

20051101000568200 1/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

PREPARED BY AND RETURN TO:
SHERRY D. OLSON, P.C.
2515 KINGS WAY
CUMMING, GA 30040
PHONE: 770 205 8858 EXT 102

MORTGAGE AND SECURITY AGREEMENT
(Shelby County, Alabama)

THIS MORTGAGE, made this 28th day of October, 2005, between **PIKE NURSERY HOLDING LLC**, a Georgia limited liability company, and doing business as Pike Family Nurseries in the State of Alabama ("Mortgagor"), whose mailing address is 4020 Steve Reynolds Boulevard, Norcross, Georgia 30093 and **BANK OF AMERICA, N.A.** ("Mortgagee"), whose mailing address is Bank of America, N.A., East Commercial Center, 3700 Crestwood Parkway, Suite 1050, Duluth, Georgia 30096-5636.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of **SEVEN MILLION EIGHT HUNDRED FIFTY FOUR THOUSAND AND NO/100 (\$7,854,000.00)** as evidenced by that certain Promissory Note dated January 4, 2005 as modified by that certain Note Modification Agreement dated of even date herewith (the "Note"), which by reference is made a part hereof to the same extent as though set out in full herein.

WHEREAS, Mortgagor and Mortgagee have entered into that certain Construction Loan Agreement dated as of January 4, 2005, as amended by that certain First Amendment to Construction Loan Agreement dated as of February 28, 2005, and as further amended of even date herewith by that certain Second Amendment to Construction Loan Agreement (as amended, the "Loan Agreement").

NOW, THEREFORE, to secure the performance and observance by Mortgagor of all covenants and conditions in the Note and in this Mortgage and in all other instruments securing the

Note, and to secure all other obligations owing by Mortgagor to Mortgagee; ***provided, however, the Maximum Secured Indebtedness shall at no time exceed \$7,854,000.00***, and in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance, and for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) paid by Mortgagee to Mortgagor this date, and for other valuable considerations, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns in fee simple forever:

THE MORTGAGED PROPERTY

(A) **The Land.** All of the Mortgagor's fee simple right, title and interest in the improved real property (the "Property" or "Land") described on **Exhibit "A"** attached hereto and made a part hereof), subject to the matters set forth on **Exhibit "B"** attached hereto and made a part hereof (the "Permitted Encumbrances");

(B) **The Improvements.** **TOGETHER WITH** all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements");

(C) **Easements or Other Interests.** **TOGETHER WITH** all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and revisions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part hereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) **Assignment of Rents.** **TOGETHER WITH** all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C)

hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permissions shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the Indebtedness and other sums secured hereby shall invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) **Assignment of Leases.** TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagee to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the mortgaged property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property, subject, however, to the conditional permission given to Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right to Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) **Fixtures and Personal Property.** TOGETHER WITH a security interest in:

- (i) all property and fixtures affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property;
- (ii) all articles of personal property and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof for use in any construction being conducted thereon, and owned by Mortgagor;
- (iii) all Personalty (as hereinafter defined). For the purposes hereof, the following definitions shall apply:
 - (a) "Accessories" means all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, goods, building and construction materials, supplies and other articles of personal property, of every kind and character, tangible and intangible (including software embedded therein), now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or Improvements, or used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or Improvements, and all Additions to the foregoing, all of which are hereby declared to be permanent accessions to the Land. Accessories does not include inventory on the Land which is being held for retail sale.
 - (b) "Accounts" means all Deposit Accounts of Mortgagor which are : (i) used in connection with the construction of any Improvements on the Property, (ii) now or hereafter established for the automatic payment of amounts owing by Mortgagor to Mortgagee, and any substitution or replacement thereof , or (iii) now or hereafter established in compliance with the terms of Construction Loan Agreement for Deferred Equity and related items, which is defined as the "Borrower's Deposit Account", including, but not limited to, Bank of America, N.A. Account Number 003282514316, entitled Pike Nursery Holding LLC Construction Draw Account, and any substitution or replacement thereof.
 - (c) "Additions" means any and all alterations, additions, accessions and improvements to property, substitutions therefor, and renewals and replacements thereof.
 - (d) "Claim" means any liability, suit, action, claim, demand, loss, expense, penalty, fine, judgment or other cost of any kind or nature whatsoever, including fees, costs and expenses of attorneys, consultants, contractors and experts.

(e) "Governmental Authority" means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, service, district or other instrumentality of any governmental entity.

(f) "Insurance Proceeds" means the insurance claims under and the proceeds of any and all policies of insurance which insure against loss or damage to the Property or any part thereof, including all returned and unearned premiums with respect to any insurance insuring against loss or damage to such Property, in each case whether now or hereafter existing or arising.

(g) "Personalty" means all personal property of any kind or nature whatsoever, whether tangible or intangible and whether now owned or hereafter acquired, in which Mortgagor now has or hereafter acquires an interest and which is used in the construction of, or is placed upon, or is derived from or used in connection with the maintenance, use, occupancy or enjoyment of, the Property, consisting of: (a) the Accessories; (b) the Accounts; (c) all franchise, license, management or other agreements with respect to the operation of the Property or the business conducted therein (provided all of such agreements shall be subordinate to this Mortgage, and Mortgagee shall have no responsibility for the performance of Mortgagor's obligations thereunder) and all general intangibles that constitute (i) rights to the payment of money (other than accounts) deriving from the ownership of the Property, such as warranty claims and rights of indemnification under agreements that comprise part of the Personalty, or (ii) general intangibles that are incorporated into Accessories affixed to the Property to the extent such general intangibles are necessary for the customary operation of such Accessories, but excluding all trade names, trade secrets, trademarks, patents and copyrights and applications therefor, symbols, designs, customer lists and goodwill, all software containing accounts or inventory data and all other general intangibles that do not relate solely to the ownership of the Property or the use of the Accessories that are affixed to the Property; (d) all sewer and water taps, appurtenant water stock or water rights, allocations and agreements for utilities, bonds, letters of credit, permits, certificates, licenses, guaranties, warranties, causes of action, judgments, Claims, profits, security deposits, utility deposits, and all rebates or refunds of fees, Taxes, assessments, charges or deposits paid to any Governmental Authority related to the Property or the operation thereof; (e) all of Mortgagor's rights and interests under all Swap Contracts, including all rights to the payment of money from Mortgagee under any Swap Contract and all accounts, deposit accounts and general intangibles, including payment intangibles, described in any Swap Contract; (f) all insurance policies held by Mortgagor with respect to the Property or Mortgagor's operation thereof; and (g) all money, instruments and documents (whether tangible or electronic) arising from or by virtue of any transactions related to the Property, and all deposits and deposit accounts of Mortgagor with Mortgagee related to the Property, including any such deposit account from which Mortgagor may from time to time authorize Mortgagee to debit and/or credit payments due with respect to the Loan; together

with all Additions to and Proceeds of all of the foregoing. Personalty specifically excludes all accounts (other than the Accounts defined herein) and inventory of Mortgagor, which is not incorporated into the Property or Improvements.

(h) "Proceeds," when used with respect to any of the Property, means all proceeds of such Property, including all Insurance Proceeds and all other proceeds within the meaning of that term as defined in the Uniform Commercial Code of the State.

(i) "Swap Contract" means any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, interest cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option, currency option or any other similar transaction (including any option to enter into the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into between Mortgagee (or its affiliate) and Mortgagor (or its affiliate) in connection with the Loan, together with any related schedules and confirmations, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.

(j) "Taxes" means all taxes and assessments, whether general or special, ordinary or extraordinary, or foreseen or unforeseen, which at any time may be assessed, levied, confirmed or imposed by any Governmental Authority or any community facilities or other private district on Mortgagor or on any of its properties or assets or any part thereof or in respect of any of its franchises, businesses, income or profits; and

(iv) all Proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (Debtor) hereby grants to Mortgagee (Creditor) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may request from time to time in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagee shall have all the rights and remedies in addition to those specified herein of a secured party under the Uniform Commercial Code.

Everything referred to in paragraphs (A), (B), (C), (D), (E) and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property."

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit in fee simple forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, shall promptly pay when and as due all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising (the "Secured Indebtedness"), all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other Instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all other properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

1.01 Performance of Note, Mortgage, etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest hereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

1.02 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple or leasehold (as designated on the cover page of this Mortgage) in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part hereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, described in the title insurance policy to be issued in connection with this Mortgage. Mortgagor shall and will make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest hereby created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

1.03 Zoning. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements.

1.04 Taxes and Liens.

(a) Mortgagor shall pay promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of, all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever (the "Property Assessments", excluding only the income taxes of the Mortgagee and taxes relating to the authority of Mortgagee to transact business as a national bank, now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part hereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred. PROVIDED, HOWEVER, Mortgagor shall not be required to pay any of the Property Assessments, or to comply with any Law, so long as Mortgagor shall in good faith, and at its cost and expense, contest the amount or validity thereof, or take other appropriate action with respect thereto, in good faith and in an appropriate manner or by appropriate proceedings; provided that (a) such proceedings operate to prevent the collection of, or other realization upon, such Mortgaged Property Assessments or enforcement of the law so contested, (b) there will be no sale, forfeiture or loss of the Mortgaged Property during the contest, (c) Mortgagor is not subjected to any claim as a result of such contest, and (d) Mortgagor provides assurances reasonably satisfactory to Mortgagee (including the establishment of an appropriate reserve account with Mortgagee) of its ability to pay such Property Assessments or comply with such law in the event Mortgagor is unsuccessful in its contest. Each such contest shall be promptly prosecuted to final conclusion or settlement, and Mortgagor shall indemnify and save Mortgagee harmless against all claims in connection therewith. Promptly after the settlement or conclusion of such contest or action, Mortgagor shall comply with such law and/or pay and discharge the amounts which shall be levied, assessed or imposed or determined to be payable, together with all penalties, fines, interests, costs and expenses in connection therewith.

(b) Mortgagor shall not permit or suffer any mechanics', laborer's, materialmen's, statutory or other lien which might or could be prior or equal to the lien of this Mortgage to be created or to remain a lien upon any of the Mortgaged Property. If any such lien arises, Mortgagor shall cause such lien to be removed, bonded or discharged, by payment or otherwise, within thirty (30) days of Mortgagor's receipt of notice of the filing of such lien.

1.05 Insurance. Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies in such amounts and of the type required by the Loan Agreement.

1.06 Condemnation. Section 4.10 of the Loan Agreement governs the rights of the parties with respect to any condemnation of the Mortgaged Property.

1.07 Care of Property. The provisions of the Loan Agreement shall govern Mortgagee's obligations with respect to the care and maintenance of the Mortgaged Property.

1.08 Transfer of Property. Except as set forth in Schedule 5.9 of the Loan Agreement, Mortgagor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee, which consent may be withheld for any or no reason, and any such sale, conveyance, transfer, lease or encumbrance made without Mortgagee's prior written consent shall be a default under this Mortgage. For purposes of this Mortgage, a transfer, sale, assignment, hypothecation or pledge of an interest in Mortgagor without the prior written consent of Mortgagee which would or could divest any person or entity now in control of Mortgagor, shall constitute a transfer prohibited by this Articles 1.08. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof, and any such assignment, agreement or act without the express written consent of Mortgagee shall be a default under this Mortgage.

1.09 Further Assurances. At any time and from time to time, upon Mortgagee's request Mortgagor shall make, execute and deliver or cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded or filed and from time to time thereafter to be re-recorded or re-filed at such time and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as Mortgagee may reasonably consider necessary or desirable in order to effectuate, complete, enlarge or perfect, or to continue and preserve the obligations of Mortgagor under the Note and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor to do so, Mortgagee may make, execute, record, file, re-record or refile any and all such mortgages, instruments, certificates and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Mortgagee the agent and attorney-in-fact of Mortgagor to do so.

1.10 After Acquired Property. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Mortgaged Property or any part hereof.

1.11 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations with regard to any leases of the Mortgaged Property in accordance with the provisions of the Loan Agreement.

1.12 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorneys' fees and disbursements and costs actually incurred or

paid by Mortgagee in any threatened, pending or completed action, proceeding or dispute in which Mortgagee is a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, this Mortgage or any other instrument securing the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but limited to the foreclosure of this mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable within ten (10) days after notice from Mortgagee, whether or not there be attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereon at the rate specified in the Note from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

1.13 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance of observance of any other covenant, condition of term in this Mortgage or in any other Instrument securing the Note, Mortgagee may at its option perform or observe the same after any applicable grace or cure period has expired and without further notice, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately, upon notice from Mortgagee. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.14 Books and Records. Mortgagor shall keep and maintain at all times books of accounts and records and provide financial statements as required under the Loan Agreement.

1.15 Estoppel Affidavits. Mortgagor shall, within ten (10) days after written request from Mortgagee, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums. Mortgagee shall, within ten (10) days after written request from Mortgagor, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby.

ARTICLE TWO

DEFAULTS

2.01 Event of Default. The term Event of Default or Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Payment Obligations. Mortgagor fails to pay any of the Secured Indebtedness when due, whether on the scheduled due date or upon acceleration, maturity or otherwise, subject to the notice and cure provisions set forth in Section 6.22 of the Loan Agreement.

(b) Transfers. Mortgagor breaches any of the covenants, agreements and conditions of Article 1.08 hereof.

(c) Other Obligations. Mortgagor fails to promptly perform or comply with any of the Secured Indebtedness set forth in this Mortgage, and such failure continues uncured for a period of thirty (30) days after Notice from Mortgagee to Mortgagor, unless (a) such failure, by its nature, is not capable of being cured within such period, and (b) within such period, Mortgagor commences to cure such failure and thereafter diligently prosecutes the cure thereof, and (c) Mortgagor causes such failure to be cured no later than ninety (90) days after the date of such Notice from Mortgagee.

(d) Event of Default Under Other Loan Documents. An Event of Default (as defined therein) occurs under the Note or the Loan Agreement, or Mortgagor fails to promptly pay, perform, observe or comply with any obligation or agreement contained in any of the other Loan Documents (within any applicable grace or cure period).

(e) Change in Zoning or Public Restriction. Any change in any zoning ordinance or regulation or any other public restriction is enacted, adopted or implemented that limits or defines the uses which may be made of the Property such that the present or intended use of the Property, as specified in the Loan Documents, would be in violation of such zoning ordinance or regulation or public restriction, as changed and such violation would cause a Material Adverse Effect. Provided, however, Borrower may cure this Default by obtaining a release of such Property pursuant to the terms of Schedule 5.9 of the Loan Agreement.

(f) Default Under Leases. Mortgagor fails duly to perform its obligations under any Lease, and such failure is not cured within the grace period, if any, provided in the Lease and as a result of such failure, there has been a Material Adverse Effect (as defined in the Loan Agreement) on Borrower's financial condition.

(g) Default Under Other Lien Documents. A default occurs under any other mortgage, deed to secure debt or security agreement conveying or encumbering the Mortgaged Property.

(h) Execution; Attachment. Any execution or attachment is levied against any of the Mortgaged Property, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

(g) Default under Obligations to other Lenders. Any default occurs under any agreement in connection with any credit the Mortgagor or any of the Mortgagor's related entities or affiliates has obtained from anyone else or which the Mortgagor or any of the Mortgagor's

related entities or affiliates has guaranteed that has a Material Adverse Effect (as defined in the Agreement) and which is not cured within any applicable cure period.

(i) An Event of Default under the Loan Agreement, subject to the notice and cure provisions set forth in Section 6.22 of the Loan Agreement.

2.02 Acceleration of Maturity. If any Event of Default or Default shall have occurred, which is not cured within the applicable notice and cure period, then Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

2.03 Mortgagee's Power of Enforcement. If an Event of Default or Default shall have occurred, 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 by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it all without relief from valuation and appraisal laws. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine.

2.03.1 Foreclosure Sale. Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving twenty-one days notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the 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. The Mortgagee, its successors and assigns, may bid at any 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. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the 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, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

2.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.
Mortgagor shall have the following rights to the extent permitted by law or equity:

(a) If an Event of Default or Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agents and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor relating to the Mortgaged Property.

(b) Mortgagor shall pay to Mortgagee, upon demand, all costs and expenses actually incurred in obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such incurred costs, expenses and reasonable compensation shall, until paid, be secured by the lien of this Mortgage.

(c) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

- (i) 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;
- (ii) insure or keep the Mortgaged Property insured;
- (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;
- (iv) enter into agreements with others to exercise the powers herein granted Mortgagee;

all as Mortgagee from time to time may determine; and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (1) the payment of accrued interest on the Note, (2) the deposits for taxes and assessments and insurance premiums due, (3) to the payment of overdue installments of principal, and (4) to the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part hereof; and (5) the reasonable compensation, expenses and disbursements of the agents, attorneys and other representatives of Mortgagee.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults

made good. The same right of taking possession, however, shall exist if any subsequent Event of Default or Default shall occur and be continuing.

2.05 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.06 Purchaser by Mortgagee. Upon any foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of the sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

2.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other Instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

2.08 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully do so, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

2.09 Receiver. If an Event of Default or Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The reasonable expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy

hereunder or afforded by laws, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this Paragraph or Paragraph 2.03. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

2.10 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, 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 might impair the security hereunder or be prejudicial to Mortgagee's interest.

2.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other document as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

2.12 Mortgagor to Pay the Note on Any Default in Payment; Application of Monies by Mortgagee.

(a) If Default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note beyond any applicable cure or grace period, then, upon Mortgagee's demand, Mortgagor will pay to mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagor shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses, including the reasonable compensation, expense and disbursements of Mortgagee's agents, attorneys and other representatives incurred in connection with such suit and any appeal in connection therewith, Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby,

Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest.

(c) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Mortgagee and no attachment or levy or any execution upon any of the Mortgaged Property or any other property shall in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(d) Any monies collected or received by Mortgagee under this Paragraph 2.12 shall be applied as Mortgagee determines, in its sole discretion.

2.13 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

2.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default or Default hereunder shall extend to or affect any subsequent or any other Event of Default or Default then existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (g) makes or consents to any agreement changing the terms of this Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor. No such action or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien 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, Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness 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.

2.15 Discontinuance of Proceedings; Position of Parties Restored. If 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 Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

2.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other Instrument securing the Note is 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 or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE THREE

MISCELLANEOUS

3.01 Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not. Notwithstanding anything to the contrary set forth herein, this Article 3.01 shall not operate to negate the terms of Article 1.08 of this Mortgage.

3.02 Addressees for Notices, etc.

(a) Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be in writing and shall be deemed given or furnished when addressed to the party intended to receive the same, at the address of such party on the first page hereof, and personally delivered or sent certified mail, return receipt requested, postage paid, and received by the intended recipient, receipt is refused, or the letter is returned to the sender marked as undeliverable, or the like.

(b) Either party may change the address to which any such notice, report, demand or other instrument is to be delivered or mailed, by furnishing written notice of such change to the other party in accordance with this Article 3.02, but no such notice of change shall be effective unless and until received by such other party.

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

3.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other Instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms of provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

3.05 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

3.06 Governing Law. The performance required by this Instrument shall, insofar as is possible, be rendered to Mortgagee at its main office at Bank of America, N.A., 6th Floor 1111 E. Main St., Richmond, VA 23219, Interoffice: VA 2-300-17-01 (Attn: Ann Hammock). Mortgagor and Mortgagee intend that the validity and construction of the obligations secured by this instrument be governed by the laws of the State of Alabama. Should any obligation or remedy under this instrument be invalid or unenforceable under the laws provided herein to govern, then the laws of another state whose laws can validate and apply to this instrument shall apply.

3.07 Default Rate. The Default Rate shall be at the Default Rate set forth in the Note. Mortgagee agrees to refund and Mortgagor agrees to accept the refund of any and all sums received by Mortgagee which are determined to be usurious by Mortgagee or a court of competent jurisdiction. It is the express intent hereof that the Mortgagor not pay and the Mortgagee not receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be legally paid by the Mortgagor under applicable law.

3.08 Loan for Business Purposes. Mortgagor represents and warrants to Mortgagee that the proceeds of the loan evidenced by the Note and secured by this Mortgage are to be used for "business purposes" as provided in Section 511 of Title V of the 1980 Deregulation and Monetary Control Act.

3.09 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Mortgagor will execute and deliver, in lieu thereof, a replacement of said Note, identical in form and substance to the said Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note(s).

3.10 WAIVER OF JURY TRIAL. NEITHER MORTGAGOR NOR MORTGAGEE, OR ANY ASSIGNEE, SUCCESSOR, HEIR OR LEGAL REPRESENTATIVE OF MORTGAGOR OR MORTGAGEE, SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM OR ANY OTHER LITIGATION PROCEDURE BASED UPON OR ARISING OUT OF THIS MORTGAGE, THE NOTE, ANY RELATED AGREEMENT OR INSTRUMENT, ANY OTHER COLLATERAL FOR THE SECURED INDEBTEDNESS HEREBY OR THE DEALINGS OR THE RELATIONSHIP BETWEEN OR AMONG MORTGAGOR OR MORTGAGEE, OR ANY OF THEM. NEITHER

MORTGAGOR NOR MORTGAGEE WILL SEEK TO CONSOLIDATE ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS PARAGRAPH HAVE BEEN FULLY NEGOTIATED BY THE PARTIES HEREOF, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. NEITHER MORTGAGOR NOR MORTGAGEE HAS IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS PARAGRAPH WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

ARTICLE FOUR

LENDING PROVISIONS

4.01 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage or in the Note, or in any other instrument securing the loan evidenced by such Note, Mortgagee may at its option declare the entire Secured Indebtedness hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage upon an Event of Default or in the event of breach by Mortgagor or any covenant contained in this Mortgage, the Note, the Loan and Security Agreement between Mortgagor and Mortgagee (as amended from time to time hereafter referred to as the "Loan Agreements") which Loan Agreements are, by this reference, herein incorporated to the same extent and effect as though it were set forth herein in full, if such breach or Event of Default is not cured within any applicable grace or cure period. The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Loan Agreements. All advances and indebtedness arising and accruing under the Loan Agreements from time to time shall be secured hereby. A breach of a covenant in any of the documents referred to above shall be deemed an Event of Default hereunder and upon the occurrence of an Event of Default Mortgagee may, at its option, cease making advances to Mortgagor and take such other action as it may deem necessary to protect its security. In the event of a conflict between the terms hereof, the terms of the Note and the terms of the Loan Agreements, the terms of the document which shall enlarge the interest of the Mortgagee in the Mortgaged Property, grant to Mortgagee greater financial security in the Mortgaged Property and/or assure payment of the Note and all sums secured hereby in full, shall control.

4.02 Secured Indebtedness. Mortgagor hereby acknowledges and agrees that the Mortgage secures the following indebtedness of Mortgagor to Mortgagee, including but not limited to the Note and the other indebtedness described herein, all other indebtedness, liabilities, and obligations now owing or which may hereafter be owing by Mortgagor to Mortgagee, however incurred, including, but without limiting the generality of the foregoing: (a) any indebtedness, liability or obligation of the Mortgagor to Mortgagee under any loan or other financial arrangement made by Mortgagee to Mortgagor on or prior to the date hereof and any and all extensions, amendments, modifications, consolidations and renewal thereof in whole or in part, (b) any indebtedness, liability or obligation of Mortgagor to Mortgagee under any later or future advances made by Mortgagee to Mortgagor, and any and all extensions, amendments, modifications, consolidations and renewals thereof in whole or in part, and, (c) any and all future

20051101000568200 20/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

or additional indebtedness, liabilities or obligations of Mortgagor to Mortgagee whatsoever, however arising, whether existing as of the date hereof or hereafter arising, whether arising as a loan, lease, line of credit, letter of credit or other type of financing, and whether direct, indirect, absolute or contingent, as maker, endorser, guarantor, surety or otherwise, whether individually or jointly with any other third party or parties, and whether evidenced by, arising out of or relating to, a promissory note, bill of exchange, check, draft, bond, letter of credit, guaranty agreement or otherwise, and any and all renewals, modifications, amendments, consolidations and extensions in whole or in part.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

PIKE NURSERY HOLDING LLC, a Georgia
limited liability company



20051101000568200 21/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

By: *Drew Garner* (Seal)
Name: Drew Garner
Title: Secretary

STATE OF GEORGIA
COUNTY OF Gwinnett

This day personally appeared before me, the undersigned authority in and for the State and County aforesaid, Drew Garner, whose name as Secretary of Pike Nursery Holding LLC, is signed to the foregoing Mortgage and Security Agreement 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 same voluntarily for and as the act of said corporation, acting in its capacity as Secretary as aforesaid.

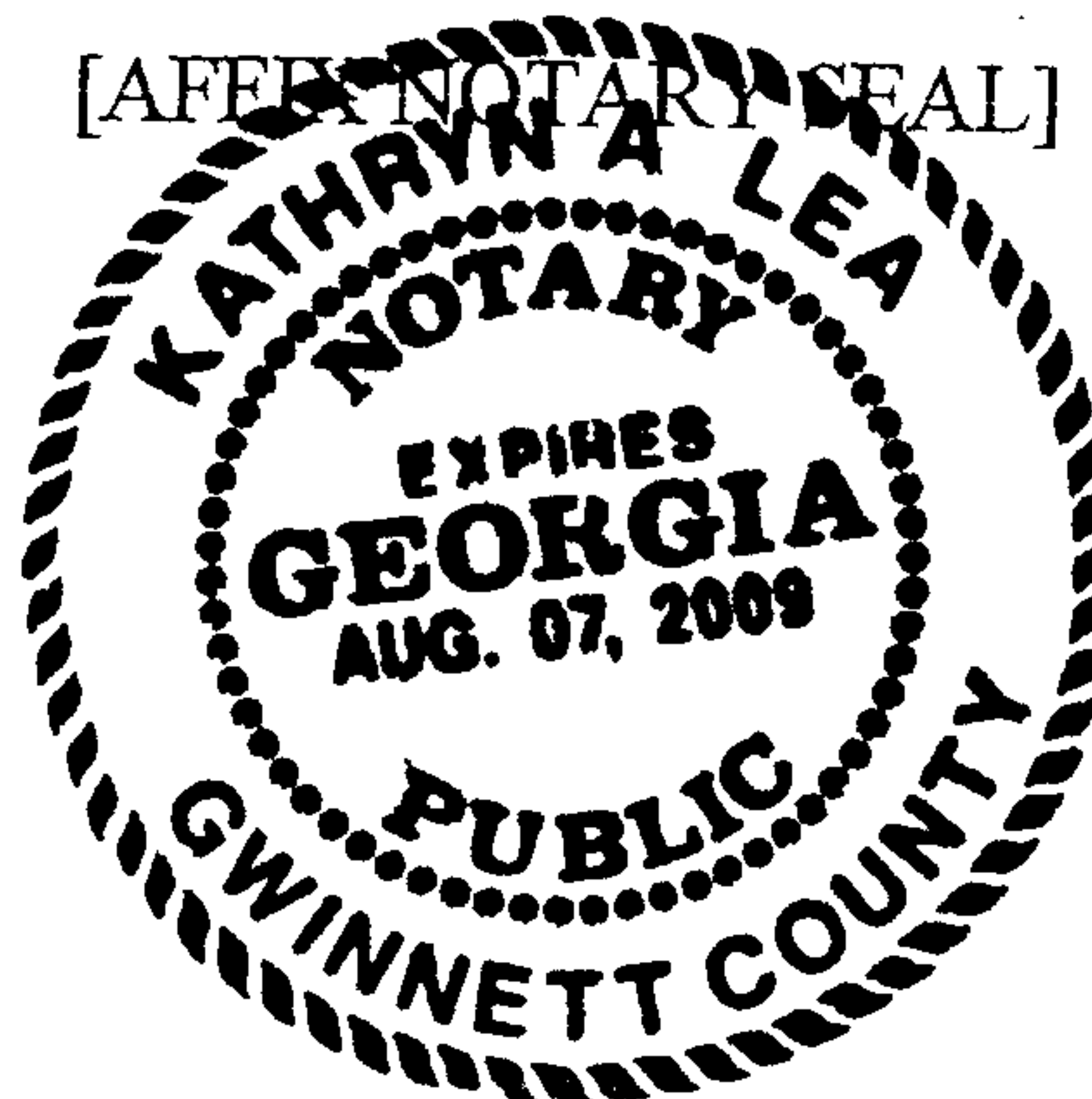
Given under my hand and official seal this the 25TH day of October, 2005.

My Commission expires:

8/7/09

Kathryn A Lea
Notary Public

[AFFIX NOTARY SEAL]



Deleted: V:\NationsBank\ECC\Pikes
Nursery 1-340\1-340.1 2005
Modification\Master rev 10-18.doc

Inserted: rev 10-18



20051101000568200 22/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

EXHIBIT A

PARCEL 1

A parcel of land situated in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama; being more particularly described as follows:

Begin at the Southeast corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said section and run North along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1344.00 feet to the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $129^{\circ} 37'$ to the left in a Southwesterly direction a distance of 447.55 feet to the Easternmost corner of Lot 1, Heatherbrooke Office Park Resurvey, as recorded in Map Book 23, Page 46, in the Office of the Judge of Probate of Shelby County, Alabama; thence continue along the last described course and along a Southeasterly property line of said Lot 1 a distance of 382.03 feet to a point; thence $0^{\circ} 14' 28''$ to the right in a Southwesterly direction along a Southeasterly property line of said Lot 1 a distance of 411.00 feet to a point; thence $72^{\circ} 57' 52''$ to the left in a Southeasterly direction along the property boundary of said Lot 1 a distance of 128.29 feet to a point on a curve to the right having a radius of 670.14 feet and a central angle of $2^{\circ} 17' 39''$; thence $87^{\circ} 21' 32''$ to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve a distance of 26.83 feet to a point; thence $90^{\circ} 00'$ to the right (angle measured to tangent) in a Southeasterly direction a distance of 60.00 feet to a point on a curve to the right having a radius of 610.14 feet and a central angle of $18^{\circ} 38' 19''$; thence $90^{\circ} 00'$ to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve a distance of 198.48 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 319.43 feet and a central angle of $25^{\circ} 30' 50''$; thence in a Northeasterly direction along the arc of said curve a distance of 142.24 feet to a point; thence $114^{\circ} 13' 54''$ to the right (angle measured to tangent) in a Southerly direction a distance of 117.17 feet to a point; thence $82^{\circ} 08' 06''$ to the left in a Southeasterly direction a distance of 65.46 feet to a point; thence $70^{\circ} 57' 13''$ to the left in a Northeasterly direction a distance of 61.84 feet to a point; thence $99^{\circ} 29' 07''$ to the right in a Southeasterly direction a distance of 57.08 feet to a point; thence $19^{\circ} 26' 40''$ to the right in a Southeasterly direction a distance of 73.28 feet to a point; thence $0^{\circ} 38' 40''$ to the right in a Southeasterly direction a distance of 81.94 feet to a point; thence $25^{\circ} 42' 01''$ to the left in a Southeasterly direction a distance of 50.71 feet to a point;

Exhibit "A" continued (Page 2)

thence $24^{\circ} 37' 55''$ to the right in a Southeasterly direction a distance of 94.93 feet to a point;
thence $17^{\circ} 49' 50''$ to the right in a Southeasterly direction a distance of 52.74 feet to a point;
thence $74^{\circ} 12' 26''$ to the right in a Southwesterly direction a distance of 83.74 feet to a point
on the South line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2
West; thence $145^{\circ} 18' 42''$ to the left in an Easterly direction along the South line of said $\frac{1}{4}$
- $\frac{1}{4}$ section a distance of 263.33 feet to the point of beginning.

Exhibit "A" continued (Page 3)


20051101000568200 24/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

PARCEL II

A 20 Foot Force Main Easement as recorded in Instrument #1999-32576 in the Office of the Judge of Probate of Shelby County, Alabama, being situated in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West and run in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 251.69 feet to the Point of Beginning of the centerline of the 20 foot easement herein described. Thence $62^{\circ} 53' 55''$ to the left in a Southwesterly direction along said centerline a distance of 396.07 feet more or less to a point 10 feet North of the Northeasterly Right-of-way line of U.S. Highway No. 280 (said centerline lies 10 feet Southeast of and parallel with the Southeast line of Lot 2, Andress Survey as recorded in Map Book 18, Page 118, in the Office of the Judge of Probate of Shelby County, Alabama); thence $90^{\circ} 05' 04''$ to the left along said centerline and 10 feet Northeast of and parallel with the Northeasterly Right-of-way line of said U.S. Highway No. 280 a distance of 115.5 feet more or less to the center of an existing sanitary sewer manhole, said point being the Point of Ending of the centerline of the 20 foot easement herein described.

Together with the right of ingress and egress over and across Greenhill Parkway, a dedicated roadway, as recorded in Map Book 20, Pages 115, and 116 and in Map Book 25, Page 144.

The above-described property is shown on that certain ALTA/ACSM Land Title Survey prepared by Walter School Engineering Company, Inc. (Joseph F. Breighner, Jr., Ala. License No. 17518) and dated September 26, 2005, which survey is incorporated herein and by this reference made a part hereof.



20051101000568200 25/25 \$11864.00
Shelby Cnty Judge of Probate, AL
11/01/2005 03:04:11PM FILED/CERT

Exhibit "B"

Taxes, assessments or dues from the local district for the Year 2006, and subsequent years, a lien not yet due and payable.

Permit to Alabama Power Company as recorded in Deed Book 182, Page 51, amended in Deed Book 270, Page 819, and in Deed Book 285, Page 93.

Right of way to Alabama Power as recorded in Book 105, Page 855, as shown on survey by Walter Schoel Engineering Company, Inc., survey dated September 26, 2005.

Slope Easement as recorded in Book 66, page 142 and re-recorded in Book 184, page 240, Walter Schoel Engineering Company, Inc., survey dated September 26, 2005.

Easement for roadway, slope and signage as recorded in Instrument #1996-00974. (only with respect to the slope easement located on property described in Schedule A)

Rights of other parties in and to Greenhill Parkway, a dedicated roadway, as recorded in Map Book 20, Pages 115, and 116 and in Map Book 25, Page 144.