

This Instrument Prepared By:

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Attention: Stephanie Decker, Esq.

**AMENDED AND RESTATED FUTURE ADVANCE SECOND MORTGAGE,
SECURITY AGREEMENT AND FIXTURE FILING**

STATE OF ALABAMA

COUNTY OF SHELBY

THIS AMENDED AND RESTATED FUTURE ADVANCE SECOND MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is dated February 13, 2004, by **THE PARTIES LISTED ON SCHEDULE I ATTACHED HERETO** (collectively, the "Mortgagor"), whose address for notice hereunder is c/o Jupiter Realty Corporation, Suite 1500, 919 North Michigan Avenue, Chicago, Illinois 60611, Attention: Mr. E. Michael Pompizzi, to **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation (together with its successors and assigns referred to herein as "Mortgagee"), whose address for notice is Suite 4100, 301 Yamato Road, Boca Raton, Florida 33431, Attention: Asset Manager/Jupiter-Alabama Apartments.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

WITNESSETH:

WHEREAS, the Alabama Housing Finance Authority (the "Issuer") has issued its \$33,760,000 Multifamily Housing Revenue Refunding Bonds (Hunters Pointe Apartments Project), 1994 Series A (the "Bonds") under and pursuant to a Trust Indenture, dated as of March 1, 1994 (as amended, restated and/or supplemented from time to time, the "Indenture"), by and between the Issuer and Regions Bank, f/k/a First Alabama Bank, as trustee (the "Trustee"), for the purpose of financing, among other things, a certain multifamily residential housing project commonly referred to as Hunters Pointe Apartments (the "Project");

WHEREAS, the Issuer loaned the proceeds of the Bonds (the "Project Loan") to FPI Birmingham, Ltd. (the "Original Owner"), pursuant to the terms and conditions of a Loan Agreement, dated as of March 1, 1994 (as amended, restated and/or supplemented from time to

time and including any similar agreement executed in connection with the issuance of bonds, issued to refund the Bonds, the "Project Loan Agreement");

WHEREAS, Mortgagee made a loan (the "Loan") to the original owner in the amount of \$1,881,761.79 which is evidenced by a Promissory Note dated March 22, 1994 (the "Note") and secured by Mortgage and Security Agreement dated as of March 1, 1994 between the Original Owner and the Mortgagee (the "Original Second Mortgage");

WHEREAS, on the date hereof, the Mortgagor acquired the Project and assumed the obligations of the Original Owner with respect to the Bonds and the Note arising on and after the date hereof;

WHEREAS, in order to secure Mortgagor's obligations to Mortgagee under the Note, Mortgagee requires that Mortgagor execute this Amended and Restated Future Advance Second Mortgage;

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings set forth in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement.

NOW THEREFORE, to secure the full and timely payment of the Indebtedness (as defined herein) and the full and timely performance of the Obligations (as defined herein), Mortgagor has BARGAINED and SOLD and does hereby MORTGAGE, GRANT, BARGAIN, SELL, WARRANT, CONVEY, ALIEN, REMISE, RELEASE, ASSIGN, SET OVER and CONFIRM to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances (as hereinafter defined), TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

ARTICLE I

INCORPORATION OF WHEREAS CLAUSES AND DEFINITIONS

Section 1.01. Incorporation of "Whereas Clauses." Each and all of the definitions set forth in the foregoing introduction and "whereas clauses" are hereby incorporated into this Mortgage for all purposes.

Section 1.02. Definitions. As used herein, the following terms shall have the following meanings:

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which commercial banks in New York, New York are required or authorized to be closed.

"Conventional Loan Agreement" means the Conventional Loan Agreement dated as of February 1, 2004 by and between the Mortgagor and the Mortgagee.

“Indebtedness” means the sum of (a) any and all agreements, covenants, conditions, warranties, representations and other obligations for the payment or reimbursement of money contained in or represented by the Note; (b) any and all agreements, covenants, conditions, warranties, representations and other obligations for the payment or reimbursement of money contained in or represented by the Note; (c) any and all additional advances made by or on behalf of Mortgagee to protect or preserve the Mortgaged Property or the lien hereof on the Mortgaged Property, or to pay taxes, to pay premiums on insurance on the Mortgaged Property or to repair or maintain the Mortgaged Property, or to complete improvements on the Mortgaged Property (whether or not the original Mortgagor remains the owner of the Mortgaged Property at the time of such advances and whether or not the original mortgagee remains the owner of the Indebtedness and this Mortgage); (d) any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained; and (e) the full and prompt payment and performance of any and all obligations or covenants of Mortgagor to Mortgagee under the terms of any other agreements, assignments or other instruments now or hereafter evidencing, securing or otherwise relating to the Indebtedness, all modifications, restatements and extensions of the foregoing.

“Mortgaged Property” means (a) the real property described in Exhibit A, together with any greater estate therein as hereafter may be acquired by Mortgagor (the “Land”), (b) all buildings, structures and other improvements, now or at any time situated, placed or constructed upon the Land (the “Improvements”), (c) all materials, supplies, equipment, apparatus and other items of personal property now owned or hereafter acquired by Mortgagor and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary sewer facilities and all other utilities whether or not situated in easements (the “Fixtures”), (d) all right, title and interest of Mortgagor in and to all goods (including without limitation inventory, equipment, fixtures and accessions), accounts, deposit accounts, general intangibles (including without limitation payment intangibles and software), investment property, letter-of-credit rights, letters-of-credit, money, supporting obligations, as-extracted collateral, timber to be cut, instruments (including without limitation promissory notes), documents, chattel paper (whether tangible or electronic) and all other personal property of any kind or character, including such items of personal property as defined in the UCC, now owned or hereafter acquired by Mortgagor and now or hereafter affixed to, placed upon, used in connection with, arising from or otherwise related to the Land and Improvements or which may be used in or relating to the planning, development, financing or operation of the Mortgaged Property, including, without limitation, furniture, furnishings, equipment, fixtures and accessions, machinery, money, insurance proceeds, accounts, deposit accounts, contract rights, trademarks, goodwill, chattel paper (whether tangible or electronic), documents, trade names, licenses and/or franchise agreements, rights of Mortgagor under leases of Fixtures or other personal property or equipment, inventory, all refundable, returnable or reimbursable fees, deposits or other funds or evidences of credit or indebtedness deposited by or on behalf of Mortgagor with any governmental authorities, boards, corporations, providers of utility services, public or private, including specifically, but without limitation, all refundable, returnable or reimbursable tap fees, utility deposits, commitment fees and development costs (the “Personalty”), (e) all reserves, escrows or impounds required under the Note and all deposit accounts maintained by Mortgagor with respect to the Mortgaged Property, (f) all plans, specifications, shop drawings and other technical descriptions prepared for construction, repair or alteration of the Improvements, and all amendments and modifications thereof (the “Plans”),

(g) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “Leases”), (h) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the “Rents”), (i) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Property Agreements”), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (l) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (m) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (n) all of Mortgagor’s right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

“*Obligations*” means all of the agreements, covenants, conditions, warranties, representations and other obligations (other than to repay the Indebtedness) made or undertaken by Mortgagor or any other person or entity to Mortgagee or others as set forth in the Note.

“*Permitted Encumbrances*” means the Prior Lien Documents and the outstanding liens, easements, restrictions, security interests and other exceptions to title set forth in the policy of title insurance insuring the lien of this Mortgage, together with the liens and security interests in favor of Mortgagee created by the Note, none of which, individually or in the aggregate, (i) materially interferes with the benefits of the security intended to be provided by this Mortgage, (ii) materially and adversely affects the value of the Mortgaged Property, (iii) impairs the use or operations of the Mortgaged Property, or (iv) impairs Mortgagor’s ability to pay its obligations in a timely manner, in the case of (i) through (iv) above, however, subject to the Prior Lien Documents and the Note.

“*Prior Lien Documents*” means the (a) Mortgage and Security Agreement, dated as of March 1, 1994, made by the Original Owner in favor of the Issuer (the “First Mortgage”), (b) Assignment of Rents and Leases, dated as of March 1, 1994, made by the Original Owner in favor of the Issuer (c) Environmental Indemnity Agreement dated as of March 1, 1994, made by the Original Owner to the Issuer, Trustee, General Electric Capital Corporation, and (d) all other documents assigned to the Mortgagor pursuant to the Assignment of Rights and Assumption Agreement, dated February 13, 2004, between the Issuer, the Original Owner and the Mortgagor, all as modified and/or modified from time to time.

(g) all leases, subleases, licenses, concessions, occupancy agreements or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Mortgaged Property, together with all related security and other deposits (the “Leases”), (h) all of the rents, revenues, income, proceeds, profits, security and other types of deposits, and other benefits paid or payable by parties to the Leases other than Mortgagor for using, leasing, licensing, possessing, operating from, residing in, selling or otherwise enjoying the Mortgaged Property (the “Rents”), (i) all other agreements, such as construction contracts, architects’ agreements, engineers’ contracts, utility contracts, maintenance agreements, management agreements, service contracts, permits, licenses, certificates and entitlements in any way relating to the development, construction, use, occupancy, operation, maintenance, enjoyment, acquisition or ownership of the Mortgaged Property (the “Property Agreements”), (j) all rights, privileges, tenements, hereditaments, rights-of-way, easements, appendages and appurtenances appertaining to the foregoing, and all right, title and interest, if any, of Mortgagor in and to any streets, ways, alleys, strips or gores of land adjoining the Land or any part thereof, (k) all accessions, replacements and substitutions for any of the foregoing and all proceeds thereof, (l) all insurance policies, unearned premiums therefor and proceeds from such policies covering any of the above property now or hereafter acquired by Mortgagor, (m) all mineral, water, oil and gas rights now or hereafter acquired and relating to all or any part of the Mortgaged Property, and (n) all of Mortgagor’s right, title and interest in and to any awards, remunerations, reimbursements, settlements or compensation heretofore made or hereafter to be made by any governmental authority pertaining to the Land, Improvements, Fixtures or Personalty. As used in this Mortgage, the term “Mortgaged Property” shall mean all or, where the context permits or requires, any portion of the above or any interest therein.

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“UCC” means the Uniform Commercial Code of Alabama or, if the creation, perfection and enforcement of any security interest herein granted is governed by the laws of a state other than Alabama, then, as to the matter in question, the Uniform Commercial Code in effect in that state.

ARTICLE II

GRANT

Section 2.01. Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance of the Obligations, Mortgagor has BARGAINED and SOLD and does hereby MORTGAGE, GRANT, BARGAIN, SELL, WARRANT, CONVEY, ALIEN, REMISE, RELEASE, ASSIGN, SET OVER and CONFIRM to Mortgagee the Mortgaged Property, subject, however, to the Permitted Encumbrances, TO HAVE AND TO HOLD the Mortgaged Property to Mortgagee, and Mortgagor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Mortgagee.

PROVIDED, HOWEVER, that these presents are upon the condition that, (i) if the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the Indebtedness, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, reasonable attorneys’ fees, and shall pay any and all other Indebtedness, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage and in the Note expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan or the Note (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

ARTICLE III

WARRANTIES, REPRESENTATIONS AND COVENANTS

Mortgagor warrants, represents and covenants to Mortgagee as follows:

Section 3.01. Title to Mortgaged Property and Lien of this Mortgage. Mortgagor owns the Mortgaged Property free and clear of any liens, claims or interests, except the Permitted Encumbrances. This Mortgage creates a valid, enforceable second priority lien and security interest against the Mortgaged Property subject only to the Permitted Encumbrances.

Mortgagor will preserve such title, and will forever warrant and defend the same to Mortgagee, and will forever warrant and defend the validity and priority of the lien hereof

against the claims of all persons and parties whomsoever, subject to the Permitted Encumbrances.

Section 3.02. Lien Status. Mortgagor shall preserve and protect the lien and security interest status of this Mortgage and the Note. If any lien or security interest other than the Permitted Encumbrances is asserted against the Mortgaged Property, Mortgagor shall promptly, and at Mortgagor's expense, (a) give Mortgagee a detailed written notice of such lien or security interest (including origin, amount and other terms), and (b) pay the underlying claim in full or take such other action so as to cause it to be released or contest the same in compliance with the requirements of the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement (including the requirement of providing a bond or other security satisfactory to Mortgagee).

Section 3.03. Payment and Performance. Mortgagor shall pay the Indebtedness when due and shall perform the Obligations in full when they are required to be performed.

Section 3.04. Replacement of Fixtures and Personalty. Mortgagor shall not, without the prior written consent of Mortgagee, permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements, unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is obsolete and is replaced by an article of equal or better suitability and value, owned by Mortgagor subject to the liens and security interests of this Mortgage and the Note, and free and clear of any other lien or security interest (other than Permitted Encumbrances) except such as may be first approved in writing by Mortgagee.

Section 3.05. Maintenance of Rights of Way, Easements and Licenses. Mortgagor shall maintain all rights of way, easements, grants, privileges, licenses, certificates, permits, entitlements, and franchises necessary for the use of the Mortgaged Property and will not, without the prior consent of Mortgagee, consent to any public restriction (including any zoning ordinance) or private restriction as to the use of the Mortgaged Property. Mortgagor shall comply with all restrictive covenants affecting the Mortgaged Property, and all zoning ordinances and other public or private restrictions as to the use of the Mortgaged Property.

Section 3.06. Inspection. Mortgagor shall permit Mortgagee, and its agents, representatives and employees, upon reasonable prior notice to Mortgagor, to inspect the Mortgaged Property and conduct such environmental and engineering studies as Mortgagee may require, provided that such inspections and studies shall not materially interfere with the use and operation of the Mortgaged Property.

Section 3.07. Other Covenants. All of the covenants in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement are incorporated herein by reference and, together with covenants in this Article III shall be covenants running with the land.

Section 3.08. Due on Sale or Encumbrance. Mortgagor hereby acknowledges to Mortgagee that the identity and expertise of Mortgagor were and continue to be material circumstances upon which the Mortgagee has relied in connection with, and which constitute

valuable consideration to Mortgagee for the making of the Loan by Mortgagee. Mortgagor therefore covenants and agrees with Mortgagee that the entire Indebtedness secured by this Mortgage shall, at the absolute option of Mortgagee, be and become immediately due and payable should the Mortgagor, without the prior written consent of Mortgagee (which consent may be given or withheld in the sole and absolute discretion of Mortgagee), sell, assign, transfer, convey, lease with option to purchase, enter into a contract for sale (other than making provisions with payoff of the Obligations), grant an option to purchase (other than making provisions with payoff of the Obligations), or further encumber any or all of Mortgagor's interest in the Mortgaged Property or the Personal Property, or any portion thereof, or permit the same to be sold, assigned, transferred, conveyed, contracted for or further encumbered except in all such cases as may be permitted in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement.

Section 3.09. Condemnation Awards and Insurance Proceeds.

(a) ***Condemnation Awards.*** Subject to the express terms of the Prior Lien Documents and the Note, Mortgagor assigns all awards and compensation for any condemnation or other taking, or any purchase in lieu thereof, to Mortgagee and authorizes Mortgagee to collect and receive such awards and compensation and to give proper receipts and acquittances therefor, subject to the terms of the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement.

(b) ***Insurance Proceeds.*** Subject to the express terms of any Prior Lien Documents and the Note, Mortgagor assigns to Mortgagee all proceeds of any insurance policies insuring against loss or damage to the Mortgaged Property. Mortgagor authorizes Mortgagee to collect and receive such proceeds and authorizes and directs the issuer of each of such insurance policies to make payment for all such losses directly to Mortgagee, instead of to Mortgagor and Mortgagee jointly.

Section 3.10. AFTER ACQUIRED PROPERTY. ALL RIGHT, TITLE, AND INTEREST OF MORTGAGOR IN AND TO ALL EXTENSIONS, IMPROVEMENTS, BETTERMENTS, RENEWALS, SUBSTITUTIONS, AND REPLACEMENTS OR, AND ALL ADDITIONS AND APPURTENANCES TO THE MORTGAGED PROPERTY, HEREAFTER ACQUIRED BY, OR CONVEYED TO, MORTGAGOR OR CONSTRUCTED, ASSEMBLED, OR PLACED BY MORTGAGOR UPON THE LAND, AND ALL CONVERSIONS OF THE SECURITY CONSTITUTED THEREBY, IMMEDIATELY UPON SUCH ACQUISITION, CONVEYANCE, CONSTRUCTION, ASSEMBLING, PLACEMENT, OR CONVERSION, AS THE CASE MAY BE, AND IN EACH SUCH CASE, WITHOUT ANY FURTHER MORTGAGE, CONVEYANCE, ASSIGNMENT, OR OTHER ACT BY MORTGAGOR, SHALL BECOME SUBJECT TO THE LIEN OF THIS MORTGAGE AS FULLY AND COMPLETELY, AND WITH THE SAME EFFECT, AS THOUGH NOW OWNED BY MORTGAGOR AND SPECIFICALLY DESCRIBED IN THE GRANTING CLAUSE OF THIS MORTGAGE, BUT AT ANY AND ALL TIMES MORTGAGOR WILL EXECUTE AND DELIVER TO MORTGAGEE ANY AND ALL SUCH FURTHER ASSURANCES, MORTGAGES, CONVEYANCES, OR ASSIGNMENTS THEREOF, AS MORTGAGEE MAY REQUIRE FOR THE PURPOSE OF EXPRESSLY AND SPECIFICALLY SUBJECTING THE SAME TO THE LIEN OF THIS MORTGAGE.

ARTICLE IV

DEFAULT AND FORECLOSURE

Section 4.01. Remedies. If an Event of Default (as defined in the Note) exists, Mortgagee may, at Mortgagee's election, exercise any or all of the following rights, remedies and recourses:

(a) ***Acceleration.*** Declare the entire balance of the Indebtedness (including but not limited to the Loan and the other Indebtedness) secured hereby (or such parts as Mortgagee may elect) with interest accrued thereon (or such parts as Mortgagee may elect) shall, at the option of the Mortgagee, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Mortgagee to exercise such option when entitled to do so shall not be considered as a waiver of such right.

(b) ***Right of Mortgagee to Enter and Take Possession.***

(i) If an Event of Default shall have occurred and be continuing, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Mortgagee or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(ii) Upon every such entering upon or taking of possession, the Mortgagee, as attorney-in-fact or agent of the Mortgagor, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Mortgagee) and conduct the business thereof either personally or by its agents, and, from time to time (A) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (B) insure or keep the Mortgaged Property (or any portion thereof selected by Mortgagee) insured; (C) manage and operate the Mortgaged Property (or any portion thereof selected by Mortgagee) and exercise all the rights and powers of the Mortgagor in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Mortgagor to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (D) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage; and the

Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Mortgagee), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Mortgagee may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, Mortgagee shall apply the remainder of the moneys so received by the Mortgagee, first to the payment of accrued interest under the Note; second to the payment of any other sums required to be paid by Mortgagor under this Mortgage; third to the payment of overdue installments of principal on the Note; fourth to the payment of any sums due with respect to any other Indebtedness, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.

(iii) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

(c) ***Receiver.***

(i) If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.

(ii) The Mortgagor shall pay to the Mortgagee upon demand all costs and expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Section 4.01(c); and all such expenses shall be secured by this Mortgage.

(d) ***Mortgagee's Power of Enforcement.*** If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Loan; (ii) to foreclose this Mortgage; (iii) to enforce or exercise any right with respect to other Indebtedness; and (iv) to pursue any other remedy available to Mortgagee, all as the Mortgagee may elect.

(e) ***Rights of a Secured Party.*** Upon the occurrence of an Event of Default, the Mortgagee, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any other documents relating to the Indebtedness or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the UCC, all of which shall be cumulative. Such rights shall include, without limitation:

(i) The right to take possession of the Personalty, Fixtures, Plans, Leases, Rents, Property Agreements and other Mortgaged Property the security interest in and disposition of which is governed by the UCC (the "Collateral") without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Mortgagor and without any liability for rent, storage, utilities or other sums;

(ii) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give to Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;

(iii) The right to require Mortgagor, upon request of Mortgagee, to assemble and make the Collateral available to Mortgagee at a place reasonably convenient to Mortgagor and Mortgagee; and

(iv) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Mortgagee upon default, Mortgagor does hereby irrevocably appoint Mortgagee attorney-in-fact for Mortgagor, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Mortgagor could do, and to sell, assign, and transfer any collateral to Mortgagee or any other party.

(f) ***Power of Sale.*** If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so

purchased. Mortgagee may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of Section 4.01(e) of this Mortgage shall apply with respect to Mortgagee's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

Section 4.02. Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Section 4.01(f), or any sale pursuant to Section 4.01(e), shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, or any other documents relating to the Indebtedness, as applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note, such repayment to be applied in the manner determined by Mortgagee;

(c) Third, to the payment of the Indebtedness (including but not limited to the Loan and other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, or any other documents relating to the Indebtedness, as applicable, whether or not all of such indebtedness is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

Section 4.03. Mortgagee's Option on Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 4.04. Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured

by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

Section 4.05. Suits to Protect the Mortgaged Property. The Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Mortgagee.

Section 4.06. Mortgagor to Pay the Note on any Default in Payment; Application of Moneys by Mortgagee. If default shall occur in the payment of any amount due under this Mortgage, the Note or any other Indebtedness, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Mortgagee, the Mortgagor shall pay to the Mortgagee the whole amount due and payable under the Note and under all other Indebtedness; and in case the Mortgagor shall fail to pay the same forthwith upon such demand, the Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Mortgagee's agents and attorneys.

Section 4.07. Delay or Omission No Waiver. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, or with respect to any other Indebtedness to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

Section 4.08. No Waiver of One Default to Affect Another. No waiver of any default hereunder, under the Note or under any other Indebtedness shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Mortgagee (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, or in any other documents relating to the Indebtedness; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, or any other documents relating to the Indebtedness; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, or any other documents relating to the Indebtedness of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer,

endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Mortgagee, without notice to any person, corporation or other entity (except notice shall be given to Mortgagor so long as Mortgagor remains liable under the Note or this Mortgage) hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

Section 4.09. Discontinuance of Proceedings — Position of Parties Restored. In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had been taken.

Section 4.10. Remedies Cumulative. No right, power, or remedy conferred upon or reserved to the 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 under the Note, any other documents relating to the Indebtedness or now or hereafter existing at law or in equity or by statute.

Section 4.11. Notice of Defaults Under the Loan Documents and Other Credit Arrangements. Mortgagor shall give prompt notice to Mortgagee of any defaults by Mortgagor under this Mortgage or the Note, and of any notice of default received by Mortgagor under any other credit arrangement of Mortgagor.

ARTICLE V

ASSIGNMENT OF RENTS AND LEASES

Section 5.01. Assignment. Mortgagor hereby assigns to Mortgagee, as further security for the Indebtedness and the Obligations, the Leases and Rents. While any Event of Default exists, Mortgagee shall be entitled to exercise any or all of the remedies provided herein.

Section 5.02. No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and undischarged, the fee and any leasehold estates to the Mortgaged Property shall not merge, but shall remain separate and distinct, notwithstanding the union of any such estates either in Mortgagor, Mortgagee, any lessee or any third party by purchase or otherwise.

ARTICLE VI

SECURITY AGREEMENT

Section 6.01. Security Interest. This Mortgage constitutes a “Security Agreement” on personal property within the meaning of the UCC and other applicable law with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and other Mortgaged Property. To this end, Mortgagor grants to Mortgagee, a second security interest (subject only to the Prior Lien Documents) in the Personalty, Fixtures, Plans, Leases, Rents and Property Agreements and all other Mortgaged Property which is personal property to secure the payment of the Indebtedness and performance of the Obligations, and agrees that Mortgagee shall have all the rights and remedies of a secured party under the UCC with respect to such property. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Personalty, Fixtures, Plans, Leases, Rents and Property Agreement and other Mortgaged Property sent to Mortgagor at least ten (10) days prior to any action under the UCC shall constitute reasonable notice to Mortgagor.

Section 6.02. Financing Statements. Mortgagor shall 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 hereunder and Mortgagee may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest. Mortgagor hereby authorizes Mortgagee, its counsel or its representative, at any time and from time to time, to file financing statements and amendments without Mortgagor’s signature that describe the collateral encumbered by this Instrument as “all assets of the Mortgagor,” “all personal property of the Mortgagor” or words of similar effect, in such jurisdictions as Mortgagee, its counsel or its representative may deem necessary or desirable in order to perfect the security interest granted by the Mortgagor under this Instrument. Mortgagor hereby agrees that it shall not file any amendments with regard to any financing statement filed pursuant to this Instrument unless authorized in writing by Mortgagee. Mortgagor’s chief executive office is in the State of Illinois at the address set forth in the first paragraph of this Mortgage.

Section 6.03. Debtor and Secured Party Information. Mortgagor covenants and agrees that Mortgagor will furnish Mortgagee with notice of any change in Mortgagor’s name, identity or corporate structure and residence or principal place of business or the location of any of the Mortgaged Property within 30 days of the effective date of any such change and Mortgagor will promptly execute any financing statements or other instruments deemed necessary by Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status.

Section 6.04. Fixture Filing. This Mortgage shall also constitute a “fixture filing” for the purposes of the UCC against all of the Mortgaged Property, which is or is to become fixtures. Information concerning the security interest herein granted may be obtained at the addresses of Debtor (Mortgagor) and Secured Party (Mortgagee) as set forth in the first paragraph of this Mortgage. The Mortgagor’s Federal Employment Identification Numbers (“FEIN”) are listed on Schedule I attached hereto.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Future Advances, Revolving and Open-End Loans, and Other Debts.

It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all other Indebtedness, obligations and liabilities, direct or contingent, of the Mortgagor to the Mortgagee, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

Section 7.02. Notices. Any notice required or permitted to be given under this Mortgage shall be in writing and either shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by telecopy (provided an identical notice is also sent simultaneously by mail, overnight courier, personal delivery or otherwise as provided in this Section 7.01). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended at its address set forth on the first page of this Mortgage and shall be sent to the parties described in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement. Any communication so addressed and mailed shall be deemed to be given on the earliest of (a) when actually delivered, (b) on the first Business Day after deposit with an overnight air courier service, or (c) on the third Business Day after deposit in the United States mail, postage prepaid, in each case to the address of the intended addressee, and any communication so delivered in person shall be deemed to be given when receipted for by, or actually received by, Mortgagee or Mortgagor, as the case may be. If given by telecopy, a notice shall be deemed given and received when the telecopy is transmitted to the party's telecopy number specified in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement and confirmation of complete receipt is received by the transmitting party during normal business hours or on the next Business Day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 7.01. Any party may designate a change of address by written notice to the other by giving at least 10 days prior written notice of such change of address.

Section 7.03. Covenants Running with the Land. All Obligations contained in this Mortgage are intended by Mortgagor and Mortgagee to be, and shall be construed as, covenants running with the Mortgaged Property. As used herein, "Mortgagor" shall refer to the parties named in the first paragraph of this Mortgage and to any subsequent owner of all or any portion of the Mortgaged Property (without in any way implying that Mortgagee has consented or will consent to any such conveyance or transfer of the Mortgaged Property). All persons or entities who may have or acquire an interest in the Mortgaged Property shall be deemed to have notice of, and be bound by, the terms of the Note; however, no such party shall be entitled to any rights thereunder without the prior written consent of Mortgagee.

Section 7.04. Attorney-in-Fact. Mortgagor hereby irrevocably appoints Mortgagee and its successors and assigns, as its attorney-in-fact, which agency is coupled with an interest, (a) to execute and/or record any notices of completion, cessation of labor, or any other notices that Mortgagee deems appropriate to protect Mortgagee's interest, if Mortgagor shall fail to do so within 10 days after written request by Mortgagee, (b) upon the issuance of a deed pursuant to the foreclosure of this Mortgage or the delivery of a deed in lieu of foreclosure, to execute all instruments of assignment, conveyance or further assurance with respect to the Leases, Rents, Personalty, Fixtures, Plans and Property Agreements and all other Mortgaged Property in favor of the grantee of any such deed and as may be necessary or desirable for such purpose, (c) to prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve Mortgagee's security interests and rights in or to any of the collateral, and (d) while any Event of Default exists, to perform any obligation of Mortgagor hereunder; however: (i) Mortgagee shall not under any circumstances be obligated to perform any obligation of Mortgagor; (ii) any sums advanced by Mortgagee in such performance shall be added to and included in the Indebtedness and shall bear interest at the Default Rate; (iii) Mortgagee as such attorney-in-fact shall only be accountable for such funds as are actually received by Mortgagee; and (iv) Mortgagee shall not be liable to Mortgagor or any other person or entity for any failure to take any action which it is empowered to take under this Section.

Section 7.05. Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective successors and assigns. Mortgagor shall not, without the prior written consent of Mortgagee, assign any rights, duties or obligations hereunder.

Section 7.06. No Waiver. Any failure by Mortgagee to insist upon strict performance of any of the terms, provisions or conditions of the Note shall not be deemed to be a waiver of same, and Mortgagee shall have the right at any time to insist upon strict performance of all of such terms, provisions and conditions.

Section 7.07. Subrogation. To the extent Mortgagee shall expend any moneys to extinguish, extend or renew any indebtedness against the Mortgaged Property, then Mortgagee shall be subrogated to all of the rights, liens and interests existing against the Mortgaged Property and held by the holder of such indebtedness and such former rights, liens and interests, if any, are not waived, but are continued in full force and effect in favor of Mortgagee.

Section 7.08. Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

Section 7.09. Waiver of Stay, Moratorium and Similar Rights. Mortgagor agrees, to the full extent that it may lawfully do so, that it will not at any time insist upon or plead or in any way take advantage of any appraisement, valuation, stay, marshalling of assets, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent or hinder the enforcement of the provisions of this Mortgage or the indebtedness secured hereby, or any agreement between Mortgagor and Mortgagee or any rights or remedies of Mortgagee.

Section 7.10. Limitation on Liability. Mortgagor's liability hereunder is subject to the limitation on liability provisions of the Note.

Section 7.11. Obligations of Mortgagor, Joint and Several. If more than one person or entity has executed this Mortgage as "Mortgagor," the obligations of all such persons or entities hereunder shall be joint and several.

Section 7.12. Governing Law. This Mortgage shall be governed by the laws of the State of Alabama.

Section 7.13. Headings. The Article, Section and Subsection titles hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Articles, Sections or Subsections.

Section 7.14. Entire Agreement. This Mortgage and the Note embody the entire agreement and understanding between Mortgagee and Mortgagor and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, this Mortgage and the Note may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

Section 7.15. Undefined Terms. All capitalized terms used but not defined herein, shall have the meaning ascribed to such terms in the Conventional Loan Agreement or, upon the termination thereof, the Project Loan Agreement.

Section 7.16. Savings Clause. Notwithstanding anything herein or in the Note to the contrary, no provision contained in the Note or herein which purports to obligate Mortgagor to pay any amount of interest or any fees, costs or expenses which are in excess of the maximum permitted by applicable law, shall be effective to the extent that it calls for the payment of any interest or other sums in excess of such maximum. Any such excess shall, at the option of the Mortgagee, either be paid to Mortgagor or be credited to the obligations of Mortgagor to Mortgagee under the Note. All arrangements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no event, whether by reason of demand for payment or acceleration of the maturity hereof or otherwise, shall the interest contracted for, charged or received by Mortgagee exceed the maximum amount permissible under applicable law. If, from any circumstance whatsoever, interest would otherwise be payable to Mortgagee in excess of the maximum lawful amount, the interest payable to Mortgagee shall be reduced to the maximum amount permitted under applicable law; and if from any circumstance Mortgagee shall ever receive anything of value deemed interest by applicable law in excess of the maximum lawful amount, an amount equal to any excessive interest shall be applied to the reduction of the amounts owing by Mortgagor to Mortgagee under the Note and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance of amount owing by Mortgagor to Mortgagee under the Note, such excess shall be refunded to Mortgagor. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal balance of the Note (including the period of any renewal or extension thereof) so that the interest on the Note for such full period shall not exceed

the maximum amount permitted by applicable law. This paragraph shall control all agreements between Mortgagor and Mortgagee.

Section 7.17. WAIVER OF TRIAL BY JURY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MORTGAGOR AND MORTGAGEE HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS MORTGAGE OR THE NOTE, OR IN RESPECT OF ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY SUCH PARTY, OR ARISING OUT OF ANY EXERCISE BY ANY SUCH PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS MORTGAGE OR THE NOTE OR IN ANY WAY RELATING TO THE INDEBTEDNESS OR THE PROJECT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ANY ACTION TO RESCIND OR CANCEL THIS MORTGAGE, AND WITH RESPECT TO ANY CLAIM OR DEFENSE ASSERTING THAT THIS MORTGAGE WAS FRAUDULENTLY INDUCED OR IS OTHERWISE VOID OR VOIDABLE). THIS WAIVER OF JURY TRIAL IS A MATERIAL INDUCEMENT FOR THE MORTGAGEE TO MAKE THE LOAN.

Section 7.18. Prior Lien Documents. This Mortgage is subject and inferior to the Prior Lien Documents. No Amendments or modifications may be made to the Prior Lien Documents without the prior written consent of Mortgagee. An Event of Default under the Prior Lien Documents shall constitute an Event of Default hereunder. Mortgagor shall pay when due the indebtedness owing under the Prior Lien Documents and timely perform all other obligations of Mortgagor thereunder. In the event such indebtedness is not timely paid or such obligations are not timely performed, Mortgagee may, but shall not be obligated to pay any such indebtedness or perform any such obligations for the account of Mortgagor, and any sum so expended shall be secured hereby. Mortgagor shall pay to Mortgagee all amounts so expended by Mortgagee with interest on such amounts from the date expended at the Default Rate, but not in excess of the highest rate permitted by applicable law.

Section 7.19. Mortgagor, individually and collectively, hereby (a) waive any and all rights to voluntary or judicial partition or division of or against all or any part of the Project pursuant to the Code of Alabama Section 35-6-1, et seq., or any other applicable statute, common law or otherwise, and (b) agree not to seek or consent to voluntary or judicial partition or division of or against all or any part of the Project. The waivers and obligations set forth pursuant to the immediately preceding sentence will remain in full force and effect until payment in full of the Bonds, including the Refunding Bonds (as defined in the Note).

Section 7.20. Amendment and Restatement. This Mortgage amends and restates in its entirety the Original Second Mortgage, which was recorded as Instrument Number 1994-09696 in the Probate of Office of Shelby County, Alabama, as amended by that certain Amendatory Agreement recorded as Instrument Number 1997-03322 in the Probate Office of Shelby County, Alabama.

[Remainder of page intentionally left blank]

[Signatures continued on following page]

IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage under seal as of the day and year first above written.

By: E. Michael Pompizzi
Name: E. Michael Pompizzi
Title: Executive Vice President

[Signatures continued on following page]

[Signatures continued on following page]

[Signatures continued on following page]

[Signature page to Amended and Restated Future Advance Second Mortgage, Security Agreement and Fixture Filing]

JRC PROPERTY (QUAIL) L.L.C., a Delaware limited liability company

By: JRC Lakeside, Inc., an Illinois corporation, its sole manager

By: *E. Michael Pompizzi*
Name: E. Michael Pompizzi
Title: Executive Vice President

STATE OF ILLINOIS)
:
COOK COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that **E. Michael Pompizzi**, whose name as **Executive Vice President** of JRC Lakeside, Inc., an Illinois corporation, as Manager of JRC Property (Quail) L.L.C., 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as such Manager as aforesaid, for and as the act of said limited liability company.

Given under my hand and official seal this 6th day of Feb, 2004.




Mary Ann Eichhorst
Notary Public

My commission expires: 4-23-05

[Signature page to Amended and Restated Future Advance Second Mortgage, Security Agreement and Fixture Filing]

JRC HUNTER'S POINTE LLC, an Illinois limited liability company

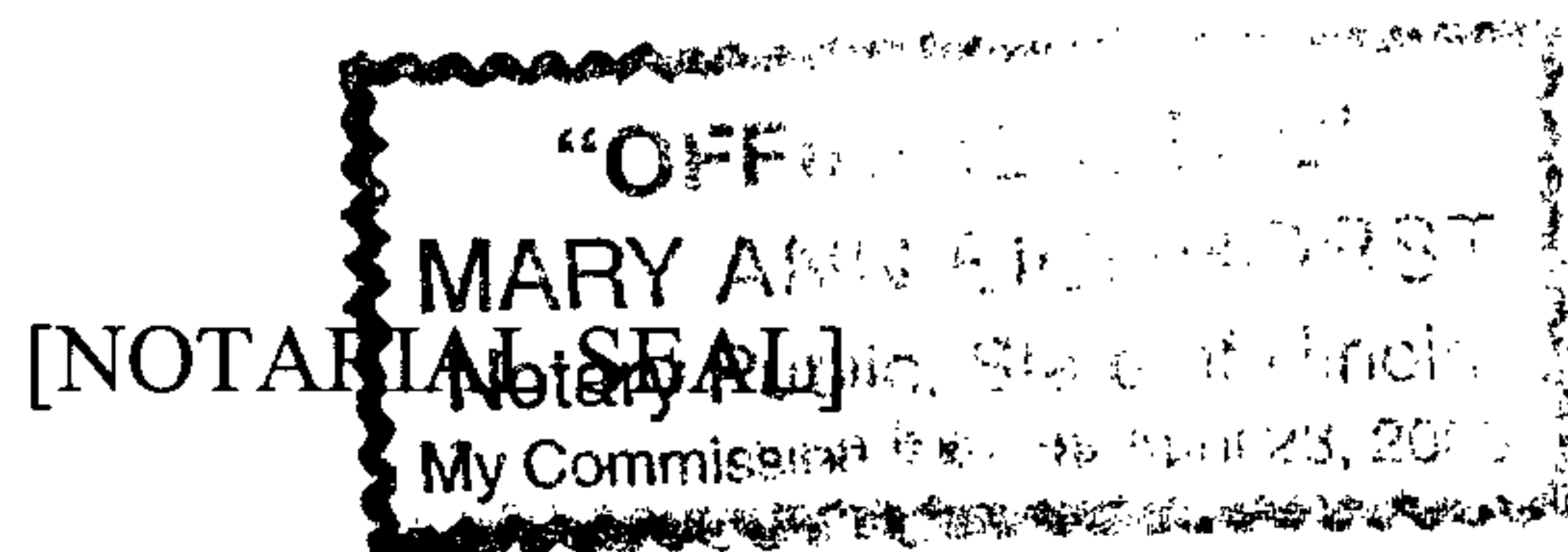
By: Jupiter Hunter's Pointe Inc., an Illinois corporation, its sole manager

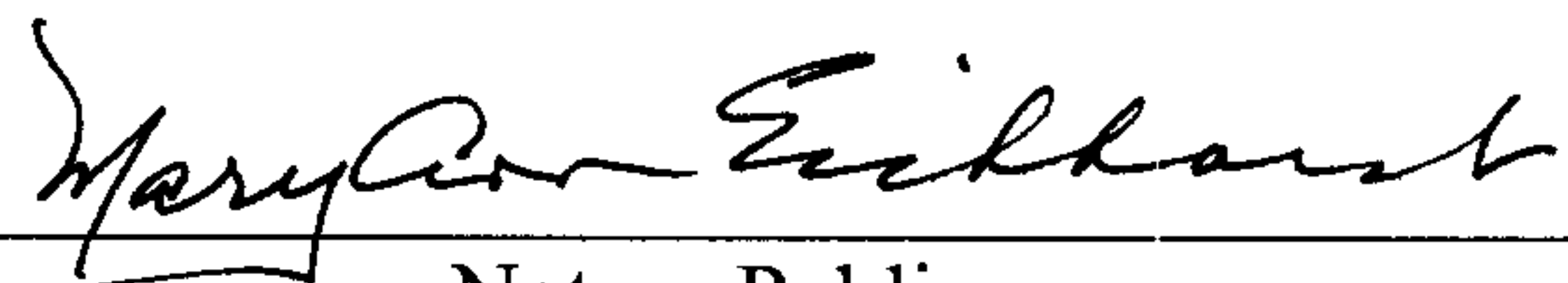
By: 
Name: E. Michael Pompizzi
Title: Executive Vice President

STATE OF ILLINOIS)
:
COOK COUNTY)

I, ~~the undersigned~~ E. Michael Pompizzi, a notary public in and for said county in said state, hereby certify that E. Michael Pompizzi, whose name as Executive Vice President of Jupiter Hunter's Pointe Inc., an Illinois corporation, as Manager of JRC Hunter's Pointe LLC, an Illinois 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as such Manager as aforesaid, for and as the act of said limited liability company.

Given under my hand and official seal this 6th day of Feb, 2004.




Notary Public

My commission expires: 4-23-05

EXHIBIT A

LEGAL DESCRIPTION

A parcel of land situated in the Northeast quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commencing at the Southeast corner of said quarter section run in a Westerly direction along the South line of said quarter section for a distance of 311.91 feet to a point on the West right of way line of a public county road known as Cahaba Beach Road, said point being the Point of Beginning of the parcel herein described; from the point of beginning thus obtained run Westerly along said South line of said quarter section for a distance of 1009.39 feet to the Southwest corner of the Southeast quarter of the Northwest quarter of said section; thence turn an angle to the right of 87 degrees 52 minutes 43 seconds and run in a Northerly direction along the West line of the East half of the Northeast quarter of said Section 36 for a distance of 2687.32 feet to the Northwest corner of said East half of the Northeast quarter section; thence turn an angle to the right of 92 degrees 09 minutes 31 seconds and run in an Easterly direction along the North line of said section for a distance of 1314.78 feet to the Northeast corner of said section; thence turn an angle to the right of 87 degrees 42 minutes 06 seconds and run in a Southerly direction along the East line of said section for a distance of 2128.72 feet to a point on the West right of way line of said Cahaba Beach Road, said point lying in a curve to the left, said curve having a radius of 756.37 feet, a central angle of 15 degrees 33 minutes 20 seconds and a chord of 204.72 feet which forms an interior angle of 145 degrees 24 minutes 26 seconds with the East line of said section; thence run in a Southwesterly direction along the arc of said curve in said right of way for a distance of 205.35 feet to the end of said curve; thence run Southwesterly along said right of way and tangent to the last curve for a distance of 327.30 feet to the beginning of a curve to the right in said right of way; said curve having a central angle of 5 degrees 01 minutes 58 seconds and a radius of 1111.0 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 97.58 feet to the Point of Beginning. Said parcel contains 79.118 Acres (3,446,380.08 square feet), more or less.

SCHEDULE I

JRC Lakeside Limited Partnership, an Illinois limited partnership ("JRC Lakeside"), as to an undivided 3.797% interest, as tenant in common (FEIN: 36-4336691);

JRC Lakeside Property (GMO), LLC, a Delaware limited liability company ("JRC GMO"), as to an undivided 1.345% interest, as tenant in common (FEIN: 36-4298370);

JRC Lakeside Property (O'Hare), LLC, a Delaware limited liability company ("JRC O'Hare"), as to an undivided 3.372% interest, as tenant in common (FEIN: 36-4298361);

JRC Lakeside (Quail Ridge), LLC, a Delaware limited liability company ("JRC Quail Ridge"), as to an undivided 8.543% interest, as tenant in common (FEIN: 36-4037496);

JRC Lakeside (Quail/Queen), LLC, a Delaware limited liability company ("JRC Quail/Queen"), as to an undivided 6.422% interest, as tenant in common (FEIN: 36-4163089);

JRC Property (Quail) L.L.C., a Delaware limited liability company ("JRC Quail"), as to an undivided 2.436% interest, as tenant in common (FEIN: 36-4298381); and

JRC Hunter's Pointe LLC, an Illinois limited liability company ("JRC Hunter's Pointe"), as to an undivided 74.085% interest, as tenant in common (FEIN: 56-2422090).