

ARC COMMUNITIES 16 LLC,
Mortgagor

to

MERRILL LYNCH MORTGAGE LENDING, INC.,
Mortgagee

MORTGAGE,
ASSIGNMENT OF LEASES AND RENTS,
SECURITY AGREEMENT AND FIXTURE FILING

Dated as of: February 18, 2004

RECORDING REQUESTED BY
AND AFTER RECORDING RETURN TO:

Proskauer Rose LLP
1585 Broadway
New York, New York 10036
Attention: David J. Weinberger, Esq.

THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (the "Mortgage"), made effective as of the 18 day of February, 2004, by ARC COMMUNITIES 16 LLC, a Delaware limited liability company ("Mortgagor"), having its principal place of business at 600 Grant Street, Suite 900, Denver, CO 80203, to MERRILL LYNCH MORTGAGE LENDING, INC., a Delaware corporation, having its principal place of business at Four World Financial Center, 16th Floor, 250 Vesey Street, New York, New York 10080 (the "Mortgagee").

W I T N E S S E T H:

To secure (A) the payment of an indebtedness in the original principal sum of TWENTY FIVE MILLION EIGHT HUNDRED THIRTY THREE THOUSAND and no/100 DOLLARS (\$25,833,000.00) or so much thereof as may be outstanding from time to time, in lawful money of the United States of America, to be paid with interest according to a certain Loan Agreement, dated as of February 18, 2004, by and among Mortgagor, as borrower and Mortgagee, as lender (the "Loan Agreement"; capitalized terms used herein and not defined having the meanings ascribed thereto in the Loan Agreement and references herein to "UCC" or "Uniform Commercial Code" shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection or priority of the security interest in any item or portion of the Mortgaged Property is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, UCC shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority), as evidenced by that certain Promissory Note, executed and delivered by Mortgagor pursuant to the Loan Agreement (the "Note"; the Loan Agreement, the Note, this Mortgage, the other Collateral Security Instruments and any other documents executed and delivered in connection with the Loan, collectively, the "Loan Documents"), and the payment and performance of all of Mortgagor's obligations hereunder and under the Loan Documents (collectively, the "Borrower Obligations"), and (B) (i) the payment of an indebtedness owed by one or more Crossed Borrowers to Mortgagee, in the aggregate principal sum of ONE HUNDRED THIRTY TWO MILLION ONE HUNDRED NINETY SIX THOUSAND and no/100 DOLLARS (\$132,196,000.00) or so much thereof as may be outstanding from time to time, in lawful money of the United States of America, to be paid with interest according to the Crossed Loan Documents, as evidenced by the Crossed Loan Documents, and (ii) the payment and performance of each of the Crossed Borrowers' obligations under the Crossed Loan Documents, and (iii) the payment and performance of the obligations of Mortgagor under the Cross Guaranties of each of the Crossed Loans executed and delivered by Mortgagor in favor of Mortgagee (the obligations described in the foregoing clauses (i), (ii) and (iii) are herein collectively referred to as the "Crossed Obligations", provided that the Crossed Obligations shall no longer include Excluded Loans or obligations of the related Excluded Borrowers under related Excluded Loan Documents or obligations of Mortgagor under the Excluded Guaranties relating to such Excluded Loans in the event and to the extent Mortgagee from time to time exercises its right and option under Section 2.11(g) of the Loan Agreement to cause the Loan Documents to no longer secure Excluded Loans specified by Mortgagee pursuant to such Section 2.11(g))(the Borrower Obligations and the Crossed Obligations are herein sometimes collectively referred to as the "Obligations"), Mortgagor has mortgaged, transferred, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated and by these presents does hereby mortgage, transfer, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate unto Mortgagee WITH MORTGAGE COVENANTS, the real property described in Exhibit A attached hereto (the "Land") and the buildings, structures and improvements of every nature whatsoever now or hereafter located thereon (including, but not limited to, all gas and electric fixtures, radiators, heaters, docks and docking facilities, engines and machinery, boilers, ranges, elevators and motors, plumbing, heating and air conditioning fixtures, carpeting and other floor coverings,

water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to the Land or said buildings, structures or improvements) (the “Improvements”);

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired by Mortgagor, in and to the following property, rights, interest and estates (the Land, the Improvements together with the following property, rights, interests and estates being hereinafter described are collectively referred to herein as the “Mortgaged Property”):

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

(b) (i) all “equipment” as defined in the Uniform Commercial Code and (ii) all of the following (regardless of how classified under the UCC): all building materials, construction materials, personal property constituting furniture, fittings, appliances, apparatus, leasehold improvements, machinery, devices, interior improvements, appurtenances, equipment, plant, furnishings, fixtures, computers, electronic data processing equipment, telecommunications equipment and other fixed assets now owned or hereafter acquired by Mortgagor, and all proceeds of (i) and (ii), as well as all additions to, substitutions for, replacements of or accessions to any of the items recited as aforesaid and all attachments, components, parts (including spare parts) and accessories, whether installed thereon or affixed thereto, all regardless of whether the same are located on the Mortgaged Property or are located elsewhere (including without limitation, in warehouses or other storage facilities or in the possession of or on the premises of a bailee, vendor or manufacturer) for purposes of manufacture, storage, fabrication or transportation and all extensions, additions, improvements, betterments, renewals, substitutions and replacements to, and proceeds of, any of the foregoing (collectively, the “Equipment”);

(c) all awards or payments, including interest thereon, which may heretofore and hereafter be made with respect to the Land and the Improvements, whether from the exercise of the right of eminent domain (including, but not limited to, any transfer made in lieu of or in anticipation of the exercise of said rights), or for a change of grade, or for any other injury to or decrease in the value of the Land and the Improvements;

(d) all leases, subleases, lettings, occupancy agreements, tenancies and licenses by Mortgagor as landlord of the Mortgaged Property or any part thereof now or hereafter entered into, and all amendments, extensions, renewals and guarantees thereof, and all security therefor (collectively, the “Leases”) and all income, rents, rent equivalents, issues, profits, revenues (including all oil and gas or other mineral royalties and bonuses), deposits and other benefits from the Land and the Improvements (including, without limitation, all receivables, and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space or other space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business

interruption or other loss of income insurance)) (collectively, the “Rents”) and all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Obligations;

(e) all proceeds of and any unearned premiums on any insurance policies covering the Mortgaged Property (including, without limitation, the right, subject to the terms of the Loan Agreement, to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property);

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

(g) all of Mortgagor’s right, title and interest, whether now owned or hereafter acquired, in, to and under (i) any Accounts, Chattel Paper, Instruments, Payment Intangibles, Letter of Credit Rights, Documents, insurance policies, drafts, bills of exchange, trade acceptances, notes or other indebtedness owing to Mortgagor from whatever source arising, (ii) to the extent not otherwise included above, (a) all income, Rents, issues, profits, revenues, deposits and other benefits from the Mortgaged Property and (b) all receivables and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Mortgagor or any operator or manager of the Mortgaged Property or other commercial space located at the Mortgaged Property or acquired from others (including, without limiting the generality of the foregoing, from rental of space, halls, stores, and offices, and deposits securing reservations of such space, exhibit or sales space of every kind, license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales of merchandise, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, (iii) all of the books and records (whether in tangible, electronic or other form) now or hereafter maintained by or on behalf of Mortgagor in connection with the operation of the Mortgaged Property or in connection with any of the foregoing and (iv) all Supporting Obligations and all liens and security interests securing any of the foregoing and all other rights, privileges and remedies relating to any of the foregoing (collectively, the “Receivables”);

(h) to the extent the assignment contemplated hereby would not result in a violation of the terms of the applicable pledged instrument, all agreements to which Mortgagor is a party or which are assigned to Mortgagor in the Management Agreement and which are executed in connection with the construction, operation and management of the Improvements located on the Mortgaged Property (including, without limitation, the Management Agreement and the agreements for the sale, lease or exchange of goods or other property and/or the performance of services by it, in each case whether now in existence or hereafter arising or acquired) as any such agreements have been or may be from time to time amended, supplemented or otherwise modified (collectively, “Contracts”);

(i) all “documents” as defined in the Uniform Commercial Code (whether negotiable or non-negotiable) or other receipts covering, evidencing or representing goods now owned or hereafter acquired by Mortgagor (collectively, “Documents”);

(j) to the extent the assignment contemplated hereby would not result in a violation of the terms of the applicable pledged instrument, all trademark licenses, trademarks, rights in intellectual property, trade names, service marks and copyrights, copyright licenses, patents, patent licenses or the license to use intellectual property such as computer software owned or licensed by Mortgagor or other proprietary business information relating to Mortgagor’s policies, procedures, manuals and trade secrets (collectively, “Intellectual Property”);

(k) all “general intangibles” as defined in the Uniform Commercial Code, now owned or hereafter acquired by Mortgagor (including, without limitation, (i) all obligations or indebtedness owing to Mortgagor from whatever source arising (other than Receivables, Rents, Inventory, Contracts, Documents, Intellectual Property and Permits), (ii) all unearned premiums accrued or to accrue under all insurance policies for the Mortgaged Property obtained by Mortgagor, all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims (including, without limitation, proceeds of insurance, condemnation awards, and all rights of Mortgagor to refunds of real estate taxes and assessments), (iii) all royalties and license fees, (iv) all Intellectual Property, (v) all rights or claims in respect of refunds for taxes paid and (vi) all rights in respect of any pension plan or similar arrangement maintained for employees of Mortgagor) (collectively, “General Intangibles”);

(l) all Deposit Accounts and Investment Property;

(m) all “inventory” as defined in the Uniform Commercial Code, whether now or hereafter existing or acquired, all Documents representing the same and all Proceeds and products of the same (including, without limitation, all goods, merchandise, raw materials, work in process and other personal property, wherever located, now or hereafter owned or held by Mortgagor for manufacture, processing, the providing of services or sale, use or consumption in the operation of the Mortgaged Property (including, without limitation, fuel, supplies and similar items and all substances commingled therewith or added thereto) and rights and claims of Mortgagor against anyone who may store or acquire the same for the account of Mortgagor, or from whom Mortgagor may purchase the same) (collectively, “Inventory”);

(n) to the extent the assignment contemplated hereby would not result in a violation of the terms of the applicable pledged instrument, all licenses, permits, variances and certificates used in connection with the ownership, operation, use or occupancy of the Mortgaged Property (including, without limitation, business licenses, state health department licenses, food service licenses, liquor licenses, licenses to conduct business and all such other permits, licenses and rights, obtained from any Governmental Authority or private Person concerning ownership, operation, use or occupancy of the Mortgaged Property) (collectively, “Permits”); and

(o) all “proceeds” (as defined in the Uniform Commercial Code) of any of the foregoing and, in any event, shall include, without limitation, all proceeds, products, offspring, rents, profits or receipts, in whatever form, arising from the Mortgaged Property (including, without limitation, (i) cash, instruments and other property received, receivable or otherwise distributed in respect of or in exchange for any or all of the Mortgaged Property, (ii) the collection, sale, lease, sublease, concession, exchange, assignment, licensing or other disposition of, or realization upon, any item or portion of the Mortgaged Property (including, without limitation, all claims of Mortgagor against third parties for loss of, damage to, destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any the Mortgaged Property now existing or hereafter arising), (iii) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Mortgagor from time to time with respect to any of the Mortgaged Property, (iv) any and all payments (in any form whatsoever) made or due and payable to Mortgagor from time to time in connection with the requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Mortgaged Property by any Governmental Authority (or any person acting under color of Governmental Authority) and (v) any and all other amounts from time to time paid or payable under or in connection with any of the Mortgaged Property) (collectively, the “Proceeds”);

TO HAVE AND TO HOLD the above granted and described Mortgaged Property unto and to the use and benefit of Mortgagee, and its successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if (a) Mortgagor shall pay to Mortgagee the Borrower Obligations in full at the time and in the manner provided in the Loan Agreement and this Mortgage and shall abide by and comply with each and every covenant and condition set forth herein and in the other Loan Documents in a timely manner and (b) the Crossed Borrowers shall pay to Mortgagee the Crossed Obligations in full at the time and in the manner provided in the Crossed Loan Documents and shall abide by and comply with each and every covenant and condition set forth in the Crossed Loan Documents in a timely manner, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Obligations and Incorporation of Covenants, Conditions and Agreements. Mortgagor will pay the Borrower Obligations at the time and in the manner provided in the Loan Documents and in this Mortgage. All the covenants, conditions and agreements of Mortgagor contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein including, without limitation, the provisions contained in the Loan Agreement regarding insurance, casualty, condemnation, leasing and maintenance of the Mortgaged Property.

2. Warranty of Title. Mortgagor warrants that Mortgagor has good, marketable and insurable fee simple title to the Land and Improvements and has the full power, authority and right to execute, deliver and perform its obligations under this Mortgage and to encumber, mortgage, transfer, give, grant, bargain, sell, alienate, enfeoff, convey, confirm, warrant, pledge, assign and hypothecate the same and that Mortgagor possesses an unencumbered fee estate in the Land and the Improvements and that it owns the Mortgaged Property free and clear of all liens, encumbrances and charges whatsoever except for those exceptions shown on Schedule B to the Title Insurance Policy insuring the lien of this Mortgage and that this Mortgage is and will remain a valid and enforceable first lien on and security interest in the Mortgaged Property, subject only to the Permitted Encumbrances. Mortgagor shall, for so long as the Obligations remain outstanding, forever warrant, defend and preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against the claims of all persons whomsoever.

3. Payment of Taxes, etc. Subject to the provisions of Section 25 hereof and the applicable provisions of the Loan Agreement, Mortgagor shall pay all Impositions (including, without limitation, all taxes, assessments, water rates and sewer rents, now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof and all ground rents, maintenance charges, other governmental impositions and other charges (including, without limitation, vault charges and license fees for the use of vaults, chutes and similar areas adjoining the Land), now or hereafter levied or assessed or imposed against the Mortgaged Property or any part thereof) (the "Other Charges"), as the same become due and payable. Subject to the terms of the Loan Agreement, Mortgagor shall deliver to Mortgagee upon Mortgagee's request, evidence reasonably satisfactory to Mortgagee that the Impositions and Other Charges have been so paid or are not then delinquent no later than thirty (30) days following the date on which the Impositions and/or Other Charges would otherwise be delinquent if not paid. Subject to the provisions of Section 25 hereof, Mortgagor shall not suffer and shall promptly cause to be paid and discharged any lien or charge whatsoever (other than Permitted Encumbrances) which may be or become a lien or charge against the Mortgaged Property, and shall promptly pay for all utility services provided to the Mortgaged Property.

4. Leases and Rents. Reference is made to the Loan Agreement and that certain Assignment of Rents and Leases affecting the Mortgaged Property for Mortgagor's obligations, license, rights and benefits regarding Leases and Rents.

5. Maintenance of Mortgaged Property. Mortgagor shall cause the Mortgaged Property to be maintained in good condition and repair in accordance with the standards set forth in Article 5 of the Loan Agreement.

6. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that Mortgagee has examined and relied on the creditworthiness and experience of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan secured hereby, and that Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for repayment of the Obligations. Mortgagor acknowledges that Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should any default occur in the repayment of the Obligations, Mortgagee can recover the Obligations (or any portion thereof) by a sale of the Mortgaged Property. Mortgagor shall not, except as and to the extent set forth in the Loan Agreement sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or permit the Mortgaged Property or any part thereof to be sold, conveyed, alienated, mortgaged, encumbered, pledged or otherwise transferred.

(b) A sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer within the meaning of this Section 6 shall be deemed to include (i) an installment sales agreement wherein Mortgagor agrees to sell the Mortgaged Property or any part thereof for a price to be paid in installments; (ii) an agreement by Mortgagor leasing all or a substantial part of the Mortgaged Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of, or the grant of a security interest in, Mortgagor's right, title and interest in and to any Leases or any Rents; and (iii) a transfer of a direct or indirect ownership interest or voting right in the Borrower that would cause a Transfer (other than a Permitted Transfer) to occur.

(c) Subject to the provisions of the Loan Agreement, Mortgagee may predicate its decision to grant or withhold consent required under the Loan Agreement on Mortgagee's satisfaction, in its sole and absolute discretion, with all relevant factors (including, without limitation, the creditworthiness of the proposed transferee and such proposed transferee's management experience), and, in the case of any transfer of title to the Mortgaged Property, upon the execution of an assumption agreement in form and substance reasonably acceptable to Mortgagee and the payment of all costs and expenses incurred by Mortgagee in connection with the assumption (including, without limitation, reasonable attorneys' fees). Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations or any portion thereof immediately due and payable upon Mortgagor's sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property without Mortgagee's consent. Except as provided in the Loan Agreement, this provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property regardless of whether voluntary or not, or whether or not Mortgagee has consented to any previous sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property.

(d) Mortgagee's consent to one sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property shall not be deemed to be a waiver of Mortgagee's right to require such consent to any future occurrence of same. Except as provided in the Loan Agreement, any sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the

Mortgaged Property made in contravention of this paragraph shall be null and void and of no force and effect.

(e) Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including, without limitation, reasonable attorney's fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any such sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer.

7. Changes in the Laws Regarding Taxation. If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Obligations from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Obligations or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. In the event Mortgagee is advised by counsel chosen by it that the payment of such tax or interest and penalties by Mortgagor would be unlawful or taxable to Mortgagee or unenforceable or provide the basis for a defense of usury, then in any such event, Mortgagee shall have the option, by written notice of not less than one hundred twenty (120) days, to declare the Obligations immediately due and payable without the payment of any prepayment penalty.

8. No Credits on Account of the Obligations. Mortgagor will not claim or demand or be entitled to any credit or credits on account of the Obligations for any part of the Impositions or Other Charges assessed against the Mortgaged Property, or any part thereof.

9. Documentary Stamps. If at any time the United States of America, any State thereof or any subdivision of any such State shall require revenue or other stamps to be affixed to the Note or this Mortgage, or impose any other tax (including any and all recording privilege taxes) or charge on the same (other than income taxes), Mortgagor will pay for the same, with interest and penalties thereon, if any.

10. Controlling Agreement. It is expressly stipulated and agreed to be the intent of Mortgagor and Mortgagee at all times to comply with applicable state law or applicable United States federal law (to the extent that it permits Mortgagee to contract for, charge, take, reserve, or receive a greater amount of interest than under state law) and that this section shall control every other covenant and agreement in this Mortgage and the other Loan Documents. If the applicable law (state or federal) is ever judicially interpreted so as to render usurious any amount called for under the Note or under any of the other Loan Documents, or contracted for, charged, taken, reserved, or received with respect to the Obligations, or if Mortgagee's exercise of the option to accelerate the maturity of any of the Obligations, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by applicable law, then it is Mortgagor's and Mortgagee's express intent that all excess amounts theretofore collected by Mortgagee shall be credited to the principal balance of the Note and all other Obligations (or, if the Note and all other Obligations have been or would thereby be paid in full, shall be refunded to Mortgagor), and the provisions of the Note and the other Loan Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the full amount otherwise called for hereunder or thereunder. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Obligations until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the maximum rate of interest permitted by law from time to time in effect and applicable to the Obligations for so long as the Obligations are outstanding.

11. Books and Records. Mortgagor will maintain full and accurate books of accounts and other records reflecting the results of the operations of the Mortgaged Property and will furnish, or cause to be furnished, to Mortgagee such information with respect to the operation of the Mortgaged Property as Mortgagee from time to time reasonably may request, all in accordance with the provisions of the Loan Agreement.

12. Performance of Other Agreements. Mortgagor shall observe and perform in all material respects the terms to be observed or performed by Mortgagor under any agreement or recorded instrument affecting or pertaining to the Mortgaged Property, the failure to perform which would have a Material Adverse Effect.

13. Further Acts, etc. Mortgagor will, at the cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, Uniform Commercial Code financing statements or continuation statements, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, warranted, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage. Mortgagor, on demand, will execute and deliver and, Mortgagor hereby authorizes Mortgagee to execute in the name of Mortgagor or without the signature of Mortgagor to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or other instruments, to evidence more effectively the security interest of Mortgagee in the Mortgaged Property. Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising the rights provided for in this Section 13.

14. 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 Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor will pay all filing, registration or recording fees and taxes, and all reasonable expenses incident to the preparation, recordation, 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 (other than income or franchise taxes imposed on Mortgagee), except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee and its successors and assigns, against any liability incurred by reason of the imposition of any tax on the making and recording of this Mortgage.

15. Reporting Requirements. Mortgagor agrees to give prompt notice to Mortgagee of the insolvency or bankruptcy filing of Mortgagor.

16. Events of Default. The term "Event of Default" as used herein shall mean the occurrence or happening, at any time and from time to time, of an Event of Default under the Loan Agreement as a result of which Mortgagee may, pursuant to the Loan Agreement, exercise its rights and remedies against Mortgagor and/or the Mortgaged Property. Mortgagor acknowledges and agrees that

this Mortgage shall be cross-collateralized and cross-defaulted with any and all other mortgages, deeds of trust, assignments of leases and rents, security agreements and fixture filings executed by Mortgagor or any affiliate thereof to secure the Loan pursuant to the terms of the Loan Agreement.

17. Right to Cure Defaults. Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend, or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Obligations, and the cost and expense thereof (including reasonable attorneys' fees to the extent permitted by law), with interest at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Obligations, shall be secured by this Mortgage and shall be due and payable to Mortgagee upon demand therefor.

18. Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee may take such action, without notice or demand (except as specifically required under the Loan Agreement), as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, subject to the provisions of Section 46, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

(i) declare the entire principal amount of the indebtedness secured hereby with interest accrued thereon to be immediately due and payable;

(ii) institute a proceeding or proceedings, judicial or nonjudicial, by advertisement or otherwise, for the complete foreclosure of this Mortgage in which case the Mortgaged Property or any interest therein may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner in accordance with the laws of the jurisdiction in which such Mortgaged Property is located;

(iii) with or without entry, to the extent permitted, and pursuant to the procedures provided by, applicable law, institute proceedings for the foreclosure of this Mortgage for the Obligations then due and payable subject to the continuing lien of this Mortgage, in accordance with the laws of the jurisdiction in which such Mortgaged Property is located, for the balance of the Obligations not then due;

(iv) sell for cash or upon credit the Mortgaged Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale contained herein or otherwise, at one or more sales, as an entity or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by the laws of the jurisdiction in which such Mortgaged Property is located;

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

(vi) subject to Section 46 hereof, recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Obligations and without regard for the solvency of Mortgagor or of any person, firm or other entity liable for the payment of the Obligations;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise (including, without limitation, the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues profits and other income of the Mortgaged Property and every part thereof); and (E) apply the receipts from the Mortgaged Property to the payment of the Obligations, after deducting therefrom all expenses (including, without limitation, reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor and require Mortgagor to vacate and surrender possession to Mortgagee of the Mortgaged Property or to such receiver and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the Uniform Commercial Code including the right to establish a lock box for all Rents and other receivables of Mortgagor relating to the Mortgaged Property.

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Section 18, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this section or otherwise, shall be applied by Mortgagee in accordance with the provisions of the Loan Agreement.

(c) Upon any sale made under or by virtue of this Section 18, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Obligations the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage. In connection with Mortgagee's exercise of the power of sale granted hereunder, Mortgagor agrees that 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 Mortgaged Property is taken, after giving 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 Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as such 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 such sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At any such foreclosure sale(s), any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels, or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds.

(d) To the extent allowed by law, no recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(e) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Section 18 at any time before the conclusion thereof, as determined in Mortgagee's sole discretion and without prejudice to Mortgagee.

(f) Mortgagee may resort to any remedies and the security given by this Mortgage or the other Loan Documents in whole or in part, and in such portions and in such order as determined by Mortgagee's sole discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by this Mortgage or the other Loan Documents. The failure of Mortgagee to exercise any right, remedy or option provided in this Mortgage or the other Loan Documents shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by this Mortgage or the other Loan Documents. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable hereunder shall be deemed to waive or cure any Event of Default with respect to Mortgagor, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee, and no extension of time for the payment of the whole or any portion of the Obligations or any other indulgence given by Mortgagee to Mortgagor or any other Person, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or, subject to the provisions of Section 46, the liability of Mortgagor or any other Person to pay the Obligations. No waiver by Mortgagee shall be effective, unless it is in writing and then only to the extent specifically stated.

(g) The interests and rights of Mortgagee under this Mortgage or the other Loan Documents shall not be impaired by any indulgence, including (i) any renewal, extension or modification which Mortgagee may grant with respect to any of the Obligations, (ii) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof; or (iii) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Obligations.

19. Right of Access. Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property as provided in Section 5.1(e) and 5.1(k) of the Loan Agreement.

20. Reasonable Use and Occupancy. In addition to the rights which Mortgagee may have herein, upon the occurrence of any Event of Default which shall remain uncured, Mortgagee, at its option, may require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Mortgaged Property as may be occupied by Mortgagor or may require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver and, in default thereof, Mortgagor may be evicted by summary proceedings or otherwise.

21. Security Agreement. This Mortgage is both a real property mortgage/deed of trust 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 Obligations, 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 the Mortgaged Property so subject to the Uniform Commercial Code being called in this paragraph the "Collateral"). Mortgagor hereby agrees with Mortgagee to execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such financing statements and such further assurances as Mortgagee may from time to time, reasonably consider 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. All or part of the Mortgaged Property is or is 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 which shall remain uncured, 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 limitation, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral). The Mortgagee shall have the right to proceed as to any personal property included in the Mortgaged Property either together with some or all of the real property included in the Mortgaged Property or separately from such real property. Upon request or demand of Mortgagee, 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 therefor any and all expenses (including, without limitation, reasonable legal expenses and attorneys' fees, 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 of the Loan Agreement at least ten (10) Business Days prior to such action or such notice as is otherwise required by law or the Loan Agreement, 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 Obligations in such priority and proportions as required by the Loan Agreement. In the event of any change in name, identity or structure of Mortgagor, Mortgagor shall notify Mortgagee thereof and, promptly after request, shall authorize, file and record such Uniform Commercial Code forms as are necessary to maintain the priority of Mortgagee's lien upon and security interest in the Collateral, and 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, Mortgagor shall, promptly after request, authorize, file and record such Uniform Commercial Code forms or continuation statements as Mortgagee shall deem necessary, and 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 this Mortgage or the other Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or other statements signed

only by Mortgagee, as secured party, in connection with the Collateral covered by this Mortgage. The Mortgagor hereby authorizes the filing of any financing statements or continuation statements, and amendments to financing statements, in any jurisdictions and with any filing offices as the Mortgagee may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Mortgagee in connection herewith. Such financing statements may describe the collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Mortgagee may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Mortgagee in connection herewith, including, without limitation, describing such property as "all assets" or "all personal property" whether now owned or hereafter acquired.

22. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its discretion, decides should be brought to protect its interest under this Mortgage in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Obligations, and any such subrogation rights shall constitute additional security for the payment of the Obligations.

23. Waiver of Setoff. Except as may be permitted under the Loan Agreement, all amounts due under this Mortgage, the Note and the other Loan Documents shall be payable without setoff, counterclaim or any deduction whatsoever.

24. Contest of Certain Claims. Notwithstanding the provisions of Section 3 and Section 7, Mortgagor shall not be in default for failure to pay or discharge Impositions, Other Charges or mechanic's or materialman's lien asserted against the Mortgaged Property or for failure to comply with any Legal Requirement if, and so long as, Mortgagor shall have complied with all of the conditions, terms and provisions of Section 5.1(b)(ii) of the Loan Agreement relating to contests of certain claims.

25. Recovery of Sums Required to Be Paid. Mortgagee shall have the right from time to time to take action to recover any sum or sums which constitute a part of the Obligations as the same become due and owing, without regard to whether or not the balance of the Obligations shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

26. Marshaling, Waiver of Redemption and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisal, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all persons to the extent permitted by applicable law.

27. Hazardous Substances. Mortgagor and the Mortgaged Property shall comply with all provisions of the Loan Documents relating to Environmental Laws, Environmental Claims and Hazardous Substances.

28. Handicapped Access.

(a) Mortgagor agrees that the Mortgaged Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto (including, without limitation, the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities) (collectively, as the same may be amended, modified or supplemented from time to time, the “Access Laws”).

(b) Notwithstanding any provisions set forth herein or in any other document regarding Mortgagee’s approval of alterations of the Mortgaged Property, Mortgagor shall not alter the Mortgaged Property in any manner which would materially increase Mortgagor’s responsibilities for compliance with the applicable Access Laws without the prior written approval of Mortgagee which approval shall not unreasonably be withheld provided that Mortgagor can demonstrate the availability of funding sources adequate to comply with such requirements. The foregoing shall apply to tenant improvements constructed by Mortgagor or by any of its tenants. Mortgagee may condition any such approval upon receipt from Mortgagor of a certificate of Access Law compliance from an architect, engineer, or other person acceptable to Mortgagee or other reasonably satisfactory evidence of compliance. Provided Mortgagor has delivered to Mortgagee the certificate described in, or otherwise complied with the provisions of, the foregoing sentence, approval by Mortgagee of tenant improvements as part of the approval of a new Lease shall also constitute approval of Mortgagor’s compliance with Access Laws applicable to such improvements.

(c) Mortgagor agrees to give prompt notice to Mortgagee of the receipt by Mortgagor of any complaints related to violations of any Access Laws received from governmental authorities or involving a threat of litigation and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

(d) Mortgagor shall protect, defend, indemnify and save harmless Mortgagee from and against all liabilities, obligations, claims, demands, damages, penalties, causes of action, losses, fines, costs and expenses (including, without limitation, reasonable attorneys’ fees and expenses), imposed upon or incurred by or asserted against Mortgagee by reason of any failure of the Mortgaged Property to comply with any Access Laws.

29. Notice. All notices, demands, statements, requests or consents (collectively, “notices”) made hereunder shall be in writing and given in the manner specified in the Loan Agreement.

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

31. Remedies of Mortgagor. In the event that a claim or adjudication is made that Mortgagee or its agents have unreasonably delayed acting in any case where by law or under this Mortgage or the other Loan Documents, Mortgagee or such agent, as the case may be, has an obligation to act promptly, Mortgagor agrees that neither Mortgagee nor its agents shall be liable for any monetary damages, and Mortgagor’s sole remedies shall be limited to commencing an action seeking injunctive relief or declaratory judgment.

32. Sole Discretion of Mortgagee. Wherever pursuant to this Mortgage, Mortgagee exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Mortgagee, the decision of Mortgagee to approve or disapprove or to decide that arrangements or terms are satisfactory or not satisfactory shall be in the sole discretion of Mortgagee and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

33. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's Obligations hereunder by reason of (a) the failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Mortgaged Property, or of any person liable for the Obligations or any portion thereof, or (c) any agreement or stipulation by Mortgagee extending the time of payment or otherwise modifying or supplementing the terms of this Mortgage or the other Loan Documents. Mortgagee may resort for the payment of the Obligations to any other security held by Mortgagee in such order and manner as Mortgagee, in its discretion, may elect. Mortgagee may take action to recover the Obligations, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. The rights and remedies of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

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

35. Successors and Assigns. Subject to the provisions hereof requiring Mortgagee's consent to any transfer of the Mortgaged Property, this Mortgage shall be binding upon and inure to the benefit of Mortgagor and Mortgagee and their respective successors and assigns forever.

36. Severability. If any term, covenant or condition of this Mortgage or the Loan Documents is held to be invalid, illegal or unenforceable in any respect, this Mortgage and any such other Loan Document shall be construed without such provision.

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

38. Duplicate Originals. This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

39. Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form and the word "Mortgagor" shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "Mortgagee" shall mean "Mortgagee and any subsequent holder of the Note," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, and the words "Mortgaged Property" shall include any portion of the

Mortgaged Property and any interest therein and the words “attorneys’ fees” shall include any and all attorneys’ fees, paralegal and law clerk fees (including, without limitation, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder). Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

40. Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided by the constitution and the laws of the United States and of any state, in and to the Land as against the collection of the Obligations, or any part hereof.

41. Assignments. Consistent with the applicable provisions of the Loan Agreement, Mortgagee shall have the right to assign or transfer, including, without limitation, in connection with a Secondary Market Transaction, its rights under this Mortgage, the Loan Agreement, the Note and the other Loan Documents and thereafter Mortgagee shall be relieved of any obligations hereunder and under the other Loan Documents arising after such assignment or transfer. Any assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage.

42. WAIVER OF JURY TRIAL. MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE NOTE, THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

43. GOVERNING LAW. THE LOAN AGREEMENT AND THE NOTE PROVIDE THAT THEY ARE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. THIS MORTGAGE SHALL ALSO BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. NOTWITHSTANDING THE PARTIES’ CHOICE OF NEW YORK LAW, HOWEVER, (I) THE TERMS AND PROVISIONS OF THIS MORTGAGE PERTAINING TO THE PRIORITY, ENFORCEMENT OR REALIZATION BY MORTGAGEE OF ITS RESPECTIVE RIGHTS AND REMEDIES UNDER THIS MORTGAGE WITH RESPECT TO THE MORTGAGED PROPERTY (OTHER THAN ANY PERSONAL PROPERTY) SHALL BE GOVERNED AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAW OF THE STATE IN WHICH THE LAND IS LOCATED (THE “STATE”) WITHOUT GIVING EFFECT TO THE CONFLICTS-OF-LAW RULES AND PRINCIPLES OF THE STATE; (II) WITH RESPECT TO ANY PERSONAL PROPERTY INCLUDED IN THE MORTGAGED PROPERTY, PERFECTION, THE EFFECT OF PERFECTION OR NON-PERFECTION AND PRIORITY OF THE SECURITY INTEREST WILL BE GOVERNED IN ACCORDANCE WITH MANDATORY CHOICE OF LAW RULES SET FORTH IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATE OF NEW YORK; (III) MORTGAGOR AGREES THAT TO THE EXTENT DEFICIENCY JUDGMENTS ARE AVAILABLE UNDER THE LAWS OF THE STATE AFTER A FORECLOSURE (JUDICIAL OR NONJUDICIAL) OF THE MORTGAGED PROPERTY, OR ANY PORTION THEREOF, OR ANY OTHER REALIZATION THEREON BY MORTGAGEE, MORTGAGEE SHALL HAVE THE RIGHT TO SEEK SUCH A DEFICIENCY JUDGMENT AGAINST MORTGAGOR IN THE STATE

(SUBJECT TO THE TERMS AND PROVISIONS OF SECTION 9.24 OF THE LOAN AGREEMENT); AND (IV) MORTGAGOR AGREES THAT IF MORTGAGEE OBTAINS A DEFICIENCY JUDGMENT IN ANOTHER STATE, THEN MORTGAGEE SHALL HAVE THE RIGHT TO ENFORCE SUCH JUDGMENT IN THE STATE TO THE EXTENT PERMITTED UNDER THE LAWS OF THE STATE, AS WELL AS IN OTHER STATES (SUBJECT TO THE TERMS AND PROVISIONS OF SECTION 9.24 OF THE LOAN AGREEMENT).

44. Intentionally omitted.

45. Submission To Jurisdiction. Mortgagor hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for the purposes of all legal proceedings arising out of or relating to this mortgage, any of the other loan documents to which it is a party or any of the transactions contemplated hereby or thereby. Mortgagor hereby irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

46. Non-Recourse. The provisions of this Mortgage are, notwithstanding anything to the contrary herein, subject to the provisions of Section 9.24 of the Loan Agreement which are incorporated herein in reference as if herein set forth in full.

47. Joint and Several Liability. If Mortgagor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

48. Release or Reconveyance. Upon payment in full of the Obligations as provided in the Loan Documents and the applicable Crossed Loan Documents, Mortgagee shall promptly release the liens and security interests created by this Mortgage or reconvey the Mortgaged Property to Mortgagor.

49. State Specific Provisions.

(a) Notwithstanding anything to the contrary in this Mortgage, the maximum amount of principal indebtedness secured by this Mortgage or which under any contingency may be secured by this Mortgage is \$10,125,000.00.

(b) Notwithstanding the foregoing or anything to the contrary contained herein, the following provisions shall apply:

(i) the lien of this Mortgage shall not be or be deemed to be reduced by any prepayment or repayment of the principal amount of the indebtedness secured hereby incurred under the Loan Agreement, the Crossed Loan Agreements and the related notes, and any such payments shall instead be deemed to reduce only such portions of the Obligations as are secured by mortgages encumbering property located outside of the State of Alabama.

(ii) so long as any portion of said indebtedness remains unpaid, such portion of said indebtedness last remaining unpaid shall be and be deemed to be secured hereby; and

(iii) the lien of this Mortgage shall secure amounts expended by Mortgagee to maintain the lien of this Mortgage or to protect the Mortgaged Property secured by this Mortgage, including, without limitation, amounts in respect of insurance premiums, real estate taxes,

assessments, maintenance charges, other expenses for the protection of the Mortgaged Property or the lien of this Mortgage, litigation expenses to prosecute or defend the rights, remedies and liens of this Mortgage or title to the Mortgaged Property encumbered hereby, and any costs, charges or amounts to which Mortgagee becomes subrogated upon payment, whether under recognized principles of law or equity or under express statutory authority, together with interest on all the foregoing amounts at such rates as are provided for in the Loan Agreement, the Crossed Loan Agreements and the related notes, as applicable.

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

MORTGAGOR:

ARC COMMUNITIES 16 LLC,
a Delaware limited liability company

By: 

Name: Cody C. Holloway

Title: Assistant Vice President

ACKNOWLEDGMENT

STATE OF Colorado)
)ss.
COUNTY OF Denver)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Cody C. Holloway, whose name as Assistant Vice President of ARC Communities 16 LLC, a Delaware 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 Assistant Vice President and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 4th day of February, 2004.

[NOTARIAL SEAL]

K. Balthaser
Notary Public

My commission expires: 7-11-2005

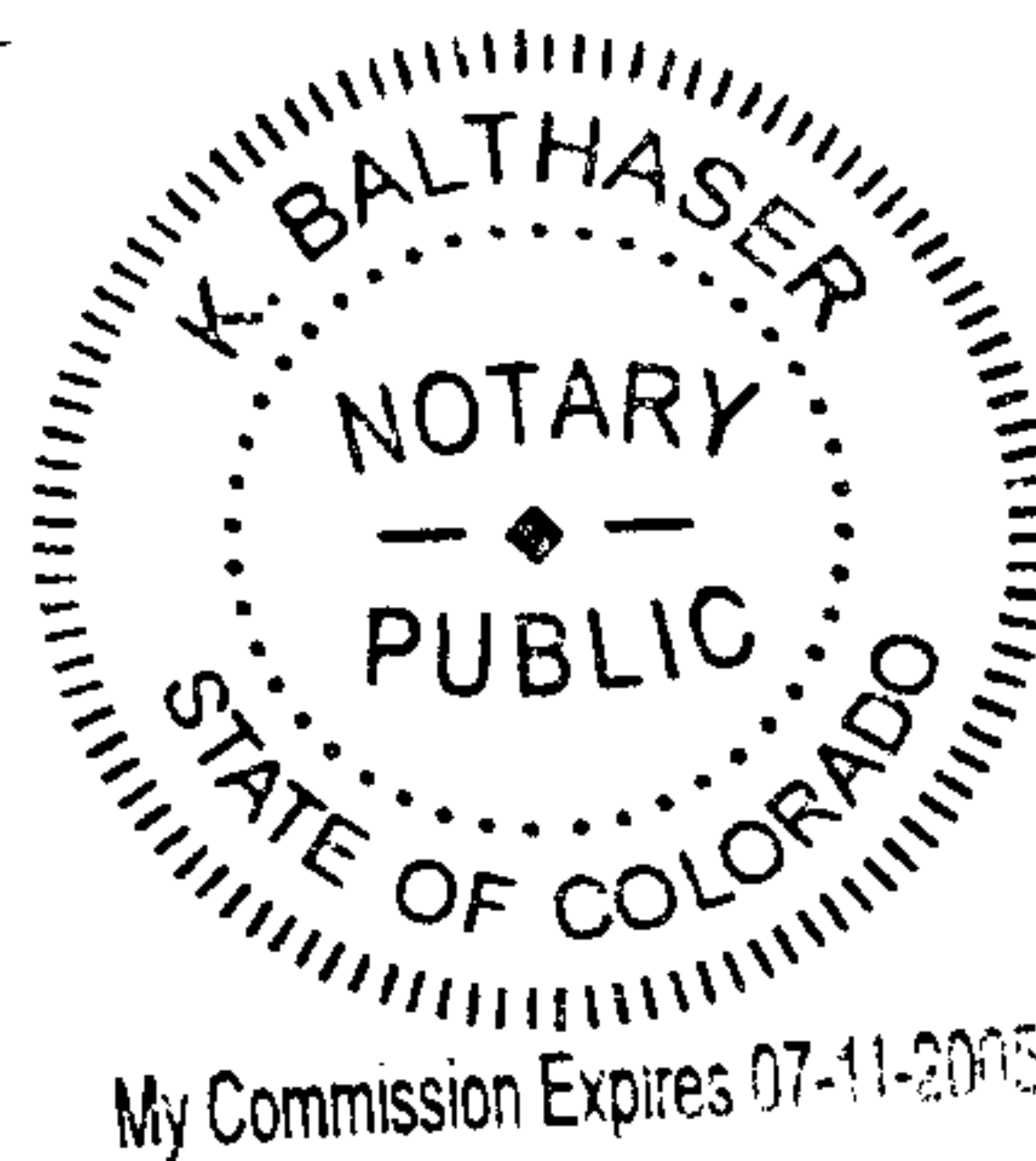


EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NE CORNER OF SAID SECTION 1; THENCE SOUTH ALONG THE EAST LINE THEREOF, A DISTANCE OF 1326.0 FEET; THENCE 45 DEG. 51 MIN. RIGHT, IN A SOUTHWESTERLY DIRECTION A DISTANCE OF 2025.0 FEET; THENCE 90 DEG. RIGHT, IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 682.0 FEET; THENCE 81 DEG. 04 MIN. RIGHT, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 663.0 FEET; THENCE 90 DEG. LEFT, IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 500.0 FEET; THENCE 90 DEG. RIGHT, IN A NORTHEASTERLY DIRECTION, A DISTANCE OF 1807.34 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION 1; THENCE 55 DEG. RIGHT, IN AN EASTERLY DIRECTION, A DISTANCE OF 844.43 FEET TO THE POINT OF BEGINNING. SITUATED IN SHELBY COUNTY, ALABAMA.

A 50 FOOT WIDE PARCEL OF LAND LOCATED IN THE NW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SW CORNER OF THE NW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST, THENCE IN A NORTHERLY DIRECTION ALONG THE WESTERLY LINE OF SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION A DISTANCE OF 25 FEET TO THE POINT OF BEGINNING, SAID POINT BEING IN THE CENTER LINE OF HEREIN DESCRIBED FIFTY FOOT WIDE PARCEL OF LAND, SAID PARCEL BEING 25 FEET EACH SIDE OF HEREIN DESCRIBED CENTER LINE; THENCE 89 DEG. 10 MIN. RIGHT, IN AN EASTERLY DIRECTION, A DISTANCE OF 56.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 73 DEG. 32 MIN., AND A RADIUS OF 119.93 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 153.92 FEET TO END OF SAID CURVE AND THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 23 DEG. 18 MIN. AND A RADIUS OF 242.51 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 98.62 FEET TO END OF SAID CURVE; THENCE NORTHEASTERLY A DISTANCE OF 715.64 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 16 DEG. 02 MIN. 30 SEC., AND A RADIUS OF 354.83 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE, A DISTANCE OF 99.34 FEET TO END OF SAID CURVE; THENCE NORTHEASTERLY A DISTANCE OF 27.50 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 35 DEG. 26 MIN. 30 SEC. AND A RADIUS OF 313.17 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE A DISTANCE OF 193.72 FEET TO END OF SAID CURVE TO THE RIGHT, HAVING A CENTRAL ANGLE OF 78 DEG. 41 MIN. AND A RADIUS OF 135.26 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE A DISTANCE OF 185.75 FEET TO ITS INTERSECTION WITH THE WESTERLY RIGHT OF WAY LINE OF U.S. HIGHWAY 31 AND END OF HEREIN DESCRIBED 50 FOOT WIDE PARCEL. SITUATED IN SHELBY COUNTY, ALABAMA.

A PARCEL OF LAND LOCATED IN THE W $\frac{1}{2}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NW CORNER OF THE SW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST, SAID POINT BEING ON THE SOUTH RIGHT OF WAY BOUNDARY OF TRAILER PARK ROAD; THENCE EASTERLY ALONG THE NORTH BOUNDARY OF SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION, WHICH IS ALSO ALONG SAID SOUTH RIGHT OF WAY BOUNDARY 55.69 FEET TO THE POINT OF BEGINNING OF THE ARC OF A CURVE, TANGENT TO LAST MENTIONED COURSE TURNING TO THE LEFT, HAVING A CENTRAL ANGLE OF 73 DEG. 32 MIN. AND A RADIUS OF 144.93 FEET; THENCE EASTERLY AND THENCE NORTHEASTERLY ALONG SAID ARC 186.00 FEET TO THE POINT OF BEGINNING OF ANOTHER CURVE, TURNING TO THE RIGHT, TANGENT TO LAST MENTIONED CURVE, HAVING A CENTRAL ANGLE OF 23 DEG. 18 MIN. AND A RADIUS OF 217.51 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF LAST MENTIONED CURVE 88.45 FEET; THENCE NORTHEASTERLY ALONG A LINE TANGENT TO LAST MENTIONED ARC 17.75 FEET (THE LAST MENTIONED THREE COURSES WERE ALONG SAID SOUTH

RIGHT OF WAY BOUNDARY OF TRAILER PARK ROAD)); THENCE RIGHT 63 DEG. 30 MIN. IN A SOUTHEASTERLY DIRECTION 35 FEET, MORE OR LESS, TO THE CENTERLINE OF BISHOP CREEK; THENCE SOUTHWESTERLY ALONG SAID CENTERLINE 486 FEET, MORE OR LESS, TO INTERSECTION WITH THE WEST BOUNDARY OF SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION: THENCE NORTHERLY ALONG SAID WEST BOUNDARY 173 FEET, MORE OR LESS, TO THE POINT OF BEGINNING. SITUATED IN SHELBY COUNTY, ALABAMA.

CENTERLINE OF 8.00 FEET EASEMENT FOR WALK
BEGIN AT THE NW CORNER OF THE SW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST; THENCE SOUTHERLY ALONG THE WEST BOUNDARY OF SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION 58.00 FEET TO THE POINT OF BEGINNING OF CENTERLINE HEREIN DESCRIBED; THENCE 81 DEG. 58 MIN. LEFT IN A SOUTHEASTERLY DIRECTION 28.10 FEET; THENCE 39 DEG. 00 MIN. RIGHT IN A SOUTHEASTERLY DIRECTION 75 FEET, MORE OR LESS, TO INTERSECTION WITH THE CENTERLINE OF BISHOP CREEK, SAID INTERSECTION BEING THE TERMINUS OF CENTERLINE HEREIN DESCRIBED. SITUATED IN SHELBY COUNTY, ALABAMA.

PART OF LOT 1 JH BANKER'S SUBDIVISION AND PART OF THE SE $\frac{1}{4}$ AND THE NE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST AND THE NW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 20 SOUTH, RANGE 2 WEST BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SE CORNER OF THE SE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA AND RUN THENCE NORTH 00 DEG. 02 MIN. 45 SEC. WEST ALONG THE EAST LINE OF SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION A DISTANCE OF 1,151.65 FEET TO PROPERTY CORNER IN THE CENTERLINE OF BISHOP CREEK; THENCE RUN SOUTH 59 DEG. 29 MIN. 19 SEC. WEST ALONG CENTERLINE OF SAID CREEK 59.70 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 21 DEG. 16 MIN. 11 SEC. WEST ALONG CENTERLINE OF SAID CREEK 159.36 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 56 DEG. 34 MIN. 04 SEC. WEST ALONG CENTERLINE OF SAID CREEK 26.66 FEET TO A PROPERTY CORNER, THENCE RUN ALONG CENTERLINE OF SAID CREEK NORTH 87 DEG. 38 MIN. 50 SEC. WEST A DISTANCE OF 140.35 FEET TO A PROPERTY CORNER; THENCE RUN ALONG THE CENTERLINE OF SAID CREEK NORTH 68 DEG. 19 MIN. 51 SEC. WEST A DISTANCE OF 53.89 FEET TO A PROPERTY CORNER; THENCE RUN NORTH 63 DEG. 53 MIN. 32 SEC. WEST ALONG CENTERLINE OF SAID CREEK 22.40 FEET TO A POINT ON THE DIAGONAL LINE FROM THE NE CORNER OF SUBJECT $\frac{1}{4}$ $\frac{1}{4}$ SECTION TO THE SW CORNER OF SAME SAID $\frac{1}{4}$ $\frac{1}{4}$ SECTION; THENCE CONTINUE NORTH 63 DEG. 53 MIN. 32 SEC. WEST ALONG CENTERLINE OF SAID BISHOP CREEK A DISTANCE OF 101.71 FEET TO A PROPERTY CORNER; THENCE RUN NORTH 70 DEG. 16 MIN. 22 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 53.59 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 59 DEG. 36 MIN. 19 SEC. WEST ALONG THE CENTERLINE OF SAID CREEK A DISTANCE OF 62.77 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 56 DEG. 48 MIN. 01 SEC. WEST ALONG THE CENTERLINE OF SAID CREEK A DISTANCE OF 65.03 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 40 DEG. 55 MIN. 10 SEC WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 68.06 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 19 DEG. 36 MIN. 18 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 48.20 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 24 DEG. 14 MIN. 39 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 56.85 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 29 DEG. 52 MIN. 59 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 76.33 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 36 DEG. 20 MIN. 45 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 69.25 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 28 DEG. 20 MIN. 41 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 50.82 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 35 DEG. 34 MIN. 16 SEC. WEST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 39.42 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 08 DEG. 36 MIN. 24 SEC. EAST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 42.56 FEET TO A PROPERTY CORNER; THENCE RUN SOUTH 32 DEG. 15 MIN. 53 SEC. EAST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 34.40 FEET TO A PROPERTY CORNER ON THE DIAGONAL (SO CALLED TWENTY ACRE LINE) LINE BETWEEN THE NE CORNER OF SAID SE $\frac{1}{4}$ OF THE NE $\frac{1}{4}$ AND THE SW $\frac{1}{4}$ OF SAME SAID $\frac{1}{4}$ $\frac{1}{4}$; THENCE RUN SOUTH 45 DEG. 50 MIN. 56 SEC. WEST ALONG SAID DIAGONAL LINE A

DISTANCE OF 809.57 FEET TO A PROPERTY CORNER REPRESENTING THE SW CORNER OF THE SAID SE ¼ OF THE NE ¼ OF SAID SECTION 1; THENCE RUN SOUTH 89 DEG. 43 MIN. 11 SEC. EAST ALONG THE SOUTH LINE OF SAID ¼ ¼ AND THE CENTERLINE OF SAME SAID BISHOP CREEK A DISTANCE OF 610.01 FEET TO A PROPERTY CORNER IN THE CENTERLINE OF SAID CREEK; THENCE RUN NORTH 60 DEG. 22 MIN. 32 SEC. EAST ALONG CENTERLINE OF SAID CREEK A DISTANCE OF 87.16 FEET TO A PROPERTY CORNER IN THE CENTERLINE OF SAID CREEK; THENCE RUN NORTH 67 DEG. 18 MIN. 26 SEC. EAST A DISTANCE OF 101.94 FEET TO A STEEL REBAR PROPERTY CORNER; THENCE RUN SOUTH 67 DEG. 18 MIN. 21 SEC. EAST AND 4.51 FEET NORTH OF AND NEARLY PARALLEL TO AN EXISTING INDUSTRIAL FENCE A DISTANCE OF 764.54 FEET TO A FOUND CRIMPED PIPE CORNER ON THE WESTERLY MARGIN OF U.S. HIGHWAY NO. 31, AKA, PELHAM PARKWAY; THENCE RUN NORTH 27 DEG. 35 MIN. 30 SEC. EAST ALONG SAID MARGIN OF SAID HIGHWAY A DISTANCE OF 73.53 FEET TO A PROPERTY CORNER; THENCE RUN NORTH 67 DEG. 23 MIN. 27 SEC. WEST A DISTANCE OF 173.65 FEET TO A PROPERTY CORNER; THENCE RUN NORTH 36 DEG. 40 MIN. 19 SEC. EAST A DISTANCE OF 46.35 FEET TO A PROPERTY CORNER; THENCE RUN NORTH 35 DEG. 01 MIN. 49 SEC. WEST A DISTANCE OF 48.32 FEET TO A PROPERTY CORNER ON THE EAST LINE OF THE NE ¼ OF THE SE ¼ OF SAME SAID SECTION 1; THENCE RUN NORTH 00 DEG. 02 MIN. 19 SEC. WEST ALONG THE EAST LINE OF THE SAID NE ¼ OF THE SE ¼ OF SAME SAID SECTION 1 A DISTANCE OF 79.04 FEET TO THE POINT OF BEGINNING. SITUATED IN SHELBY COUNTY, ALABAMA.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

COMMENCE AT THE NE CORNER OF THE SE ¼ OF THE NE ¼ OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA AND RUN THENCE SOUTH 45 DEG. 50 MIN. 56 SEC. WEST A DISTANCE OF 476.34 FEET TO A POINT IN THE CENTERLINE OF BISHOP CREEK AND THE POINT OF BEGINNING OF THE PROPERTY BEING DESCRIBED; THENCE RUN NORTH 63 DEG. 53 MIN. 32 SEC. WEST ALONG THE CENTERLINE OF BISHOP CREEK A DISTANCE OF 101.71 FEET TO A POINT; THENCE RUN NORTH 70 DEG. 16 MIN. 22 SEC. WEST ALONG SAID CENTERLINE OF SAID CREEK 53.59 FEET TO A POINT; THENCE RUN SOUTH 59 DEG. 36 MIN. 19 SEC. WEST ALONG CENTERLINE OF SAID CREEK 62.77 FEET TO A POINT; THENCE RUN SOUTH 56 DEG 48 MIN 01 SEC WEST ALONG CENTERLINE OF SAID CREEK 65.03 FEET TO A POINT; THENCE RUN SOUTH 40 DEG 55 MIN 10 SEC WEST ALONG THE CENTERLINE OF SAID CREEK 68.06 FEET TO A POINT; THENCE RUN SOUTH 19 DEG 36 MIN 18 SEC WEST ALONG CENTERLINE OF SAID CREEK 48.20 FEET TO A POINT; THENCE RUN SOUTH 24 DEG 14 MIN 39 SEC WEST ALONG CENTERLINE OF SAID CREEK 56.85 FEET TO A POINT; THENCE RUN SOUTH 29 DEG 52 MIN 59 SEC WEST ALONG CENTERLINE OF SAID CREEK 76.33 FEET TO A POINT; THENCE RUN SOUTH 36 DEG 20 MIN 45 SEC WEST ALONG CENTERLINE OF SAID BISHOP CREEK 69.25 FEET TO A POINT; THENCE RUN SOUTH 28 DEG 20 MIN 41 SEC WEST ALONG SAID CENTERLINE OF SAID CREEK 50.82 FEET TO A POINT; THENCE RUN SOUTH 35 DEG 34 MIN 16 SEC WEST ALONG CENTERLINE OF SAID CREEK 39.42 FEET TO A POINT; THENCE RUN SOUTH 08 DEG 36 MIN 24 SEC EAST ALONG CENTERLINE OF SAID CREEK 42.56 FEET TO A POINT; THENCE RUN SOUTH 32 DEG 15 MIN 53 SEC EAST ALONG CENTERLINE OF SAID CREEK 34.40 FEET TO A POINT; THENCE RUN NORTH 45 DEG 50 MIN 56 SEC EAST A DISTANCE OF 607.41 TO THE POINT OF BEGINNING SITUATED IN SHELBY COUNTY, ALABAMA

BEGINNING AT THE NE CORNER OF THE SE 1/4 OF THE NE 1/4 OF SECTION 1, TOWNSHIP 20 SOUTH, RANGE 3 WEST, SHELBY COUNTY, ALABAMA AND RUN THENCE SOUTH 45 DEG 50 MIN 56 SEC WEST A DISTANCE OF 476.34 FEET TO A POINT IN THE CENTERLINE OF BISHOP CREEK; THENCE RUN SOUTH 63 DEG 53 MIN 32 SEC EAST ALONG SAID CENTERLINE OF SAID CREEK 22.40 FEET TO A POINT; THENCE RUN SOUTH 69 DEG 19 MIN 51 SEC EAST ALONG SAID CENTERLINE OF SAID CREEK 53.89 FEET TO A POINT; THENCE RUN SOUTH 87 DEG 38 MIN 50 SEC EAST ALONG SAID CENTERLINE OF SAID CREEK 140.35 FEET TO A POINT; THENCE NORTH 56 DEG 34 MIN 04 SEC EAST ALONG SAID

CENTERLINE OF SAID CREEK 26.66 FEET TO A POINT; THENCE RUN NORTH 21 DEG 16 MIN 11 SEC EAST ALONG SAID CENTERLINE OF SAID CREEK 159.36 FEET TO A POINT; THENCE RUN NORTH 59 DEG 29 MIN 19 SEC EAST ALONG CENTERLINE OF SAID CREEK 61.31 FEET TO A POINT ON THE EAST LINE OF SAID SE 1/4 OF NE 1/4 OF SAID SECTION 1; THENCE RUN NORTH 00 DEG 30 MIN 24 SEC WEST ALONG SAID EAST LINE OF SAID 1/4 1/4 A DISTANCE OF 173.00 FEET TO THE POINT OF BEGINNING. SITUATED IN SHELBY COUNTY, ALABAMA.

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Shelby Cnty Judge of Probate, AL
02/27/2004 11:14:00 FILED/CERTIFIED