20060628000309330 1/14 $2300.00
Shelby Cnty Judge of Probate,AL
06/28/2006 08:30:55AM FILED/CERT

AFTER RECORDING MAIL TO:

KeyBank Real Estate Capital
911 Main Street, Suite 1500
Kansas City, MO 64105
Attn: New Loan Set-up

Loan Number: 10031316

KeyBank National Association

MORTGAGE,
ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE (herein "Instrument") is made this **21st** day of **June, 2006**, between the Grantor, **C-K Quantum Enterprises, Inc., an Ohio Corporation**, whose address is **2347 Chestnut Hill Street NW, North Canton, OH 44720**, (herein "Borrower") and KeyBank National Association, a national banking association having a place of business at 911 Main Street, Suite 1500, Kansas City, Missouri 64105 as beneficiary ("Lender," such term includes all successors and assigns and all subsequent holders, if any, of the promissory note that this Instrument secures). For purposes of this Instrument, the term, "Borrower" shall mean Mortgagor, and the term, "Lender" shall mean Mortgagee.

BORROWER, in consideration of the indebtedness herein recited, irrevocably grants, conveys and assigns to Lender, with all powers of sale, all of Borrower's estate, right, title and interest in, to and under, the following described property located in **Shelby** County, State of **Ohio**:

LEGAL DESCRIPTION:

Commence at the SW corner of the SW 1/4 of the SW 1/4 of Section 28, Township 21 South, Range 2 West; Thence run S 79°27'28" East along the South line thereof for a distance of 1341.69 feet to the Easterly right of way of U.S. #31 thence run North 10°52'28" West along said right of way for a distance of 374.52 feet to the point of beginning of a curve to the right having a central angle of 07°17'16" and a radius of 2730.14 feet and a chord bearing of North 07°13'50" West; thence run along the arc of said curve for a distance of 347.26 feet to the point of beginning; thence continue along the arch of said curve for a distance of 259.08 feet; thence run North 01°51'02" East for a distance of 274.22 feet; thence leaving said right of way run North 89°59'32" East for a distance of 864.05 feet to the centerline of Camp Branch; thence run the following calls along said centerline South 09°09'15" East for a distance of 157.53 feet; thence run South 19°46'52" West for a distance of 211.85 feet; thence run South 70°25'22" West for a distance of 158.10 feet; thence run South 62°51'22" West for a distance of 165.81 feet; thence run South 56°09'22" West for a distance of 89.18 feet; thence leaving said centerline run North 89°59'52" West for a distance of 451.76 feet to the point of beginning.

Subject property also described as follows:

A parcel of land in the South one half of the Southwest quarter of Section 28, Township 21 South, Range 2 West, Shelby County, Alabama, more particularly described by metes and bounds as follows:

Commence at the Southwest corner of the Southwest 1/4 of the Southwest 1/4 of Section 28, Township 21 South, Range 2 West, Shelby County, Alabama and run thence South 79°27'28" East along the South line of said 1/4 - 1/4 a distance of 1,341.69 feet to a point on the Easterly right of way line of U.S. Highway No. 31; thence run North 10°52'28" West along said right of way line a distance of 374.52 feet to the point of beginning of a curve to the right having a central angle of 07°17'16" and a radius of 2,730.14 feet and a chord bearing of North 07°13'50" West; thence run along the arc of said curve an arc distance of 347.26 feet to a found steel property corner and the point of beginning of the property being described; thence continue along said curve on a central angle of 05°25'36" with a radius of 2,730.14 feet and a measured arc distance of 258.57 feet (Deed call 259.08') to the P.T. of said curve; thence continue North 01°51'02" East along the East right of way line of said Highway No. 31 a distance of 274.22 feet to a found steel property corner; thence run North 89°59'32" East a distance of 864.45 feet (Deed call 864.05') to found steel property corner in the centerline of Camp Branch, a small creek or branch; thence run along said centerline of said branch the following five (5) field measured calls: South 09°12'10" East 157.23 feet to a point; thence (Deed call South 09°09'15" East 157.53') South 19°52'04" West 211.73 feet to a point; thence (Deed call South 19°46'52" West 211.85') South 70°29'10" West 158.09

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feet to a point; thence (Deed call South 70°25'22" West 158.10') South 62°48'17" West 165.52 feet to a point; thence (Deed call South 62°51'22" West 165.81') South 55°54'49" West 89.18 feet to a found steel corner; (Deed call South 56°09'22" West 89.18')thence run North 89°58'04" West a distance of 447.41 feet to the point of beginning.

Situated in Shelby County, Alabama.

Property Address: 3309 US Highway 31, Calera, Alabama 35040
Tax Identification Number(s): 22-8-28-0-000-015

TOGETHER with all buildings, improvements and tenements now or hereafter erected on the property, and all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, rents (subject however to the assignment of rents to Lender herein), royalties, mineral, oil and gas rights and profits, water, water rights and water stock appurtenant to the property, and, except to the extent owned by parties other than Borrower, all fixtures, machinery, equipment, engines, boilers, incinerators, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or intended to be used in connection with the property, including, but not limited to, those for the purposes of supplying or distributing heating, cooling, electricity, gas, water, air and light; and all elevators, and related machinery and equipment, fire prevention and extinguishing apparatus, security and access control apparatus, plumbing, bath tubs, water heaters, water closets, sinks, ranges, stoves, refrigerators, dishwashers, disposals, washers, dryers, awnings, storm windows, storm doors, screens, blinds, shades, curtains and curtain rods, mirrors, cabinets, paneling, rugs, attached floor coverings, furniture, pictures, antennas, trees and plants, and, N/A ; all of which, including replacements and additions thereto, shall be deemed to be and remain part of the real property covered by this Instrument; and all of the foregoing, together with said property (or the leasehold estate in the event the Instrument is on a leasehold) are herein referred to as the "Property".

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by Borrower's note dated, **June 21, 2006** (herein "Note") in the principal sum of, **One Million Five Hundred Thousand and NO/100th Dollars**, with interest thereon, with the balance of the indebtedness, if not sooner paid, due and payable on, **July 1, 2016**, and all renewals, extensions and modifications thereof; (b) the repayment of any future advances, with interest thereon, made by Lender to Borrower pursuant to paragraph 32 hereof (herein "Future Advances"); (c) the performance of the covenants and agreements of Borrower contained in a Construction Loan Agreement between Lender and Borrower dated **N/A**, if any, as provided in paragraph 26 hereof; (d) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument; and (e) the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the Property hereby conveyed and has right to grant, convey and assign the Property (and, if this Instrument is on a leasehold, that the ground lease is in full force and effect without modification except as noted above and without default on the part of either lessor or lessee thereunder), that the Property is unencumbered, and that the Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any easements and restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

Uniform Covenants. Borrower and Lender covenant and agree as follows:

A. **APPRAISALS.** From time to time, under the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") and in full compliance thereof, Lender shall have the right to order an appraisal on the subject property at the Borrower's expense.

B. **HAZARDOUS SUBSTANCES.** Borrower represents and warrants to Lender, to the best of its knowledge after due inquiry and inspection, that; no asbestos has been used in construction, repair or maintenance of any improvements, no Hazardous Substance is currently being generated, processed, stored, transported, handled or disposed of, on, under or in the Property, except in accordance with all applicable laws; neither Borrower nor any other person or entity has ever caused or permitted any Hazardous Substances to be generated, processed, stored, transported, handled or disposed of, on, under or in the Property, except in compliance with all applicable laws; there is no actual or alleged violation with respect to the Property of any federal, state or local statute, ordinance, rule, regulation or other law pertaining to Hazardous Substances; and there is no action or proceeding pending before or appealable from any court, quasi-judicial body or administrative agency relating to Hazardous Substances affecting or alleged to be affecting the Property.

   Borrower covenants and agrees that Hazardous Substances will not be generated, processed, stored, transported, handled or disposed of on the Property by any person or entity, except in accordance with all applicable laws.

   "Hazardous Substance" means any substance or material which may be hazardous to the health or safety of any person; including without limitation any substance or material which is now or hereafter becomes regulated under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to environmental protection, contamination or cleanup, including without limitation petroleum and its derivatives as regulated under Alabama law.

Borrower shall immediately notify Lender if Borrower becomes aware of any Hazardous Substance problem or liability with respect to the Property, any actual or alleged violation with respect to the Property of any federal, state or local statue, ordinance, rule, regulation or other laws pertaining to Hazardous Substances, of any lien action with respect to any of the foregoing. Borrower shall, at its sole expense, take all actions as may be necessary or advisable for the cleanup of Hazardous Substances with respect to the Property, including without limitation, all removal, containment and remedial actions in accordance with all applicable laws and in all events in a manner satisfactory to Lender, and shall further pay or cause to be paid all cleanup, administrative and enforcement costs of government agencies if obligated to do so by contract or by law.

C. Borrower agrees to hold Lender harmless from, and indemnify Lender against and from, any damage, loss, expense, or liability resulting from the breach of any hazardous substance representation and warranty as defined in this Instrument, including but not limited to all attorney's fees and costs incurred as a result thereof.

D. Lender is hereby authorized to enter the Property, including the interior structures, at reasonable times, and after reasonable notice, for the purpose of inspecting the Property to determine Borrower's compliance with paragraph B.

E. Borrower shall furnish to Lender within twenty (20) days after Lender's request, a complete and current financial statement, in reasonable detail for any general partner, sole owner and guarantor, and or co-borrowers together with a true and correct copy of the most recent federal income tax return of any general partner, guarantor, sole owner or co-borrowers.

F. No additional liens, mortgages, deeds of trusts or other forms of encumbrances are allowed without prior written consent of the Lender. Granting any type secondary lien(s) shall be at the sole discretion of the Lender.

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the PRINCIPAL of and interest on the indebtedness evidenced by the Note, any prepayment and late charges provided in the Note and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES.

Escrow reserves are ☐ are not ☒ required on this loan.
Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note (or on another day designated in writing by Lender), until Note is paid in full, a sum (herein "Funds") equal to one twelfth of (a) the yearly water and sewer rates and taxes and assessments which may be levied on the Property, (b) the yearly ground rents, if any, (c) the yearly premium installments for fire and other hazard insurance, rent loss insurance and such other insurance covering the Property as Lender may require pursuant to paragraph 5 hereof, (d) the yearly premium installments for mortgage insurance , if any, and (e) if this Instrument is on a leasehold, the yearly fixed rents, if any, under the ground lease, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Any waiver by Lender of a requirement that Borrower pay such Funds may be revoked by Lender at its sole discretion, at any time upon written notice to Borrower.

Lender may require Borrower to pay to Lender, in advance, such other Funds for other taxes, charges, premiums, assessments and impositions in connection with Borrower or the Property which Lender shall reasonably deem necessary to protect Lender's interests (herein "Other Impositions"). Unless otherwise provided by applicable law, Lender may require Funds for Other Impositions to be paid by Borrower in a lump sum or in periodic installments, at Lender's option.

The Funds shall be held in an institution(s) the deposits or accounts of which are guaranteed by a Federal or state agency (including Lender). Lender shall apply the Funds to pay said rates, rents, taxes, assessments, insurance premiums and Other Impositions so long as Borrower is not in breach of any covenant or agreement of Borrower in the Instrument. Lender shall make no charge for so holding and applying the Funds, analyzing the account or for verifying and compiling said assessments and bills, unless Lender pays Borrower interest, earnings or profits on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Instrument that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires interest, earnings, or profits to be paid, Lender shall not be required to pay Borrower any interest, earnings or profits on the Funds.

Lender shall give Borrower, without charge, an annual accounting of the Funds in Lender's normal format showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Instrument.

If the amount of the Funds held by Lender at the time of the annual accounting thereof shall exceed the amount deemed necessary by Lender to provide for the payment of water and sewer rates, taxes, assessments, insurance premiums, rents and Other Impositions, as they fall due, such excess shall be credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by Lender shall be less than the amount deemed necessary by Lender to pay water and sewer rates, taxes, assessments, insurance premiums,

rents and Other Impositions, as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within thirty days after notice from Lender to Borrower requesting payment thereof.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may apply , in any amount and in any order as Lender shall determine in Lender's sole discretion, any Funds held by Lender at the time of application (i) to pay rates, rents, taxes, assessments, insurance premiums and Other Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by the Instrument. Upon payment in full of all sums secured by this Instrument, Lender shall promptly refund to Borrower any funds held by Lender.

3. **APPLICATION OF PAYMENTS.** Unless applicable law provides otherwise, all payments received by Lender from Borrower under the Note or this Instrument shall be applied by Lender in the following order of priority: (i) amounts payable to Lender by Borrower under paragraph 2 hereof; (ii) interest payable on the Note; (iii) principal of the Note; (iv) principal of advances made pursuant to paragraph 9 hereof; (v) interest payable on any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the amounts of interest payable on the Future Advances in such order as Lender, in Lender's sole discretion, may determine; (vi) principal of any Future Advance, provided that if more than one Future Advance is outstanding, Lender may apply payments received among the principal balances of the Future Advances in such order as Lender, in Lender's sole discretion, may determine; and (vii) any other sums secured by this Instrument in such order as Lender, at Lender's option may determine; provided, however, that Lender may, at Lender's option, apply any sums payable pursuant to paragraph 9 hereof prior to interest on and principal of the Note, but such application shall not otherwise affect the order of priority of application specified in this paragraph 3.

4. **CHARGES; LIENS.** Borrower shall pay all water and sewer rates, rents, taxes, assessments, premiums, and Other Impositions attributable to the Property at Lender's option in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof, or in such manner as Lender may designate in writing. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph 4, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claim of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property.

5. **HAZARD INSURANCE**. Borrower shall keep the improvements now existing or hereafter erected on the Property insured by carriers at all times satisfactory to Lender against loss by fire, hazards included within the term "extended coverage", rent loss and other hazards, casualties, liabilities and contingencies as Lender (and, if this Instrument is on a leasehold, the ground lease) shall require and in such amounts and for such periods as Lender shall require. Borrower shall maintain said insurance in an amount not less than 100% of the full replacement cost of the building and all other improvements, and contain a replacement cost endorsement without deduction for depreciation. At a minimum, hazard insurance shall be issued by carriers that hold a rating of A or better in accordance with Best's Insurance Reports or a comparable source, as agreed to by Lender. All premiums on insurance policies shall be paid, at Lender's option, in the manner provided under paragraph 2 hereof, or by Borrower making payment, when due, directly to carrier, or in such manner as Lender may designate in writing.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. At least thirty days prior to the expiration date of a policy, Borrower shall deliver to Lender a renewal policy in form satisfactory to Lender. If this Instrument is on a leasehold, Borrower shall furnish to Lender a duplicate of all policies, renewal notices, renewal policies and receipts of paid premiums if, by virtue of the ground lease, the originals thereof may not be supplied by Borrower to Lender. Alternatively, Borrower may furnish copies of all policies if there is a master policy insuring several properties.

In the event of Loss, Borrower shall give immediate written notice to the insurance carrier and to Lender. Borrower hereby authorizes and empowers Lender as attorney-in-fact for Borrower to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Lender's expenses incurred in the collection of such proceeds; provided, however that nothing contained in this paragraph 5 shall require Lender to incur any expense or take any action hereunder. Borrower further authorizes Lender, at Lender's option, (a) to hold the balance of such proceeds to be used to reimburse Borrower for the cost of reconstruction or repair of the Property or (b) to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof (subject, however, to the rights of the lessor under the ground lease if this Instrument is on a Leasehold).

If the insurance proceeds are held by Lender to reimburse Borrower for the cost of restoration of the Property, the Property shall be restored to the equivalent of its original condition or such other condition as Lender may approve in writing. Lender may, at Lender's option, condition disbursement of said proceeds on Lender's approval of such plans and specifications of an architect satisfactory to Lender, contractor's cost estimates, architect's certificates, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, applications of payments, and satisfaction of liens as Lender may reasonably require. If the insurance proceeds are applied to the payment of the sums secured by this Instrument, any such application of proceeds to principal shall not extend or postpone the due dates of the monthly installments referred to in paragraphs

1 and 2 hereof or change the amounts of such installments. If the Property is sold pursuant to paragraph 28 hereof or if Lender acquires title to the Property, Lender shall have all of the right, title and interest of Borrower in and to any insurance policies and unearned premiums thereon and in and to the proceeds resulting from any damage to the Property prior to such sale or acquisition.

6. **FLOOD INSURANCE.** If the Property is, or becomes, located in a designated flood hazard area, Borrower shall provide flood insurance equal to the lesser of the outstanding principal balance of the loan, or the maximum amount available under the National Flood Insurance Program.

7. **PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (C) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other conditions as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including improvements, fixtures, equipment, machinery and appliances thereon in good repair and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) shall generally operate and maintain the Property in a manner to insure maximum rentals, and (g) shall give notice in writing to Lender of and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of Lender. Neither Borrower or any tenant or other person shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of a like kind.

If this Instrument is on a leasehold, Borrower (i) shall comply with the provisions of the ground lease, (ii) shall give immediate written notice to Lender of any default by lessor under the ground lease or of any notice received by Borrower from such lessor of any default under the ground lease by Borrower, (iii) shall exercise any option to renew or extend the ground lease and give written confirmation thereof to Lender within thirty days after such option becomes exercisable, (iv) shall give immediate written notice to Lender of the commencement of any remedial proceedings under the ground lease by any party thereto and, if required by Lender, shall permit Lender as Borrower's attorney-in-fact to control and act for Borrower in any such remedial proceedings and (v) shall within thirty days after request by Lender obtain from the lessor under the ground lease and deliver to Lender the lessor's estoppel certificate required thereunder, if any. Borrower hereby expressly transfers and assigns to Lender the benefit of all covenants contained in the ground lease, whether or not such covenants run with the land, but Lender shall have no liability with respect to such covenants nor any other covenants contained in the ground lease.

Borrower shall not surrender the leasehold estate and interests herein conveyed nor terminate or cancel the ground lease creating said estate and interests, and Borrower shall not, without the express written consent of Lender, alter or amend said ground lease.

Borrower covenants and agrees that there shall not be merger of the ground lease, or of the leasehold estate created thereby, with the fee estate covered by the ground lease by reason of said leasehold estate of said fee estate, or any part of either, coming into common ownership, unless Lender shall consent in writing to such merger; if Borrower shall acquire such fee estate, then this Instrument shall simultaneously and without further action be spread so as to become evidence of the collateral transfer of title of such fee estate to Lender.

8. **USE OF PROPERTY.** Unless required by applicable law or unless Lender has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or part of the Property was intended at the time this Instrument was executed. Borrower shall not initiate and acquiesce in a change in the zoning classification of the Property without Lender's prior written consent.

9. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take action as Lender deems necessary, in its sole discretion, to protect Lender's interest, including but not limited to, (i) disbursement of attorney's fees, (ii) entry upon the Property to make repairs, (iii) procurement of satisfactory insurance as provided in paragraph 5 hereof, and (iv) if this Instrument is on a leasehold, exercise of any option to renew or extend the ground lease on behalf of Borrower and the curing of any default of Borrower in the terms and conditions of the ground lease.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon, shall become additional indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amount shall be immediately due and payable and shall bear interest from the date of the disbursement at the rate stated in the Note unless collection from Borrower of such interest at such rate would be contrary to applicable law. Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the indebtedness secured hereby. Nothing contained in this paragraph 9 shall require Lender to incur any expense take any action hereunder.

10. INSPECTION. Lender may make or cause to be made reasonable entries upon and inspections of the Property.

11. BOOKS AND RECORDS. Borrower shall keep and maintain at all times at Borrower's address stated above, or such other place as Lender may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Property and copies of all written contracts, leases and other instruments which affect the Property. Such books, records, contracts, leases and other instruments shall be subject examination and inspection at any reasonable time by Lender.

Borrower shall furnish to Lender, within one hundred and twenty days after the end of each fiscal year of Borrower, a balance sheet, a statement of income and expenses of the Property and a statement of changes in financial position, each in reasonable detail and certified by Borrower and, if Lender shall require, by an independent certified public accountant. Borrower shall furnish, together with the foregoing financial statements and at any other time upon Lender's request, a rent schedule for the Property, certified by Borrower, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date, the rent payable and the rent paid, together with income tax returns to include all supporting schedules no later than sixty days from filing.

12. CONDEMNATION. Borrower shall promptly notify Lender of any action or proceeding relating to any condemnation or other taking whether direct or indirect, of the Property, or part thereof, and Borrower shall appear in and prosecute any such action of proceeding unless otherwise directed by Lender in writing. Borrower authorizes Lender, at Lender's option, as attorney-in-fact for Borrower, to commence, appear in and prosecute, in Lender's or in Borrower's name, any action or proceeding relating to any condemnation or other taking of the Property.

The proceeds of any award, payment or claim for damages, direct or consequential, in connection with such condemnation or other taking, whether direct or indirect, of the Property, or part thereof, or for conveyances in lieu of condemnation, are hereby assigned to and shall be paid to Lender subject, if this Instrument is on a leasehold, to the rights of the lessor under the ground lease.

Borrower authorizes Lender to apply such awards, payments, proceeds or damages, after the deduction of Lender's expenses incurred in the collection of such amounts, at Lender's option, to restoration or repair of the Property or to payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in paragraph 3 hereof, with balance, if any, to Borrower. Unless Borrower and Lender agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Lender may require.

13. BORROWER AND INSTRUMENT NOT RELEASED OR DISCHARGED. From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior mortgagees, lienholders or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in the Instrument, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, accept a renewal note or notes therefore, modify the terms and time payment of said indebtedness, release of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installment thereunder. Any actions taken by Lender pursuant to the terms of this paragraph 13 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the indebtedness secured hereby, and shall not this Instrument or priority of this Instrument on the Property. Borrower shall pay Lender a reasonable service charge, together with such title insurance premiums and attorney's fees as may be incurred at Lender's option, for any such action taken if taken at Borrower's request.

14. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy. The acceptance by Lender of payment of any sums secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under paragraphs 5 and 12 hereof, operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

15. ESTOPPEL CERTIFICATE. Borrower shall within ten days of a written request from Lender furnish Lender with a written statement, duly acknowledged, setting forth the sums secured by this Instrument and any right of off-set, counterclaim or other defense which exists against such sums and the obligations of this Instrument.

16. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial

Code, and Borrower hereby grants Lender a security interest in said items. Borrower agrees that Lender may file this Instrument, or a reproduction thereof, with State Department of Licensing or other appropriate index, as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to Lender, upon Lender's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as Lender may require to perfect a security interest with respect to said items. Lender may also prepare and file any financing statements and continuations and assignments thereof that Lender deems to be necessary or desirable. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Lender may reasonably require. Without the prior written consent of Lender, Borrower shall not create or suffer to be created any other security interest or enter into any other security agreements in the personal property subject hereto. Any breach by Borrower of any of the terms of this paragraph shall give rise to all remedies available to a secured party pursuant to the Uniform Commercial Code and, at Lender's option, Lender may also invoke the remedies provided in paragraph 28 of this instrument as to such items. In exercising any of said remedies, Lender may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Lender's remedies under the Uniform Commercial Code or of the remedies provided in paragraph 28 of this Instrument.

17. LEASES OF THE PROPERTY. As used in this paragraph 17, the word "lease" shall mean "sublease" if this Instrument is on a leasehold. Borrower shall comply with and observe Borrower's obligations as landlord under all leases of the Property or any part thereof. Borrower, at Lender's request, shall furnish Lender with executed copies of all leases now existing or hereafter made of all or any part of the Property, and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender.

All leases of the Property shall specifically provide that subject to Lender's agreement not to disturb a tenant so long as tenant is not in default of its lease, such leases are subordinate to this Instrument; that the tenant attorns to Lender, such attornment to be effective upon Lender's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as Lender may from time request; that the attornment of the tenant shall not be terminated by foreclosure; and that Lender may, at Lender's option, accept or reject such attornments. Borrower shall not, without Lender's written consent, execute, modify, surrender or terminate, either orally or in writing any lease now existing or hereafter made of all or any part of the Property providing for a term of three years or more, permit an assignment or sublease of such a lease without Lender's written consent, or request or consent to the subordination of any lease of all or any part of the Property to any lien subordinate to this Instrument. If Borrower becomes aware that any tenant proposes to do, or is doing, any act or thing which may give rise to any right of set-off against rent, Borrower shall, (i) take such steps as shall be reasonably calculated to prevent the accrual of any right to a set-off against rent, (ii) notify Lender thereof and of the amount of said set-offs, and (iii) within ten (10) days after such accrual, reimburse the tenant who shall have acquired such right to set-off or take such other steps as shall effectively discharge such set-off and as shall assure that rents thereafter due shall continue to be payable without set-off or deduction.

18. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

19. ACCELERATION IN CASE OF BORROWER'S INSOLVENCY. If Borrower shall voluntarily file a petition under the federal Bankruptcy Act, as such Act may from time to time be amended, or under any similar or successor federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if Borrower shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Borrower, or if Borrower shall be adjudged a bankrupt, or if trustee or receiver shall be appointed for Borrower or Borrower's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar court, or if Borrower shall make an assignment for the benefit of Borrower's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Borrower's assets and such seizure is not discharged within ten days, then Lender may, at Lender's option, declare all sums secured by this Instrument to be immediately due and payable without prior notice to Borrower, and Lender may invoke any remedies permitted by paragraph 28 of this Instrument. Any attorney's fees and other expenses incurred by Lender in connection with Borrower's bankruptcy or any of the aforesaid events shall be additional indebtedness of Borrower secured by this Instrument pursuant to paragraph 9 hereof.

20. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER; ASSUMPTION. On sale or transfer of (i) all or any part of the Property, or any interest therein, or (ii) beneficial interests in Borrower (if Borrower is not a natural person or persons but is a corporation, partnership, trust or other legal entity), Lender may, at Lender's option, declare all of the sums secured by its Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by paragraph 28 of this Instrument. This option shall not apply in case of:

a) transfers by devise or descent or by operation of law upon death of a joint tenant, a partner or an LLC member.
b) the grant of a leasehold interest in a part of the Property of three years or less (or such longer lease term as Lender may permit by prior written approval) not containing an option to purchase (except any interest in the ground lease, if this Instrument is on a leasehold);
c) sales or transfers of fixtures or any personal property pursuant to the first paragraph of paragraph 7 hereof.

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Provided the Loan is not otherwise in default, Lender shall consent to a sale or transfer (Transfer) if prior to the Transfer, transferee is deemed to meet the eligibility, credit, management and other standards customarily applied by Lender at the time of the Transfer to the approval of borrowers in connection with the origination of loans involving similar properties, and the transferee agrees to the execution of an Assumption Agreement that is acceptable to Lender that, among other things, requires the transferee to perform all obligations of Borrower under the Loan Documents. Borrower shall be required to reimburse Lender for all out of pocket costs, together with a loan assumption fee of no less than one percent (1%) of the then outstanding principal balance of the Loan.

21. NOTICE. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Instrument or in the Note shall be given by personal delivery or mailing such notice by certified mail, return receipt requested, addressed to the Borrower at Borrower's address stated above or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by personal delivery or certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Instrument or in the Note shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

22. SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; AGENTS; CAPTIONS.
The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 20 hereof. All covenants and agreements of Borrower shall be joint and several. In exercising any rights hereunder or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the paragraphs of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

23. UNIFORM MULTIFAMILY INSTRUMENT; GOVERNING LAW; SEVERABILITY. This form of instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property and related fixtures and personal property. This Instrument shall be governed by the law of the jurisdiction in which the Property is located, without regard to conflict of laws principles. In the event that any provision of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can give effect without the conflicting provisions, and to this end the provisions of this Instrument and the Note are declared severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any charge provided for in this Instrument or in the Note, whether considered separately or together with other charges levied in connection with this Instrument and the Note, violates such law, and Borrower is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate violation. The amounts, if any, previously paid to Lender in excess of the amounts payable to Lender pursuant to such charges as reduced shall be applied by Lender to reduce the principal of the indebtedness evidenced by the Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all indebtedness which is secured by this Instrument or evidenced by the Note and which constitutes interest, as well as all other charges levied in connection with such indebtedness which constitutes interest, shall be deemed to be allocated and spread over the stated term of the Note. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such manner that the rate of interest computed thereby is uniform throughout the stated term of the Note.

24. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of this Instrument or to any action brought to enforce the Note or any obligation secured by this Instrument.

25. WAIVER OF MARSHALLING. Notwithstanding the existence of any security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender 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. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the 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 by applicable law or provided herein.

26. CONSTRUCTION LOAN PROVISIONS (if applicable). Borrower agrees to comply with the covenants and conditions of the Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Instrument. All advances made by Lender pursuant to Construction Loan Agreement shall be indebtedness of Borrower secured by this Instrument, and such advances may be obligatory as provided in the Construction Loan Agreement. All sums disbursed by Lender prior to the completion of improvements to protect the security of this Instrument up to the principal amount of the Note shall be treated as disbursements pursuant to the Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated which may be collected from Borrower under applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property and which Borrower may have against any party supplying or who has supplied labor, materials or services in connection with construction of the Property. In case of breach by Borrower of the covenants and conditions of the Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (i) may invoke any of the rights or remedies provided in the Construction Loan Agreement, (ii) may accelerate the sums secured by this Instrument and invoke those remedies provided in paragraph 28 hereof, or (iii) may do both.

If, after the commencement of amortization of the Note, the Note and this Instrument are sold by Lender, from and after such sale the Construction Loan Agreement shall cease to be a part of this Instrument and Borrower shall not assert any right of set-off, counterclaim or other claim or defense arising out of or in connection with the Construction Loan Agreement against the obligations of the Note and this Instrument.

27. ASSIGNMENT OF RENTS; APPOINTMENT OF RECEIVER; LENDER IN POSSESSION. As part of the consideration for the indebtedness evidenced by the Note, Borrower hereby absolutely and unconditionally assigns and transfers to Lender all rents and revenues of the Property, including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the property are payable. Borrower hereby authorizes Lender or Lender's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Lender or Lender's agents; provided, however, that prior to written notice being given by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower, to apply the rents and revenues so collected to the sums secured by this Instrument in the order provided in paragraph 3 hereof with the balance, so long as no such breach has occurred, to the account of Borrower, it being intended by Borrower and Lender that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only.

Upon delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument, and without the necessity of Lender entering upon and taking and maintaining full control of the Property in person, by agent or by a court appointed receiver, Lender shall immediately be entitled to possession of all rents and revenues of the Property as specified in this paragraph 27 as the same become due and payable, including but not limited to rents then due and unpaid. Such notice by Lender to Borrower of the breach by Borrower shall contain a statement that Lender exercises its rights to such rents. Borrower agrees that commencing upon delivery of such written notice of Borrower's breach by Lender to Borrower, each tenant of the Property shall make such rents payable to and pay such rents to Lender or Lender's agents on Lender's written demand to each tenant therefore, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Borrower.

Borrower hereby covenants that Borrower has not executed any prior assignment of said rents, that Borrower has not performed, and will not perform, any acts or has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under this paragraph 27, and that at the time of execution of this Instrument there has been no anticipation or prepayment of any of the rents of the Property for more than two months prior to the due dates of such rents. Borrower covenants that Borrower will not hereafter collect or accept payment of any rents of the Property more than two months prior to the due dates of such rents.

Borrower further covenants that Borrower will execute and deliver to Lender such further assignments of rents and revenues of the Property as Lender may from time to time request.

Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Lender may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Lender's security, enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Instrument. In the event Lender elects to seek the appointment of a receiver for the Property upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, Borrower hereby expressly consents to the appointment of such receiver. Lender or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Lender to Borrower of the breach by Borrower of any covenant or agreement of Borrower in this Instrument shall be applied first to costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorneys fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Borrower as lessor or landlord of the Property and then to the sums secured by this Instrument. Lender or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Property by reason of anything done or left undone by Lender under this paragraph 27.

If the rents of the Property are not sufficient to meet costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Lender for such purposes shall become indebtedness of Borrower to Lender secured by this Instrument pursuant to paragraph 9 hereof. Unless Borrower and Lender agree in writing to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law.

Any entering upon and taking and maintaining of control of the Property by Lender or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Lender under applicable law or provided herein. This assignment of rents of the Property by Lender shall terminate at such time as this Instrument ceases to secure indebtedness held by Lender.

Nonuniform Covenants. Borrower and Lender covenant and agree as follows:

28. EVENTS OF DEFAULT; REMEDIES. (a) Borrower hereby consents and agrees that the following constitute "Events of Default" under this Instrument: (i) the occurrence of a breach of any covenant or agreement of Borrower in this Instrument, including, but not limited to, the covenant to pay when due any sums secured by this Instrument; (ii) the occurrence of any event of default under the Note or documentation evidencing Future Advances; (iii) the occurrence of any default under any guaranty, mortgage, security agreement, or other instrument or agreement guaranteeing or granting security for the Note or Future Advances and continues beyond any applicable cure period; (iv) the occurrence of any event described in paragraph 19 hereof; (v) any statement, representation, or warranty contained in this Instrument, the Note, the documentation evidencing the Future Advances, any other document securing or otherwise related in any way to the Note or Future Advances, or any financial statement or certificate delivered to Lender shall be determined to have been materially false when made (all of the documents referenced in this paragraph 28 (v) are collectively referred to as the "Loan Documents"); (vi) the occurrence of any default or event of default under any other obligation, direct or indirect, now or hereinafter due Lender by Borrower, which continues beyond any applicable cure period; (vii) the further assignment or encumbrance by Borrower of the leases or rents of the Property or any part thereof without in each instance the Borrower obtaining prior written consent of the Lender; (viii) the subsequent leasing of any part of the Property without in each instance the Borrower obtaining the prior written consent of the Lender; (ix) the failure by Borrower to pay (or cause to be paid), before any fine, penalty, interest, or cost may be added thereto, all franchise taxes and charges and other governmental charges, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including, but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed, or become a lien upon the Property or any part thereof or become payable during the term of any of the Loan Documents; (x) if a default occurs under any mortgage that is prior or subordinate to this Instrument (beyond the applicable notice and grace period, if any) or the mortgagee under any such prior or subordinate mortgage commences a foreclosure or other enforcement action in connection with such mortgage; or (xi) if the Property, or any part thereof or interest therein, is sold, transferred, assigned, conveyed, granted, or alienated without in each instance the Borrower obtaining prior written consent of the Lender.

(b) Upon the occurrence of any Event of Default, the Lender may, in addition to any rights or remedies available to it hereunder, take such action as it deems advisable to protect and enforce its rights against the Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as the Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of the Lender: (i) declare the entire unpaid Future Advances, all indebtedness evidenced by the Note, and all other indebtedness then owed to Lender (collectively, the "Indebtedness") to be immediately due and payable; or (ii) enter into or upon the Property, either personally or by its agents, nominees, or attorneys, and dispossess Borrower and its agents and servants therefrom, and thereupon the Lender may (1) use, operate, manage, control, insure, maintain, repair, restore, and otherwise deal with all and every part of the Property and conduct the business thereat, (2) complete any construction on the Property in such manner and form as the Lender deems advisable, (3) make alterations, additions, renewals, replacements, and improvements to or on the improvements and the balance of the Property, (4) exercise all rights and powers of Borrower with respect to the Property, whether in the name of the Borrower or otherwise, including, without limitation, the right to make, cancel, enforce, or modify leases, obtain and evict tenants, and sue for, collect and receive all earnings, revenues, rents, issues, profits, and other income of the Property and every part thereof, and (5) apply the receipts from the Property to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance, and other charges in connection with the Property, as well as just and reasonable compensation for the services of the Lender, its counsel, agents, and employees; or (iii) institute proceedings for the complete foreclosure of this Instrument in which case the Property may be sold for cash or credit in one or more parcels; or (iv) with or without entry and, to the extent permitted, and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Instrument for the portion of the Indebtedness then due and payable, subject to this Instrument continuing unimpaired and without loss of priority so as to secure the balance of the Indebtedness not then due; or (v) institute an action, suit, or proceeding in equity for the specific performance of any covenant, condition, or agreement contained herein or in the other Loan Documents; or (vi) recover judgment on the Note, any documentation evidencing Future Advances, or any other Loan Documents (including any guaranty) either before, during, or after or in lieu of any proceedings for the enforcement of this Instrument; or (vii) apply for the appointment of a trustee, receiver, liquidator, or conservator of the Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of the Borrower, any guarantor or of any person, firm, or other entity liable for the payment of the Indebtedness, to which

appointment the Borrower does hereby consent; or (viii) sell the Property, or any part thereof to the extent permitted and pursuant to the procedures provided by the laws of the State in which the Property is located, and all estate, right, title, interest, claim, and demand therein, and right of redemption thereat, at one or more sales, as an entity or in parcels; or (ix) Sell the Property at public outcry to the highest bidder for cash in front of the front or main door of the court house of the county where said Property, or a substantial and material part thereof, is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the Property, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in the county (or all counties, if more than one) in which the Property is located (but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks), and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Any such sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Lender may bid at said sale, and if Lender is the highest bidder therefor, may purchase said Property, or any part thereof. At the foreclosure sale, the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion. Any such sale shall operate as a foreclosure of this Instrument only as to the Property sold, and if all sums secured hereby are not thereby satisfied in full, the other Property shall continue as security therefor and there may be a further foreclosure of this Instrument, either by sale under power of sale or by judicial foreclosure; or (x) pursue such other remedies as the Lender may have under applicable law. At the option of Lender, this Instrument may be foreclosed as provided by law or in equity, in which event Lender's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Instrument in equity, Lender may, at its option, foreclose this Instrument subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted by Borrower to be a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Property.

(c) The purchase money proceeds of any sale made under or by virtue of this paragraph 28, together with any other sums which then may be held by the Lender under this Instrument, whether under the provisions of this paragraph 28 or otherwise, shall be applied as follows:

1st: To the payment of the costs and expenses of any such sale, or the costs and expenses of entering upon, taking possession of, removal from, holding, operating, and managing the Property or any part thereof, as the case may be, including reasonable compensation to the Lender, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities, and advances made or incurred by the Lender under this Instrument, together with interest as provided herein on all advances made by the Lender and all taxes or assessments, except any taxes, assessments, or other charges subject to which the Property shall have been sold.

2nd: To the payment of the whole amount then due, owing or unpaid upon the Note and documentation evidencing the Future Advances for principal and interest, with interest on the unpaid principal at the rate therein specified from and after the happening of any Event of Default from the due date of any such payment of principal until the same is paid.

3rd: To the payment of any other sums required to be paid by Borrower pursuant to any provision of this Instrument, the Note, the documentation evidencing the Future Advances, and all other Loan Documents.

4th: To the payment of the surplus, if any, to whomsoever may be lawfully entitled to receive the same.

The Lender and any receiver of the Property or any part thereof shall be liable to account for only those rents, issues, and profits actually received by it.

(d) Borrower hereby grants to Lender a power of sale, and accordingly, Lender shall have all rights and powers granted by applicable state law to the holder of a mortgage containing a power of sale, including the right to foreclose Borrower's equity of redemption upon an Event of Default by exercising the power of sale, without first commencing a foreclosure action or obtaining a foreclosure decree, and to give such notices and to do all other acts, including the giving of a foreclosure deed upon completion of the foreclosure sale, as are permitted or required by applicable state law to foreclose a mortgage without judicial action. If it shall be necessary to initiate any legal action to determine the person or persons legally entitled to any excess proceeds of the sale, Lender's cost of such action shall be deducted from such excess and reimbursed to Lender before its ultimate disbursal.

(e) The Lender may adjourn from time to time any sale by it to be made under or by virtue of this Instrument by announcement at the time and place appointed for such sale or for such adjourned sale or sales; except as otherwise provided by any applicable provision of law, the Lender, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(f) Upon the completion of any sale or sales made by the Lender under or by virtue of this paragraph 28, the Lender, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, granting, conveying, assigning, and transferring all estate, right, title, and interest in and to the property and rights sold. To the extent permitted by law, the Lender is hereby irrevocably appointed the true and lawful attorney-in-fact of Borrower (coupled with an

interest), in its name and stead, to make all necessary conveyances, assignments, transfers, and deliveries of the Property and rights so sold, and for that purpose the Lender may execute all necessary instruments of conveyance, assignment, transfer, and delivery, and may substitute one or more persons with like power, the Borrower hereby ratifying and confirming all that such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Borrower, if so requested by the Lender, shall ratify and confirm any such sale or sales by executing and delivering to the Lender or to such purchaser or purchasers all such instruments as may be advisable, in the reasonable judgment of the Lender, for the purpose, and as may be designated in such request. All of the power of attorney provisions contained in this Instrument shall be irrevocable and coupled with an interest and shall survive the termination of this Instrument. All such power of attorney provisions shall not be affected by the subsequent disability or incapacity of the Borrower. Prior to taking any action as the attorney-in-fact, any assignee or substitute of Lender shall execute and deliver to the Borrower the attestation provision in substantially the form contained in this Instrument. Any such sale or sales made under or by virtue of this paragraph 28, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim, and demand whatsoever, whether at law or in equity, of the Borrower in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against the Borrower and against any and all persons claiming or who may claim the same, or any part thereof from, through, or under the Borrower.

(g) In the event of any sale made under or by virtue of this paragraph 28 (whether made under the power of sale granted pursuant to this Instrument or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note, the documentation evidencing Future Advances, in this Instrument, or in the Loan Documents to the contrary notwithstanding, become due and payable.

(h) Upon any sale made under or by virtue of this paragraph 28 (whether made under the power of sale granted pursuant to this Instrument or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), the Lender may bid for and acquire the Property or any part thereof or interest therein and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness secured by this Instrument the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which the Lender is authorized to deduct under this Instrument.

(i) No recovery of any judgment by the Lender and no levy of an execution under any judgment upon the Property or upon any other property of the Borrower shall affect in any manner or to any extent, this Instrument upon the Property or any part thereof, or any liens, rights, powers, or remedies of the Lender hereunder, but such liens, rights, powers, and remedies of the Lender shall continue unimpaired as before.

(j) This Instrument is intended as a security agreement and financing statement with respect to the Property. Upon an Event of Default, Lender shall be entitled to all rights and remedies of a secured party under the Uniform Commercial Code, and Lender may, at its discretion, require Borrower to assemble all Property that consists of personal property and make it available to Lender at a place reasonably convenient to both parties to be designated by Lender. Any sale or other disposition of such Property shall be at public or private sale upon such terms and in such manner as Lender deems advisable, having due regard to compliance with any statute or regulation which might affect, limit, or apply to Lender's disposition of such Property. Lender may conduct any such sale or other disposition of such Property at any location it chooses. Unless such Property to be sold or disposed of is perishable or threatens to decline speedily in value, or is of a type customarily sold on a recognized market (in which case Lender shall provide Borrower with such notice as may be practicable under the circumstances), Lender shall give Borrower ten (10) days prior notice of the date, time, and place of any proposed public or private sale, and of the date after which any private sale or other disposition of such Property may be made. Borrower acknowledges that such ten (10) day notice period is reasonable. Lender may purchase such Property, or any portion thereof, at any sale held under this provision. Borrower agrees that all rights of Lender with respect to all Property may be exercised together or separately and further agrees that in exercising its power of sale as to any Property, Lender may sell any part of the Property, either separately from or together with other parts of the Property, all as Lender may in its discretion elect.

29. [INTENTIONALLY OMITTED]

30. [INTENTIONALLY OMITTED]

31. USE OF PROPERTY. The Property is not used principally for agriculture or farming purposes.

32. FUTURE ADVANCES. Upon request of Borrower, Lender, at Lender's option so long as this Instrument secures indebtedness held by Lender, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Instrument when evidenced by promissory notes stating that said notes are secured by this Instrument, not including sums advanced in accordance herewith protect the security of this Instrument, exceed the original amount of the Note ($1,500,000.00) plus the additional sum of $N/A.

33. TRANSFER OF LOAN. Lender may at any time, (a) sell, transfer or assign the Note, this Instrument, and the other Loan Documents, (b) any or all servicing rights with respect thereto, (c) grant participations therein, or (d) issue mortgage pass-through certificates or other securities evidencing a beneficial interest in a rated or unrated public offering or private placement, (each, a "Secondary Market Transaction").

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Shelby Cnty Judge of Probate,AL
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Borrower shall cooperate in good faith with Lender in effecting any such Secondary Market Transaction. Such cooperation shall include executing and delivering such amendments to the Loan Documents and the organizational documents of Borrower and any constituent entities as Lender or any rating agency, purchaser; transferee, assignee, trustee, servicer or potential investor (the rating agencies and all of the foregoing parties are herein collectively referred to as "Interested Parties") may request, provided however, that no such amendment shall modify (i) the interest rate payable under the Note; (ii) the stated maturity date of the Note, (iii) the amortization of the principal amount of the Note, (iv) any other material economic terms of the Loan, or (v) any provision, the effect of which would materially increase Borrower's obligations or materially decrease Borrower's rights under the Loan Documents. Such cooperation also shall include using best efforts to obtain such certificates and assurances from governmental entities and others as Lender may request. Borrower shall not be required to provide additional collateral that was not initially contemplated by the parties to effect any such restructuring or Secondary Market Transaction. Borrower shall not be required to pay any third party costs and expenses incurred by Lender in connection with any such Secondary Market Transaction unless otherwise payable by Borrower under this Instrument or the other Loan Documents.

Borrower, at its sole cost and expense, shall provide such access to personnel and such information and documents relating to Borrower, its constituent persons or entities, any guarantor or indemnitor, the Property and the business and operations of all of the foregoing as Lender may request in connection with any such Secondary Market Transaction including updated financial information, updated representations and warranties made in the Loan Documents and such additional representations and warranties as any rating agency or other Interested Party may request. Lender shall be permitted to share all such information with the investment banking firms, rating agencies, accounting firms, law firms, other third party advisory firms, potential investors, servicers and other service providers and other parties involved in any proposed Secondary Market Transaction. Borrower understands that any such information may be incorporated into any offering circular, prospectus, prospectus supplement, private placement memorandum or other offering documents for any Secondary Market Transaction. Lender and all of the aforesaid third-party advisors and professional firms and investors shall be entitled to rely upon such information.

34. WAIVER OF TRIAL BY JURY. BORROWER BY ITS EXECUTION HEREOF AND LENDER BY ITS ACCEPTANCE HEREOF HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER CLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN EVIDENCED BY THE NOTE, THIS INSTRUMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACTS OR OMISSIONS OF LENDER OR ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

35. **Riders/Addendums to this Instrument.** If one or more riders/addendums are executed by Borrower and recorded together with this Instrument, the covenants and agreements of each such rider/addendum shall be incorporated into and shall amend and supplement the covenants and agreements of this Instrument as if the rider(s)/addendum(s) were a part of this Instrument. (Check applicable box(es))

☐ Adjustable Rate Rider ☐ Other:

36. **INDEMNITY.** Borrower agrees that it shall indemnify, defend, and hold harmless the Lender from and against all loss, liability, obligation, claim, damage, penalty, cause or action, cost, and expense, including without limitation any assessments, levies, impositions, judgments, reasonable attorneys' fees and disbursements, cost of appeal bonds, recording and filing fees, and printing costs imposed upon or incurred by or asserted against the Lender by reason of (a) ownership of this Instrument; (b) any accident, injury to, or death of persons or loss of or damage to property occurring on or about the Property; (c) any use, non-use, or condition of the Property; (d) any failure on the part of Borrower to perform or comply with any of the terms of any Loan Document; (e) performance of any labor or services or the furnishing of any materials or other property with respect to the Property or any part thereof for maintenance or otherwise; (f) the imposition of any mortgage, real estate, or governmental tax incurred as a result of this Instrument or the other Loan Documents, other than income tax payable by, or other taxes personal to, the Lender; or (g) any violation or alleged violation by Borrower of any law. Any amounts payable under this paragraph shall be due and payable on demand and until paid shall bear interest at the rate or rates set forth in the Note. If any action is brought against the Lender by reason of any of the foregoing occurrences, the Borrower will, upon the Lender's request, defend and resist such action, suit, or proceeding, at Borrower's sole cost and expense by counsel approved by the Lender. Notwithstanding the foregoing, Borrower shall have no duty to indemnify, defend, and hold harmless Lender for any loss, liability, obligation, claim, damage, penalty, cause or action, cost, and expense occasioned by the gross negligence or willful misconduct of the Lender.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused same to be executed by its representatives thereunto duly authorized.

C-K Quantum Enterprises, Inc.

By: Anthony Codispoti
Anthony Codispoti, President

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Shelby Cnty Judge of Probate, AL
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CORPORATE ACKNOWLEDGMENT

STATE OF **OHIO**

ss:

County STARK

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Anthony Codispoti**, whose name as **President** of **C-K Quantum Enterprises, Inc** a(n) **Ohio** corporation, 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, (s)he as such officer and with full authority, executed the same voluntarily for and as the act of said partnership on the day the same bears date.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year first above written.

My Commission Expires:

Cathy L. Vogt

Print Name: CATHY L. VOGT

Notary Public in and for the State of **Ohio**

Residing at: CANTON, OHIO

NOTARIAL SEAL
STATE OF OHIO

CATHY L. VOGT
Notary Public, State of Ohio
My Commission Expires
June 20, 2010

Prepared by:

KeyBank National Association
911 Main Street, Suite 1500
Kansas City, MO 64105
1-888-979-1200