance required to be carried by Walgreen Co. under the Walgreens Lease (which may include self-insurance) is carried, Mortgagor shall not be required to carry any hazard or casualty insurance in connection with the loan secured by this Mortgage after the completion of the construction of the improvements to be constructed on the Premises by Mortgagor pursuant to the Walgreens Lease.

1.5 ***Care of Premises.***

(a) The Mortgagor will keep the improvements now or hereafter erected on the Premises in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof.

(b) Subject to the Walgreen's Lease (as defined in subparagraph 1.4(e) above) and the demolition of the improvements currently located on the Premises contemplated therein, the Mortgagor will not remove or demolish nor alter the design or structural character of any building (now or hereafter erected), fixture or chattel which are part of the security or other part of the Premises without the prior written consent of the Mortgagee.

(c) If the Premises or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Mortgagee.

(d) The Mortgagee or its representative is hereby authorized to enter upon and inspect the Premises at any time during normal business hours.

(e) The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Premises or any part thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, the Mortgagor will, upon request of the Mortgagee, promptly

restore the Premises to the equivalent of its condition immediately prior to such damage, and if a part of the Premises shall be damaged through condemnation, the Mortgagor will, upon request of Mortgagee, promptly restore, repair or alter the remaining part of the Premises in a manner satisfactory to the Mortgagee.

1.6 ***Further Assurances; Modifications.*** At any time, and from time to time, upon request by the Mortgagee, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee, any and all other further instruments, certificates and other documents as may, in the opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect or to continue and preserve (i) the obligations of the Mortgagor under the Note and the Loan Documents, (ii) the security interest of this Mortgage, and (iii) the mortgage lien hereunder. Upon any failure by the Mortgagor so to do, the Mortgagee may make, execute and record any and all such instruments, certificates and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Mortgagee the agent and the attorney in fact of the Mortgagor so to do.

1.7 ***Leases Affecting the Premises.*** Mortgagor shall not make any lease or other tenancies covering all or any part of the Premises unless Mortgagor obtains Mortgagee's written consent, which may be given or withheld in Mortgagee's sole discretion. The Mortgagor shall perform all covenants to be performed by the landlord under any and all leases and other agreements now or hereafter on the Premises or any part thereof and shall not, without the prior written consent of the Mortgagee, cancel, surrender or modify any lease. Upon request of the Mortgagee, the Mortgagor shall, by written instrument in form and substance satisfactory to the Mortgagee, assign to the Mortgagee the landlord and lessor interest in any lease and in each and every lease hereafter entered into by the Mortgagor leasing all or any part of the Premises. The terms "lease" and "leases" as used in this paragraph 1.7 shall include all tenancies.

1.8 ***Expenses.*** In addition to the expenses described in subparagraph 2.4(d) hereof, the Mortgagor will pay or reimburse the Mortgagee for all reasonable attorneys' fees, costs and expenses, including those in connection with appellate proceedings, incurred by the Mortgagee in any proceedings involving the estate of a decedent or an insolvent, or in any action, legal proceeding or dispute of any kind in which the Mortgagee is a plaintiff or defendant affecting the indebtedness secured hereby, this Mortgage or the interest created herein, or the Premises, including but not limited to the exercise of the power of sale of this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be secured by this Mortgage.

1.9 ***Estoppel Affidavits.*** The Mortgagor, upon ten (10) days' prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any offsets or defenses exist against such principal and interest.

1.10 ***Subrogation.*** The Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.11 ***Performance by Mortgagee of Defaults by Mortgagor.*** If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Premises; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; in the performance of any covenant, term or condition of any leases affecting all or any part of the Premises, including the Walgreens Lease; or in the performance or observance of any covenant, condition or term of this Mortgage; then the Mortgagee, at its option, may perform or observe the same, and all payments made or costs incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Mortgagee with interest thereon at the maximum rate provided by law. The Mortgagee shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim, premium and obligation, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any other person in possession holding under the Mortgagor.

1.12 ***Condemnation.*** If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall, at the option of the Mortgagee, become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who after deducting therefrom all its expenses, including attorneys' fees, may release any monies so received by it without affecting this Mortgage and may

apply the same in such manner as the Mortgagee shall determine, to the reduction of the sum secured hereby and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as the Mortgagee may require. Notwithstanding the foregoing, however, if the Walgreens Lease remains in full force and effect despite such condemnation, Mortgagee agrees to allow Mortgagor to use any monies received as a result of such taking for construction and repair of the Premises resulting from such taking. In the event the funds are to be disbursed for construction purposes, such funds shall be disbursed in accordance with the usual and customary construction disbursement procedures of Mortgagee, which procedures may include, but shall not be limited to, draw requests, retainage requirements, sufficient evidence of necessary equity to complete the project, lien waivers, title insurance endorsements and inspections, which title insurance endorsements and inspections shall be paid for by Mortgagor, which shall be first paid from proceeds of the condemnation proceeds to the extent available and then from Mortgagor.

1.13 ***Annual Financial Statements and Income Tax Returns.*** Within ninety (90) days after the end of each calendar year, Mortgagor shall (and cause each Guarantor of the Note to) supply Mortgagee with (i) their respective financial statements for the prior year, and (ii) such supporting documentation as Mortgagee reasonably requests. On or before May 15th of each year, Mortgagor and Guarantors shall supply Mortgagee with a copy of their respective income tax returns. Notwithstanding the foregoing, if extensions are filed for the tax returns, then in that event Guarantors further covenant and agree to furnish to Mortgagee a copy of their respective income tax return within thirty (30) days after any permitted extension date. The form and content of the financial statements must be acceptable to Mortgagee in its sole discretion, must be certified by each Mortgagor and Guarantor to be correct and complete, and must include a complete description of all contingent liabilities, including, without limitation, all indebtedness guaranteed. Failure to provide any of the information required in this paragraph shall be a default under this Mortgage. Mortgagor and each Guarantor shall further covenant and agree that Mortgagee shall have the absolute right to inspect Mortgagor's or any Guarantor's books and records concerning the Premises on reasonable prior notice and during reasonable business hours.

1.14 ***Environmental Condition of Premises.*** Mortgagor, after thorough investigation, warrants and represents to Mortgagee, except as to the matters disclosed in that certain Phase I Environmental Site Assessment dated January 2, 2001, and the Phase I Environmental Site Assessment Update dated March 20, 2003, both prepared by Gallett & Associates, Inc.:

(a) The Premises are now and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), the Federal Water Pollution and Control Act, the Federal Clean Water Act, the National Environmental Policy Act, the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Hazardous Material Transportation Act, and the Federal Clean Air Act (hereinafter together with any amendments thereto "Environmental Laws");

(b) As of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances in violation of applicable laws, rules or regulations (including without limitation, asbestos, polychlorinated biphenyls ("PCB's"), petroleum products, oils, toxic or radioactive materials, ammonia, solvent mixtures, chlorine, pesticides, bulk chemicals, substances listed in the United States Department of Transportation Table or by the Environmental Protection Agency (or any successor agency) as hazardous substances, or which are classified as hazardous or toxic under local, state or federal laws, rules or regulations) ("Hazardous Substances") located on, in or under the Premises or used in connection therewith;

(c) The Premises are not on any Hazardous Substance cleanup list of any governmental authority;

(d) Mortgagor has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental authority including, but not limited to any agency or department of Shelby County, the State of Alabama, or the United States Government nor has any action ever been commenced or threatened by any governmental authority concerning any intentional or unintentional action or omission on Mortgagor's part which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of hazardous Substances into or onto the Premises;

(e) The Premises have never been used by previous owners or operators, or by Mortgagor, to generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Substances, and Mortgagor does not intend to use any part of the Premises, for such purposes;

(f) No part of the Premises or any building, structure or facility located thereon or improvement thereto contain or contained asbestos or have or have had asbestos-containing materials installed thereon or therein

at any time during or prior to Mortgagor's ownership or operation thereof in violation of applicable laws, rules or regulations;

(g) No part of the Premises or any building, structure or facility located thereon or improvement thereto contain or contained PCB's or have or have had electrical transformers, fluorescent light fixtures, ballasts or other equipment containing PCB's installed thereon or therein at any time during or prior to Mortgagor's ownership or operation thereof;

(h) No part of the Premises or any building, structure or facility located thereon or improvement thereto are or have been used as a sanitary landfill, and no Hazardous Substances have been buried, spilled or disposed of on or within the boundaries of the Premises, at any time during or prior to Mortgagor's ownership or operation thereof; and

(i) There is no occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Laws.

ARTICLE II

2.1 ***Due on Sale or Further Encumbrance Clause.*** In determining whether or not to make the loan secured hereby, Mortgagee examined the creditworthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagee also evaluated the background and experience of Mortgagor in owning and operating property such as the Premises, found it acceptable and relied and continues to rely upon same as the means of maintaining the value of the Premises which is Mortgagee's security for the loan. Mortgagor is an entity well-experienced in borrowing money and owning and operating property such as the Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rates or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Premises (a) may divert funds which would otherwise be used to pay the Note secured hereby; (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security; (c) would detract from the value of the Premises should any such junior mortgagee come into possession thereof with the intention of selling same; and

(d) impair Mortgagee's right to accept a deed in lieu of foreclosure, as a foreclosure by Mortgagee would be necessary to clear the title to the Premises.

In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security both of repayment by Mortgagor and of value of the Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Premises free of subordinate financing liens, Mortgagor agrees that if this paragraph be deemed a restraint on alienation, that it is a reasonable one and that any sale, conveyance, assignment, further encumbrance or other transfer of title to the Premises or any interest therein (whether voluntarily or by operation of law) without Mortgagee's prior written consent, which may be withheld for any reason, shall be an event of default hereunder.

For the purpose of, and without limiting the generality of, the preceding sentence, the occurrence at any time of any of the following events shall be deemed to be an unpermitted transfer of title to the Premises and therefore an event of default hereunder:

(a) any sale, conveyance, assignment, or other transfer of or the grant of a security interest in, all or any part of the title to the Premises except Mortgagor may transfer the property as part of a 1031 exchange so long as Richard K. Maloof owns at least fifty-one percent (51%) of the new owner of the Premises and Richard K. Maloof retains management and control of the new owner of the Premises;

(b) any sale, conveyance, assignment, or other transfer of, or the grant of a security interest in, any limited or general partnership interest of Mortgagor, except for the addition of new limited partners and transfers by the limited partners existing as of the date hereof to trusts or immediate family members;

(c) any change in the assets of Mortgagor so that it is no longer a single purpose entity;

(d) any sale, conveyance, assignment or other transfer of, or the grant of a security interest in, any share of stock of any corporation directly or indirectly controlling Mortgagor;

(e) any new or additional liabilities by Mortgagor without the prior written consent of Mortgagee; and

(f) any change in the present structure of ownership of Mortgagor, resulting in Richard K. Maloof owning less than a fifty-one percent (51%) interest in Mortgagor.

Any consent by Mortgagee, or any waiver of an event of default, under this paragraph shall not constitute a consent to, or waiver of any right, remedy or power of Mortgagee upon a subsequent event of default under this paragraph.

2.2 **Default.** A default shall have occurred hereunder if:

(a) Mortgagor shall fail to pay in full as and when due and payable any installment of principal, interest, late charges or escrow deposits as required by the Note, this Mortgage and otherwise; or

(b) Mortgagor shall fail duly to observe on time any other covenant, condition or agreement of this Mortgage or of any of the other Loan Documents, including but not limited to, leases as specifically required in accordance with paragraph 1.7 hereof and that certain Construction Loan Agreement of even date herewith; or

(c) Any warranties or representations made or agreed to be made in any of the Loan Documents shall be breached by Mortgagor or shall prove to be false or misleading; or

(d) Any lien for labor or material or otherwise shall be filed against the Premises which has not been bonded or released within fifteen (15) days after filing the same; or

(e) Any suit shall be filed against Mortgagor which, if there is a substantial likelihood plaintiff will prevail and if adversely determined, could substantially impair the ability of Mortgagor to perform each and every one of its obligations under and by virtue of the Loan Documents; or

(f) A levy shall be made under any process on, or a receiver be appointed for, the Premises or any other property of Mortgagor; or

(g) Mortgagor or any Guarantor shall file a voluntary petition in bankruptcy, or any other petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation or similar relief for Mortgagor under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtor; or

(h) Mortgagor shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any part of the Premises or of any or all of the rents, revenues, issues, earnings, profits or income thereof; or

(i) Mortgagor or any Guarantor shall make any general assignment for the benefit of creditors; or

(j) In any legal proceeding Mortgagor or any Guarantor shall be alleged to be insolvent or unable to pay Mortgagor's or such Guarantor's debts as they become due, which matter is not dismissed within ninety (90) days of the filing of said legal proceeding; or

(k) Mortgagor shall do, or shall omit to do, any act, or any event shall occur, as a result of which any uncontested obligation of Mortgagor in excess of \$10,000.00, not arising hereunder, is declared immediately due and payable by the holder thereof; or

(l) Mortgagor shall commit an event of default which is not cured within any applicable cure period under the terms of any of the leases affecting all or any part of the Premises, including the Walgreens Lease; or

(m) Mortgagor, without the prior written consent of Mortgagee, voluntarily or by operation of law, shall sell, transfer, convey or assign all or any part of the legal or equitable title to the Premises, or any part of, or interest in, the Premises; or

(n) Mortgagor, without the prior written consent of Mortgagee, voluntarily or by operation of law, shall transfer, convey or assign the Premises, or any part of, or interest in, the Premises as security for an indebtedness other than for the indebtedness secured hereby; or

(o) Richard K. Maloof shall die, or any Guarantor becomes insolvent or files a voluntary or involuntary petition of bankruptcy, provided, however, if any of the events described in this subparagraph occur and within ninety (90) days of such event a new guarantor acceptable to Lender in its sole and absolute discretion is provided or additional collateral in an amount acceptable to Mortgagee exercising its reasonable discretion considering the construction and budget status of the project is provided, then this shall not be an event of default; or

(p) Mortgagor, without the prior written consent of Mortgagee, shall modify, amend, terminate, or cancel any lease, including the Walgreens Lease; or

(q) A breach by Mortgagor of any covenant, representation or warranty set forth in any of the Loan Documents pertaining to the Note and Mortgage; or

(r) Mortgagor or any Guarantor shall fail to furnish any annual financial statements, operating statements or income tax returns, as set forth in paragraph 1.13 herein, in the Guaranties and any of the Loan Documents; or

(s) Any Guarantor shall transfer any of its material assets during the term of the Loan, other than sales or conveyances in the ordinary course of Guarantor's business, that do not have (i) a material and adverse impact on such Guarantor's obligation to Mortgagee as a Guarantor or (ii) a material and adverse impact on Guarantor's financial condition; as determined by Mortgagee in Mortgagee's reasonable discretion; or

(t) A breach by Mortgagor of any covenant, representation or warranty set forth in the Construction Loan Agreement, or an Event of Default occurs under the terms of the Construction Loan Agreement or any of the other Loan Documents; or

(u) A material adverse change shall occur in the financial condition of Mortgagor which, in Mortgagee's opinion, affects the ability of Mortgagor to fulfill its obligations hereunder or under the Note; or

(v) Mortgagee shall reasonably suspect the occurrence of anyone or more of the above said defaults and Mortgagor, upon the request of Mortgagee, shall fail to provide evidence reasonably satisfactory to Mortgagee that such default has not in fact occurred; or

(w) A material adverse change shall occur in the financial condition of any Guarantor which, in Mortgagee's opinion, affects the ability of the Guarantor to fulfill its obligations hereunder or under its guaranty, or any Guarantor shall (i) file a voluntary petition in bankruptcy or seek similar relief, (ii) make a general assignment for the benefit of creditors, (iii) be alleged to be insolvent or unable to pay its debts in any legal proceeding, (iv) fail duly to observe on time any covenant, condition or agreement of this Mortgage, the guaranty, or any other Loan Document, or if Richard K. Maloof shall die or be adjudged incompetent. Notwithstanding the foregoing, if any of the events described in this subparagraph 2.2(w) occurs and within ninety (90) days of such event, (i) a new guarantor acceptable to Mortgagee in its sole and absolute discretion is provided or (ii) additional collateral in an amount determined by Mortgagee exercising its reasonable discretion considering the construction and budget status of the project is provided, then this shall not be a default.

For the purposes of this paragraph 2.2, the term "Mortgagor" shall be construed as anyone or more of the parties comprising Mortgagor.

2.3 Acceleration of Maturity. If a default shall have occurred hereunder, then the whole unpaid principal sum of the indebtedness secured hereby with interest accrued thereon shall, at the option of Mortgagee, become due and payable without notice or demand, time being of the essence of this Mortgage and of the Note secured hereby; and no omission on the part of

Mortgagee to exercise such option when entitled so to do shall be considered as a waiver of such right.

2.4 ***Rights and Remedies of Mortgagee upon Default.***

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

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

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of a default hereunder or at any time thereafter, Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Premises, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Premises,

with power to lease and control the Premises and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of a default hereunder, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Premises is taken, after giving twenty-one (21) days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Premises or any part thereof is located, to sell the Premises (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Premises, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Premises, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Premises in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Premises not previously sold shall have been sold or all the indebtedness secured hereby shall have been paid in full.

In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraisers' fees, outlays for documentary and expert evidence, stenographers' charges, publication costs and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this paragraph mentioned shall become so much additional debt secured hereby and shall be immediately due and payable with interest thereon at the maximum rate provided by law, when paid or incurred by Mortgagee in connection with (i) any proceeding, including foreclosure, probate and bankruptcy proceedings, to which it shall be a party, either as plaintiff,

claimant, or defendant, by reason of this Mortgage, or any indebtedness hereby secured, (ii) preparations for the commencement of any suit for the foreclosure hereof after accrual of such right to foreclose whether or not actually commenced, or (iii) preparations for the defense of any threatened suit or proceeding which might affect the Premises or the security hereof, whether or not actually commenced.

(e) **Personal Property and Fixtures.** Upon the occurrence of a default hereunder or at any time thereafter, Mortgagee shall have and may exercise with respect to the personal property and fixtures included in the Premises (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At Mortgagee's request, Mortgagor shall assemble the Collateral and make the Collateral available to Mortgagee at any place designated by Mortgagee. To the extent permitted by law, Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Mortgagee existing after default. To the extent that such notice is required and cannot be waived, Mortgagor agrees that if such notice is given to Mortgagor in accordance with the provisions of paragraph 4.1 below, at least five (5) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

Mortgagor agrees that Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Premises in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. Mortgagor hereby grants Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the indebtedness secured hereby in such

order and amounts and manner as Mortgagee may elect. Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Application of Proceeds.** All payments received by Mortgagee as proceeds of the Premises or any part thereof, as well as any and all amounts realized by Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the Note, the Construction Loan Agreement and the other Loan Documents, (ii) to the payment in full of any of the indebtedness secured hereby that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) to a cash collateral reserve fund to be held by Mortgagee in an amount equal to, and as security for, any of the indebtedness secured hereby that is not then due and payable, and (iv) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

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

(h) **Waiver of Appraisement Laws.** Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the

Premises (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the indebtedness secured hereby or any creation or extension of a period of redemption from any sale made in collecting the indebtedness secured hereby (commonly known as stay laws and redemption laws).

(i) **Prerequisites of Sales.** In case of any sale of the Premises as authorized by this paragraph 2.4, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the indebtedness secured hereby or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(j) **Delivery of Documents.** Mortgagor shall deliver to Mortgagee at any time on its request, all agreements for deed, contracts, leases, abstracts, title insurance policies, muniments of title, surveys and other papers relating to the Premises, and in case of foreclosure thereof and failure to redeem, the same shall be delivered to and become the property of the person obtaining a deed to the Premises by reason of such foreclosure.

2.5 **Discontinuance of Proceedings and Restoration of the Parties.** In case Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by receiver, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adverse to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had been taken.

2.6 **Remedies Cumulative.** No right, power or remedy conferred upon or reserved by Mortgagee by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.7 **Mortgage Taxes.** It is contemplated that Mortgagor will pay or has paid the mortgage taxes applicable to the full face amount of the Note. If any additional mortgage tax shall become applicable with respect to this Mortgage, the Note, any loan or credit extended hereunder, or any security agreement, guaranty, the loan agreement or other document executed in connection herewith, Mortgagor shall promptly pay such tax in full (including interest and penalties, if any) and shall hold Mortgagee harmless with respect

thereto. Mortgagor's liability under this paragraph 2.7 will survive the repayment of indebtedness under the Note.

ARTICLE III

3.1 **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representatives, successors and assigns of such parties shall be included and all covenants and agreements contained in this indenture by or on behalf of Mortgagor and by or on behalf of Mortgagee shall bind and inure to the benefit of their respective heirs, legal representatives, successors and assigns, whether so expressed or not. Provided, however, that Mortgagor shall have no right to assign its obligations hereunder without the prior written consent of Mortgagee.

3.2 **Headings.** The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

3.3 **Invalid Provisions to Affect No Others.** If fulfillment of any provision hereof or any transaction related hereto or to the Note, at the time performance of such provisions shall be due, shall involve transcending the limit of validity prescribed by law, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Mortgage in whole or in part, then such clause or provision only shall be held for naught, as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. Notwithstanding any provision contained herein, the total liability of Mortgagor for payment of interest, including service charges, penalties or any other fees pursuant to paragraph 1.8, subparagraph 2.4(d) or otherwise shall not exceed the maximum amount of such interest permitted by applicable law to be charged, and if any payments by Mortgagor include interest in excess of such maximum amount, Mortgagee shall apply such excess to the reduction of the unpaid principal amount due and pursuant hereto.

3.4 **Number and Gender.** Whenever the singular or plural number, masculine or feminine or neuter gender is used herein, it shall equally include the other.

ARTICLE IV

4.1 **Notice.** Any notice or other communication required or permitted to be given hereunder shall be sufficient if in writing and delivered in

person or sent by United States Certified Mail, postage prepaid, to the parties being given such notice at the following addresses:

Mortgagor: Lee Branch LLC
% R.K.M. Development Corp.
100 Second Avenue South, Suite 204 North
St. Petersburg, Florida 33701
Attn: William C. Lloyd

Mortgagee: AmSouth Bank
13535 Feather Sound Drive, Suite 610
Clearwater, Florida 33762
Attn: David J. Kern, Senior Vice President
Commercial Real Estate

With copy to: Powell, Carney, Gross, Maller, & Ramsay, P.A.
Post Office Box 1689
St. Petersburg, Florida 33731-1689
Attn: Don Douglas Ramsay

Any party may change said address by giving the other parties hereto notice of such change of address. Notice given as hereinabove provided shall be deemed given on the date of its deposit with the United States Postal Service and, unless sooner received, shall be deemed received by the party to whom it is addressed on the third business day following the date on which said notice is deposited in the mail, or if a courier system is used, on the date of delivery of the notice.

ARTICLE V

5.1 **Future Advances.** It is agreed that this Mortgage shall also secure such future or additional advances as may be made by Mortgagee at its option to Mortgagor, or its successor in title, for any purpose, provided that all those advances are to be made within twenty (20) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future or additional advances as against the rights of creditors or subsequent purchasers for valuable consideration. The total amount of indebtedness secured by this Mortgage may decrease or increase from time to time.

5.2 **Lien Priority.** The lien priority of this Mortgage shall not be affected by any changes in the Note including, but not limited to, an increase in the interest rate charged pursuant to the Note. Any parties acquiring an interest in the Premises subsequent to the date this Mortgage is recorded shall

acquire such interest in the Premises with notice that Mortgagee may increase the interest rate charged pursuant to the Note or otherwise modify the Note and the Note, as modified, and the Mortgage shall remain superior to the interest of any party in the Premises acquired subsequent to the date this Mortgage is recorded.

5.3 **Security Agreement.** This instrument also creates a security interest in favor of Mortgagee under the Alabama Uniform Commercial Code, and Mortgagee shall also have all the rights and remedies of a secured party under the Alabama Uniform Commercial Code, and without limitation upon or in derogation of the rights and remedies created and accorded to Mortgagee by this Mortgage pursuant to the common law or any other laws of the State of Alabama or any other jurisdiction, it being understood that the rights and remedies of Mortgagee under the Alabama Uniform Commercial Code shall be cumulative and in addition to all other rights and remedies of Mortgagee arising under the common law or any other laws of the State of Alabama or any other jurisdiction.

5.4 **Marshalling of Assets.** Mortgagor waives any rights it might otherwise have to require a marshalling of assets in the event of a foreclosure.

5.5 **Governing Law.** This Mortgage was negotiated in Florida, but made by Mortgagor and accepted by Mortgagee in the State of Alabama. The proceeds of the Note secured hereby were disbursed from Florida, which state the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby and in all respects, including without limiting the generality of the foregoing, matters of construction, validity and performance, this Mortgage and the obligations arising hereunder shall be governed by and construed in accordance with the substantive, procedural and constitutional laws of the State of Florida applicable to contracts made and performed in such state and any applicable law of the United States of America; except that at all times the provisions for the creation, perfection and enforcement of the liens and security interests created pursuant hereto and the other Loan Documents shall be governed by and construed according to the law of the state in which the Premises are located, it being understood that, to the fullest extent permitted by law of such State, the substantive, procedural and constitutional law of the State of Florida shall govern the validity and the enforceability of this Mortgage, the Note and the other Loan Documents and the indebtedness or obligations arising hereunder or thereunder. To the fullest extent permitted by law, Mortgagor hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Mortgage, the Note and the other Loan Documents.

5.6 **Binding Effect.** This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee hereto, and their respective heirs, successors and assigns.

5.7 **Security for Swap Agreement.** This Mortgage shall also secure any obligations imposed upon the Mortgagor pursuant to the International Swap Dealers Association Master Agreement, Confirmation and Schedules between the Mortgagor and Mortgagee or any Mortgagee affiliate executed in connection with the Note, or any other agreement between the Mortgagor and Mortgagee or any Mortgagee affiliate hereinafter entered into.

IN WITNESS WHEREOF, Mortgagor has executed and sealed this Mortgage, effective the day and year first above written.

Signed, sealed and delivered in the presence of:

LEE BRANCH LLC, an Alabama limited liability company

[Signature]
Signature of Witness

John L Hartman III
Legibly Print Name of Witness

By: [Signature]
Name: William C. Lloyd
Title: Managing Member

[Signature]
Signature of Witness

Carter L Cooper
Legibly Print Name of Witness

(CORPORATE SEAL)

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **WILLIAM C. LLOYD**, whose name as Managing Member of Lee Branch LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such representative and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 30th day of June, 2003.

[Signature]
Notary Public

AFFIX SEAL

My Commission Expires: 08/04/05

County, Alabama, said point also lying on the North line of said Southeast quarter of Section 5; thence leaving said Westerly right of way margin of U.S. Highway 280, proceed South 88 degrees 49 minutes 06 seconds West along the South line of said Lot – 2 and along said North line of said Southeast quarter for 204.40 feet to the POINT OF BEGINNING.

PARCEL THREE:

Together with that certain non-exclusive and reciprocal easement for the benefit of Parcels I & II for the purpose of ingress and egress as created by that certain reciprocal easement agreement between Mark D. Kidd and Lee Branch LLC dated June 30, 2003, recorded in Instrument # 20030701000412980 over, under and across the driveway as such term is described therein.

PARCEL FOUR:

Together with that certain non-exclusive and reciprocal easement for the benefit of Parcels I & II for the purpose of ingress and egress as created by that certain reciprocal easement agreement between AIG Baker Brookstone, L.L.C. and Lee Branch LLC dated June 30, 2003, recorded in Instrument # 20030701000412990 over, under and across the following described property:

Lot 3 of “THE VILLAGE AT LEE BRANCH” Sector 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 31, Page 17 being the same property as Lot 3 of “THE VILLAGE AT LEE BRANCH” Sector 1-Revision 1, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 31, Page 43A & 43B;

And

Doug Baker Boulevard as described in Exhibit “C” therein.

LEGAL DESCRIPTION

PARCEL ONE:

A parcel of land situated in the Northwest quarter, the Northeast quarter and the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being Lot-2 of "THE VILLAGE AT LEE BRANCH" Sector 1, as recorded in Map Book 31, page 17, in the Office of the Judge of Probate, Shelby County, Alabama being the same property as Lot 2 of "THE VILLAGE AT LEE BRANCH" Sector 1-Revision 1 as recorded in Map Book 31, page 43 A & 43B, in the Office of the Judge of Probate, Shelby County, Alabama and being more particularly described as follows:

Commence at an iron pin found at the Northwest corner of said Southeast quarter of Section 5, said iron pin also being the POINT OF BEGINNING; thence proceed South 00 degrees 25 minutes 08 seconds East along the West line of said quarter Section for 34.72 feet to a point; thence leaving the West line of said Southeast quarter, proceed South 88 degrees 49 minutes 06 seconds West for 53.54 feet to a point; thence proceed North 00 degrees 25 minutes 08 seconds West for 34.72 feet to a point; thence proceed South 88 degrees 49 minutes 06 seconds West for 13.01 feet to a point; thence proceed North 01 degrees 10 minutes 54 seconds West for 321.92 feet to a point; thence proceed North 82 degrees 20 minutes 46 seconds East for 88.11 feet to a point; thence proceed South 84 degrees 57 minutes 48 seconds East for 56.90 feet to a point; thence proceed North 82 degrees 20 minutes 46 seconds East for 91.28 feet to a point on the Westerly right of way margin of U.S. Highway 280; thence proceed South 07 degrees 19 minutes 16 seconds East along said Westerly right of way margin of U.S. Highway 280 for 337.91 feet to a point lying on the North line of said Southeast quarter of Section 5; thence leaving said Westerly right of way margin of U.S. Highway 280, proceed South 88 degrees 49 minutes 06 seconds West along the North line of said Southeast quarter for 204.40 feet to the POINT OF BEGINNING.

PARCEL TWO:

A parcel of land situated in the Northwest quarter of the Southeast quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

Commence at an iron pin found at the Northwest corner of said Southeast quarter of Section 5, said iron pin also being the POINT OF BEGINNING; thence proceed South 00 degrees 25 minutes 08 seconds East along the West line of said Southeast quarter for 26.48 feet to a point; thence leaving the West line of said Southeast quarter, proceed North 82 degrees 32 minutes 28 seconds East for 206.41 feet to a point on the Westerly right of way margin of U.S. Highway 280; thence proceed North 07 degrees 19 minutes 16 seconds West along said Westerly right of way margin of U.S. Highway 280 for 3.93 feet to a point at the Southeast corner of Lot -2 of "THE VILLAGE AT LEE BRANCH" as recorded in Map Book 31, page 17, in the Office of the Judge of Probate, Shelby