

**SECOND MORTGAGE, ASSIGNMENT OF LEASES,
SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT**

THIS SECOND MORTGAGE, ASSIGNMENT OF LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Instrument") is made and entered into this 6 day of January, 2005, by **CARBONE PROPERTIES OF ALABASTER, LLC**, an Ohio limited liability company (the "Mortgagor"), having an address of c/o Ross P. Carbone, 5885 Landerbrook Drive, Cleveland, Ohio 44124, in favor of **NATIONAL CITY BANK**, a national banking association (the "Mortgagee"), having an address of 1900 East Ninth Street, Cleveland, Ohio 44114-3484, Attention: Special Credits Locator 01-2094.

WHEREAS, Mortgagee has provided a loan to Rancho Manana Ventures, LLC, an Arizona limited liability company (herein "Borrower") which loan is evidenced by a Note of even date herewith in the sum of \$10,000,000.00 (the "Note"), the terms and conditions for repayment of which are subject to a Loan Agreement of even date herewith (the "Loan Agreement"), by and between Borrower, Mortgagee, Ross P. Carbone, and Vincent P. Carbone, individuals (each individually referred to as a "Guarantor" and collectively referred to as the "Guarantors") (Mortgagor, Borrower and Guarantors are sometimes collectively referred to as the "Obligors"); and

WHEREAS, Mortgagor specifically acknowledges and agrees that (a) it directly and indirectly benefits from (i) Mortgagee's extension of credit to Borrower pursuant to the Note, and (ii) the terms and conditions of the Loan Agreement, the receipt and sufficiency of such consideration also being hereby acknowledged and agreed; and (b) such benefits are reasonably equivalent exchange of value in return for granting this Mortgage to Mortgagee and executing and delivering the instruments and documents to be executed in connection therewith.

W I T N E S S E T H:

NOW, THEREFORE, IN ORDER TO SECURE TO MORTGAGEE the repayment of the indebtedness evidenced by the Note and other financial accommodations made to Borrower by Mortgagee, Mortgagor does hereby irrevocably grant, bargain, sell, convey, assign, transfer, mortgage and set over unto the Mortgagee, and its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, property, fixtures, equipment, furniture, furnishings, appliances and appurtenances (collectively, the "Property"):

(a) All those tracts or parcels of land and easements located in the County of Shelby, State of Alabama, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Land").

(b) All buildings, structures, parking areas, landscaping and improvements of every nature whatsoever now or hereafter situated, erected or placed on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, fire extinguishers and any other safety equipment required by governmental regulation or law, washers, dryers, water

Carbona Title, Inc.

heaters, mirrors, mantels, air conditioning apparatus, refrigerating plants, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, which are or shall be owned by Mortgagor and attached to said buildings, structures or improvements and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles, building supplies and materials, books and records, chattels, inventory, accounts, farm products, consumer goods, general intangibles and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Property, including all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, and all the right, title and interest of Mortgagor in any such furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property subject to or covered by any prior security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on behalf of Mortgagor, all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Instrument.

(c) All easements, rights-of-way, licenses, operating agreements, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor.

(d) All income, rents, issues, profits and revenues of the Land from time to time accruing (including without limitation all payments under leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits whether held by Mortgagor or in a trust account, and escrow funds), 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; reserving only the right to Mortgagor to collect the same (other than insurance proceeds and condemnation payments) so long as Mortgagor is not in default hereunder.

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of the Mortgagee, and its successors and assigns; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Property as aforesaid, and has good right to convey the same, that the same is unencumbered except for easements, covenants and restrictions of record and that certain Mortgage and Security Agreement in the amount of \$1,850,000 from Mortgagor in favor of General Electric Capital Business Asset Funding Corp, a Delaware corporation recorded in Deed Book _____ Pages _____ of Shelby County Records as amended by the Addendum to Mortgage and Security Agreement dated _____ (the "First Mortgage") and that Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as aforesaid.

2000-21017

This Instrument is given to secure the following described indebtedness (collectively, the "Indebtedness"):

(a) The term loan (the "Loan") as evidenced by the Note, executed and delivered by Borrower in favor of the Mortgagee.

(b) All Obligations (defined in the Loan Agreement) of any kind or nature of the Borrower or Guarantors, whether jointly or severally, under the Loan Agreement and all other instruments executed and delivered to Mortgagor in connection therewith or in connection with the Notes.

(c) All obligations of any kind or nature of Borrower under a certain Intercreditor Agreement dated August 29, 2003, as thereafter amended from time to time.

(d) All obligations of any kind or nature of the Borrower, Guarantors, R.P. Carbone Company, or Gold Dome LLC, whether jointly or severally, under a certain Collateral Assignment Of Interest In ILX Contract dated June 30, 2004.

(e) Any and all additional advances made by Mortgagee to protect or preserve the Property or the lien and security title hereof in and to the Property, or for taxes, assessments or insurance premiums as hereinafter provided (whether or not the original Mortgagor remains the owner of the Property at the time of such advances).

Should the Indebtedness secured by this Instrument be paid according to the tenor and effect thereof when the same shall become due and payable, and should Mortgagor perform all covenants herein contained in a timely manner, then this Instrument shall be cancelled and surrendered.

Mortgagor hereby further covenants and agrees with the Mortgagee as follows:

ARTICLE 1

1.01 Payment of Indebtedness. Mortgagor will pay or cause to be paid the Indebtedness according to the tenor of the Note, this Instrument, the Loan Agreement and the Loan Documents defined therein (collectively the "Loan Documents") and all other sums now or hereafter secured hereby promptly as the same shall become due.

1.02 Taxes, Liens and Other Charges.

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of debts secured by mortgages or the manner of collecting taxes so as to adversely affect the Mortgagee, Mortgagor will promptly pay any such tax.

(b) Mortgagor shall pay all taxes, liens, assessments and charges in accordance with the provisions of the First Mortgage.

1.03 Insurance. The provisions relating to insurance in the Loan Agreement and in that certain Deed of Trust Security Agreement, Fixture Filing and Assignment of Rents and Leases by Ventures to Lender are incorporated here by reference provided, however, that the terms "Ventures" and "Trustor" shall mean "Borrower" hereunder and the terms "Bank" and "Beneficiary" shall mean "Mortgagee" hereunder.

1.04 Monthly Deposits. Upon the occurrence and continuance of an Event of Default and subject to the provisions of the First Mortgage, at the option of the Mortgagee and further to secure the payment of the taxes and assessments referred to in Paragraph 1.02, Mortgagor shall deposit with the Mortgagee, on the due date of each installment under the Indebtedness, such amounts as, in the reasonable estimation of the Mortgagee, shall be necessary to pay such charges as they become due; said deposits to be held by the Mortgagee, free of interest, and free of any liens or claims on the part of creditors of Mortgagor and as part of the security of the Mortgagee, and to be used by the Mortgagee to pay current taxes and assessments on the Property as the same accrue and are payable. Payment from said sums for said purposes shall be made by the Mortgagee at its discretion and may be made even though such payments will benefit subsequent owners of the Property. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of the Mortgagee. If said deposits are insufficient to pay the taxes and assessments in full as the same become payable, Mortgagor will deposit with the Mortgagee such additional sum or sums as may be required in order for the Mortgagee to pay such taxes and assessments in full.

1.05 Condemnation. Subject to the provisions of the First Mortgage, if all or any portion of the Property shall be damaged or taken through condemnation (which term when used in this Instrument shall include any damage or taking by any governmental authority or any transfer by private sale in lieu thereof), either temporarily or permanently, and (a) the condemnation proceeds, together with deposits currently in escrow with Mortgagee (or deposited after the damage by Mortgagor with Mortgagee), if any, are sufficient to replace or partially replace such damaged property, (b) no Event of Default has occurred, and (c) Mortgagor has sufficient business interruption insurance to replace the lost profits of any of Mortgagor's facilities during the period of repair and replacement of such damaged property, then Mortgagor may elect (by delivering written notice to Mortgagee) to use the condemnation proceeds to replace, repair or restore the Property to substantially the equivalent condition prior to such condemnation. If (1) Mortgagor does not, or cannot, elect to use the condemnation proceeds, or (2) an Event of Default has occurred, Mortgagee may apply the condemnation proceeds to the payment of the Indebtedness in such manner and in such order as Mortgagee may elect with any surplus payable to Mortgagor.

1.06 Care, Use and Management of Property.


(a) Mortgagor will maintain the Property in good condition and repair and will not commit or suffer any waste thereof, reasonable wear and tear excepted. Mortgagor represents and warrants that the Property is in compliance with all laws, ordinances, regulations or requirements of any governmental authority relating to the Property and that Mortgagor will comply with, or cause to be complied with, all laws, ordinances, regulations, or requirements, and will promptly repair, restore, replace, or rebuild any part of the Property now or hereafter subject to the lien of this Instrument which may be damaged or destroyed by any casualty or as

the result of any condemnation proceeding or exercise of the right of eminent domain, or by an alteration of the grade of any street affecting the Property. None of the buildings, structures, or improvements now or hereafter constituting the Property shall be removed, demolished, or substantially or structurally altered in any respect without the prior written consent of Mortgagee which consent shall not be unreasonably withheld. Mortgagee, and any person authorized by Mortgagee, shall have the right to enter upon and inspect the Property at all reasonable times upon reasonable notice and subject to the rights of the tenant of the Property. Mortgagor will pay promptly when due all charges for utilities or services, including but not limited to, electricity, gas, sewer and water. In the event of any Default, Mortgagee may at its option take such action as Mortgagee deems necessary, in its sole discretion, to protect Mortgagee's interest in the Property and make any related payment or payments, and any amounts so paid by Mortgagee shall become immediately due and payable and shall be secured by the lien of this Instrument with interest at the Default Interest Rate as defined in the Loan Agreement.

(b) Mortgagor covenants that Mortgagor will not violate any Environmental Law in connection with the use, ownership, lease, maintenance or operation of the Property. For purposes herein, the term "Environmental Law(s)" shall mean any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, as now or at any time hereafter in effect. For purposes herein, the term "Hazardous Substance(s)" shall have the meaning ascribed in and shall include those substances listed under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the regulations promulgated thereunder (as amended from time to time) and the Clean Air Act, 42 U.S.C. 7401, et seq. and the regulations promulgated thereunder (as amended from time to time) and includes oil, waste oil, and used oil as those terms are defined in the Clean Water Act, 33 U.S.C. 1251 et seq. and regulations promulgated thereunder (as amended from time to time) and the Resource, Conservation and Recovery Act, 42 U.S.C. 6901 et seq. and regulations promulgated thereunder (as amended from time to time) and the Oil Pollution Act of 1990, 33 U.S.C. 2701 et seq. and regulations promulgated thereunder (as amended from time to time) and shall include any other pollutant or contaminant designated as such by Congress or the United States Environmental Protection Agency (EPA) or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect. Mortgagor hereby represents and warrants that (i) to its knowledge, no violation of any Environmental Law currently exists in connection with use, ownership, lease, maintenance or operation of the Property; (ii) based upon reasonable investigation, that, except for such substances which have been used in the normal course of operation of business, neither Mortgagor nor any other person within Mortgagor's knowledge or control, including any occupant or lessee of the Property, has ever caused or permitted any Hazardous Substance to be released, spilled or disposed of on, under or at the Property or any part thereof and neither the Property nor any part thereof has ever been used by Mortgagor or, to its knowledge, any other person as a dump site or storage site, whether permanent or temporary, for any Hazardous Substance; (iii) it is not a party to any litigation or administrative proceeding, nor so far as is known by Mortgagor is any litigation or administrative proceeding threatened against it, which in either case asserts or alleges that (a) Mortgagor violated any Environmental Law, (b) Mortgagor is required to clean up or take other response action due to the release or threatened release or transportation of any Hazardous Substance, or (c) Mortgagor is required to pay all or a portion of

the cost of any past, present or future cleanup or other response action which arises out of or is related to the release or threatened release or transportation of any Hazardous Substance; and (iv) there are not now, nor to Mortgagor's knowledge after reasonable investigation have there ever been, tanks or other facilities on, under or at the Property which contained materials which, if known to be present in soils or groundwater, would require cleanup or other corrective action. If there are such tanks or other facilities, Mortgagor represents and warrants that after reasonable investigation that nothing contained therein has ever been spilled, leaked or released into the environment, soil or groundwater and that such tanks or other facilities are in compliance with all Environmental Laws. If Mortgagor acquires any knowledge of or receives any notice or other information regarding (i) the happening of any event involving any Hazardous Substance with respect to the Property or to any activity of the Mortgagor or (ii) any noncompliance with regard to any environmental, health or safety matter with respect to the Property or to any activity of the Mortgagor, then Mortgagor shall immediately notify Mortgagee orally and in writing and provide Mortgagee with copies of any written notice or information. Mortgagee shall have the right but not the obligation, to enter the Property and take such other actions as it deems necessary or advisable at any time (i) to clean up or otherwise deal with any Hazardous Substance (ii) following receipt of any notice or other information which, in the reasonable opinion of Mortgagee, could result in action against Mortgagor or Mortgagee or could adversely affect the value of the Property. Mortgagee further shall have the right but not the obligation, to enter the Property to investigate the environmental condition of the Property and shall have the right to grant access to environmental professionals to perform investigations, including without limitation sampling and borings, to determine the environmental condition of the Property in anticipation of foreclosure or acceptance of a deed in lieu of foreclosure. Notwithstanding the indemnification set forth below, Mortgagor agrees that all reasonable costs and expenses incurred by Mortgagee in the exercise of any entry, investigation or mitigation rights (including without limitation those incurred in anticipation of foreclosure or acceptance of a deed in lieu of foreclosure) shall be payable by Mortgagor upon demand by Mortgagee or added to the outstanding principal balance of the Note. Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all losses, liabilities, including strict liability, damages, injuries, expenses, including reasonable attorneys' fees (which fees shall include the allocated cost of in-house counsel and staff), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment and claims of any and every kind whatsoever paid, incurred or suffered by or asserted against Mortgagee by any person, entity or governmental agency for, with respect to or as a direct or indirect result of Mortgagor's noncompliance or alleged noncompliance with any Environmental Law or the presence on, under or at the Property of, or the release or threatened release or transportation of, any Hazardous Substance, regardless of whether or not caused by or within the control of Mortgagor. The covenants, representations, warranties, and indemnities under this Instrument shall be deemed continuing covenants, representations, warranties and indemnities for the benefit of Mortgagee, its successors and assigns, and any purchaser of the Property at a foreclosure sale, any transferee of title to the Property from Mortgagee, and any subsequent owner of the Property claiming through or under the title of Mortgagee, and shall survive any enforcement of Mortgagee's rights against collateral securing payment of the Note or the satisfaction of the Note for a period of one (1) year (unless the repayment or satisfaction of the Note shall be effected by foreclosure of this Mortgage or any voluntary conveyance in lieu thereof, in which case the one (1) year survival period shall be indefinite in duration to the extent permitted by law). The liability of Mortgagor

EXHIBIT "A"


20060113000021670 7/25 \$345.50
Shelby Cnty Judge of Probate, AL
01/13/2006 08:22:09AM FILED/CERT

(Description of Land)

A parcel of land in the SE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 11, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the SW corner of Section 11, Township 21 South, Range 3 West, Alabaster, Shelby County, Alabama and run thence easterly along the South line of said Section 11 a distance of 1600.69 feet to a point on the East side of Alabama Highway No. 119; Thence turn a deflection angel of 65 deg. 48 min. 59 sec. left and run northeasterly parallel with the future right of way line of Alabama Highway 119 a distance of 803.19 feet to a steel rebar corner and the POINT OF BEGINNING of the property being described; Thence continue along last described course a distance of 325.00 feet to a steel rebar corner; Thence turn a deflection angle of 90 deg. 00 min. 00 sec. right and run a distance of 469.11 feet to a steel rebar corner; Thence turn a deflection angle of 90 deg. 00 min 00 sec. right and run southwesterly, parallel with the West line of subject property a distance of 325.00 feet to a steel rebar corner; Thence turn a deflection angle of 90 deg. 00 min. 00 sec. right and run northwesterly a distance of 469.11 feet to the point of beginning.

EXHIBIT "B"

Schedule 1

(Description of "Debtor" and "Secured Party")

A. Debtor:

Carbone Properties of Alabaster, LLC, a limited liability company organized under the laws of the State of Ohio. Debtor has been using or operating under said name and identity or corporate structure without change since February 12, 1999.

B. Secured Party:

NATIONAL CITY BANK, a national banking association.

Schedule 2

(Notice Mailing Addresses of "Debtor" and "Secured Party")

A. The mailing address of Debtor is:

CARBONE PROPERTIES OF ALABASTER, LLC
c/o Ross P. Carbone
5885 Landerbrook Drive
Cleveland, Ohio 44124

B. The mailing address of Secured Party is:

NATIONAL CITY BANK
National City Center
Special Credits 9th Floor Locator 01-2094
1900 East Ninth Street
Cleveland, Ohio 44114-3484
Attention: Sharon Johnston, Vice President

hereunder shall in no way be limited by (i) any renewals, extensions, amendments or replacement of the Note, (ii) any sale or assignment of any of the Indebtedness or any sale or transfer of all or part of the Property after the enforcement of any of Mortgagee's rights and warranties, or Mortgagee's or its assignees' acquisition of all or part of the Property by a deed-in-lieu of foreclosure, at foreclosure sale or upon exhibits of any rights or remedies of the Mortgagee. Mortgagor hereby waives any right or claim of right to cause a marshalling of collateral for the Note, all rights and remedies (including any rights of subrogation) accorded by applicable law to indemnitors, sureties or guarantors, and agree that any payments required to be made hereunder shall become due on demand.

(c) If the Property or any part thereof is damaged by fire or any other cause, Mortgagor will give immediate written notice thereof to the Mortgagee. Subject to the provisions of the First Mortgage, if all or any part of the Property shall be damaged by fire or other casualty, Mortgagee shall make the proceeds received under any insurance policies required by the First Mortgage available for the restoration of the improvements so damaged, periodically during the progress of such restoration, subject to the following conditions: (a) Mortgagor is not then in Default under any of the terms, covenants and conditions of the Note, this Instrument or any other Loan Documents; (b) Mortgagee shall first be given satisfactory proof, in accordance with the plans and specifications therefor previously approved by Mortgagee, that such improvements have been fully restored, or by the expenditures of such money will be fully restored, free and clear of all mechanic's and materialman's liens; (c) in the event such proceeds shall be insufficient to restore or rebuild the improvements, Mortgagor shall deposit promptly with Mortgagee funds which, together with the insurance proceeds, shall be sufficient to restore and rebuild the improvements on the Land; and (d) the excess of the insurance proceeds above the amount necessary to complete such restoration shall be applied as hereinbefore provided, at the option of Mortgagee, as a credit upon the indebtedness secured by this Instrument. Upon no circumstances shall Mortgagee become obligated to take any action to restore the improvements so damaged.

1.07 Leases and Other Agreements Affecting Property.

(a) Mortgagor will duly and punctually perform all terms, covenants, conditions and agreements binding upon it under any lease or any other agreement of any nature whatsoever which involves or affects the Property or any part thereof.

(b) Mortgagor will, at the request of the Mortgagee, furnish the Mortgagee with executed copies of all leases now or hereafter created upon the Property or any part thereof.

(c) Except for a lease to the U.S. Postal Service, Mortgagor will not, without the prior express written consent of the Mortgagee, which shall not be unreasonably withheld, modify, surrender or terminate, either orally or in writing, any lease, now existing or hereafter created upon the Property or any part thereof, nor will Mortgagor permit an assignment or a subletting by any tenant without the prior express written consent of the Mortgagee, which shall not be unreasonably withheld. Mortgagor will not accept payment from any tenant of rent more than one (1) month in advance without the prior express written consent of the Mortgagee, which shall not be unreasonably withheld.

(d) In order to further secure payment of the Indebtedness and the observance, performance and discharge of Mortgagor's obligations, Mortgagor hereby expressly and absolutely assigns, transfers and sets over under the Mortgagee all of Mortgagor's right, title and interest in, to and under all leases affecting the Property or any part thereof and in and to all of the rents, issues, profits, revenues, awards and other benefits now or hereafter arising from the use and enjoyment of the Property or any part thereof; reserving only the right to Mortgagor to collect the same so long as Mortgagor is not in Default hereunder beyond any applicable grace or cure period.

(e) Mortgagor hereby authorizes and directs each present and future tenant of the Property to pay to the Mortgagee all rents and any other sums due Mortgagor, as landlord, and to perform for the direct benefit of the Mortgagee any other obligations of such tenant to Mortgagor, as landlord, as if the Mortgagee were the landlord under such tenant's lease, immediately upon receipt of a written demand by the Mortgagee to make such payment or perform such obligation. No such demand by the Mortgagee shall constitute or be deemed to constitute any assumption by the Mortgagee of any obligations of the landlord under such tenant's lease. Mortgagor hereby waives any right, claim or action Mortgagor may now or hereafter have against any such tenant by reason of such tenant's payment to or performance for the Mortgagee as described above, and any such payment to or performance for the Mortgagee shall discharge the obligation of such tenant to make such payment to, or perform such obligation for, Mortgagor.

1.08 Security Agreement.

(a) Insofar as the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, and articles of personal property either referred to or described in this Instrument, or in any way connected with the use and enjoyment of the Property is concerned, this Instrument is hereby made and declared to be a security agreement, encumbering each and every item of personal property included herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. A financing statement or statements reciting this Instrument to be a security agreement, affecting all of said personal property aforementioned, shall be prepared by Mortgagee, authorized by Mortgagor and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Mortgagee's sole election. Mortgagor and the Mortgagee agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this declaration and the hereby stated intention of Mortgagor and the Mortgagee that everything used in connection with the production of income from the Property and/or adapted for use therein and/or which is described or reflected in this Instrument, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (1) the proceeds of any fire and/or hazard insurance policy, or

(2) any award in eminent domain proceedings for a taking or for loss of value, or (3) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall never be construed as in anyway altering any of the rights of the Mortgagee as determined by this Instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of the Mortgagee in the event any court shall at any time hold with respect to the foregoing (1), (2) or (3), that notice of the Mortgagee's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) Mortgagor warrants that (i) Mortgagor's (that is, "Debtor's") name, identity or corporate structure and residence or principal place of business are as set forth in Subparagraph 1.08(c) hereof; (ii) Mortgagor (that is, "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in Subparagraph 1.08(c) hereof, and (iii) the location of the collateral secured by this Instrument is upon the Land. Mortgagor covenants and agrees that Mortgagor will furnish the Mortgagee with notice of any change in the matters addressed by clauses (i) or (iii) of this Subparagraph 1.08(b) within thirty (30) days of the effective date of any such change and Mortgagor will promptly execute any financing statements or other instruments deemed necessary by the Mortgagee to prevent any filed financing statement from becoming misleading or losing its perfected status.

(c) The information contained in this Subparagraph 1.08(c) is provided in order that this Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements. The names of the "Debtor" and the "Secured Party", the identity or corporate structure and residence or principal place of business of "Debtor", and the time period for which "Debtor" has been using or operating under said name and identity or corporate structure without change, are as set forth in Schedule 1 of Exhibit "B" attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor", are as set forth in Schedule 2 of Exhibit "B" attached hereto; and a statement indicating the types, or describing the items, of collateral secured by this Instrument is set forth hereinabove.

1.09 Further Assurances; After-Acquired Property. At any time, and from time to time, upon request by the Mortgagee, Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Mortgagee and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed reasonably required by the Mortgagee, any and all such other and further mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the reasonable opinion of the Mortgagee, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve (a) the obligation of Mortgagor under the Indebtedness and under this Instrument, and (b) the lien of this Instrument, subject to the First Mortgage, as a first and prior lien upon and security title in and to all of the Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, the Mortgagee may make, execute, record, file, re-record and/or refile any and all such mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments,

certificates, and documents for and in the name of Mortgagor and Mortgagee hereby irrevocably appoints the Mortgagee the agent and attorney-in-fact of Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Property or any part thereof.

1.10 Expenses. Mortgagor will pay or reimburse the Mortgagee, upon demand therefor, for all reasonable attorney's fees, costs and expenses actually incurred by the Mortgagee in any suit, action, legal proceeding or dispute of any kind in which the Mortgagee is made a party or appears as party plaintiff or defendant, affecting or arising in connection with the Indebtedness secured hereby, this Instrument or the interest created herein, or the Property, including, but not limited to, the exercise of the power of sale contained in this Instrument, any condemnation action involving the Property or any action to protect the security hereof; and any such amounts paid by the Mortgagee shall be added to the Indebtedness secured by the lien of this Instrument.

1.11 Estoppel Affidavits. Mortgagor, upon ten (10) days prior written notice, shall furnish the Mortgagee a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness secured hereby and whether or not any offsets or defenses exist against such principal and interest. The Mortgagee, upon ten (10) days prior written notice, shall furnish Mortgagor a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness secured hereby and the date on which the last payment under the Indebtedness was received.

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

1.13 Books, Records, Accounts and Annual Reports. Mortgagor will keep and maintain books, records and accounts in accordance with the provisions of the First Mortgage. Mortgagor shall furnish to Mortgagee annual reports in accordance with the provisions of the First Mortgage.

1.14 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Instrument or of the Indebtedness at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Instrument or under the Indebtedness that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Paragraph 1.14 shall control every other provision of this Instrument and of the Indebtedness.

1.15 Use of Property. Mortgagor shall not be permitted to change the use of the Property or to abandon the Property without the prior written consent of the Mortgagee which consent shall not be unreasonably withheld.

1.16 Conveyance of Property. Mortgagor hereby acknowledges to the Mortgagee that (a) the identity and expertise of Mortgagor was and continues to be a material circumstance upon which the Mortgagee has relied in connection with, and which constitute valuable consideration to the Mortgagee for, the extending to Mortgagor of the loan evidenced by the Note, and (b) any change in such identity or expertise could materially impair or jeopardize the security for the payment of the Indebtedness granted to the Mortgagee by this Instrument. Mortgagor therefore covenants and agrees with the Mortgagee, as part of the consideration for the extending to Mortgagor of the Indebtedness, that, except as permitted by the terms of the First Mortgage, Mortgagor shall not convey, transfer, assign, further encumber or pledge any or all of its interest in the Property without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld.

ARTICLE 2

2.01 Events of Default. The terms "Default", "Event of Default" or "Events of Default", wherever used in this Instrument, shall mean the occurrence of any one or more of the following events:

(a) if any portion of the Indebtedness is not paid prior to the date the same is due or if the entire Indebtedness is not paid on or before the Maturity Date;

(b) if any of the taxes, liens or other charges are not paid when the same is due and payable except to the extent sums sufficient to pay such taxes, liens or other charges have been deposited with Mortgagee;

(c) if any representation or warranty of Mortgagor, Borrower or any person guaranteeing payment of the Indebtedness or any portion thereof or performance by Mortgagor of any of the terms of this Instrument (a "Guarantor"), or in any guaranty, or in any certificate, report, financial statement or other instrument or document furnished to Mortgagee shall have been false or misleading in any material respect when made;

(d) if (i) Mortgagor shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or Mortgagor shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against Mortgagor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against Mortgagor any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) Mortgagor shall take any action in furtherance of, or

indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), or (iii) above; or (v) Mortgagor shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(e) if Mortgagor shall be in default beyond applicable notice and grace periods under the First Mortgage or under the Loan Agreement;

(f) if the Property becomes subject to any construction, mechanic's, materialman's or other lien other than a lien for local real estate taxes and assessments not then due and payable and the lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of sixty (60) days;

(g) if any federal tax lien is filed against Mortgagor, or the Property and same is not discharged of record within thirty (30) days after same is filed, unless such lien is being contested by Mortgagor as permitted by the terms of this Instrument;

(h) if for more than ten (10) days after notice from Mortgagee, any of the Obligors shall continue to be in default under any other term, covenant or condition of the Note, this Instrument or the other Loan Documents in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Mortgagee in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Mortgagor shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require Mortgagor in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days.

(i) The occurrence of an "Event of Default" under the Loan Agreement; or

Immediately upon the occurrence of an Event of Default, and without regard to any time periods or opportunities to cure, the Mortgagee may make written demand upon any and all tenants of the Property to pay to the Mortgagee all rents and other sums and to perform for the direct benefit of the Mortgagee all obligations of such tenants.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred and be continuing, then the entire Indebtedness secured hereby shall, at the option of the Mortgagee, immediately become due and payable without notice or demand, time being of the essence of this Instrument; and no omission on the part of the Mortgagee to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Property and if, and to the extent, permitted by law, the Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property without the appointment of a receiver, or an application therefor, 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.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by the Mortgagee, the Mortgagee may obtain a judgment or decree conferring upon the Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of the Property to the Mortgagee. Mortgagor will pay to the Mortgagee, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to the Mortgagee, its attorneys and agents, and all such expenses and compensation shall, until paid, be secured by the lien of this Instrument.

(c) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage and control the 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 Property insured; (iii) manage and operate the Property and exercise all the rights and powers of Mortgagor to the same extent as Mortgagor could in its own name or otherwise with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be in its best interest. The Mortgagee may collect and receive all the rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting (1) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (2) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (3) the cost of such insurance; (4) such taxes, assessments and other similar charges as the Mortgagee may at its option pay; (5) other proper charges upon the Property or any part thereof; and (6) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Mortgagee, the Mortgagee shall apply the remainder of the monies and proceeds so received by the Mortgagee, first to the payment of accrued interest; second to the payment of deposits (as may be required in Paragraph 1.04); and third to the payment of overdue installments of principal. The Mortgagee shall have no obligation to discharge any duties of a landlord to any tenant or to incur any liability as a result of any exercise by the Mortgagee of any rights under this Instrument or otherwise. The Mortgagee shall not be liable for any failure to collect rents, issues, profits and revenues from the Property, nor shall the Mortgagee be liable to account for any such rents, issues, profits or revenues unless actually received by the Mortgagee.

(d) Whenever all that is due upon the Indebtedness and under any of the terms, covenants, conditions and agreements of this Instrument shall have been paid and all Events of Default made good, the Mortgagee shall surrender possession of the Property to Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Performance by the Mortgagee. If Mortgagor shall Default in the payment, performance or observance of any term, covenant or condition of this Instrument, the Mortgagee may, so long as such Default continues, at its option, pay, perform or observe the same, and all

payments made or costs or expenses incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to the Mortgagee with interest thereon at the Default Interest Rate (as defined in the Loan Agreement). The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

2.05 Receiver. If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right without notice and without regard to the occupancy or value of the security for the Indebtedness secured hereby or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. Mortgagor will pay to the Mortgagee upon demand all expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Paragraph 2.05, and all such expenses shall be secured by this Instrument.

2.06 Enforcement.

(a) If an Event of Default shall have occurred and be continuing, the Mortgagee shall be authorized, at its option, whether or not possession of the 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 any county wherein the Property or any part thereof is located, to sell the 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 Instrument and may purchase the Property or any part therefor, 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 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 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 Property not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

(b) If an Event of Default shall have occurred and be continuing, the Mortgagee may, in addition to and not in abrogation of the rights covered under subparagraph (a) of this Paragraph 2.06, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Indebtedness or the performance of any term, covenant, condition or agreement of this Instrument or any other right, and (ii) to pursue any other remedy available to it, all as the Mortgagee shall determine most effectual for such purposes.

2.07 Purchase by the Mortgagee. Upon any foreclosure sale, the Mortgagee may bid for and purchase the Property and shall be entitled to apply all or any part of the Indebtedness secured hereby as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a foreclosure sale of the Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including attorney's and trustee's fees, then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by the Mortgagee, then to payment of the outstanding principal balance of the Indebtedness secured hereby, then to the accrued interest on all of the foregoing, and finally the remainder, if any, shall be paid to Mortgagor.

2.09 Mortgagor as Tenant Holding Over. In the event of any such foreclosure sale by the Mortgagee, Mortgagor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

2.10 Waiver of Appraisalment, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law, that in case of a Default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Instrument, or the absolute sale of the 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 so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien hereof.

2.11 Waiver of Homestead. Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States, the State of Alabama and of any state, in and to the Property as against the collection of the Indebtedness, or any part hereof.

2.12 Leases. The Mortgagee, at its option, is authorized to foreclose this Instrument subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby.

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

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

2.15 Waiver.

(a) No delay or omission of the Mortgagee or of any holder of the Indebtedness to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein; and every right, power and remedy given by this Instrument to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee. No consent or waiver, expressed or implied, by the Mortgagee to or of any breach or Default by Mortgagor in the performance of the obligations thereof hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or Default in the performance of the same or any other obligations of Mortgagor hereunder. Failure on the part of the Mortgagee to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Mortgagee of its rights hereunder or impair any rights, powers or remedies consequent on any breach or Default by Mortgagor.

(b) If the Mortgagee shall (i) grant forbearance or an extension of time for the payment of any sums secured hereby; (ii) take other or additional security for the payment of any sums secured hereby; (iii) waive or not exercise any right granted herein or in the Indebtedness; (iv) release any part of the Property from the lien of this Instrument or otherwise change any of the terms, covenants, conditions or agreements of the Indebtedness or this Instrument; (v) consent to the filing of any map, plat or replat affecting the Property; (vi) consent to the granting of any easement or other right affecting the Property; or (vii) make or consent to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Indebtedness, this Instrument or any other obligation of Mortgagor or any subsequent purchaser of the Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any Default then made or of any subsequent Default; nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee, shall the lien of this Instrument be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, the Mortgagee, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings.

2.16 Suits to Protect the Property. The Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Instrument, (b) to preserve or protect its interest in the Property and in the rents, issues, profits and revenues arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental

enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Mortgagee.

2.17 The Mortgagee May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor, its creditors or its property, the Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Mortgagee allowed in such proceedings for the entire amount due and payable by Mortgagor under this Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Mortgagor hereunder after such date.

2.18 WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS INSTRUMENT, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS AND THE POWER GIVEN HEREIN TO THE MORTGAGEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON THE OCCURRENCE OF AN EVENT OF DEFAULT (AS DEFINED HEREIN) BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS INSTRUMENT; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING, WITHOUT LIMITATION, THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, INCLUDING THE STATE OF ALABAMA, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY THE MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO THE MORTGAGEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS INSTRUMENT; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS INSTRUMENT AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS INSTRUMENT AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS INSTRUMENT; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION.

ARTICLE 3

3.01 Successors and Assigns. This Instrument shall inure to the benefit of and be binding upon Mortgagor and the Mortgagee and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Instrument to Mortgagor or the Mortgagee such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Mortgagor or the Mortgagee.

3.02 Terminology. All personal pronouns used in this Instrument whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Instrument itself, and all references herein to Articles, Paragraphs or subparagraphs thereof, shall refer to the corresponding Articles, Paragraphs or subparagraphs thereof, of this Instrument unless specific reference is made to such Articles, Paragraphs or subparagraphs thereof of another document or instrument.

3.03 Severability. If any provision of this Instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Instrument and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 Applicable Law. This Instrument shall be interpreted, construed and enforced according to the laws of the State of Alabama.

3.05 Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (defined below) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Mortgagor or Mortgagee, as the case may be, at the addresses set forth on the first page of this Instrument or addressed as such party may from time to time designate by written notice to the other parties. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in Cleveland, Ohio.

3.06 Assignment. This Instrument is assignable by the Mortgagee, and any assignment hereof by the Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to the Mortgagee.

3.07 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Instrument, the Loan Documents and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Indebtedness.

(No further text on this page-Signature page follows)

IN WITNESS WHEREOF, this Mortgagor has executed this Mortgage under seal, by its duly authorized Member, as of the 6th day of JANUARY, 2004.2005

CARBONE PROPERTIES OF ALABASTER, LLC,

an Ohio limited liability company

By: Ross P. Carbone
Ross P. Carbone, Managing Member

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **ROSS P. CARBONE**, whose name as Managing Member of **CARBONE PROPERTIES OF ALABASTER, LLC**, an Ohio limited liability company, is signed to the foregoing instrument, and who is personally known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, acting in his capacity as such Managing Member and with full authority, executed the same voluntarily on the date hereof, for and on behalf of said limited liability company acting in its capacity as Managing Member of said limited liability company.

Given under my hand and official seal this the 6th day of January, 2004.5

Karen Lee
Notary Public

(SEAL)

KAREN LEE, Notary Public
State of Ohio

My Commission Expires: My Commission Expires Aug. 4, 2007

This Instrument Prepared By:
Kevin T. Duffy, Esq.
National City Bank
National City Center, 17th Floor
1900 East 9th Street
Cleveland, Ohio 44114-3495

United States of America
State of Ohio
Office of the Secretary of State

*I, J. Kenneth Blackwell, do hereby certify that I am the duly elected, qualified and present acting Secretary of State for the State of Ohio, and as such have custody of the records of Ohio and Foreign corporations; that said records show **CARBONE PROPERTIES OF ALABASTER, LLC**, an Ohio Limited Liability Company, Registration Number 1060423, was organized within the State of Ohio on February 12, 1999, is currently in **FULL FORCE AND EFFECT** upon the records of this office.*



*Witness my hand and the seal of the
Secretary of State at Columbus, Ohio
this 11th day of January, A.D. 2005*

J. Kenneth Blackwell

Ohio Secretary of State

Validation Number: V200511J72E84

**CARBONE PROPERTIES OF ALABASTER, LLC
RESOLUTIONS**

We, Ross P. Carbone and Vincent P. Carbone, being co-managers ("Managers") of Carbone Properties of Alabaster, LLC (the "Company") with its principal office at 5885 Landerbrook Drive, Suite 110, Cleveland, Ohio 44124, do hereby certify that the Company is organized and existing as a limited liability company under the laws of the State of Ohio and authorized to do business in the State of Alabama.

We further certify that pursuant to authority granted to the Managers under the Operating Agreement, the following resolutions are hereby adopted:

BE IT RESOLVED, that the Managers are hereby authorized, on behalf of the Company, to enter into a Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement in favor of National City Bank, a national banking association, upon such terms and conditions as the Managers deem desirable, and to execute, deliver and perform such other agreements or obligations of the Company in favor of and in form and content satisfactory to National City Bank.

BE IT FURTHER RESOLVED, that any and all acts authorized pursuant to this resolution are hereby ratified and approved and that this resolution shall remain in full force and effect.

WE FURTHER CERTIFY, that as Managers of the Company we are duly elected, appointed, or employed by or for the Company; that the foregoing resolution now stands of record on the books of the Company; and that the resolution is in full force and effect and has not been modified or revoked in any manner whatsoever.

We have read the provisions of this Resolution, and we, as Managers together with the sole member of the Company, certify and agree to its terms as of this 17th day of January, 2005.

MANAGERS:


ROSS P. CARBONE


VINCENT P. CARBONE

IN THE DEPARTMENT OF REVENUE OF
THE STATE OF ALABAMA

In re:)
)
NATIONAL CITY BANK)
)
Petitioner.)

MORTGAGE RECORDATION TAX ORDER

COMES Petitioner, National City Bank, a national banking association, as holder of the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement executed by Carbone Properties of Alabaster, LLC to Petitioner, and requests that the Alabama Department of Revenue fix and determine the amount of mortgage recording tax due upon the recordation of the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement, which embraces property within and without the State of Alabama. An allocation of indebtedness, subject to tax according to relative property values, is determined pursuant to §40-22-2(8), Code of Alabama 1975.

Upon consideration of the Petition, the Affidavit of Carbone Properties of Alabaster, LLC, and other evidence offered in support thereof, the Department of Revenue finds as follows:

1. The Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement secures indebtedness in the amount of \$10,000,000.00, which also is secured by other similar mortgage instruments covering property in other states.

2. Since the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement covers future advances, the Petitioner is required to abide by the reporting and paying provisions of §40-22-2(2)b, Code of Alabama 1975.

3. The total value of all property covered by the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement and similar mortgage instruments, both within and without the State of Alabama, is \$10,000,000.00.

4. The total value of the property located within the State of Alabama covered by the

Carbone Title, Inc.

Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement is \$175,000, or 1.75% of the total value of all property covered by the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement and similar mortgage instruments both within and without the State of Alabama.

5. The total amount of indebtedness which is allocable to Alabama, on which mortgage recording tax is due upon recordation of the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement is \$175,000.

6. The amount of mortgage recording tax to be paid, at the rate of \$.15 for each \$100.00 of indebtedness, or fraction thereof, which is attributable to the property located within Alabama is \$262.50.

IT IS ORDERED, THEREFORE, that the Probate Judge of Shelby County shall collect mortgage recording tax in the amount of \$262.50, together with any applicable recording fees, upon recording of the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement. **IT IS ORDERED FURTHER** that the Petitioner abide by the reporting and paying provisions of §40-22-2(2)b, Code of Alabama 1975, as to any additional indebtedness incurred with respect to the Second Mortgage, Assignment of Leases, Security Agreement and Fixture Financing Statement.

DONE this 23rd day of DEC., 2005.

ALABAMA DEPARTMENT OF REVENUE

By: Cynthia Underwood
Assistant Commissioner of Revenue

ATTEST:

[Signature]
As Secretary

[Signature]
Legal Division