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State of Alabama

County of Shelby

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THIS INSTRUMENT WAS
PREPARED BY:
David S. Hall, Esq.
Thacher Proffitt & Wood LLP
Two World Financial Center
New York, New York 10281

UPON RECORDATION RETURN TO:
David S. Hall, Esq.
Thacher Proffitt & Wood LLP
Two World Financial Center
New York, New York 10281

THIS MORTGAGE IS FILED AS, AND SHALL CONSTITUTE, A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA (1975) AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.

DDRTC RIVER RIDGE LLC, as mortgagor
(Borrower)

to

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., as mortgagee
(Lender)

MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT,
FIXTURE FILING AND ASSIGNMENT OF LEASES,
RENTS, AND SECURITY DEPOSITS

Dated: February 27, 2007

Location: Birmingham, Alabama

County: Shelby

MERS MIN.: 8000101-0000005124-2

THE MAXIMUM AMOUNT OF DEBT SECURED BY THIS MORTGAGE SHALL NOT EXCEED \$28,116,029.00 .

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MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES, RENTS, AND SECURITY DEPOSITS

MORTGAGE, SECURITY AGREEMENT, FINANCING STATEMENT, FIXTURE FILING, AND ASSIGNMENT OF LEASES, RENTS, AND SECURITY DEPOSITS, is made as of February ____, 2007 (this "**Security Instrument**"), by DDRTC RIVER RIDGE LLC, a Delaware limited liability company, as mortgagor ("**Borrower**"), having an address at c/o Developers Diversified Realty Corporation, 3300 Enterprise Parkway, Beachwood, Ohio 44122, for the benefit of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation, acting as nominee for Lender (defined below) (in such capacity, "**Mortgagee**").

RECITALS

WHEREAS, Borrower is the owner in fee simple of that certain real property described in **Exhibit A** attached hereto and made a part hereof (collectively, the "**Land**"), and (ii) title to the Improvements (as hereinafter defined);

WHEREAS, this Security Instrument is given to Mortgagee, in its capacity as nominee for Lender (defined below) on the date hereof, to secure a loan made by Lender to Borrower in the principal amount of \$28,116,029.00 (the "**Loan**") pursuant to that certain Loan Agreement, dated as of the date hereof (the "**Loan Agreement**") between Borrower and Bank of America, N.A., having an address at 214 North Tryon Street, Charlotte, North Carolina 28255 ("**Lender**"), which Loan is evidenced by that certain Promissory Note, dated as of the date hereof, in the principal amount of \$28,116,029.00 (together with all amendments, replacements and supplements, the "**Note**"), made by Borrower, as maker; and

WHEREAS, Borrower and Lender intend these Recitals to be a material part of this Security Instrument.

SECURED INDEBTEDNESS

NOW, THEREFORE, in consideration of the Loan to Borrower evidenced by the Note and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby agrees as follows:

TO SECURE:

- (i) payment and performance of all covenants, conditions, liabilities, and obligations of Borrower to Lender contained in the Loan Agreement and the other Loan Documents; and
- (ii) payment of the indebtedness evidenced by the Note plus all interest and all fees, including, without limitation, the Prepayment Premium and Liquidated Damages Amount (as each is defined in the Loan Agreement) payable thereunder; and

- (iii) payment and performance of all covenants, conditions, liabilities and obligations contained in this Security Instrument and any extensions, renewals or modifications hereof; and
- (iv) payment and performance of all covenants, conditions, liabilities and obligations of Borrower contained in the Assignment of Leases, Rents and Security Deposits, dated as of the date hereof (together with any extensions, renewals or modifications thereof, the "**Assignment of Leases**"), between Borrower, as assignor, and Mortgagee, as assignee; and
- (v) payment and performance of all covenants, conditions, liabilities and obligations of Borrower contained in each of the other Loan Documents (as defined below); and
- (vi) without limiting the foregoing, payment of all indebtedness, liabilities, costs, expenses, and amounts from time to time incurred by Lender pursuant to the Note, this Security Instrument, the Loan Agreement or such other Loan Documents, to the extent payment of such amounts is expressly required to be made by Borrower pursuant to any Loan Documents, even if the aggregate amount of the monetary obligation outstanding at any one time exceeds the face amount of the Note (all of the foregoing indebtedness, monetary liabilities and obligations set forth in clauses (i) through (v) above and this clause (vi), collectively, the "**Indebtedness**");
- (vii) payment of the Indebtedness together with the payment and performance of all other covenants, conditions, liabilities and obligations described and set forth in clauses (i) through (vi) above and in this clause (vii), (collectively, the "**Obligations**"); and
- (viii) any judgments that may be obtained regarding the Obligations.

GRANTING CLAUSES

NOW, THEREFORE, THIS SECURITY INSTRUMENT WITNESSETH: that Borrower, in consideration of the premises, the Indebtedness evidenced by the Note, the acceptance by Lender of the trusts created hereby, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure payment and performance of the Obligations (a) has mortgaged, warranted, granted, bargained, sold, alienated, released, confirmed, conveyed, pledged and assigned, and (b) by these presents does hereby irrevocably grant and create a first priority Lien (as defined in the Loan Agreement) on and security interest in, subject to the Permitted Encumbrances (as defined in the Loan Agreement) and the provisions hereof and of the other Loan Documents, and does hereby MORTGAGE, WARRANT, GRANT A SECURITY INTEREST IN, GRANT, BARGAIN, SELL, ALIENATE, CONFIRM, CONVEY, PLEDGE, ASSIGN, TRANSFER AND SET OVER to Mortgagee and its successors or assigns, for the benefit and use of Lender and its successors and assigns forever, all of Borrower's estate, right, title and interest now owned or hereafter acquired in, to and under

any and all of the property (collectively, the **"Property"**) described in the following Granting Clauses:

- (i) the Land;
- (ii) all additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise, be expressly made subject to the lien of this Security Instrument;
- (iii) all of Borrower's right, title and interest in and to the buildings, foundations, structures, improvements and fixtures now or hereafter located or erected on the Land (the **"Improvements"**);
- (iv) all of Borrower's right, title and interest in and to (A) all streets, avenues, roads, alleys, passages, places, sidewalks, strips and gores of land and ways, existing or proposed, public or private, adjacent to the Land, and all reversionary rights with respect to the vacation of said streets, avenues, roads, alleys, passages, places, sidewalks and ways in the land lying thereunder; (B) all air, light, lateral support, development, drainage, oil, gas and mineral rights, options to purchase or lease, waters, water courses and riparian rights now or hereafter pertaining to or used in connection with the Land and/or the Improvements; (C) all and singular, the tenements, hereditaments, rights of way, easements, appendages and appurtenances and property now or hereafter belonging or in any way appertaining to the Land and/or the Improvements; and (D) all estate, right, title, claim or demand whatsoever, either at law or in equity, in possession or expectancy, of, in and to the Land and/or the Improvements (collectively, the **"Appurtenances"**);
- (v) all of Borrower's right, title and interest in and to the machinery, appliances, apparatus, equipment, fittings, fixtures, materials, articles of personal property and goods of every kind and nature whatsoever used in connection with the Land and/or the Improvements and all additions to and renewals and replacements thereof, and all substitutions therefor, now or hereafter affixed to, attached to, placed upon or located upon or in the Land and/or the Improvements, or any part thereof, and used in connection with the use, ownership, management, maintenance, enjoyment or operation of the Land and/or the Improvements in any present or future occupancy or use thereof and now owned or leased (to the extent permitted by the applicable Lease) or hereafter owned or leased by Borrower, including, but without limiting the generality of the foregoing, all heating, lighting, laundry, cooking, incinerating, loading, unloading and power equipment, boilers, dynamos, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and

communications apparatus, air cooling and air conditioning apparatus, building materials and equipment, elevators, escalators, carpeting, shades, draperies, awnings, screens, doors and windows, blinds, furnishings (other than equipment and personal property of tenants or guests of, the Land and/or the Improvements, or any part thereof) (collectively, **"Building Equipment"**);

- (vi) all of Borrower's right, title and interest as lessor or licensor, as the case may be, in, to and under all leases, subleases, underlettings, concession agreements and licenses of the Property or any part thereof now existing or hereafter entered into by Borrower, including, without limitation, any cash and securities deposited (collectively, **"Leases"**), the grant of such cash and securities hereunder being expressly subject to the provisions of the applicable Leases and all of Borrower's right, title and interest, subject to the provisions of Section 5, in the right to receive and collect the revenues, income, rents, issues, profits, royalties and other benefits payable under any of the Leases (collectively, **"Rents"**), and all revenues, income, rents, issues and profits otherwise arising from the use or enjoyment of all or any portion of the Property;
- (vii) subject to the provisions of Section 6.2 of the Loan Agreement, all of Borrower's right, title and interest in and to all proceeds, judgments, claims, compensation, awards or payments hereafter made to Borrower for the taking, whether permanent or temporary, by condemnation, eminent domain, or for any conveyance made in lieu of such taking, of the whole or any part of the Property, including, without limitation, all proceeds, judgments, claims, compensation awards or payments for changes of grade of streets or any other injury to or decrease in the value of the Property, whether direct or consequential, which awards and payments are hereby, subject to the provisions of the Loan Agreement, assigned to Mortgagee, who is, subject to the provisions of the Loan Agreement, hereby authorized to collect and receive the proceeds thereof and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the Obligations in such order as Lender may determine in accordance with the provisions of this Security Instrument without regard to the adequacy of Lender's security hereunder and notwithstanding the fact that the amount thereof may not then be due and payable, and toward the payment of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such awards or payments; and Borrower hereby agrees, subject to the provisions of the Loan Agreement, upon request, to make, execute and deliver any and all further assignments and other instruments sufficient for the purpose of confirming this assignment of said proceeds, judgments, claims, compensation awards or payments to Lender, free, clear and discharged of any encumbrances of any kind or nature whatsoever other than the Permitted Encumbrances and any Leases permitted by the Loan Agreement;

- (viii) subject to the provisions of Section 6.2 of the Loan Agreement, all of Borrower's right, title and interest in and to all unearned premiums paid under insurance policies now or hereafter obtained by Borrower to the extent the same insure the Property and any other insurance policies required to be maintained pursuant to Section 6.1 of the Loan Agreement to the extent the same insure the Property, including, without limitation, liability insurance policies and Borrower's interest in and to all proceeds of the conversion and the interest payable thereon, voluntary or involuntary, of the Property, or any part thereof, into cash or liquidated claims including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on or with respect to the Property (other than liability insurance);
- (ix) all right, title and interest of Borrower in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and Appurtenances to, the Property, hereafter acquired by or released to Borrower or constructed, assembled or placed by Borrower on the Property, and all conversions of the security constituted thereby; immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, to the extent permitted by law, without any further mortgage, conveyance, assignment or other act by Borrower, all such extensions, improvements, betterments, renewals, substitutes and replacements shall become subject to the Lien of this Security Instrument as fully and completely, and with the same effect, as though now owned by Borrower and specifically described herein;
- (x) all of Borrower's right, title and interest in, to and under, to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof without occurrence of a breach or default thereunder and to the extent permitted by applicable law, and without impairment of the validity or enforceability thereof, (A) any REAs (as defined in the Loan Agreement) and all contracts and agreements relating to the Property (other than the Leases), and other documents, books and records, related to the ownership and operation of the Property; (B) to the extent permitted by law, all Licenses (including, to the extent permitted by law, any licenses held by Borrower permitting the sale of liquor at any of the Property the transfer and/or assignment of which is permitted by law without filing or other qualification), warranties, guaranties, building permits and government approvals relating to or required for the construction, completion, occupancy and operation of the Property; (C) all plans and specifications for the construction of the Improvements, including, without limitation, installations of curbs, sidewalks, gutters, landscaping, utility connections and all fixtures and equipment necessary for the construction, operation and occupancy of the Improvements; (D) all such other contracts and agreements (other than the Leases) from time to time executed by Borrower relating to the ownership, leasing, construction, maintenance,

operation, occupancy or sale of the Property, together with all rights of Borrower to compel performance of the terms of such contracts and agreements, including, without limitation, the Purchase Agreement, (E) subject to the terms of the Loan Agreement, the Collateral Accounts (as defined in the Loan Agreement) and any funds in such Collateral Accounts from time to time (it being understood that at such time as Borrower shall withdraw any amounts from any Collateral Accounts in accordance with the provisions of the Loan Agreement, the same shall cease to constitute part of the Property);

- (xi) to the extent the same may be encumbered or assigned by Borrower pursuant to the terms thereof and to the extent permitted by law, all of Borrower's right, title and interest in, to and under documents, instruments, and general intangibles, as the foregoing terms are defined in the Uniform Commercial Code as in effect in the State in which the applicable item of Property is located (the "UCC"), and credit card receivables and escrows, in any case which now or hereafter relate to, are derived from, or are used in connection with the Property, and all contract rights, franchises, books, records, plans, specifications, Licenses, actions and causes of action which now or hereafter relate to, are derived from or used in connection with the Property or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (collectively, the property described in the foregoing paragraphs (vii), (viii), (ix), (x) and this paragraph (xi), the "Intangibles"); and
- (xii) all of Borrower's right, title and interest in all proceeds, both cash and noncash, of the foregoing which may be sold or otherwise be disposed of pursuant to the terms hereof.

UPON CONDITION that, so long as no Event of Default (as hereinafter defined) has occurred and is continuing, Borrower shall be permitted to possess and use the Property, and to use the rents, issues, profits, revenues and other income of the Property as provided in this Security Instrument, the Loan Agreement and the other Loan Documents.

HABENDUM

TO HAVE AND TO HOLD THE PROPERTY hereby conveyed, or mentioned and intended so to be, whether now owned or held or hereafter acquired, subject only to the Permitted Encumbrances and the terms hereof, unto and for the use of Mortgagee, its successors and/or assigns, upon the terms and conditions set forth herein.

IN TRUST FOREVER, WITH POWER OF SALE (to the extent permitted by applicable law) upon the terms and trusts set forth herein and to secure the performance of, and compliance with, the Obligations, covenants and conditions of this Security Instrument and the other Loan Documents all as herein set forth, including the Indebtedness.

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

1. **DEFINITIONS.** Wherever used in this Security Instrument, the following terms, and the singular and plural thereof, shall have the following meanings. All capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement:

Appurtenances: Shall have the meaning provided in Granting Clause (iv).

Assignment of Leases: Shall have the meaning provided in the Recitals.

Borrower: Shall have the meaning provided in the Introductory Paragraph.

Closing Date: Shall mean the date of this Security Instrument.

Events of Default: Shall mean the occurrence of an "Event of Default" pursuant to the Loan Agreement.

Improvements: Shall have the meaning provided in Granting Clause (iii).

Indebtedness: Shall have the meaning provided in Recitals.

Intangibles: Shall have the meaning provided in Granting Clause (xi).

Land: Shall have the meaning provided in the Recitals.

Leases: Shall have the meaning provided in Granting Clause (vi).

Lender: Shall have the meaning provided in the Recitals.

Licenses: Shall mean all certifications, permits, licenses and approvals, including without limitation, liquor licenses, certificates of completion and occupancy permits required of

Borrower for the legal use, occupancy and operation of the Property for retail and ancillary purposes.

Loan: Shall have the meaning provided in the Recitals.

Loan Agreement: Shall have the meaning provided in the Recitals.

Loan Document: Shall have the meaning provided in the Loan Agreement.

Note: Shall have the meaning provided in the Recitals.

Property: Shall have the meaning provided in the recitals to the Granting Clause.

Rents: Shall have the meaning provided in Granting Clause (vi).

The words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Instrument shall refer to this Security Instrument as a whole and not to any particular provision of this Security Instrument, and section, schedule and exhibit references are to this Security Instrument unless otherwise specified. The words "includes" and "including" are not limiting and mean "including without limitation."

In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding," and the word "through" means "to and including."

References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto executed in writing by all of the parties thereto and, if Lender's consent was required for the original of any such document, consented to by Lender. All references in this Security Instrument to the plural of any document described herein shall mean all of such documents collectively.

References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending, or replacing the statute or regulation.

The captions and headings of this Security Instrument are for convenience of reference only and shall not affect the construction of this Security Instrument.

2. **WARRANTY**. Borrower represents and warrants to, and covenants and agrees with, Lender as follows:

(a) **Title**. Borrower represents and warrants that Borrower owns good, indefeasible and insurable fee title to the Property, subject only to the Permitted Encumbrances and other Liens expressly permitted under the Loan Documents. This Security Instrument, upon its due execution and proper recordation, is and will remain a valid and enforceable (and, with respect to all personalty as to which security interests are governed by the UCC, upon proper recordation and the filing of a financing statement) perfected first mortgage Lien on and security interest on Borrower's right, title and interest in and to Property subject only to the Permitted Encumbrances and other Liens expressly permitted under the Loan Documents.

(b) All Property. The Property constitutes all of the real property, personal property, equipment and fixtures currently (i) owned or leased by Borrower or (ii) used in the operation of the business located on the Property, other than items owned or leased by Manager, any landlord of Borrower, or any Tenants.

(c) Enforceability of Security Instrument. This Security Instrument is the legal, valid and binding obligation of Borrower, enforceable against Borrower in accordance with its terms, subject only to applicable bankruptcy, insolvency and similar laws affecting rights of creditors generally and subject to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

3. AFFIRMATIVE COVENANTS.

(a) Payment of Obligations. Borrower shall promptly pay when due the principal of and interest on the Indebtedness and all other payment Obligations, all in lawful money of the United States of America in accordance with the Note and the Loan Agreement, and shall further perform fully and in a timely manner all Obligations of Borrower. All sums payable by Borrower hereunder shall be paid without demand, counterclaim (other than mandatory counterclaims), offset, deduction (except as required by law) or defense. Borrower waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim (other than mandatory counterclaims), setoff, deduction or defense.

(b) Performance and Observance of Loan Agreement Covenants. Borrower will duly perform, observe and comply with all of the affirmative and negative covenants, agreements and obligations to be performed, observed and complied with by Borrower, and all of the other terms and conditions applicable to Borrower, under the terms of the Loan Agreement and any other Loan Document, as if each such covenant, agreement, obligation, term and condition were expressly set forth herein in full. Without limiting the generality of the foregoing, but subject to the terms of the Loan Agreement, Borrower will maintain the Property, pay Impositions and Other Charges, obtain, pay and maintain insurance, keep the Property free of Liens (other than Permitted Encumbrances), pay the utility charges for the Property, perform alterations and repairs in respect of the Property, cause the Property to comply with all Legal Requirements, fund the Collateral Accounts as required by the Loan Agreement, restore the Property upon any casualty or Taking, and lease the Property as permitted by the Loan Agreement, all in accordance with and subject to all of the applicable terms and conditions of this Security Instrument, the Loan Agreement and the other Loan Documents.

(c) Insurance. Borrower shall, at its sole cost and expense, continuously keep and maintain insurance in respect of the Property and Borrower's operations thereat, of the type and in the form and with insurers, all as provided in Section 6.1 of the Loan Agreement. All Proceeds to which Borrower may be entitled resulting from damage to or destruction of the Property or any part hereof by a casualty or a Taking shall be distributed and applied towards restoration of the Property or repayment of the Obligations in accordance with the provisions of Section 6.2 of the Loan Agreement.

(d) Maintenance of Validity and Recording.

(i) Borrower covenants that it will forthwith after the execution and delivery of this Security Instrument and thereafter as necessary from time to time cause this Security Instrument and the other Loan Documents intended to be filed, registered or recorded and any continuation statement or similar instrument relating to any property subject thereto or to any property intended to be encumbered, granted, conveyed, transferred and assigned by this Security Instrument to be filed, registered and recorded in such manner and in such places as may be required by law in order to publish notice of and fully to protect the validity thereof or the grant thereby of the property subject thereto and the interest and rights of Lender therein. Borrower covenants that it has paid or will pay or cause to be paid all taxes and fees incident to such filing, registration and recording, and all expenses incident to the preparation, execution and acknowledgment thereof, and of any instrument of further assurance, and all federal or state stamp taxes or other charges arising out of or in connection with the execution and delivery of such instruments.

(ii) Borrower shall maintain the validity, perfection, priority and effectiveness of this Security Instrument and the other Loan Documents. Unless otherwise permitted in this Security Instrument and the other Loan Documents, Borrower will not take any action, will not permit action to be taken by others and will not omit to take any action, nor will Borrower give any notice, approval or consent or exercise, waive or modify any rights under or in respect of the Permitted Encumbrances, which action, omission, notice, approval, consent or exercise, waiver or modification of rights would release Borrower from, or reduce any of Borrower's obligations or liabilities under, or would result in the termination, surrender or assignment of, or the amendment or modification of, any of the Loan Documents, or would impair the validity of this Security Instrument or any of the other Loan Documents, or would have a Material Adverse Effect, without Lender's consent, and any attempt to do any of the foregoing without such consent shall be of no force and effect.

(iii) Borrower, at its expense, will execute, acknowledge and deliver all such instruments and take all such actions as Lender from time to time reasonably may request or as may be reasonably necessary or proper for the better assuring to Lender of the properties and rights now or hereafter subject to the Lien hereof or intended so to be.

4. NEGATIVE COVENANTS. Borrower covenants and agrees that, without Lender's prior written consent, Borrower shall not:

- (a) partition the Property; or
- (b) Transfer any asset other than in the ordinary course of business or Transfer any interest in the Property except as may be permitted by the Loan Agreement.

5. LICENSE TO COLLECT RENTS. To the fullest extent permitted under applicable law, Lender and Borrower hereby confirm that for so long as no Event of Default shall have occurred and is continuing, Lender has granted to Borrower a revocable license to collect and use the Rents as they become due and payable in accordance with the provisions of the Loan Agreement and the Assignment of Leases; provided that the existence of such right



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shall not operate to subordinate the Assignment of Leases to any subsequent assignment, in whole or in part by Borrower, and any such subsequent assignment shall be subject to Lender's rights under this Security Instrument. Borrower further agrees to execute and deliver such assignments of Leases and Rents as Lender may from time to time reasonably request in order to better assure, transfer and confirm to Lender the rights intended to be granted to Lender with respect thereto. In accordance with the provisions of the Assignment of Leases, upon the occurrence and during the continuance of an Event of Default (1) Borrower agrees that Lender may, but shall not be obligated to, assume the management of the Property, and collect the Rents, applying the same upon the Obligations, and (2) Borrower hereby authorizes and directs all tenants, purchasers or other Persons occupying, utilizing or acquiring any interest in any part of the Property to pay all Rents to Lender upon Lender's request. In the event Lender actually receives such Rents after an Event of Default, any application of the Rents by Lender shall not constitute a misappropriation of the Rents by Borrower pursuant to Section 18.1 of the Loan Agreement. Upon the occurrence and during the continuance of an Event of Default, Lender shall have and hereby expressly reserves the right and privilege (but assumes no obligation), to demand, collect, sue for, receive and recover the Rents, or any part thereof, now existing or hereafter made, and apply the same in accordance with this Security Instrument, the Assignment of Leases, and applicable law.

6. SECURITY AGREEMENT. This Security Instrument constitutes a financing statement and, to the extent required under the UCC because portions of the Property may constitute fixtures, this Security Instrument is to be filed in the office where a mortgage for the Land would be recorded. In addition, Borrower hereby authorizes Lender to file one or more financing statements to evidence more effectively the security interest of Lender in the Property. Lender also shall be entitled to proceed against all or portions of the Property in accordance with the rights and remedies available under the UCC. Borrower is, for the purposes of this Security Instrument, deemed to be the Debtor, and Lender is deemed to be the Secured Party, as those terms are defined and used in the UCC. Borrower agrees that the Indebtedness and Obligations secured by this Security Instrument are further secured by security interests in all of Borrower's right, title and interest in and to fixtures, equipment, and other property covered by the UCC, if any, which are used upon, in, or about the Property (or any part) or which are used by Borrower or any other Person in connection with the Property. Borrower grants to Lender a valid and effective first priority security interest in all of Borrower's right, title and interest in and to such personal property (but only to the extent permitted in the case of leased personal property), together with all replacements, additions, and proceeds. Except for Permitted Encumbrances, Borrower agrees that, without the written consent of Lender, no other security interest will be created under the provisions of the UCC. Borrower agrees that all property of every nature and description covered by the Lien, mortgage and charge of this Security Instrument together with all such property and interests covered by this Security Instrument are encumbered as a unit, and upon the occurrence and during the continuance of an Event of Default by Borrower, all of the Property, at Lender's option, may be foreclosed upon or sold in the same or different proceedings or at the same or different time, subject to the provisions of applicable law. The filing of any financing statement relating to any such property or rights or interests shall not be construed to diminish or alter any of Lender's rights of priorities under this Security Instrument.

7. LEASE SUBORDINATION AND ATTORNMEN

(a) Leases To Be Subordinate. All New Leases entered into by Borrower after the date hereof shall by their express terms be subject and subordinate to this Security Instrument, the Loan Agreement and each of the other Loan Documents (through a subordination provision contained in such Lease or otherwise) and shall provide that the Person holding any rights thereunder shall attorn to Lender or any other Person succeeding to the interests of Lender upon the exercise of its remedies hereunder or any transfer in lieu thereof on the terms set forth in this Security Instrument.

(b) Attornment. Each New Lease entered into from and after the date hereof shall provide that in the event of the enforcement by Lender of any remedy under this Security Instrument or the Loan Agreement, the Tenant under such Lease shall, at the option of Lender or of any other Person succeeding to the interest of Lender as a result of such enforcement, attorn to Lender or to such Person and shall recognize Lender or such successor in the interest as lessor under such Lease without change in the provisions thereof; provided, however, Lender or such successor in interest shall not be liable for or bound by (i) any payment of an installment of rent or additional rent which may have been made more than thirty (30) days before the due date of such installment, (ii) any act or omission of or default by Borrower under any such Lease (but the Lender, or such successor, shall be subject to the continuing obligations of the landlord to the extent arising from and after such succession to the extent of Lender's, or such successor's, interest in the Property), (iii) any credits, claims, setoffs or defenses which any Tenant may have against Borrower, (iv) any obligation on Borrower's part, pursuant to such Lease, to perform any tenant improvement work or (v) any obligation on Borrower's part, pursuant to such Lease, to pay any sum of money to any Tenant. Each such New Lease shall also provide that, upon the reasonable request by Lender or such successor in interest, such Tenant shall execute and deliver an instrument or instruments confirming such attornment.

(c) Non-Disturbance Agreements. Lender shall enter into, and, if required by applicable law to provide constructive notice or requested by a Tenant, record in the county where the subject Property is located, a subordination, attornment and non-disturbance agreement, in form and substance substantially similar to the form attached to the Loan Agreement as Exhibit K (a "Non-Disturbance Agreement"), with any Tenant (other than an Affiliate of Borrower) entering into a New Lease satisfying the requirements of Section 8.8 of the Loan Agreement, including any New Lease for which Lender's prior written consent is required by Section 8.8 of the Loan Agreement and has been obtained, within ten (10) Business Days after written request therefor by Borrower, provided that such request is accompanied by an Officer's Certificate stating that such Lease complies in all material respects with Section 8.8 of the Loan Agreement. All reasonable third party costs and expenses incurred by Lender in connection with the negotiation, preparation, execution and delivery of any Non-Disturbance Agreement, including, without limitation, reasonable attorneys' fees and disbursements, shall be paid by Borrower (in advance, if requested by Lender).

8. PROTECTION OF SECURITY; COSTS AND EXPENSES. Borrower shall appear in and defend any action or proceeding of which it has notice affecting the security hereof or the rights or powers of Lender hereunder and shall pay all costs and expenses actually incurred by Lender, including, without limitation, cost of evidence of title and reasonable attorneys' fees and disbursements, in any such action or proceeding, and in any suit brought by Lender to foreclose this Security Instrument or to enforce or establish any other rights or



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remedies of Lender hereunder upon the occurrence and during the continuance of an Event of Default. If an Event of Default occurs and is continuing under this Security Instrument or the Loan Agreement, or if any action or proceeding is commenced in which it becomes necessary to defend or uphold the Lien or priority of this Security Instrument or which adversely affects Lender or Lender's interest in the Property or any part thereof, including, without limitation, eminent domain, enforcement of, or proceedings of any nature whatsoever under any Legal Requirement affecting the Property or involving Borrower's bankruptcy, insolvency, arrangement, reorganization or other form of debtor relief, then Lender, upon reasonable notice to Borrower, may, but without obligation to do so and without releasing Borrower from any obligation hereunder, make such appearances, disburse such reasonable sums and take such action as Lender reasonably deems necessary or appropriate to protect Lender's interest in the Property, including, but not limited to, disbursement of reasonable attorneys' fees, entry upon the Property to make repairs or take other action to protect the security hereof, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the reasonable judgment of Lender appears to be prior or superior hereto; provided, however, that the foregoing shall be subject to Borrower's rights to contest under Section 7.3 of the Loan Agreement and, provided no Event of Default shall have occurred and is then continuing, Lender shall not pay or discharge any lien, encumbrance or charge being contested by Borrower in accordance with Section 7.3 of the Loan Agreement.

9. LENDER'S RIGHT TO PERFORM. Upon the occurrence and during the continuance of an Event of Default with respect to the performance of any of the Obligations contained herein, Lender may, without waiving or releasing Borrower from any Obligation or Default under this Security Instrument, but shall not be obligated to, at any time perform the Obligations giving rise to such Event of Default, and the cost thereof, with interest at the Default Rate from the date of payment by Lender to the date such amount is paid by Borrower, shall immediately be due from Borrower to Lender and the same shall be secured by this Security Instrument and shall be a Lien on the Property prior to any right, title to, interest in or claim upon the Property attaching subsequent to the Lien and mortgage of this Security Instrument (subject to the provisions governing the maximum amount of indebtedness secured hereby and subject to Article VIII of the Loan Agreement). No payment or advance of money by Lender under this Section 9 shall be deemed or construed to cure Borrower's Event of Default or waive any right or remedy of Lender hereunder.

10. REMEDIES AND RIGHTS OF LENDER UPON DEFAULT. Subject to applicable law, upon the occurrence and during the continuation of an Event of Default hereunder or under the Loan Agreement, Lender may take such actions against Borrower, subject to Section 12 hereof, and/or against the Property or any portion thereof as Lender determines is necessary to protect and enforce its rights hereunder, without notice or demand except as set forth below or as required under applicable law. Any such actions taken by Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents. Lender's determination of appropriate action may be based on an appropriate real estate or other consultant and/or counsel, and Lender may rely conclusively on such advice.

Borrower shall pay such consultants' and reasonable attorneys' fees and expenses incurred by Lender pursuant to this Section 10. Such actions may include, without limitation, the following:

(a) Acceleration. Subject to any applicable provisions of the Note and the other Loan Documents, Lender may declare all or any portion of the unpaid principal balance under the Note, together with all accrued and unpaid interest thereon, and all other unpaid Indebtedness, to be immediately due and payable.

(b) Entry. Subject to the provisions and restrictions of applicable law, Lender, personally, or by its agents or attorneys, at Lender's election, may enter into and upon all or any part of the Property (including, but not limited to, the Land and Improvements and any part thereof), and may exclude Borrower, its agents and servants therefrom (but such entry shall be subject to any Non-Disturbance Agreements then in effect), and take possession of all books, records and accounts relating thereto and Borrower agrees to surrender possession of the Property and such books, records, and accounts to Lender upon demand, and thereupon Lender, having and holding the same, may use, operate, manage and control the Property or any part thereof and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or receiver. Upon every such entry, Lender may, at the reasonable expense of the Property and/or Borrower, from time to time, either by purchase, repair or construction, maintain and restore the Property or any part thereof, and may insure and reinsure the same in such amount and in such manner as may seem to them to be advisable. Similarly, from time to time, Lender may, at the expense of Borrower (which amounts may be disbursed by Lender from the Property on behalf of Borrower), make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments and improvements to and on the Property or any part thereof as it may deem advisable. Lender or its designee shall also have the right to manage and operate the Property or any part thereof and to carry on the business thereof and exercise all rights and powers of Borrower with respect thereto, either in the name of Borrower or otherwise, as may seem to them to be advisable. In confirmation of the grant made in Granting Clause (vi) hereof, but subject to applicable laws, in the case of the occurrence and continuation of an Event of Default, Lender shall be entitled to collect and receive all Rents to be applied as provided for in Section 11 hereof. In addition, Lender may require (i) Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be physically occupied by Borrower and (ii) Borrower to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

(c) Phase I Environmental Report. Lender may at its option obtain, in each instance described in clauses (a) and (b) above, at Borrower's reasonable expense, a new phase I environmental report with respect to the Property, and such additional environmental studies as may be recommended in such phase I reports.

(d) Power of Sale; Judicial Foreclosure. Upon the occurrence and during the continuance of any Event of Default, Lender, with or without entry, personally or by its agents or attorneys, insofar as applicable, and in addition to any and every other remedy, shall have alternate remedies as follows:



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(i) Power of Sale. To the extent, and in the manner permitted by law, Lender may elect to exercise the non-judicial power of sale which is hereby conferred under the terms of this Security Instrument and as provided for by the statutes of the State. Any Person, including Borrower, or Lender, may purchase at any such sale. A sale of less than all of the Property or any defective or irregular sale made hereunder shall not exhaust the power of sale provided for herein, and subsequent sales may be made hereunder until all Obligations have been satisfied or the entire Property sold, without defect or irregularity. No action of Lender based upon the provisions contained herein or contained in the applicable statutes, including, without limitation, the giving of the Notice of Default and Election to Sell or the Notice of Sale, shall constitute an election of remedies which would preclude Lender from pursuing judicial foreclosure before a completed sale pursuant to the power of sale contained herein.

(ii) Judicial Foreclosure. Whether or not proceedings have commenced by the exercise of the power of sale above given, assuming the breach(es) or default(s) are uncured and continuing, then, subject to applicable law, Lender or the holder or holders of any the Obligations, in lieu of proceeding with the power of sale, may at its option declare the whole amount or any part, of the Indebtedness remaining unpaid immediately due and payable without notice, by suit or suits in equity or at law to foreclose the same. Appraisal of the Property is hereby waived at the option of Lender, that option to be exercised at or prior to the time judgment is rendered in the judicial foreclosure. The Property may be sold as one parcel or in such parcels as Lender may elect unless otherwise provided by law. Lender may be a purchaser of the Property or any part thereof or of any interest therein at any sale thereof, whether pursuant to power of sale, foreclosure or otherwise, and Lender may apply the outstanding Indebtedness against the purchase price. Any purchaser shall, upon its purchase, acquire good title to the properties so purchased, free of the security interest and Lien of this Security Instrument.

(iii) Lender may conduct any number of sales from time to time. The power of sale shall not be exhausted by any one or more such sales as to any part of the Property remaining unsold, but shall continue unimpaired until the entire Property shall have been sold. Upon taking title to the Property (whether by foreclosure, deed in lieu or otherwise) by Lender or any other purchaser or assignee of the Property after an Event of Default, Borrower shall assign and transfer all of its right, title and interest in and to the Property to Lender. Borrower hereby irrevocably appoints Lender as its attorney-in-fact to execute all documents and take all actions necessary to effectuate such assignment and transfer, provided that such power may only be exercised by Lender while an Event of Default exists and is continuing.

(e) Specific Performance. Lender, in its sole and absolute discretion, may institute an action, suit or proceeding at law or in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note or any other Loan Document, or in aid of the execution of any power granted hereunder or for the enforcement of any other appropriate legal or equitable remedy.

(f) Enforcement of Note. Subject to Section 18.1 of the Loan Agreement, and to the extent permitted under the provisions of applicable law, Lender may recover judgment on the Note (or any portion of the Indebtedness evidenced thereby), either before, during or after any proceedings for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument.

(g) Sale of Property.

(i) Lender may postpone any sale of all or any part of the Property to be made under or by virtue of this Section 10 by public announcement at the time and place of such sale, or by publication, if required by law, and, from time to time, thereafter, may further postpone such sale by public announcement made at the time of sale fixed by the preceding postponement.

(ii) Upon the completion of any sale made by Lender under or by virtue of this Section 10, Lender shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or deeds or other appropriate instruments, conveying, assigning and transferring all its estate, right, title and interest in and to the property and rights so sold. Lender is hereby appointed the true and lawful irrevocable attorney-in-fact of Borrower in its name and stead or in the name of Lender to make all necessary conveyances, assignments, transfers and deliveries of the property and rights so sold, and, for that purpose, Lender may execute all necessary deeds and other instruments of assignment and transfer, and may substitute one or more persons with like power, Borrower hereby ratifying and confirming all that such attorney or attorneys or such substitute or substitutes shall lawfully do by virtue hereof; provided, however, that such power of attorney shall be effective only for so long as an Event of Default shall exist and be continuing. Borrower shall, nevertheless, if so requested in writing by Lender, ratify and confirm any such sale or sales by executing and delivering to Lender or to such purchaser or purchasers all such instruments as may be advisable, in the judgment of Lender, for such purposes and as may be designated in such request. Any such sale or sales made under or by virtue of this Section 10 shall operate to divest all the estate, right, title, interest, claim and demand, whether at law or in equity, of Borrower in and to the Property and rights so sold, and shall be a perpetual bar, at law and in equity, against Borrower, its successors and assigns and any Person claiming through or under Borrower and its successors and assigns.

(iii) The receipt of Lender for the purchase money paid as a result of any such sale shall be a sufficient discharge therefor to any purchaser of the property or rights, or any part thereof, so sold. No such purchaser, after paying such purchase money and receiving such receipt, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Security Instrument, or shall be answerable, in any manner, for any loss, misapplication or non-application of any such purchase money or any part thereof, nor shall any such purchaser be bound to inquire as to the authorization, necessity, expediency or regularity of such sale.

(iv) Upon any sale made under or by virtue of this Section 10, Lender may bid for and acquire the Property or any part thereof and, in lieu of paying cash

therefor, may make settlement for the purchase price by crediting upon the Note secured by this Security Instrument the net proceeds of sale, after deducting therefrom the expense of the sale and the costs of the action and any other sums which Lender is authorized to deduct under this Security Instrument. The person making such sale shall accept such settlement without requiring the production of the Note or this Security Instrument, and there shall be deemed credited to the Indebtedness and Obligations under this Security Instrument the net proceeds of such sale. Lender, upon acquiring the Property or any part thereof, shall be entitled to own, hold, lease, rent, operate, manage or sell the same in any manner permitted by applicable laws.

(h) Voluntary Appearance; Receivers. Upon the occurrence, and during the continuance of, any Event of Default hereunder or pursuant to the Loan Agreement, and immediately upon commencement of (i) any action, suit or other legal proceeding by Lender to obtain judgment for the principal and interest on the Note and any other sums required to be paid pursuant to this Security Instrument, or (ii) any action, suit or other legal proceeding by Lender of any other nature in aid of the enforcement of the Loan Documents or any of them, Borrower will (a) enter its voluntary appearance in such action, suit or proceeding, and (b) if required by Lender, consent to the appointment of one or more receivers of the Property and all of the Rents. After the occurrence and during the continuance of any Event of Default, or upon the filing of a bill in equity to foreclose this Security Instrument or to enforce the specific performance hereof or in aid thereof, or upon the commencement of any other judicial proceeding to enforce any right of Lender, Lender shall be entitled, as a matter of right, if it shall so elect, without notice to any other party and without regard to the adequacy of the security of the Property, forthwith, either before or after declaring the principal and interest on the Note to be due and payable, to the appointment of such a receiver or receivers. Any receiver or receivers so appointed shall have such powers as a court or courts shall confer, which may include, without limitation, any or all of the powers which Lender is authorized to exercise by the provisions of this Section 10, and shall have the right to incur such obligations and to issue such certificates therefor as the court shall authorize. Notwithstanding the foregoing, Lender as a matter of right may appoint or secure the appointment of a receiver, trustee, liquidator or similar official of the Property or any portion thereof, and Borrower hereby irrevocably consents and agrees to such appointment, without notice to Borrower and without regard to the value of the Property or adequacy of the security for the Indebtedness and without regard to the solvency of the Borrower or any other Person liable for the payment of the Indebtedness, and such receiver or other official shall have all rights and powers permitted by applicable law and such other rights and powers as the court making such appointment may confer, but the appointment of such receiver or other official shall not impair or in any manner prejudice the rights of Lender to receive the Rents pursuant to this Security Instrument or the Assignment of Leases.

(i) UCC Remedies. Lender may exercise any or all of the remedies granted to a secured party under the UCC, specifically including, without limitation, the right to recover the reasonable attorneys' fees and disbursements and other expenses incurred by Lender in the enforcement of this Security Instrument or in connection with Borrower's redemption of the Improvements or Building Equipment or Intangibles. Lender may exercise its rights under this Security Instrument independently of any other collateral or guaranty that Borrower may have granted or provided to Lender in order to secure payment and performance of the Obligations, and Lender shall be under no obligation or duty to foreclose or levy upon any other collateral

given by Borrower to secure any Obligation or to proceed against any guarantor before enforcing its rights under this Security Instrument.

(j) Leases. Lender may, at its option, before any proceeding for the foreclosure (or partial foreclosure) or enforcement of this Security Instrument, treat any Lease which is subordinate by its terms to the Lien of this Security Instrument (and with respect to which Non-Disturbance Agreement exists and is in full force and effect without any default on the part of the Tenant thereunder or under the Lease relating thereto beyond the expiration of applicable notice and cure periods) as either subordinate or superior to the Lien of this Security Instrument.

(k) Insurance Policies. Lender may surrender any insurance policies maintained pursuant to the Loan Agreement, collect the unearned insurance premiums for such insurance policies and apply such sums as a credit on the Indebtedness in such priority and proportion as Lender in its discretion shall deem proper, and in connection therewith, Borrower hereby appoints Lender its true and lawful irrevocable attorney-in-fact of Borrower to collect such insurance premiums;

(l) Other Rights. Lender may pursue against Borrower any other rights and remedies of Lender permitted by law, equity or contract or as set forth herein or in the other Loan Documents, subject to the provisions of Section 18.1 of the Loan Agreement.

(m) Retention of Possession. Notwithstanding the appointment of any receiver, liquidator or trustee of Borrower, or any of its property, or of the Property or any part thereof, Lender, to the extent permitted by law, shall be entitled to retain possession and control of all property now or hereafter granted to or held by Lender under this Security Instrument.

(n) Suits by Lender. All rights of action under this Security Instrument may be enforced by Lender without the possession of the Note and without the production thereof or this Security Instrument at any trial or other proceeding relative thereto, provided, however, Lender shall in any event certify that it is the current holder of the Note. Any such suit or proceeding instituted by Lender shall be brought in the name of Lender and any recovery of judgment shall be subject to the rights of Lender.

(o) Remedies Cumulative. Subject to Section 18.1 of the Loan Agreement, no remedy herein (or pursuant to the Loan Agreement or any Loan Document) conferred upon or reserved to Lender shall exclude any other remedy, and each such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission of Lender to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given to Lender by this Security Instrument or any other Loan Document may be exercised from time to time and as often as Lender may deem expedient. Nothing in this Security Instrument shall affect Borrower's obligations to pay the principal of, and interest on, the Note in the manner and at the time and place expressed in the Note.

(p) Waiver of Rights. Borrower agrees that, to the fullest extent permitted by law, it will not at any time, (1) insist upon, plead or claim or take any benefit or advantage of any stay, extension or moratorium law, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Security Instrument or any Loan Document, (2) claim, take or insist upon any benefit or advantage of any law, now or at any time hereafter in force, providing for valuation or appraisal of the Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein contained, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (3) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted by the United States or any State or otherwise to redeem the property and rights sold pursuant to such sale or sales or any part thereof. Borrower hereby expressly waives all benefits and advantages of such laws, and covenants, to the fullest extent permitted by law, not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but will suffer and permit the execution of every power as though no such laws had been made or enacted. Borrower for itself and all who may claim through or under it, waives, to the extent it lawfully may do so, any and all homestead rights and, any and all rights to reinstatement, any and all right to have the property comprising the Property marshaled upon any foreclosure of the Lien or mortgage hereof.

(q) Actions and Proceedings. Upon the occurrence and during the continuance of an Event of Default, Lender has the right to appear in and defend any action or proceeding brought with respect to the Property and to bring any action or proceeding, in the name and on behalf of Borrower, which Lender, in its discretion, decides should be brought to protect its interest in the Property.

(r) Bankruptcy. Upon or at any time after the occurrence of an Event of Default, Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to the rejection of any Lease, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the lessee under such Lease under the Bankruptcy Code. If there shall be filed by or against Borrower a petition under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "**Bankruptcy Code**"), and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

(s) Subrogation. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to

the extent of the funds so used, Lender shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Property heretofore held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather are continued in full force and effect in favor of Lender and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness, the performance and discharge of Borrower's obligations hereunder, under the Loan Agreement, the Note and the other Loan Documents and the performance and discharge of the Obligations.

11. APPLICATION OF PROCEEDS. The proceeds of any sale or foreclosure of the Property or any portion thereof or any other sums collected by Lender pursuant to the Note, this Security Instrument or the other Loan Documents, shall be applied to the payment of costs and expenses of foreclosure proceedings with respect to such Property (including reasonable counsel fees and disbursements actually incurred and advertising costs and expenses), the payment of all sums due under the Note and the Loan Documents in such order and priority as Lender shall elect in its sole and absolute discretion with any surplus to Borrower or any other party legally entitled thereto.

12. MISCELLANEOUS.

(a) CERTAIN WAIVERS. TO INDUCE LENDER TO CONSUMMATE THE TRANSACTIONS CONTEMPLATED BY THE NOTE AND THIS SECURITY INSTRUMENT, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, EACH OF LENDER AND BORROWER EXPRESSLY AND IRREVOCABLY HEREBY, IN ADDITION TO AND NOT IN DEROGATION OF ALL OTHER WAIVERS CONTAINED IN THE NOTE, THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS, WAIVE AND SHALL WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY, OR COUNTERCLAIM ASSERTED BY LENDER OR BORROWER WHICH ACTION, PROCEEDING OR COUNTERCLAIM ARISES OUT OF OR IS CONNECTED WITH THIS SECURITY INSTRUMENT, THE NOTE OR ANY OTHER LOAN DOCUMENT.

(b) Recourse; Exculpation. Recourse to the Borrower with respect to any claims arising under or in connection with this Security Instrument shall be limited to the extent provided in Section 18.1 of the Loan Agreement and the terms, covenants and conditions of Section 18.1 of the Loan Agreement are hereby incorporated by reference as if fully set forth in this Security Instrument.

(c) Notices. Any notice, election, request, demand, report or statement which by any provision of this Security Instrument is required or permitted to be given or served hereunder shall be in writing and shall be given or served in the manner and to the Persons required by Section 19.6 of the Loan Agreement.

(d) No Oral Modification. This Security Instrument may not be waived, altered, amended, modified, changed, discharged or terminated orally but only by a written agreement signed by the party against which enforcement is sought.

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(e) Partial Invalidity. In the event any one or more of the provisions contained in this Security Instrument shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included hereunder.

(f) Successors and Assigns. All covenants of Borrower contained in this Security Instrument are imposed solely and exclusively for the benefit of Lender and its successors and assigns, and no other Person shall have standing to require compliance with such covenants or be deemed, under any circumstances, to be a beneficiary of such covenants, any or all of which may be freely waived in whole or in part by Lender at any time if in its sole discretion it deems it advisable to do so. All such covenants of Borrower shall run with the land and bind Borrower, the successors and assigns of Borrower (and each of them) and all subsequent owners, encumbrancers and Tenants of the Property, and shall inure to the benefit of Lender, its successors and assigns.

(g) GOVERNING LAW.

(i) THIS SECURITY INSTRUMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CHOICE OF LAW RULES AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA, PROVIDED HOWEVER, THAT THE PROVISIONS FOR THE CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS CREATED HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SUCH PROPERTY IS LOCATED.

(ii) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS SECURITY INSTRUMENT AND ANY ACTION FOR ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS SECURITY INSTRUMENT, BORROWER HEREBY ACCEPTS, AND BY ITS ACCEPTANCE OF THIS SECURITY INSTRUMENT, LENDER HEREBY ACCEPTS, EACH FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND APPELLATE COURTS FROM ANY THEREOF. BORROWER AND LENDER EACH IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT THE ADDRESS FOR NOTICES SET FORTH HEREIN. BORROWER AND LENDER EACH HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS SECURITY INSTRUMENT BROUGHT IN THE COURTS REFERRED TO ABOVE AND

HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(h) No Waiver. No failure by Lender to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such term or right, power or remedy or of any such breach. No waiver of any breach shall affect or alter this Security Instrument, which shall continue in full force and effect, or shall affect or alter the rights of Lender with respect to any other then existing or subsequent breach.

(i) Entire Agreement. This Security Instrument and the other Loan Documents contain the entire agreement of the parties hereto and thereto in respect of the transactions contemplated hereby and thereby, and all prior agreements among or between such parties, whether oral or written between Borrower and Lender are superseded by the terms of this Security Instrument, the Loan Agreement and the other Loan Documents.

(j) Limitation on Lender's Responsibility. No provision of this Security Instrument shall operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender or Mortgagee, nor shall it operate to make Lender or Mortgagee responsible or liable for any waste committed on the Property by the tenants or any other Person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger. Nothing herein contained shall be construed as constituting Lender or Mortgagee a "mortgagee in possession."

(k) Further Assurances. Borrower, at its own expense, will execute, acknowledge and deliver all such reasonable further documents or instruments including, without limitation, (i) security agreements on any Building Equipment included or to be included in the Property, and (ii) such other documents as Lender from time to time may reasonably request to better assure, transfer and confirm unto Lender the rights now or hereafter intended to be granted to Lender under this Security Instrument or the other Loan Documents. Borrower shall notify Lender in writing no less than thirty (30) days prior to a change of address.

(l) Additional Waivers and Other Matters.

(i) Waiver of Notice. Borrower shall not be entitled to any notices of any nature whatsoever from Lender or Mortgagee except with respect to matters for which this Security Instrument or the Loan Agreement specifically and expressly provides for the giving of notice by Lender or Mortgagee to Borrower and except with respect to matters for which Borrower is not permitted by applicable law to waive its right to receive notice, and Borrower hereby expressly waives the right to receive any notice from Lender or Mortgagee with respect to any matter for which this Security Instrument or the Loan Agreement does not specifically and expressly provide for the giving of notice by Lender or Mortgagee to Borrower.

(ii) Waiver of Statute of Limitations. Borrower hereby expressly waives and releases to the fullest extent permitted by law, the pleading of any statute of limitations as a defense to payment of the Indebtedness or performance of its Obligations.

(iii) Sole Discretion of Lender. Whenever pursuant to this Security Instrument, Lender exercises any right given to it to approve or disapprove, or any arrangement or term is to be satisfactory to Lender, the decision of Lender to approve or disapprove or to decide whether arrangements or terms are satisfactory or not satisfactory shall (except as is otherwise specifically herein provided) be in the sole discretion of Lender and shall be final and conclusive.

(iv) Waiver of Foreclosure Defense. Borrower hereby waives any defense Borrower might assert or have by reason of Lender's failure to make any tenant or lessee of the Property a party defendant in any foreclosure proceeding or action instituted by Lender.

(m) Counterparts. This Security Instrument may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

(n) Merger, Conversion, Consolidation or Succession to Business of Lender. Any Person into which Lender may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which Lender shall be a party, or any Person succeeding to all or substantially all the business of Lender, shall be the successor of Lender hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

(o) No Endorsement. Lender shall not become or be considered to be an endorser, co-maker or co-obligor on the Note or on any other Obligation of Borrower secured by this Security Instrument or otherwise.

(p) Intentionally Omitted.

(q) Mortgagee as Nominee.

(i) Mortgagee is acting as nominee under certain agreements by and between Lender and Mortgagee as the same may have been or may be amended, restated, replaced, supplemented or otherwise modified from time to time.

(ii) Notwithstanding anything to the contrary contained herein or in any other Loan Document, all references herein and in any other Loan Document to "Lender" shall be deemed to collectively or individually (as the context requires) refer to Lender or to Mortgagee acting on behalf of and at the sole direction of Lender in its capacity as Lender's nominee.

(iii) Unless Lender, in its sole discretion, shall determine otherwise, only Lender (and not Mortgagee) shall be deemed to be "Lender" with respect to (i) any consent, determination or similar approval right granted to Lender under the Loan



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Documents (including, without limitation, any consent or similar approval right that is deemed granted if not approved or denied within a specified time period), (ii) any items, documents or other information required to be delivered to Lender under the Loan Documents (other than notices) or (iii) any future funding or other obligations of Lender to Borrower or any affiliate of Borrower under the Loan Documents, if any.

13. STATE SPECIFIC PROVISIONS.

(a) Inconsistencies. In the event of any inconsistency between the terms and conditions of the other articles and provisions of this Security Instrument and this Section 13, the terms and conditions of this Section 13 shall control and be binding.

(b) Section 10 (d)(i) of this Security Instrument is hereby deleted in its entirety and replaced with the following:

Power Of Sale. If an Event of Default shall occur, this Security Instrument shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the land to be sold is located. If there is land to be sold in more than one county, publication shall be made in all counties where the land to be sold 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. The 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. The Lender may bid at any sale held under this Security Instrument and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, 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 obligations of Borrower under this Security Instrument, in any of the Loan Documents or any renewal, extension, modification, consolidation, change, substitution, replacement for restatement or increase of the Note, this Security Instrument or the Loan Documents shall have been paid in full and this Security Instrument shall have been terminated as provided herein. The proceeds of any foreclosure sale pursuant to this Section shall be applied first, to the payment of the costs of said sale, including reasonable attorney's and auctioneer's fees; second, to the payment of the indebtedness hereby secured, whether due or not, with the unpaid interest thereon to the date of sale, and any amount that may be due Lender by virtue of any of the special liens or agreements herein contained; and, third, the balance, if any, to be paid over to Borrower, or as may otherwise be provided by law.

(c) Fixture Filing. This Security Instrument shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Land. The goods are described by item or type in the Granting Clauses of this Security Instrument. The Borrower is the debtor, and the Lender is the secured party. The names of the debtor (Borrower) and the secured party (Lender) are given on the first page of this Security Instrument. This Agreement is signed by the debtor (Borrower) as a fixture filing. The mailing address of the Lender set out in the Notice section of the Loan Agreement is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Borrower set out in the first paragraph of this Security Instrument is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section and in the Granting Clauses of this Security Instrument. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Borrower is a record owner of the real estate.

(d) Mortgage Tax. The maximum amount of the principal debt secured by this Security Instrument, not including funds disbursed to protect the security of this Security Instrument, shall not at any time exceed \$28,116,029.00.


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IN WITNESS WHEREOF, this Security Instrument has been duly executed by
Borrower on the date first hereinabove written.

BORROWER:

DDRTC RIVER RIDGE LLC, a Delaware limited liability
company

By: 
Name:
Title: JOAN U. ALLGOOD
Executive Vice President

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ACKNOWLEDGMENT

STATE OF New York)
COUNTY OF New York)
SS:

On the 20th day of February, in the year 2007, before me, the undersigned, personally appeared Joan U. Atlgood, personally known to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Kerri Difiore

Notary Public

KERRI DIFIORE
Notary Public, State of New York
No. 01DI6134372
Qualified in Kings County
Commission Expires October 3, 2009




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EXHIBIT A
REAL PROPERTY

EXHIBIT "A"


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Parcel I:

Lot 3-A , according to the Survey of River Ridge Plaza Lot 3 Resurvey, as recorded in Map Book 31, page 58, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in that certain Reciprocal Easement and Operating Agreement recorded as Instrument 1999-38039, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in that certain Operation and Easement Agreement recorded as Instrument 1999-38041, in the Probate Office of Shelby County, Alabama, as amended by Scrivener's Affidavit recorded as Instrument 200104-4979 in the Probate Office of Jefferson County, Alabama; and First Amendment to Operation and Easement Agreement recorded as Instrument 20021217000629710, re-recorded in Instrument 200302120000868830 in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Grant of Easements recorded as Instrument 2000-01426, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Construction, Operations, Restrictions and Easement Agreement recorded as Instrument 2001-37114 and 20030512000291030, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in Detention Pond and Drainage Easement recorded as Instrument 20030512000291040, in the Probate Office of Shelby County, Alabama.

Parcel II:

Lot 5, according to the Survey of River Ridge Plaza, as recorded in Map Book 26, page 14, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in that certain Reciprocal Easement and Operating Agreement recorded as Instrument 1999-38039, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in that certain Operation and Easement Agreement recorded as Instrument 1999-38041, in the Probate Office of Shelby County, Alabama, as amended by Scrivener's Affidavit recorded as Instrument 200104-4979 in the Probate Office of Jefferson County, Alabama; and First Amendment to Operation and Easement Agreement recorded as Instrument 20021217000629710, re-recorded in Instrument 200302120000868830 in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Grant of Easements recorded as Instrument 2000-01426, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Construction, Operations, Restrictions and Easement Agreement recorded as Instrument 2001-37114 and 20030512000291030, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in Detention Pond and Drainage Easement recorded as Instrument 20030512000291040, in the Probate Office of Shelby County, Alabama.

continued:

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Parcel III:

Lots 3-B, according to the Survey of River Ridge Plaza Lot 3 Resurvey, as recorded in Map Book 31, page 58, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in that certain Reciprocal Easement and Operating Agreement recorded as Instrument 1999-38039, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in that certain Operation and Easement Agreement recorded as Instrument 1999-38041, in the Probate Office of Shelby County, Alabama, as amended by Scrivener's Affidavit recorded as Instrument 200104-4979 in the Probate Office of Jefferson County, Alabama; and First Amendment to Operation and Easement Agreement recorded as Instrument 20021217000629710, re-recorded in Instrument 200302120000868830 in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Grant of Easements recorded as Instrument 2000-01426, in the Probate Office of Shelby County, Alabama; and

Together with easement rights as contained in Construction, Operations, Restrictions and Easement Agreement recorded as Instrument 2001-37114 and 20030512000291030, in the Probate Office of Shelby County, Alabama.

Together with easement rights as contained in Detention Pond and Drainage Easement recorded as Instrument 20030512000291040, in the Probate Office of Shelby County, Alabama.