
20051116000598430 1/26 \$32486.00
Shelby Cnty Judge of Probate, AL
11/16/2005 11:13:52AM FILED/CERT

**MORTGAGE AND SECURITY AGREEMENT
AND FIXTURE FINANCING STATEMENT**

between

Continental 120 Fund LLC

and

Richter-Schroeder Company, Inc.

November 15, 2005

This instrument prepared by and
after recordation should be returned to:

Charles H. McMullen, Esq.
Quarles & Brady, LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 277-5000

THIS MORTGAGE AND SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT ("Mortgage"), given and granted as of the 15th day of November, 2005 by **CONTINENTAL 120 FUND LLC**, a Wisconsin limited liability company having a mailing address of P.O. Box 220, Menomonee Falls, Wisconsin 53052 ("Mortgagor"), to **RICHTER-SCHROEDER COMPANY, INC.**, a Wisconsin corporation having a mailing address of 1110 North Old World Third Street, Suite 320, Milwaukee, Wisconsin 53203 (together with its successors and assigns, "Mortgagee"),

W I T N E S S E T H:

WHEREAS, in accordance with a construction loan agreement of even date herewith between Mortgagor and Mortgagee (the "Loan Agreement"); Mortgagor has contracted to borrow from Mortgagee the sum of up to Twenty-One Million Six Hundred Thousand and 00/100 Dollars (\$21,600,000.00), for which principal sum Mortgagor has issued its Promissory Note of even date herewith payable to the order of Mortgagee in the amount of Twenty-One Million Six Hundred Thousand and 00/100 Dollars (\$21,600,000.00) (which Promissory Note, together with any extensions, modifications, amendments or renewals thereof or substitutions therefor, is hereinafter referred to as the "Note");

NOW, THEREFORE, Mortgagor, in consideration of the premises hereof, and for the purpose of securing (1) payment of the indebtedness as provided in said Note and any renewals, extensions, or modifications thereof, (2) payment of all other sums with interest which may be advanced pursuant to this Mortgage, (3) the repayment of any future advances, with interest thereon, made by Mortgagee to Mortgagor (herein "Future Advances"), (4) the performance of all the covenants, conditions, stipulations, and agreements herein and in the Note and in the Loan Agreement, Loan Disbursing Agreement, the Collateral Assignment of Contracts and Development Rights, the Assignment of Rents, Leases, and Profits and other agreements of even date herewith and related to the Note (collectively, the "Security Instruments") and (5) any and all reimbursement obligations of Mortgagor with respect to any and all letters of credit issued by Mortgagee or any of its affiliates (including M&I Marshall & Ilsley Bank) for the account of the Mortgagor (the obligations set forth in subclauses (1) through (5) above are sometimes collectively referred herein as the "obligations secured hereby" or "indebtedness secured hereby"), DOES BY THESE PRESENTS GRANT, BARGAIN, SELL, MORTGAGE, GRANT A SECURITY INTEREST IN, WARRANT and CONVEY to Mortgagee, its successors and assigns, forever, with mortgage covenants, its fee interest in the real estate described in Exhibit A attached hereto, which is incorporated herein by reference (such real estate is sometimes collectively referenced herein as the "Land" or the "premises");

TOGETHER WITH all right, title, and interest of Mortgagor in and to any and all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the premises, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever, now or hereafter owned by Mortgagor located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the premises, buildings, structures, or other improvements, or in connection with any construction being conducted or which may be conducted thereon, and owned or leased by Mortgagor, including all extensions, additions, improvements, betterments, renewals, substitutions, 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 together with the benefit of any deposits or payments now or hereafter made on such personal property or fixtures by Mortgagor or on its behalf; it being mutually agreed that all of the aforesaid property owned by Mortgagor and placed on the premises shall, so far as permitted by law, be deemed to be fixtures, a part of the realty, and security for Mortgagor's indebtedness to Mortgagee pursuant to the Note; notwithstanding the agreement and declaration hereinabove expressed that certain articles of property form a part of the realty covered by this Mortgage and shall be appropriated to its use and deemed to be realty, to the extent that such agreement and declaration may not be effective and that any of said articles may constitute goods (as said term is used in the Uniform Commercial Code), this instrument shall constitute a security agreement creating a security interest in such goods, as collateral, in favor of Mortgagee as a secured party and Mortgagor as Debtor, all in accordance with said Uniform Commercial Code as more particularly set forth in Section 5 hereof;

TOGETHER WITH all rents, issues, and profits therefrom;

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 the interest of Mortgagor in the premises, 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 reversions, 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; and

TOGETHER WITH all proceeds of the foregoing, including without limitation all judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance maintained with respect to the premises or proceeds of any sale, option, or contract to sell the premises or any portion thereof; and unless applicable law provides otherwise, Mortgagor hereby authorizes, directs, and empowers Mortgagee, at its option, on behalf of Mortgagor, or the successors or assigns of Mortgagor, to adjust, compromise, claim, collect, and receive such proceeds, to give proper receipts and acquittances therefor, and, after deducting expenses of collection, to apply the net proceeds as a credit upon any portion, as selected by Mortgagee, of the obligations secured hereby, notwithstanding the fact that the same may not then be due and payable or that the obligations secured hereby are otherwise adequately secured.

INCLUDING BUT NOT LIMITED TO, to the extent any of the following are used or useful or is or will be placed in or upon, or is derived from or used in connection with, the maintenance, use, occupancy or enjoyment of the property described in Exhibit A hereto, and whether now owned or hereafter acquired by Mortgagor: all accounts, documents, instruments, chattel paper, equipment, machinery, fixtures, general intangibles, inventory (as such terms are defined in the Uniform Commercial Code of the State of Alabama), furniture, carpeting and contracts and subcontracts for the construction, reconstruction or repair of improvements or buildings on the property described in Exhibit A, bonds, permits, licenses, guarantees, warranties, tradenames, trademarks, causes of action, judgments, claims, profits, rents, security deposits, utility deposits, escrow deposits, escrow rights, refunds of fees, insurance premiums, deposits paid to any governmental authority, letters of credit, contract rights, insurance policies

and insurance proceeds, any awards that may be made by any condemning authority for any partial or total taking of the property described in Exhibit A by condemnation or eminent domain or any conveyance in lieu thereof, together with all present and future attachments, accretions, accessions, replacements, and additions thereto, and the products and proceeds thereof.

MORTGAGOR HEREBY WARRANTS to and covenants with Mortgagee and its successors and assigns that Mortgagor has good title in fee simple to the property identified on Exhibit A, free and clear of all liens and encumbrances, excepting only those liens and encumbrances referenced in the title commitment issued by Chicago Title Insurance Company and approved and accepted by Mortgagee as part of the closing of the loan evidenced by the Note (the "Permitted Exceptions"), and that Mortgagor has the full and legal right to mortgage, assign, convey, and warrant the premises, and that Mortgagor will warrant and defend the title to the same against all claims whatsoever.

TO HAVE AND TO HOLD, the above granted and described Land, premises, equipment, appurtenances, and property (the "Mortgaged Property") unto Mortgagee and its successors and assigns, forever.

PROVIDED ALWAYS, and these presents are upon the statutory condition, that if Mortgagor, or its successors or assigns, shall pay or cause to be paid to Mortgagee or its successors or assigns all of the obligations secured hereby, in accordance with their terms, and shall well and truly comply with each and every covenant and condition set forth in this Mortgage, in the Note and in the Security Instruments, then these presents shall become void. Otherwise, this Mortgage shall remain in full force and effect.

THIS MORTGAGE IS ON THE FOLLOWING CONDITIONS:

1. All of the Mortgaged Property shall stand as security for all of the obligations secured hereby. The lien hereof is and shall be a valid and continuing first priority lien upon all of the Mortgaged Property to secure the prompt payment of the Note and the performance of each and every obligation of Mortgagor provided in this Mortgage, the Note and the Security Instruments. Mortgagor, from time to time, shall execute and deliver any and all such further conveyances and instruments as may be requested by Mortgagee in order to record the description of the Mortgaged Property and to assure that the same is subject to the lien of the Mortgage on the public record.

2. No building or other improvement which is part of the Project defined below and is now or hereafter covered by the lien of this Mortgage shall be removed, demolished, or materially altered without the prior written consent of Mortgagee, except:

2.1 Mortgagor shall utilize the loan proceeds related to the Note in connection with the construction on the Land of a 300 unit apartment project (the "Project") all pursuant to contracts and agreements approved by Mortgagee, at a cost and involving equipment and materials approved by Mortgagee; provided that such improvements and all of the Mortgaged Property shall be kept by Mortgagor free from any lien, chattel mortgage, or other security interest or encumbrance taking precedence over or on a parity with the lien of this Mortgage and free from any reservation of title; and

2.2 Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage, such equipment as from time to time may become worn out

or obsolete (the "Obsolete Collateral"), provided that simultaneously with or prior to such removal any such equipment shall be replaced with equipment for similar use of a value at least equal to that of the replaced equipment and free from chattel mortgage or other security interest or encumbrances and from any reservation of title, and by such removal and replacement Mortgagor shall be deemed to have subjected such equipment to the lien of this Mortgage.

3. Construction of the Project shall proceed and loan proceeds shall be disbursed in accordance with the terms and conditions of the Loan Agreement and the Loan Disbursing Agreement of even date herewith.

4. So long as all or any part of the principal and/or interest on the Note and any additional indebtedness or obligation arising under this Mortgage, the Note, or the Security Instruments remains outstanding and unpaid:

4.1 Mortgagor will duly and punctually pay the principal and interest on the obligations secured hereby when and as the same shall become due and payable in accordance with the terms thereof and shall faithfully comply with and carry out all of its covenants and agreements set forth in this Mortgage, the Note and the Security Instruments.

4.2 Mortgagor will keep the Mortgaged Property, or cause the Mortgaged Property to be, properly insured against loss or damage as may be required by Mortgagee, including but not limited to comprehensive all-risk builder's insurance, in form and amount satisfactory to, and with insurance companies approved by Mortgagee, the policies for which insurance shall show Mortgagee as an additional party insured and shall be payable to Mortgagee as loss payee under standard mortgage endorsements. Mortgagor will procure, deliver to and maintain for the benefit of Mortgagee during the continuance of this Mortgage and until the same is fully satisfied and released, a policy or policies of comprehensive insurance insuring the Mortgaged Property (including buildings and improvements now existing or hereafter erected on the said premises) against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, and such other hazards, casualties, and contingencies as Mortgagee may designate, in amounts no less than the full insurable value of the Mortgaged Property from time to time on a replacement cost basis. Mortgagor will promptly pay, or cause to be paid, when due premiums on any policy or policies of insurance required hereunder, and will deliver to Mortgagee renewals of such policy or policies at least thirty (30) days prior to the expiration date thereof. In the event of any loss or damage, Mortgagor will give immediate notice thereof to Mortgagee. Mortgagee thereupon may make proof of such loss or damage, if the same is not promptly made by Mortgagor. All proceeds of insurance, in the event of such loss or damage, shall be payable to Mortgagee, and any affected insurance company is authorized and directed to make payment thereof directly to Mortgagee. Mortgagee is authorized and empowered to settle, adjust, or compromise any claims for loss, damage, or destruction under any policy or policies of insurance. In the event of insured loss or damage to the Mortgaged Property, provided (a) Mortgagor gives written notice to Mortgagee of its intention hereunder within thirty (30) days of such loss or damage; (b) Mortgagor shall not then be in default under the provisions of this Mortgage; (c) Mortgagor delivers to Mortgagee a complete set of plans and specifications for repairs, including equipment to be installed as a part of the repairs, subject to approval by the Mortgagee, and certified by an architect to be in accordance with applicable regulations, including but not limited to OSHA, Federal, State and local restrictions, code and regulations, and fire protection codes; (d) Mortgagor delivers to Mortgagee written, executed, and fully enforceable contracts for completion of the repairs according to final plans and specifications, at

firm contract prices, and such payment and performance bonds as Mortgagee may reasonably require; (e) the improvements can be rebuilt substantially to the same as those originally financed and can, with restoration and repair, continue to be operated for the purposes utilized prior to such damage or taking; and (f) the appraised value of the Mortgaged Property after such restoration or repair shall not have been reduced from its appraised value as of the date hereof; THEN any insurance proceeds payable under policies pertaining to the Mortgaged Property shall be available for the purpose of repairing, restoring, rebuilding, or replacing the premises so damaged or destroyed in accordance with plans and specifications approved by Mortgagee, and shall be paid out from time to time by the Mortgagee as the work progresses upon receipt by Mortgagee of a certificate of a reputable architect or contractor in charge of the work, certifying the actual cost of the work done and materials furnished to a date prior to the date of such certificate; provided, however, that the amount payable from time to time shall not exceed ninety percent (90%) of the actual cost of the work done and materials furnished to the date of such payment (or, after the Project is 50% or more complete, 95% of the actual cost of the work done and materials furnished to the date of payment) and the final payment to be made after completion of the work of repair or restoration, free of liens or the possibility thereof; PROVIDED, HOWEVER, that if the proceeds of insurance are insufficient to complete the repairs, Mortgagor shall, prior to commencement of the work, deposit with Mortgagee sufficient additional monies necessary to pay for such work and materials in accordance with the plans, specifications and contracts. Failure of Mortgagor to deposit such monies promptly with Mortgagee, or to commence the work of repair or restoration after written notice to do so from the Mortgagee within the time specified in such notice, shall constitute a default hereunder, and Mortgagee may, at its option, apply the entire amount of such insurance proceeds to repayment of the indebtedness secured hereby. All insurance proceeds and any additional monies deposited pursuant to this paragraph are to be disbursed by Mortgagee in the manner which Mortgagee deems appropriate. Any balance remaining of such proceeds after the Mortgagor shall have been fully reimbursed for the cost of the work done and materials furnished shall be applied by Mortgagee upon the indebtedness secured hereby, and any balance remaining after the entire amount of the indebtedness to the Mortgagee has been paid in full, including interest and any other charges which may be due the Mortgagee, shall be payable to Mortgagor. The delivery to Mortgagee of any policy or policies of insurance hereunder, or renewals thereof, shall constitute an assignment to Mortgagee of all unearned premiums thereon as further security for the payment of the indebtedness secured hereby. In the event of any foreclosure action or other transfer of title to the property covered hereby in extinguishment of the debt secured hereby, all right, title, and interest of Mortgagor in and to any policy or policies of insurance then in force shall pass to the purchaser or grantee.

4.3 Mortgagor will pay, or cause to be paid, before delinquent all taxes, installments of special assessments and other governmental charges of every type or nature levied or assessed against the Mortgaged Property or any part thereof (or any taxes imposed on the basis of rentals received by Mortgagor as lessor under leases for portions of the premises, if such a tax is imposed as a substitute for or in addition to real estate taxes) (collectively, "Taxes") and exhibit to Mortgagee paid receipts therefor, except when the validity thereof is being challenged in good faith by appropriate proceedings and no sale for such Taxes is advertised or public notice thereof given. In the event any such Taxes are being contested, and upon Mortgagee's request at any time regardless of whether or not any such contest exists, Mortgagor will deposit payments with Mortgagee on the payment dates provided for in the Note sufficient in amount to reasonably anticipate the payment of all such Taxes for the current year or any year for which Taxes are unpaid, including interest and penalties. Mortgagor agrees to promptly pay all Taxes and

assessments assessed or levied under or by virtue of any state, federal, or municipal law or regulation hereafter passed, against Mortgagee upon this Mortgage or the obligations hereby secured or the rents or profits assigned to Mortgagee pursuant to the Security Instruments.

4.4 After completion of the Project or if the Mortgagor fails to pay any Taxes when due or if any other Event of Default shall occur, then the Mortgagor shall deposit with the Mortgagee or its servicing agent, at the Mortgagee's request, on the first day of each and every month thereafter as a deposit to pay the costs of Taxes and insurance premiums next due for insurance policies required to be maintained under Section 4.2 hereof (hereinafter collectively referred to as the "Charges"):

(i) One-Twelfth (1/12th) of the Taxes next to become due upon the Mortgaged Property; provided that, in the case of the first such deposit, there shall be deposited in addition, an amount as estimated by the Mortgagee which, when added to monthly deposits to be made thereafter as provided for herein, shall assure to the Mortgagee's reasonable satisfaction that there will be sufficient funds on deposit to pay the Taxes as they come due; plus

(ii) One-Twelfth (1/12th) of the annual premiums on each policy of insurance required to be maintained under Section 4.2 hereof; provided that with the first such deposit, there shall be deposited, in addition, an amount equal to one-twelfth (1/12th) of such annual insurance premiums multiplied by the number of months elapsed between the date premiums on each policy were last paid to and including the date of deposit;

provided that the amount of such deposits shall be based upon the Mortgagee's reasonable estimate as to the amount of Taxes and premiums of insurance next to be payable. If the Mortgagee has requested the Mortgagor to make the deposits to it described above, the Mortgagee will, upon the timely presentation to the Mortgagee by the Mortgagor of the bills therefor, pay the Charges from such deposits or will upon presentation of receipted bills therefor, reimburse the Mortgagor for such payments made by or for the account of the Mortgagor. In the event the deposits on hand shall not be sufficient to pay all of the estimated Charges when the same shall become due from time to time, or the prior deposits shall be less than the currently estimated monthly amounts, then the Mortgagor shall pay to the Mortgagee on demand any amount necessary to make up the deficiency. The excess of any such deposits shall be returned to the Mortgagor or credited towards subsequent Charges, at the discretion of the Mortgagee. If an Event of Default shall occur under the terms of this Mortgage the Mortgagee may, at its option, without being required so to do, apply any deposits on hand to the obligations secured hereby, in such order and manner as the Mortgagee may elect. When the obligations secured hereby have been fully paid any remaining deposits shall be returned to the Mortgagor. All deposits are hereby pledged as additional security for the obligations secured hereby, shall be held for the purposes for which made as herein provided, may be held by the Mortgagee or its servicing agent and may be commingled with other funds of the Mortgagee, or its servicing agent, shall be held without any allowance of interest thereon and shall not be subject to the decision or control of the Mortgagor. Neither the Mortgagee nor its servicing agent shall be liable for any act or omission made or taken in good faith. In making any payments, the Mortgagee or its servicing agent may rely on any statement, bill or estimate procured from or issued by the payee without inquiry into the validity or accuracy of the same. If the Taxes shown in the tax statement shall be levied on property more extensive than the Mortgaged Property, the Mortgagee shall be under no duty to seek a tax division or apportionment of the tax bill, and any

payment of Taxes based on a larger parcel shall be paid by the Mortgagor and the Mortgagor shall expeditiously cause a tax subdivision to be made.

4.5 Mortgagor will maintain and keep or cause to be maintained and kept the Mortgaged Property in good condition and repair, making or causing to be made all structural and non-structural exterior and interior, ordinary and extraordinary, foreseen and unforeseen repairs, renewals and replacements. To that end, Mortgagor will not commit or suffer any waste of the Mortgaged Property, and will promptly comply with, or cause to be complied with, all statutes, ordinances, and requirements of any governmental authority relating to the Mortgaged Property. Except as otherwise provided herein, Mortgagor promptly will repair, restore, replace, or rebuild any part of the Mortgaged Property now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty whatsoever or which may be affected by any proceeding of the character to which reference is made to in paragraph 4.6 hereof. Mortgagor promptly will comply with, or cause to be complied with, any direction or certificate of occupancy of any public officer or officers, and with the requirements of all policies of public liability, fire, and other insurance at any time enforced with respect to the Mortgaged Property, which shall impose any duty upon Mortgagor with respect to any part of the Mortgaged Property or the use, occupation, or control thereof or the conduct of any business therein, whether or not any of the same requires structural repairs or alterations.

4.6 Mortgagor agrees that all awards heretofore or hereafter made by any public or quasi-public authority to Mortgagor or its successor with respect to the Mortgaged Property by virtue of an exercise of the right of eminent domain by such authority, including any award for a taking of title, possession or right of access to a public way, or for any change of grade of streets affecting said premises, are hereby assigned to Mortgagee. Notwithstanding any taking by eminent domain or other injury to or decrease in value of the Mortgaged Property, Mortgagor shall continue to pay interest on the entire principal sum secured until any such award or payment shall have been actually received by Mortgagee, and any reduction in the principal sum resulting from the application by Mortgagee of such award or payment as hereinafter set forth shall be deemed to take effect only on the date of such receipt. Such award or payment shall be made available to the Mortgagor for restoration or repair of the Mortgaged Property on the same terms and conditions applicable to the disbursement of insurance proceeds after a casualty event, as set forth in Section 4.2 above. If, prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, then Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage shall have been sought or recovered and also to the extent of the reasonable counsel fees, costs, and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

4.7 Mortgagor, during the term of this Mortgage, will not sell, contract to sell, mortgage, or otherwise encumber or transfer the Mortgaged Property or any interest therein, or change the form of ownership thereof, without the prior written consent of Mortgagee. Neither Mortgagor nor any member of Mortgagor shall transfer, assign, pledge, or otherwise encumber in any manner, any interest in Mortgagor without the prior written consent of Mortgagee. Mortgagor, with approval of Mortgagee, may grant easements, licenses, or rights-of-way over, under, or upon the site, so long as such easements, licenses, or rights-of-way do not destroy or diminish the value or usefulness of the Mortgaged Property as determined by Mortgagee. If Mortgagor violates the foregoing covenants, or sells, conveys, or alienates the Mortgaged

Property, or any interest therein, whether legal or equitable, or severs or removes any part thereof, or shall be divested of its title or any interest therein in any manner or way, whether voluntarily or involuntarily, or changes the form of ownership thereof, without the prior written consent of Mortgagee, then in any such case Mortgagee shall have the right, at its option, to declare any indebtedness or obligations secured hereby immediately due and payable irrespective of the maturity date specified in the Note evidencing the same. In addition, Mortgagee shall have the right, at its option, to declare an amount equal to the contingent obligation of the Mortgagor with respect to all undrawn amounts under any outstanding Letters of Credit (as that term is defined in the Loan Agreement) to be immediately due and payable. Mortgagee may condition its consent to such a sale, transfer, encumbrance, or change in form of ownership upon an increase in the interest rate and/or a modification of any other terms and conditions of the Note secured by this Mortgage, as it deems appropriate.

4.8 Mortgagor will not enter, create or suffer to be created any further mortgage, charge, lien, or encumbrance upon the Mortgaged Property, or any part thereof, whether or not prior to or subordinate to or on a parity with the lien of this Mortgage, without the prior written consent of Mortgagee. All leases pertaining to the Mortgaged Property executed by Mortgagor during the term of this Mortgage shall be approved in advance by Mortgagee, and shall be on terms and at rentals approved by Mortgagee.

4.9 If any action or proceeding be commenced (except an action to foreclose this Mortgage or to collect the debt secured hereby), to which action or proceeding Mortgagee is or becomes a party or in which it becomes necessary to defend or uphold the lien of the Mortgage or the efficacy of any instrument of Mortgagor, all sums paid by Mortgagee for the expense of any litigation (including reasonable counsel fees) to prosecute or defend the rights and lien created by this Mortgage or the Security Instruments, on notice and demand, shall be paid by Mortgagor. Payment of such sums by Mortgagor shall be secured hereby as a further charge and lien upon the Mortgaged Property, with interest thereon at the default rate specified in the Note.

4.10 Mortgagor covenants and represents that the Mortgaged Property complies, and any building to be constructed thereon, when completed, will comply, with the covenants and restrictions affecting the premises and with all applicable permits and authorizations and building and zoning laws and with all other laws, orders, ordinances, rules, regulations and requirements of all Federal, State, County and municipal governments, departments, commissions, boards and officers. Mortgagor will at all times so own and use the same and take all steps necessary to assure such compliance at all times. Mortgagor promptly will advise Mortgagee of any action, suit, or proceeding pending or, to Mortgagor's knowledge, threatened, before any tribunal, board, or body which might result in the condemnation of any or all of the Mortgaged Property or which might adversely affect the compliance of any of the Mortgaged Property with such covenants, restrictions, building, zoning, and other laws, orders, ordinances, rules, regulations, or requirements. Mortgagor will promptly, diligently, and competently defend all such actions, suits, or proceedings.

4.11 Mortgagor will deliver to Mortgagee a statement of annual income and expenses, including an itemized rent roll, in detail reasonably satisfactory to Mortgagee, in connection with the Mortgaged Property within ninety (90) days after the expiration of each fiscal year of Mortgagor, certified by Mortgagor, or as otherwise acceptable to Mortgagee.

4.12 Mortgagee and its employees or agents shall have the right at all reasonable times to enter upon and inspect the Mortgaged Property, subject to the rights of any tenant thereon, and in such manner as will not cause an unreasonable interference with the business conducted by any such tenant.

4.13 Mortgagor shall furnish to Mortgagee copies of all contracts for construction of improvements on or affecting the Mortgaged Property and any other contractual arrangements affecting the Mortgaged Property, and copies of all changes or amendments thereto.

4.14 Notwithstanding any other provisions of this Mortgage, the Note, the Loan Agreement or the Loan Disbursing Agreement, it is expressly agreed that the loan to the Mortgagor at all times shall be in balance, to-wit: the undistributed proceeds of the loan at any time, after provisions for all holdbacks, reserves, and retainages, shall be sufficient, in Mortgagee's opinion, for all work done, or to be done for completion of the Mortgagor's Project. Mortgagor agrees that if for any reason the amount of undistributed loan proceeds at any time shall be considered by Mortgagee insufficient for such completion, then Mortgagor, within fifteen (15) days after written request by Mortgagee, shall deposit the amount of such completion deficiency with Mortgagee, which deficiency deposit shall be exhausted first before any further disbursements of the loan proceeds shall be made. Failure of Mortgagor to comply with such a deposit request shall constitute an Event of Default hereunder.

4.15 The shareholders of the manager of the Mortgagor will not sell, contract to sell, mortgage or otherwise encumber or transfer any shares of capital stock, if such transfer would result in those persons or entities who were shareholders as of the date of this Mortgage having at any time less than a controlling interest in Mortgagor.

4.16 If the interest of Mortgagor in the Mortgaged Property or any part thereof shall be endangered or shall be attacked in legal proceedings, directly or indirectly, Mortgagor hereby authorizes Mortgagee at Mortgagor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation, and the compromise or discharge of claims made against such interest. Any sums so expended by Mortgagee shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage.

5. Mortgagor and Mortgagee agree that this Mortgage shall constitute a security agreement within the meaning of the Alabama Uniform Commercial Code (hereinafter referred to as the "Code") with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagor, held by Mortgagee (whether deposited by or on behalf of Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or the Loan Agreement or Loan Disbursing Agreement and (ii) with respect to any personal property included in the granting clauses of this Mortgage, which personal property may be deemed to be not affixed to the project or may not constitute a "fixture" (within the meaning of Section 7-9A-102(a), Code of Alabama 1975) (which property is hereinafter referred to as "Personal Property") and all replacements of such Personal Property, substitutions for such Personal Property, additions to such Personal Property, and the proceeds thereof (all of said Personal Property and the replacements, substitutions and additions thereto and the proceeds thereof and all sums at any time on deposit described in Paragraph 5(i) above being sometimes hereinafter collectively referred to as the "Collateral"), and that a security interest in and to the Collateral is hereby granted to Mortgagee, and the Collateral and all of Mortgagor's right, title, and interest therein are hereby assigned to

Mortgagee, all to secure payment of the obligations secured hereby. All of the terms, provisions, conditions, and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the premises. The following provisions of this Paragraph shall not limit the applicability of any other provision of this Mortgage but shall be in addition thereto:

5.1 Mortgagor (being the debtor as that term is used in the Code) is and will be the true and lawful owner of the Collateral, subject to no liens, charges, or encumbrances other than: the lien hereof, other liens and encumbrances benefitting Mortgagee and no other party, the Permitted Exceptions, and liens and encumbrances, if any, expressly permitted by the Loan Agreement.

5.2 The Collateral is to be used by Mortgagor solely for business purposes.

5.3 Except as permitted under the Loan Agreement and Loan Disbursing Agreement, the Collateral will be kept at the premises and, except for Obsolete Collateral (as defined in Paragraph 2.2 above), will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code). The Collateral may be affixed to the premises, but will not be affixed to any other real estate.

5.4 The only persons having any security interest in the Collateral are Mortgagor, Mortgagee, and holders of interests, if any, expressly permitted by the Loan Agreement and Loan Disbursing Agreement.

5.5 No financing statement (other than financing statements showing Mortgagee as the sole secured party, or with respect to liens or encumbrances, if any, expressly permitted by the Loan Agreement) covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto. Mortgagor, at its own cost and expense, upon demand, will furnish to Mortgagee such further information and will deliver to Mortgagee such financing statements and other documents in form satisfactory to Mortgagee and will do all such acts and things as Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the obligations secured hereby, subject to no other liens or encumbrances, other than liens or encumbrances benefitting Mortgagee, the Permitted Exceptions, and liens and encumbrances (if any) expressly permitted by the Loan Agreement or Loan Disbursing Agreement. Mortgagor will pay the cost of filing or recording such financing statements or other documents and this instrument in all public offices wherever filing or recording is deemed by Mortgagee to be necessary or desirable. Mortgagor hereby authorizes Mortgagee, without Mortgagor's consent and without Mortgagor's signature, to file any financing statements, amendments thereto and continuations thereof as Mortgagee deems necessary or appropriate in order to perfect and maintain the perfection of its security interest in the Collateral. Such financing statements may describe the property covered thereby as "All assets of Debtor."

5.6 Upon the happening of an Event of Default hereunder, Mortgagee shall have the remedies of a secured party under the Code, including, without limitation, the right to take immediate and exclusive possession of the Collateral, or any part thereof, and for that purpose may, so far as Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace) upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed

to real estate, then such removal shall be subject to the conditions stated in the Code. Mortgagee shall be entitled to hold, maintain, preserve, and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption in satisfaction of Mortgagor's obligations, as provided in the Code. Mortgagee may render the Collateral unusable without removal and may dispose of the Collateral on the premises. Mortgagee may require Mortgagor to assemble the Collateral and make it available to Mortgagee for its possession at a place, reasonably convenient to both parties to be designated by Mortgagee. Mortgagee will give Mortgagor at least ten (10) days notice of the time and place of any public sale of the Collateral or of the time after which any private sale or any other intended disposition thereof is made. The requirements of reasonable notice shall be met if such notice is mailed, by certified United States mail, postage prepaid, to the address of Mortgagor hereinafter set forth at least ten (10) days before the time of the sale or disposition. Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale. Any such sale may be held as part of and in conjunction with any foreclosure sale of the Mortgaged Property (the Mortgaged Property, including the Collateral to be sold as one lot if Mortgagee so elects). The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling, or the like and the attorneys' fees and legal expenses incurred by Mortgagee, shall be applied against the obligations secured hereby in such order or manner as Mortgagee shall select. Mortgagee will account to Mortgagor for any surplus realized on such disposition.

5.7 The terms and provisions contained in this Paragraph 5, unless the context otherwise requires, shall have the meanings and be construed as provided in the Code.

5.8 As to those items of Collateral described in this Mortgage that are, or are to become fixtures related to the real estate mortgaged herein, it is intended as to those items that THIS MORTGAGE SHALL BE EFFECTIVE AS A FINANCING STATEMENT FILED AS A FIXTURE FILING from the date of its filing in the real estate records of the County where the Mortgaged Property is situated. The name of the record owner of said real estate is the Mortgagor set forth in page one to this Mortgage. Information concerning the security interest created by this instrument may be obtained from the Mortgagee, as secured party, at its address as set forth in page one of this Mortgage. The address of the Mortgagor, as debtor, is as set forth in page one to this Mortgage. This document covers goods which are or are to become fixtures.

5.9 To the extent permitted by applicable law, the security interest created hereby specifically is intended to cover and include all leases between Mortgagor, as lessor, and various tenants named therein, as lessees, with respect to all or a portion of the Mortgaged Property, including all extended terms and all extensions and renewals of the terms thereof, as well as any amendments to or replacement of said leases (collectively, the "Leases"), together with all of the right, title, and interest of Mortgagor, as lessor thereunder, including, without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive, and receipt for any and all of the rents, income, revenues, issues and profits, and moneys payable as damages or in lieu of the rent and moneys payable as the purchase price of the premises or any part thereof or of awards or claims for money and other sums of money payable or receivable thereunder, howsoever payable, and to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Mortgagor or any lessor is or may become entitled to do under the Leases.

5.10 This is a "construction mortgage" within the meaning of Section 7-9A-334, Code of Alabama 1975.

5.11 The provisions contained herein with respect to the security interests or security agreement rights of Mortgagee are severable interests. Mortgagee shall have the right to exercise any and all its rights hereunder pursuant to the provisions of the uniform commercial code of the State of Alabama, with such rights being construed in accordance with such Code and without waiving or relinquishing any rights which it may have as a mortgagee, it being intended that this agreement may be utilized separately as a security agreement (alone), mortgage (alone), or mortgage and security agreement (combined).

6. If Mortgagee (a) grants any extension of time for forbearance with respect to the payment of any indebtedness secured by this Mortgage; (b) takes other or additional security for the payment thereof; (c) waives or fails to exercise any right granted herein or under the Note secured hereby or the release of any person liable for payment of said debt; (d) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Note secured hereby (including substitution of another note); then and in any such event, such act or omission to act shall not release Mortgagor, or any surety or guarantors of this Mortgage or of the Note secured hereby, under any covenant of this Mortgage or of said Note, nor preclude 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 any subsequent default, nor in any way impair or affect the lien or priority of this Mortgage.

7. If any one or more of the following events (herein designated as "Events of Default") shall occur:

7.1 Default by Mortgagor in the prompt payment of the principal of or any installment of interest or other payment on the Note when the same shall become due and payable as therein expressed and any grace period provided therein shall have passed; or

7.2 Default in the due observance or performance of any other covenant, condition, or agreement on Mortgagor's part to be observed or performed pursuant to the terms and provisions of this Mortgage or any other Security Instrument, and such default shall continue for thirty (30) days after written notice thereof is sent to Mortgagor by Mortgagee; provided that such thirty (30) day period shall be extended for up to sixty (60) additional days so long as the Mortgagor commences the cure of the default before the end of such thirty (30) days and diligently pursues the cure at all times thereafter; or

7.3 Construction of the Project shall be abandoned for a period of ten (10) days, or shall be unreasonably delayed or discontinued for a period of thirty (30) days, or Mortgagee shall in good faith determine, by written notice to Mortgagor, that Mortgagor's ability to perform any material obligation under the Note, this Mortgage, the Loan Agreement and Loan Disbursing Agreement related to the Project, or any other Security Instrument is materially impaired or that it has become improbable that Mortgagor will be able to fully perform any such obligation; or

7.4 Any representation or warranty made by Mortgagor herein or with respect to the Mortgaged Property or made by Mortgagor in the Security Instruments incident hereto shall prove untrue in any material respect when made; or

7.5 If Mortgagor or any guarantor of the Mortgagor's obligations shall: file a voluntary petition in bankruptcy; make an assignment for the benefit of creditors; consent to the appointment of a receiver or trustee for all or any part of its properties; file a petition, answer, or other instrument seeking or acquiescing in its reorganization, arrangement of its debts, or other relief under the Federal bankruptcy laws, or any other applicable Federal or State law for the relief of debtors; have entered against it a decree adjudging it to be bankrupt or insolvent, or approving as properly filed a petition seeking its reorganization under the Federal bankruptcy laws or any other applicable Federal or State law for the relief of debtors; have a receiver or trustee or assignee in bankruptcy or insolvency appointed for it or its properties; or have entered against it a decree directing the winding up or liquidation of its affairs; or have entered or filed against it one or more judgments, writs, or attachments in an aggregate amount at any one time in excess of \$50,000, which are not released, stayed, satisfied, or vacated within sixty (60) days after entry or filing; or, in the case of James H. Schloemer, he should die and the Mortgagee shall notify the Mortgagor in writing that the Mortgagee in good faith believes that his death has impaired or is likely to impair the timely completion of the Project and/or the timely refinancing of the Note (it being agreed that the Mortgagee may make such a determination on the basis, among other things, of whether or not the general contractor is proceeding with its contract to construct the Project).

THEN, and upon the happening of any such event, and the expiration of any applicable grace period, Mortgagee, at its option and without notice, may declare the then outstanding principal of the Note to be forthwith due and payable, and upon such declaration the principal, together with interest accrued thereon and other payments, shall become and be due and payable forthwith, anything in this Mortgage, the Note, or the Security Instruments to the contrary notwithstanding; provided that in the event that the Mortgagee notifies the Mortgagor that it has declared an Event of Default solely because of the death of James H. Schloemer in the circumstances described above, then so long as no other Event of Default shall exist and Mortgagee's legal position is not otherwise impaired, the Mortgagee shall endeavor to enforce its rights and remedies without accelerating the maturity date of the Note (it being understood and agreed that Mortgagee shall be the sole judge of whether or not its legal position is impaired as a result of not accelerating its debt). Upon acceleration of the maturity date of the Note or non-payment thereof at maturity, Mortgagee may proceed to protect and enforce its rights hereunder and under the Note and said Security Instruments by foreclosure proceedings, or by other suit in equity, action at law, or other appropriate proceedings, including actions for the specific performance of any covenant or agreement contained in this Mortgage or in the Note or in the said Security Instruments, or in aid of the exercise of any power granted in this Mortgage, the Note, or in said Security Instruments, or may proceed in any manner to enforce the payment of the Note and any other legal or equitable right of Mortgagee and of the holder of the Note. In addition, Mortgagee, at its option, shall have the right to declare an amount equal to the contingent obligation of the Mortgagor with respect to all undrawn amounts under any outstanding Letters of Credit (as that term is defined in the Loan Agreement) to be immediately due and payable.

8. Upon the happening of an Event of Default, then and in addition to (and not to the exclusion of) the rights set forth immediately above:

8.1 Mortgagee shall be entitled as a matter of right in any judicial proceedings which are commenced or as may otherwise be permitted by applicable law to have a receiver appointed for Mortgagee's benefit to take possession, management and control of all of the Mortgaged Property and of the earnings, income, rents, issues, and profits thereof, during such proceedings

or otherwise, with such other powers as the court making such appointment shall confer. Mortgagor hereby irrevocably consents and agrees to such appointment.

8.2 Mortgagee, either itself or by its agents or attorneys, in its discretion, may enter upon and take possession of the Mortgaged Property, or any part or parts thereof, and may exclude Mortgagor and Mortgagor's agents and servants wholly therefrom. Having and holding the same, Mortgagee may take over and complete construction of the Project in accordance with plans and specifications approved by Mortgagee, to the extent possible, with such changes as Mortgagee, in its discretion, may deem appropriate, all at the risk, cost, and expense of Mortgagor. Mortgagee may assume or reject any contracts entered into by Mortgagor in connection with the same, subject to the rights of other parties to such contracts, and may (a) enter into additional or different contracts for services, labor, and for materials required, in the judgment of the Mortgagee, to complete the said construction, and (b) pay, compromise and settle all claims in connection with the same. All sums expended by Mortgagee in completing such construction shall be deemed advances made by Mortgagee to Mortgagor, and Mortgagor shall be liable to Mortgagee for the repayment of such sums, together with interest on such amounts from the date of their expenditure at the default rate specified in the Note. Mortgagee, in its discretion, at any time may abandon work on the premises after having commenced such work, and may recommence such work at any time, it being understood that nothing in this paragraph shall impose any obligation on Mortgagee either to complete or not to complete such construction. For the purpose of carrying out the provisions of this paragraph, Mortgagor irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact, with full power of substitution, to execute and deliver all such documents, pay and receive such funds, and take such action as may be necessary, in the judgment of Mortgagee, to complete such construction of improvements on the Mortgaged Property.

Mortgagee further may (i) use, operate, manage, and control the Mortgaged Property or any part thereof, and conduct the business thereof (either itself or by its attorneys and agents) including letting the same, (ii) collect any and all rents, issues, and profits due or to become due, without prejudice of its rights to foreclosure, to appointment of a receiver, and other rights, and (iii) from time to time, either by purchase, repair, or construction, maintain, restore, and insure and keep insured, the buildings, structures, improvements, fixtures, machinery, equipment, and other property constituting a part of or used in connection with the Mortgaged Property. After paying all of the expenses of operating the premises and said property, Mortgagee shall apply the moneys arising therefrom to the payment of the amount then due on the Note for interest and principal, with interest on overdue interest and principal at the default rate specified in the Note from the date the same became payable, whether by lapse of time, acceleration, or otherwise.

8.3 Mortgagee, at its option, may perform any covenant or agreement of Mortgagor in this Mortgage, the Note, or the Security Instruments. The cost thereof, with interest at the default rate specified in the Note, immediately shall be due from Mortgagor to Mortgagee without further demand and shall be secured by this Mortgage.

8.4 Mortgagee shall have the right to enforce the provisions of this Mortgage and may either with or without entry or taking possession, proceed by suit or suits at law or in equity or by any other appropriate proceedings or remedy to enforce payment of the indebtedness secured hereby or the performance of any other term hereof or any other right and the Mortgagor hereby authorizes and fully empowers the Mortgagee to foreclose this Mortgage by judicial proceedings

or, to the extent permitted by applicable law, by advertisement with full authority and power to sell the Mortgaged Property at public auction and convey the same to the purchaser in fee simple, either in one parcel or separate lots and parcels, all in accordance with and in the manner prescribed by law, and out of the proceeds arising from sale and foreclosure to retain the principal and interest due on the Note and the other obligations secured hereby together with all such sums of money as the Mortgagee shall have expended or advanced pursuant to this Mortgage or pursuant to statute together with interest thereon as herein provided and all costs and expenses of such foreclosure, including lawful attorney's fees, with the balance, if any, to be paid to the persons entitled thereto by law.

8.5 In case it becomes necessary for Mortgagee to commence proceedings to foreclose this Mortgage or to commence any other suit in equity, action at law, or other appropriate proceeding, or to enforce its rights under this Mortgage, the Note or the Security Instruments, Mortgagor agrees to pay to Mortgagee all costs of such suit, action, or proceeding as well as all expenses incurred in procuring and continuing title insurance and the reasonable fees of Mortgagee's attorneys (including Alabama special counsel) in connection therewith, which costs and fees shall be included in the judgment in any such suit, action, or proceeding.

8.6 No remedy herein conferred upon or otherwise available to Mortgagee is intended to be or shall be construed to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein. The Mortgagor hereby waives any rights available with respect to marshalling of assets so as to require the separate sales of any portion of the Mortgaged Property before proceeding against the other and does hereby expressly consent to and authorize the sale of the Mortgaged Property or any part thereof as a single unit or parcel. Mortgagor hereby waives and agrees not to insist upon, plead, or in any manner take advantage of, any stay, extension, homestead, marshaling or moratorium law or any law providing for the valuation or appraisal of all or any part of the premises prior to any sale or sales thereof under any provision of this Mortgage or before or after any decree, judgment or order of any court or confirmation thereof, or claim or exercise any right to redeem all or any part of the premises so sold and hereby expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the premises, all benefit and advantage of any such laws which would otherwise be available to Mortgagor or any such person or entity, and agrees that neither Mortgagor nor any such person or entity will invoke or utilize any such law to otherwise hinder, delay or impede the exercise of any remedy granted or delegated to Mortgagee herein but will permit the exercise of such remedy as though any such laws had not been enacted. Mortgagor hereby further expressly waives to the full extent permitted by applicable law on behalf of itself and each and every person or entity acquiring any right, title or interest in or to all or any part of the premises any and all rights of redemption from any sale or any order or decree of foreclosure obtained pursuant to provisions of this mortgage.

8.7 In addition to all other remedies provided herein, upon the occurrence of any 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 Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving notice by publication once a week for three (3) consecutive weeks of the time, place, and

terms of each such sale by publication in a newspaper published in the county or counties wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the 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, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged 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 obligations secured hereby shall have been paid in full.

8.8 Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto without any covenant or warranty, express or implied. The recitals in Mortgagee's deed shall be prima facie evidence of the truth of the statements made in those recitals. Mortgagor covenants and agrees that the proceeds of any sale shall be applied in the following order or as otherwise prescribed by law: (a) to all costs and expenses of the sale, including attorneys' fees and costs of title evidence; (b) to the Indebtedness secured hereby in such order as Mortgagee, in Mortgagee's discretion, directs; and (c) the excess, if any, to the person or persons legally entitled to it..

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

8.10 Mortgagor waives all rights of exemptions as to personal property.

9. The following terms and conditions regarding environmental matters and the Mortgaged Property are included in this Mortgage:

9.1 For the purpose of this Mortgage, the phrase "Regulated Materials" shall include, but shall not be limited to, those materials or substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic pollutant" or other similar designations under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601, et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801, et seq., or regulations promulgated pursuant thereto. Also for purposes of this Mortgage, the phrase "Governmental Agency or Agencies" means any federal, state, local or foreign government, political subdivision, court, agency or other entity, body, organization or group exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government.

9.2 The Mortgagor hereby represents to the Mortgagee that, except as expressly described in the written environmental report delivered to the Mortgagee prior to the date hereof (the "Pre-Closing Report"):

(a) other than the incidental use, storage and handling of Regulated Materials in a manner which does not require any management or remediation and which could not have an adverse effect on the Mortgagor or the Mortgaged Property, (i) to the best of Mortgagor's knowledge after inquiry, no Regulated Material currently exists on the Mortgaged Property or in its soil or groundwater and (ii) to the best of Mortgagor's knowledge, after inquiry, the Mortgaged Property has never been used either by previous owners or occupants or by the Mortgagor or current occupants to generate, manufacture, refine, transport, treat, store, handle or dispose of any Regulated Material, except in accordance with all applicable law;

(b) to the best of Mortgagor's knowledge after inquiry, no portion of any building on the Mortgaged Property contains, and no building on the Mortgaged Property will be constructed with, any Regulated Material, including but not limited to asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemicals or substance which has been determined to be a hazard to health or the environment and which would require any legally mandated remedial action;

(c) to the best of Mortgagor's knowledge, after inquiry, there are no electrical transformers or other equipment which have dielectric fluid containing polychlorinated biphenyls (PCBs) located in, on or under the Mortgaged Property;

(d) to the best of Mortgagor's knowledge, after inquiry, the Mortgaged Property does not contain any underground storage tanks or septic tanks; and

(e) the Mortgagor has not received nor does it have any knowledge of any summons, citation, directive, letter or other communication, written or oral, from any Governmental Agency or Agencies concerning (i) the existence of any Regulated Materials on the Mortgaged Property or in the immediate vicinity which it reasonably believes would affect the Mortgaged Property or (ii) any intentional or unintentional action or omission on the part of the Mortgagor or any occupant of the Mortgaged Property resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of Regulated Materials onto the Mortgaged Property or into waters or other lands.

9.3 The Mortgagor hereby covenants to the Mortgagee that:

(a) the Mortgagor shall (i) comply and shall use its best efforts to cause all occupants of the Mortgaged Property to comply with all federal, state and local laws, rules, regulations and orders with respect to the discharge, generation, removal, transportation, storage and handling of Regulated Materials, (ii) remove any Regulated Materials immediately upon discovery of the same or promptly remediate their impact in compliance with all applicable federal, state and local laws, rules, regulations and orders; provided that, in the event the Mortgagor elects to remediate Regulated Materials present on the Mortgaged Property, the Mortgagee shall not have objected to the manner and timing of such remediation, and (iii) pay or cause to be paid all costs associated with such removal or remediation, unless the presence of such Regulated Materials do not require any management or remediation under applicable law and do not materially adversely affect the value of the Mortgaged Property;

(b) the Mortgagor shall keep the Mortgaged Property free of any lien imposed pursuant to any state or federal law, rule, regulation or order in connection with the existence of Regulated Materials on the Mortgaged Property;

(c) the Mortgagor shall not install or permit to be installed or to exist in or on the Mortgaged Property any Regulated Materials including, but not limited to, asbestos, asbestos-containing materials, urea formaldehyde insulation or any other chemical or substance which as used or installed would require remedial action pursuant to any law or regulation applicable to Regulated Materials, unless the presence of such Regulated Materials do not require any management or remediation under applicable law and do not materially adversely affect the value of the Mortgaged Property;

(d) the Mortgagor shall not cause or permit to exist, as a result of an intentional or unintentional act or omission on the part of the Mortgagor or any occupant of the Mortgaged Property, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Regulated Materials onto the Mortgaged Property or into waters or other lands;

(e) the Mortgagor shall promptly provide a copy of any summons, citation, directive, letter or other communication which it receives from any Government Agency or Agencies concerning any of the matters of a kind described in Section 9.2(e) above; and

9.4 It shall constitute an Event of Default hereunder and the Mortgagee shall be entitled to exercise all remedies available to it hereunder if:

(a) any of the Mortgagor's representations contained in Section 9.2 hereof prove to be false, inaccurate or misleading;

(b) the Mortgagor shall fail to comply with the covenants contained in Section 9.3 hereof within thirty (30) days after Mortgagee mails notice to Mortgagor thereof;

(c) any Regulated Materials are hereafter found to exist on the Mortgaged Property or in its soil or groundwater and the Mortgagor shall fail within seventy-five (75) days after Mortgagee mails notice to Mortgagor thereof, to commence and diligently pursue such actions as are necessary to remove the same from the Mortgaged Property, unless the presence of such Regulated Materials do not require any management or remediation under applicable law and do not materially adversely affect the value of the Mortgaged Property; or

(d) any summons, citation, directive, letter or other communication, written or oral, shall be issued by any Governmental Agency or Agencies concerning the matters described in Section 9.2(e)(i) and (ii) above and Mortgagor fails to cure the condition occasioning the same within the time limit set forth in Section 9.4(b).

The Mortgagor hereby grants the Mortgagee and its employees and agents an irrevocable and non-exclusive license to enter the Mortgaged Property, subject to rights of tenants, in order to inspect, conduct testing and remove hazardous wastes or substances. All costs of such inspection, testing and removal shall immediately become due and payable to the Mortgagee, shall be secured by this Mortgage and shall constitute additional indebtedness secured hereby.

9.5 The Mortgagor hereby agrees to defend, indemnify and hold harmless the Mortgagee, its directors, officers, employees, agents, contractors, subcontractors, licensees, invitees, successors and assigns ("Indemnified Parties") from and against any and all claims, losses, damages, liabilities, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees and claims) incurred by the Indemnified Parties as a result of or in connection with the presence or removal of any Regulated Materials in or from the Mortgaged Property. The Mortgagor shall bear, pay and discharge, as and when the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise, against the Indemnified Parties, shall hold the Indemnified Parties harmless against all claims, losses, damages, liabilities, costs and expenses, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or Governmental Agency or Agencies arising out of any of the occurrences set forth in this Section 9.

9.6 The representations, covenants and indemnifications given by Mortgagee to Mortgagor in this Section 9 shall be a separate agreement between the parties, and shall survive any termination, satisfaction or foreclosure of the Mortgage or the acceptance of a deed in lieu of foreclosure.

10. This Mortgage shall secure payment of the Note whether the entire amount shall have been advanced to Mortgagor at the date hereof or at a later date, and whether or not principal amounts repaid by Mortgagor and applied against the principal amount due under the Note secured hereby are subsequently again loaned to Mortgagor for purposes of making improvements to the Mortgaged Property, all of which shall be deemed to be obligatory advances hereunder. This Mortgage also shall secure any and all future advances made hereunder, including additional sums which hereafter may be loaned and evidenced by a note secured by this Mortgage, and all costs, taxes, assessments, insurance, expenses, and attorneys' fees which Mortgagee may make, pay or incur under any provision of this instrument for the protection of Mortgagee or any of the rights of Mortgagee in connection with the Mortgaged Property, costs of foreclosure proceedings commenced and subsequently abandoned, or any dispute or litigation in which Mortgagee or the holder of the Note may become involved by reason of or arising out of this Mortgage, all of which sums shall be secured by this Mortgage, including the extent to which the aggregate of such sums may exceed the principal amount stated herein, with interest thereon at the default rate specified in the Note. This Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance with respect to all sums so secured. Any agreement, extension, renewal, or modification of the Note made by

Mortgagor and Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

11. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Mortgagee or by any other party, Mortgagee shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided herein. Mortgagee shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Mortgagor, any party who consents to this Mortgage and any party who now or hereafter acquires a security interest in the Mortgaged Property and who has actual or constructive notice hereof, hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted in applicable law or provided herein.

12. Mortgagor agrees to comply with the covenants and conditions of the Loan Agreement, which is hereby incorporated by reference in and made a part of this Mortgage. All advances made by Mortgagee pursuant to the Loan Agreement shall be indebtedness of Mortgagor secured by this Mortgage, and such advances may be obligatory as provided in the Loan Agreement. All sums disbursed by Mortgagee prior to completion of the improvements to protect the security of this Mortgage shall be treated as disbursements pursuant to the Loan Agreement. All such sums shall bear interest from the date of disbursement at the interest rate stated in the Note.

From time to time as Mortgagee deems necessary to protect Mortgagee's interests, Mortgagor shall upon request of Mortgagee, execute and deliver to Mortgagee, in such form as Mortgagee shall direct assignments of any and all rights or claims which relate to the construction of the Property and which Mortgagor may have against any party supplying or who has supplied labor, materials or any other work or product in connection with construction of the Mortgaged Property. In case of breach by Mortgagor of the covenants and conditions of the Loan Agreement, Mortgagee, at Mortgagee's option, with or without entry upon the Mortgaged Property, (i) may invoke any of the rights or remedies provided in the Loan Agreement, (ii) may accelerate the sums secured by this Mortgage and invoke those remedies provided in Sections 7 and 8 hereof, or (iii) may do both.

Mortgagee shall not, in any way, act as the agent or trustee of Mortgagor nor does it intend, in any way, to act for or on behalf of Mortgagor with respect to disbursements under this Section 12. The purpose of Mortgagee in making the requirements set forth in this paragraph and the Loan Agreement is that of a Mortgagee protecting the priority of this Mortgage and the value of Mortgagee's security. Mortgagee assumes no responsibility for the completion of any improvements erected thereon, any plans and specifications in connection therewith, or Mortgagor's relations with any contractors. This instrument is not to be construed by Mortgagor, or any party furnishing labor, materials or any other work or product for the improving of the Mortgaged Property as an agreement on the part of the Mortgagee to assure that any party will be paid for furnishing such labor, materials or any other work or product. Any such party must look entirely to Mortgagor for such payment. Mortgagee assumes no responsibility for the architectural or structural soundness of any improvements to be erected on the Mortgaged Property or for the approval of any plans and specifications in connection therewith or for any improvements as finally completed.

13. In the event any terms or provisions of this Mortgage shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Mortgage, or the application of such to persons or circumstances other than those to which it has been declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.

14. All covenants, agreements, and conditions contained in this Mortgage by or on behalf of any party hereto shall bind and benefit the respective heirs, personal representatives, successors, and assigns of Mortgagor and Mortgagee, to the extent assignable. This Mortgage shall not be transferable or assumable by any transferee or grantee of the Mortgaged Property, without the prior written consent of Mortgagee. This Mortgage shall be construed and enforced in accordance with the laws of the State of Alabama.

15. Upon payment of the obligations secured hereby, this Mortgage shall become null and void, and Mortgagee shall release this Mortgage. Mortgagor shall pay Mortgagee's reasonable costs incurred in releasing this Mortgage.

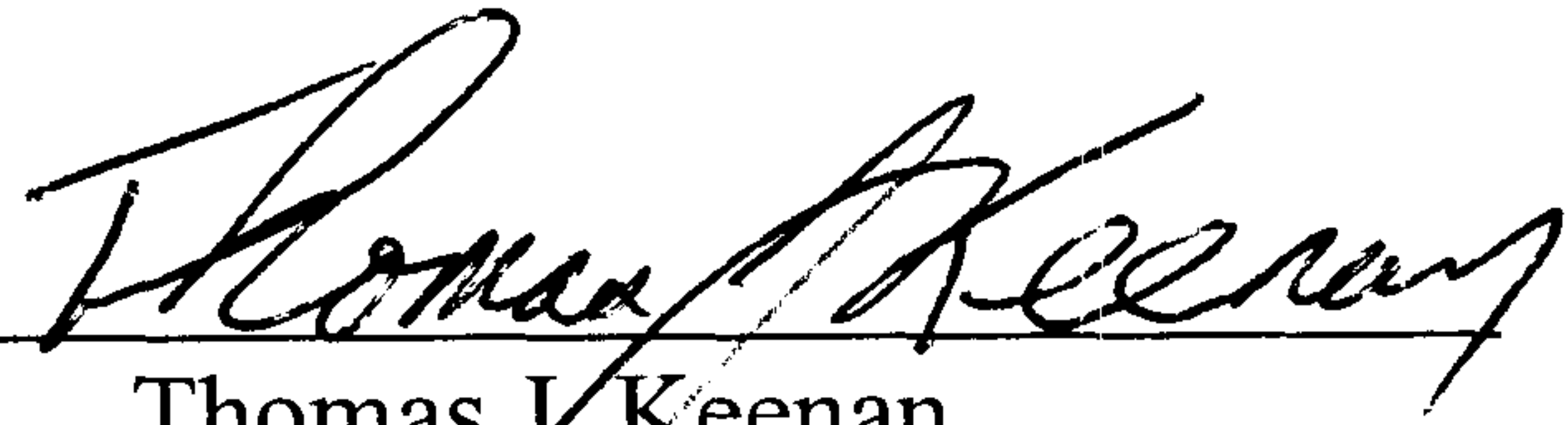
[The remainder of this page is intentionally blank.]


IN WITNESS WHEREOF, Mortgagor has executed this instrument on the date first above written.

MORTGAGOR:

CONTINENTAL 120 FUND LLC, a
Wisconsin limited liability company

By: Continental Properties Company, Inc.
a Wisconsin corporation, its manager

By: 
Thomas J. Keenan
Executive Vice President

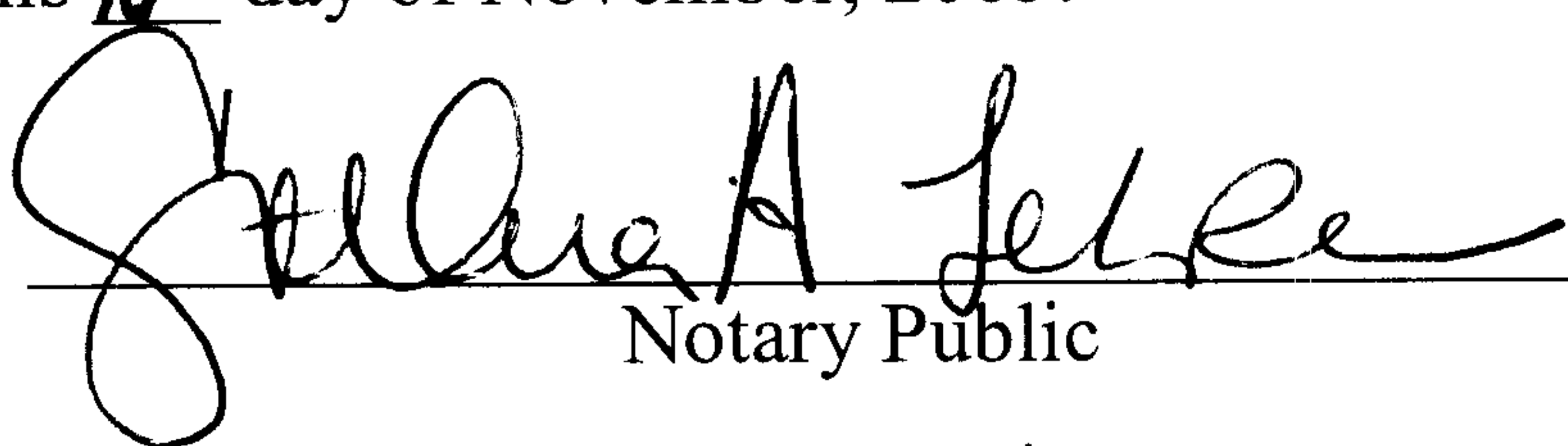
By: 
Paul R. Seifert
Vice President

STATE OF WISCONSIN)
:
COUNTY OF WAUKESHA)

I, the undersigned, a notary public in and for said county and state, hereby certify that Thomas J. Keenan, whose name as the Executive Vice President of Continental Properties Company, Inc., the Manager of Continental 120 Fund LLC, a Wisconsin 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 Executive Vice President of Continental Properties Company, Inc. and with full authority, executed the same voluntarily for and as the act of said Continental 120 Fund LLC.

Given under my hand and official seal this 10th day of November, 2005.

Cynthia A. Lehrke
Notary Public
State of Wisconsin
[NOTARIAL SEAL]


Notary Public
My commission: 6/10/07.

STATE OF WISCONSIN)
:
COUNTY OF WAUKESHA)

I, the undersigned, a notary public in and for said county and state, hereby certify that Paul R. Seifert, whose name as Vice President of Continental Properties Company, Inc., the Manager Continental 120 Fund LLC, a Wisconsin 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 Vice President of Continental Properties Company, Inc. and with full authority, executed the same voluntarily for and as the act of said Continental 120 Fund LLC.

Given under my hand and official seal this 11th day of November, 2005.

Cynthia A. Lehrke
Notary Public
State of Wisconsin
[NOTARIAL SEAL]

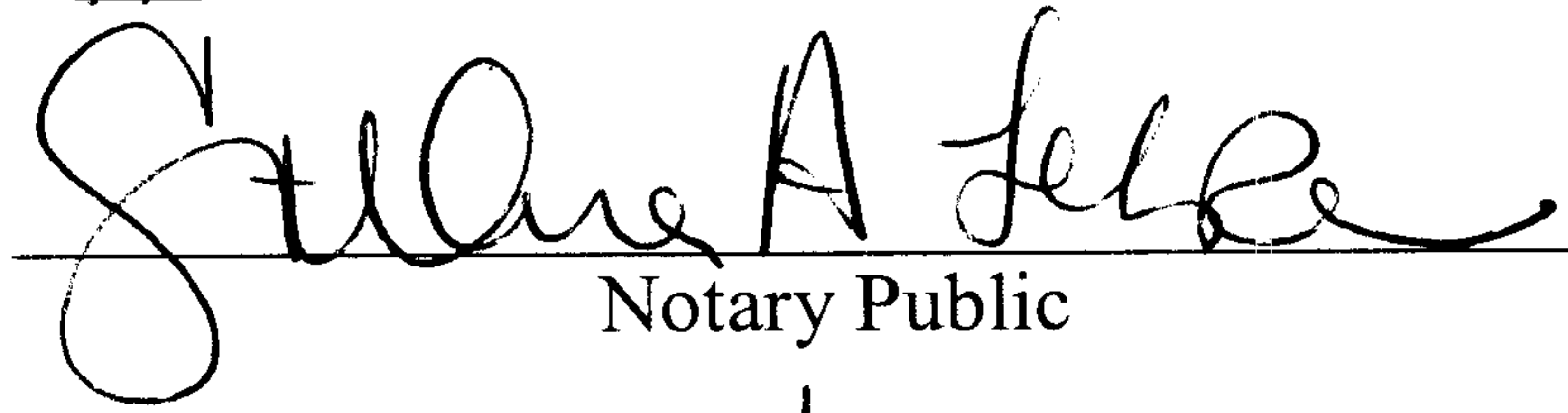

Notary Public
My commission: 6/10/07.

EXHIBIT "A"

PARCEL A

Lot 1, according to the survey of Springs @ Greystons, as recorded in Map Book 35, Page 96, in the Probate Office of Shelby County, Alabama; and being formerly described as follows: That certain real estate situated in D. N. Lee Estates as recorded in Map Book 3, page 115, in the Probate Office of Shelby County, Alabama, also being in the South $\frac{1}{2}$ of the South $\frac{1}{2}$ of Section 29 and the North $\frac{1}{2}$ of the North $\frac{1}{2}$ of Section 32, Township 18 South, Range 1 West, being more particularly described as follows:

Commence at the Southwest corner of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 29, Township 18 South, Range 1 West; thence run North along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 309.85 feet to an iron pin set at the point of beginning, said point being on the Northwest right of way of Alabama Highway No. 119 known as Cahaba Valley Drive; thence turn an angle to the right of $27^{\circ}54'59''$ and run in a Northeasterly direction along said Northwest right of way for a distance of 131.41 feet to an iron pin set on a curve to the left having a central angle of $3^{\circ}36'08''$ and a radius of 5,530.14 feet; thence turn an interior clockwise angle to the right of $178^{\circ}22'28''$ to the chord of said curve and run in a Northwesterly direction along the arc of said curve and also along said Northwest right of way for a distance of 347.69 feet to a concrete monument found; thence turn an interior clockwise angle to the right of $178^{\circ}12'00''$ from the chord of last stated curve and run in a Northeasterly direction along said Northwest right of way for a distance of 93.82 feet to an iron pin set; thence turn an interior clockwise angle to the right of $101^{\circ}23'58''$ and run in a Northwesterly direction for a distance of 314.01 feet to an iron pin set on the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence turn an interior clockwise angle to the right of $234^{\circ}06'35''$ and run in a Northerly direction along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 320.53 feet to an iron pin set at the Northeast corner of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of said Section 29; thence turn an interior clockwise angle to the right of $89^{\circ}22'09''$ and run in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 1,328.95 feet to an iron pin set at the Northwest corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence turn an interior clockwise angle to the right of $90^{\circ}37'24''$ and run in a Southerly direction along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 1,077.51 feet to an iron pin found; thence turn an interior clockwise angle to the right of $89^{\circ}23'23''$ and run in an Easterly direction for a distance of 1,296.79 feet to an iron pin found on the Northwest right of way of said Alabama Highway No. 119; thence turn an interior clockwise angle to the right of $118^{\circ}32'03''$ and run in a Northeasterly direction along said Northwest right of way for a distance of 68.38 feet to the point of beginning.

LESS AND EXCEPT the following description:

A part of Tracts 1, 2, 3 & 4 of D. N. Lee Estates as recorded in Map Book 3, page 115, in the Probate Office of Shelby County, Alabama, and also being in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 29, Township 18 South, Range 1 West, being more particularly described as follows:

Begin at an iron pin locally accepted to be the Northwest corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and also being the Northwest corner of said Tract 4; thence run South along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ section and also along the West line of Tracts 4, 3, 2 & 1 in said D. N. Lee Estates for a distance of 1,077.51 feet to an iron pin found; thence turn an angle to the left of $90^{\circ}36'37''$ and run in an Easterly direction for a distance of 310.02 feet to a point; thence turn an angle to the left of $89^{\circ}23'23''$ and run in a Northerly direction for a distance of 736.70 feet to a point; thence turn an angle to the right of $20^{\circ}05'51''$ and run in a Northeasterly direction for a distance of 189.97 feet to a point; thence turn an angle to the right of $35^{\circ}41'41''$ and run in a Northeasterly direction for a distance of 294.91 feet to a point on the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section and also on the North line of said Tract 4; thence turn an angle to the left of $146^{\circ}24'41''$ and run in a Westerly direction along said North line for a distance of 619.20 feet to the point of beginning.

Continued:



20051116000598430 26/26 \$32486.00
Shelby Cnty Judge of Probate, AL
11/16/2005 11:13:52AM FILED/CERT

PARCEL B

Drainage Easement between Continental 120 Fund LLC and Joseph & Williams, L.L.C., recorded November __, 2005 in Instrument 2005111600059840 in the Probate Office of Shelby County, Alabama; and

Grading Easement between Continental 120 Fund LLC and Harold H. Wehby recorded November __, 2005 in Instrument 2005111600059840 in the Probate Office of Shelby County, Alabama; and
598430

Grading Easement between Continental 120 Fund LLC and Joseph & Williams L.L.C., recorded November __, 2005 in Instrument 2005111600059840, in the Probate Office of Shelby County, Alabama.