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PREPARED AND RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

IMPERIAL CAPITAL BANK
500 North Brand Boulevard, Suite 1500
Glendale, California 91203

Attention: Telma Altoon

INSTRUCTIONS TO RECORDER:

Index this document as (1) a Mortgage; (2) an assignment
of rents; (3) a security agreement; and (4) a fixture filing

☐ IF THE PRECEDING BOX IS CHECKED, THIS IS A
CONSTRUCTION MORTGAGE



(Space above this line for Recorder's use)

**STATE OF ALABAMA
COUNTY OF SHELBY**

**MORTGAGE, FIXTURE FILING, ASSIGNMENT OF
RENTS, AND SECURITY AGREEMENT**

THIS MORTGAGE, FIXTURE FILING, ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT (the "Mortgage") is made on **June 21, 2007**, by **Tower Capital, LLC, a California limited liability company, as to an undivided seventy percent (70%) interest, and Forest Square, LLC, an Alabama limited liability company, as to an undivided thirty percent (30%) interest, as tenants in common** (collectively, the "Mortgagor"), whose address is **c/o Rabin Michael 814 South Westgate Avenue #127, Los Angeles, California 90049** for the benefit of **IMPERIAL CAPITAL BANK** ("Mortgagee"), whose principal office is located at 500 North Brand Boulevard, Suite 1500, Glendale, California 91203.

For valuable consideration received by Mortgagor, Mortgagor does hereby irrevocably convey, warrant, grant, bargain, sell, assign, transfer, pledge and set over unto Mortgagee all of Mortgagor's present and future estate, right, title and interest in and to the following described property (collectively, the "Property"):

(A) The following described real property located in the City of **Alabaster**, County of **Shelby**, State of **Alabama** (the "Land"):

See Exhibit "A" attached hereto and incorporated herein by this reference.

The street or common address of the Land is **104-144 Market Center Drive, Alabaster, Alabama 35007**; and

(B) All Buildings, Fixtures, Easements, Rents and Profits, Development Rights, Water Rights, Mineral Rights, and Crops (as each of such terms is defined in Article 1 of this Mortgage).

TO HAVE AND TO HOLD the Property and all parts, rights, and appurtenances thereof and thereto, to the use and benefit of Mortgagee and the successors, successors-in-title and assigns of Mortgagee, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Property as aforesaid and has good right to convey the same, that the same are

unencumbered except for those matters expressly set forth in Exhibit "A" hereto, and Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to those matters set forth in said Exhibit "A."

THIS MORTGAGE SECURES THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (collectively, the "Obligations") in such order of priority as Mortgagee may from time to time elect:

(1) Payment and performance of Mortgagor's indebtedness and obligations under the promissory note of even date herewith in the original face principal amount of **One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000.00)** executed by Mortgagor and payable to Mortgagee, or order, and all extensions, renewals, modifications, and replacements thereof (collectively, the "Note");

(2) Payment and performance of Mortgagor's indebtedness and obligations under this Mortgage and all extensions, renewals, and modifications of this Mortgage;

(3) Payment of all sums of money which may be advanced by, or otherwise due to, Mortgagee under any provision of this Mortgage or to protect the security of this Mortgage, with interest thereon at the rate provided in this Mortgage;

(4) Payment and performance of Mortgagor's indebtedness and obligations under the Building Loan Agreement or Loan Agreement, if any, of even date herewith between Mortgagor and Mortgagee which states that it is secured by this Mortgage and all extensions, renewals, and modifications thereof (the "Loan Agreement");

(5) Payment and performance of all indebtedness and obligations owing on account of each future loan that Mortgagee may elect to make to Mortgagor or the record owner of the Land when the promissory note evidencing such loan specifically states that it is secured by this Mortgage, and all extensions, renewals, modifications, and replacements thereof (such loans are referred to individually as a "Future Advance" and collectively as the "Future Advances"); and

(6) Payment and performance of Mortgagor's indebtedness and obligations under all other existing and future agreements executed by Mortgagor in connection with the loan evidenced by the Note (the "Loan") or in connection with any Future Advance, with interest thereon at the rate provided in such agreements, when such agreement specifically states that it is secured by this Mortgage, and all extensions, renewals, and modifications of such agreements.

FOR VALUABLE CONSIDERATION, Mortgagor agrees as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Mortgage, the following terms shall have the following definitions:

1.1 Books and Records. "Books and Records" means all books and records relating to the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including (a) records reflecting the results of operation of the Property; (b) all Leases and other documents relating to the Property; and (c) Mortgagor's federal income tax returns for the year in which the Loan is made and each subsequent year that the Loan is outstanding.

1.2 Buildings. "Buildings" means all buildings, structures and other improvements now existing or hereafter located on the Land.

1.3 Commercial Project. "Commercial Project" means a multifamily residential project or a retail, commercial or industrial project.

1.4 Condemnation Claims. "Condemnation Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Mortgagor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any condemnation of the Property or other taking of the Property for public or quasi-public use by eminent domain or to the transfer of the Property in lieu of condemnation or any such taking.

1.5 Condemnation Proceeds. "Condemnation Proceeds" means all proceeds of the Condemnation Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Condemnation Claims.

1.6 Covenants and Restrictions. "Covenants and Restrictions" means all covenants, conditions, restrictions, equitable servitudes, and all other similar matters now or hereafter affecting the Property, including any condominium, planned unit development, or cooperative apartment declaration of covenants, conditions and restrictions, by-laws, articles, rules, and regulations to which Mortgagor or the Property is subject or bound.



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- 1.7 Crops.** "Crops" means all crops, trees and vines now or hereafter growing on the Land.
- 1.8 Development Rights.** "Development Rights" means all existing and future development rights, development credits, air rights, and options of any kind relating to the Property.
- 1.9 Easements.** "Easements" means all existing and future easements, rights of way, licenses, and similar rights relating or appurtenant to the Property and all existing and future rights in or to streets, roads, sidewalks, alleys, strips and gores adjoining or used in connection with the Property.
- 1.10 Event of Default.** "Event of Default" means any of the events described in Article 3 of this Mortgage.
- 1.11 Fixtures.** "Fixtures" means all fixtures, machinery, equipment, building materials, and appliances now or hereafter located in, on, attached or affixed to, or used in connection with the Land or the Buildings, including all systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light; elevators, escalators and related machinery and equipment; fire prevention and extinguishing equipment and water sprinkler systems; security and access control equipment; water heaters, showers, bathtubs, tanks, pumps, toilets, sinks, pipes, and other plumbing fixtures and equipment; stoves, ranges, refrigerators, dishwashers, and disposals; laundry equipment; engines, motors, generators, boilers, furnaces, and incinerators; wall, window, and floor coverings, including screens, shades, drapes, and awnings; partitions, doors, windows, cabinets, bookcases, and hardware; janitorial, maintenance, and waste and rubbish removal equipment; recreational equipment; signs; switchboards, telephone systems, and other communication equipment; television, radio, and computer cables, antennae, and other equipment; chandeliers and other light fixtures; trees, plants and other landscaping; and all attachments, substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing, all of which shall conclusively be deemed to be part of the Land and Buildings and conveyed by this Mortgage, whether or not affixed or attached to the Land.
- 1.12 Governmental Authorities.** "Governmental Authorities" means (a) the United States; (b) the state, county, city, or other political subdivision in which the Land is located; (c) all other governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities or authorities; and (d) all judicial authorities and public utilities having or exercising jurisdiction over Mortgage or the Property.
- 1.13 Governmental Permits.** "Governmental Permits" means all permits, approvals, and authorizations now or hereafter issued by all Governmental Authorities for or in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property, including grading permits, foundation permits, building permits, tentative subdivision map approvals, zone changes, zone variances, conditional use permits, temporary certificates of occupancy, and final certificates of occupancy.
- 1.14 Governmental Requirements.** "Governmental Requirements" means all existing and future laws, ordinances, rules, regulations, orders, and requirements of all Governmental Authorities applicable to Mortgage or the Property, including those respecting the design, construction, improvement, development, use, ownership, operation, maintenance, repair, or marketing of the Property.
- 1.15 Ground Lease.** "Ground Lease" means any lease agreement creating a leasehold estate which is now or hereafter encumbered by this Mortgage.
- 1.16 Guaranties.** "Guaranties" means the guaranty agreement or agreements executed by the Guarantors.
- 1.17 Guarantors.** "Guarantors" means the Person or Persons, if any, now or hereafter guaranteeing payment of the Note or payment or performance of any or all of the other Obligations.
- 1.18 Impositions.** "Impositions" means all (a) Taxes; (b) Insurance Premiums; (c) gas, electricity, water, sewer, and other utility charges which are incurred for the benefit of the Property or which may become a lien against the Property; (d) assessments, charges, and fees imposed pursuant to any Covenants and Restrictions; (e) assessments, charges and fees payable with respect to any Easements, Water Rights or Development Rights; (f) principal, interest, and other amounts payable in connection with any Liens; (g) rents and other amounts payable under any Ground Lease; and (h) such other taxes, charges, premiums, assessments and impositions relating to the Property, the payment of which Mortgagee determines to be necessary to protect Mortgagee's security for the Obligations.
- 1.19 Improvements.** "Improvements" means the Buildings and Fixtures, collectively.
- 1.20 Insurance Claims.** "Insurance Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature which Mortgage now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise under any policy of insurance which Mortgage maintains with respect to the Property or which Mortgage is required to maintain under this Mortgage (collectively, the "Insurance Policies").

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1.21 Insurance Proceeds. "Insurance Proceeds" means all proceeds of the Insurance Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Insurance Claims.

1.22 Insurance Premiums. "Insurance Premiums" means all premiums and other amounts payable in connection with procuring or maintaining the Insurance Policies.

1.23 Leases. "Leases" means all existing and future rental agreements, leases, licenses, concessions, occupancy agreements, and other similar agreements affecting the Property, including all subleases at any level.

1.24 Liens. "Liens" means all mortgages, mechanics' liens, and other liens and encumbrances of every kind and nature, other than this Mortgage, now or hereafter affecting the Property.

1.25 Loan Documents. "Loan Documents" means the Note, this Mortgage, the Loan Agreement, if any, all promissory notes evidencing any Future Advances, all other documents secured by this Mortgage, and all other documents executed by Mortgagor or any of the Guarantors and delivered to Mortgagee at Mortgagee's request in connection with the Loan or any Future Advance, and all extensions, renewals, modifications, and replacements of such documents.

1.26 Mineral Rights. "Mineral Rights" means all existing and future right, title, and interest in and to all minerals, oil, gas and other hydrocarbon substances in or on the Property.

1.27 Person. "Person" means any natural person or any entity, including any corporation, partnership, joint venture, limited liability company, trust, unincorporated organization, trustee, or Governmental Authority.

1.28 Property Claims. "Property Claims" means all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation, and damages of every kind and nature (other than the Insurance Claims and Condemnation Claims) which Mortgagor now has or which may hereafter accrue against any Person, whether arising in tort, by contract or statute, or in any other manner, which in any way directly or indirectly relate to or arise out of any or all of the following: (a) the Property; (b) any existing or future fact, matter, occurrence, or transaction relating to the Property; or (c) the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

1.29 Property Proceeds. "Property Proceeds" means all proceeds of the Property Claims, including all money, deposit accounts, accounts, notes, drafts, instruments, documents, and all other tangible and intangible property resulting from the payment, collection of, recovery on, or other disposition of any or all of the Property Claims.

1.30 Rents and Profits. "Rents and Profits" means all existing and future rents, royalties, issues, profits, proceeds, revenues, income and other benefits of the Property and all Leases, including all security deposits and prepaid rent.

1.31 Taxes. "Taxes" means (a) all taxes, bonds, levies and assessments now or hereafter affecting the Property, including all general and special real and personal property taxes, bonds, and assessments affecting the Property; (b) all other taxes, bonds, levies and assessments which now are or hereafter may become a lien on the Property, including all income, profits, franchise, withholding, and gross receipt taxes; (c) all other charges now or hereafter imposed on or assessed against the Property by any Governmental Authority or arising with respect to the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property; and (d) all taxes, bonds, levies, and assessments now or hereafter imposed by any Governmental Authorities on Mortgagee by reason of its respective interests in this Mortgage, the Note, or any promissory note evidencing a Future Advance, excluding any franchise, estate, inheritance, income, or similar tax imposed on Mortgagee.

1.32 Tenants. "Tenants" means all tenants and occupants of the Property under the Leases.

1.33 Water rights. "Water rights" means all existing and future water, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), and all water stock relating to the Property.

ARTICLE 2

COVENANTS OF MORTGAGOR

2.1 Performance of Secured Obligations. Mortgagor shall pay and perform each and all of the Obligations in accordance with their respective terms.

2.2 Preservation of the Property. Mortgagor (a) shall maintain the Property in good condition and repair; (b) shall promptly repair and restore in a good and workmanlike manner any part of the Property which may be damaged or destroyed, whether or not any Insurance Proceeds are adequate to pay for the cost of such repair and restoration; (c) shall comply and cause the Property to comply with the provisions of all Insurance Policies; (d) shall comply and cause the Property to comply with all Governmental Requirements; (e) shall comply and cause the Property to comply with all Covenants and Restrictions; (f) shall



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maintain in effect all Governmental Permits; (g) shall not initiate, join in or consent to any change in the zoning, general plan, specific plan, or any other land use classification affecting the Property or any Covenant or Restriction without the prior written consent of Mortgagee; (h) shall not remove, demolish, improve, add to, or alter the Improvements (excluding non-structural alterations which preserve or increase the value of the Property) or change the character or use of the Property without the prior written consent of Mortgagee; (i) shall not commit or permit any waste respecting the Property or impairment of the Property; (j) shall not abandon the Property; (k) shall not commit or permit any act upon the Property in violation of any Governmental Requirements; (l) shall promptly complete in a good and workmanlike manner all Improvements which Mortgagor commences to construct on the Land; and (m) shall paint, cultivate, irrigate, fertilize, fumigate, prune, maintain and do all other acts, in a timely and proper manner, which from the character or use of the Property may be necessary or appropriate to preserve, protect and maintain the value of the Property.

2.3 Insurance. Mortgagor shall at all times maintain in full force (a) fire and extended coverage all risk insurance, together with such endorsements as Mortgagee may require, including vandalism, malicious mischief, earthquake, and flood coverage; (b) commercial general liability insurance; and (c) such other types of insurance as may from time to time be required by Mortgagee, including business interruption insurance, rental loss insurance, and workers' compensation insurance. Each of the Insurance Policies, including the amounts, form, coverage, deductibles, insurer and loss payable and cancellation provisions, shall be acceptable to Mortgagee. Without limiting any of the terms of this Section, (i) each of the Insurance Policies shall provide that it may be canceled or modified only upon not less than thirty (30) days prior written notice to Mortgagee; (ii) the fire and extended coverage and other casualty insurance policies which Mortgagor is required to maintain under this Mortgage shall contain a mortgagee's loss payable endorsement acceptable to Mortgagee naming Mortgagee as loss payee and shall be written with liability in an amount equal to the greater of the original face principal amount of the Note or the full replacement cost of the Improvements, subject to applicable legal limitations on the amount of such insurance which may be required by Mortgagee; and (iii) the comprehensive general liability policy which Mortgagor is required to maintain shall name Mortgagee as an additional insured and shall be primary and noncontributing with any insurance maintained by Mortgagee.

2.4 Insurance Policies. Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee the originals of all Insurance Policies together with receipts for the full payment of all Insurance Premiums, and Mortgagee shall have the right to hold such policies as long as any Obligations are outstanding. By approving, disapproving, accepting, obtaining or failing to obtain any Insurance Policies, Mortgagee shall not be liable or responsible for the suitability, adequacy, enforceability, validity, amount, form, or content of any Insurance Policies, the solvency of any insurer, or the collection of any Insurance Proceeds, and Mortgagor shall at all times have full responsibility for all of such matters. Not later than thirty (30) days prior to the expiration of each of the Insurance Policies, Mortgagor shall deliver to Mortgagee a policy or policies renewing or extending the expiring Insurance Policies together with written evidence showing payment of the Insurance Premiums for such policies. If Mortgagor fails to deliver any of the Insurance Policies to Mortgagee in accordance with this Mortgage, or if any of the Insurance Policies is canceled, Mortgagee, without notice to or demand upon Mortgagor, shall have the right to obtain such insurance in such form, content and amount and with such insurer as Mortgagee determines to be necessary or appropriate to protect its interest. Without limiting any other provision of this Mortgage, all premiums and other costs and expenses paid or incurred by Mortgagee in connection with Mortgagee's obtaining any Insurance Policies under this Section shall be payable by Mortgagor to Mortgagee on Mortgagee's demand. Notwithstanding anything to the contrary contained in the Loan Documents, if Mortgagee elects to obtain any Insurance Policies as a result of Mortgagor's breach of its obligation to maintain such Insurance Policies in accordance with the terms of this Mortgage or the other Loan Documents (including as a result of Mortgagor's failure to timely provide Mortgagee with evidence acceptable to Mortgagee of the existence, renewal or extension of any Insurance Policies), then in addition to all other amounts that may be payable by Mortgagor to Mortgagee under the terms of this Mortgage as a result of such breach, Mortgagor shall also pay to Mortgagee upon Mortgagee's demand a non-refundable administrative fee equal to \$100.00 (the "Administrative Fee"). Mortgagor agrees that the actual administrative costs and expenses incurred by Mortgagee because of any failure by Mortgagor to maintain the Insurance Policies or to provide Mortgagee with evidence of the existence, renewal or extension of any Insurance Policies are extremely difficult and impracticable to ascertain, and the Administrative Fee described in this Section represents a reasonable attempt to fix such costs and expenses under the circumstances existing at the time this Mortgage is executed. If Mortgagor fails to timely provide Mortgagee with evidence acceptable to Mortgagee of the existence, renewal or extension of any Insurance Policies, such Administrative Fee and the other amounts provided for in this Section nevertheless shall be payable by Mortgagor to Mortgagee upon Mortgagee's demand, even if Mortgagor has in fact obtained, renewed, or extended such Insurance Policies. Mortgagee's acceptance of any such Administrative Fee shall not constitute a waiver of any breach by Mortgagor of its obligation to maintain the Insurance Policies or of any of the other terms of the Loan Documents and shall not affect Mortgagee's right to enforce any of its rights and remedies against Mortgagor or any other Person under the Loan Documents. Neither Trustee nor Mortgagee shall be obligated to obtain or maintain any policy of insurance with respect to the Property. Mortgagee shall not be obligated to obtain or maintain any policy of insurance with respect to the Property. All Insurance Policies relating to the Property and all unearned Insurance Premiums shall automatically inure to the benefit of and be deemed to be assigned to the grantee of the Property at any judicial foreclosure sale under this Mortgage or by any deed in lieu of foreclosure under this Mortgage.

2.5 Assignment of Insurance Claims and Proceeds. To secure the Obligations, Mortgagor grants, transfers, and assigns to Mortgagee the Insurance Claims and Insurance Proceeds.

2.6 Assignment of Condemnation Claims and Proceeds and Other Claims. To secure the Obligations, Mortgagor grants, transfers, and assigns to Mortgagee the Condemnation Claims, Condemnation Proceeds, Property Claims, and Property Proceeds.

2.7 Payment of Proceeds. Mortgagor shall cause all Insurance Proceeds, Condemnation Proceeds and Property Proceeds (collectively, the "Proceeds") to be paid or delivered directly to Mortgagee. Mortgagee shall at all times have the right but

not the obligation (a) to demand, collect, accept, receive and give receipts for any and all of the Proceeds; and (b) to direct any Person to pay or deliver any or all of the Proceeds directly to Mortgagee. Nothing contained in this Mortgage shall be deemed to obligate Mortgagee to make any inquiry as to the sufficiency of any Proceeds received by Mortgagee. If for any reason Mortgagor receives any Proceeds, Mortgagor (i) shall immediately pay or deliver such Proceeds to Mortgagee in the original form in which received by Mortgagor; (ii) shall endorse, with recourse, all checks, drafts, money orders, notes, and other instruments or documents representing such Proceeds to Mortgagee; (iii) shall not commingle such Proceeds with any of Mortgagor's other funds or property; and (iv) shall hold such Proceeds separate and apart from its other funds and property in an express trust for Mortgagee until paid or delivered to Mortgagee.

2.8 Prosecution and Settlement of Claims. Prior to the occurrence of any Event of Default, Mortgagor shall have a license to prosecute and enforce the Insurance Claims, Condemnation Claims, and Property Claims (collectively, the "Claims"). Mortgagee shall at all times have the right to appear in, defend, and prosecute any action or proceeding arising out of or relating to any or all of the Claims if Mortgagee determines that such action is necessary or appropriate to protect Mortgagee's interest in connection with the Obligations. Upon the occurrence of an Event of Default, Mortgagor's license to prosecute and enforce the Claims shall be revoked upon, and to the extent provided in, notice by Mortgagee to Mortgagor. Following such revocation, Mortgagee, at its option, shall have the exclusive right to prosecute and enforce any or all of the Claims to the extent provided in Mortgagee's notice of revocation and to compromise, adjust, settle or dismiss any or all of the Claims, whether or not Mortgagee has taken possession of the Property. Without Mortgagee's prior written consent, Mortgagor shall not (a) sell, transfer, pledge, hypothecate or otherwise dispose of or abandon any or all of the Claims; or (b) compromise, adjust, settle, or dismiss any or all of the Claims.

2.9 No Liability by Mortgagee. Nothing contained in this Mortgage shall be deemed to obligate Mortgagee to prosecute or enforce any or all of the Claims nor shall Mortgagee have any liability or responsibility for any failure or delay by Mortgagee in prosecuting or enforcing any or all of the Claims or to collect any or all of the Proceeds. Mortgagor shall at all times have the right to determine and follow its own policies and practices in the conduct of its business, subject to the terms and conditions of the Loan Documents. Nothing contained in this Mortgage nor Mortgagee's receipt of any Proceeds shall result in any obligation or liability by Mortgagee for the performance or observance of any of the terms of any document or Insurance Policies relating to any or all of the Claims or the Proceeds.

2.10 Application of Proceeds. Mortgagee, at its option, shall have the right (a) to apply any or all Proceeds received by Mortgagee to any or all of the Obligations in such order and manner as Mortgagee shall determine, whether or not such Obligations are then due and payable and without regard to the adequacy or impairment of the security for the Obligations; (b) to release any or all of the Proceeds received by Mortgagee for payment of the costs of repair or reconstruction of the Property on such terms and conditions as may be acceptable to Mortgagee; or (c) to release any or all of the Proceeds received by Mortgagee to Mortgagor on such terms and conditions as may be acceptable to Mortgagee. If and to the extent that the Note provides for Mortgagor's payment of a prepayment charge, such prepayment charge shall not apply with respect to principal prepayments resulting from Mortgagee's election to apply any Proceeds to the outstanding principal balance of the Note. Provided that no Event of Default has occurred and is continuing, Mortgagee shall permit Insurance Proceeds to be used for the repair and reconstruction of the Project, provided that the cost of such repair or reconstruction does not exceed fifty percent (50%) of the full replacement cost of the Project and the conditions contained in Section 2.11 below are satisfied, as reasonably determined by Mortgagee.

2.11 Release of Proceeds for Reconstruction. Without limiting the generality of Section 2.10 above, Mortgagor agrees that if Mortgagee elects to release any Proceeds for repair or reconstruction of the Property, at Mortgagee's option, such release shall be conditioned on Mortgagor's satisfaction of the following conditions within sixty (60) days after the occurrence of the damage requiring the repair or reconstruction: (a) Mortgagor's deposit with Mortgagee of such funds in addition to the Proceeds as Mortgagee determines to be necessary to pay all direct and indirect costs relating to the repair or reconstruction of the Property; (b) the establishment of a procedure acceptable to Mortgagee for Mortgagee's disbursement of the Proceeds; (c) Mortgagee's receipt and approval of final plans and specifications and a cost breakdown for the repair or reconstruction of the Property; (d) Mortgagee's receipt and approval of (i) a general construction contract for the repair or reconstruction of the Property executed by Mortgagor and a contractor acceptable to Mortgagee; and (ii) payment and performance bonds written on such general contractor issued by a surety acceptable to Mortgagee; (e) evidence acceptable to Mortgagee that (i) the repair and reconstruction of the Property can be completed and a final and unconditional certificate of occupancy for the Property can be issued not later than thirty (30) days before the maturity date of the Note; (ii) upon completion of the repair or reconstruction of the Property, the income from the Property will be sufficient to pay all Impositions, operating expenses of the Property and installment payments due in connection with the Loan and any Future Advances; (iii) leases acceptable to Mortgagee will be in effect or remain in effect upon completion of the repair or reconstruction of the Property; (iv) upon completion of the repair or reconstruction of the Property, the fair market value of the Property will be at least as great as it was prior to the date on which the damage or condemnation occurred as shown in an appraisal acceptable to Mortgagee; (v) there has been no adverse change in the financial condition of Mortgagor or any Guarantors since the date of this Mortgage; and (vi) no Event of Default exists; and (f) such additional conditions as Mortgagee may establish.

2.12 Taxes and Impositions. Mortgagor (a) shall pay all Taxes at least ten (10) days before delinquency; and (b) shall pay all other Impositions when due. Upon Mortgagee's request, Mortgagor shall deliver to Mortgagee receipts and such other substantiating documentation as may be required by Mortgagee to evidence payment of all Impositions by Mortgagor in accordance with this Section.

2.13 Impounds.

(a) **Impound Account.** If Mortgagor fails to pay any of the Impositions when due, upon ten (10) days prior written notice by Mortgagee to Mortgagor, Mortgagee, at its option, shall have the right to require Mortgagor to deposit with Mortgagee, in monthly installments, an amount equal to one-twelfth (1/12th) of the estimated aggregate annual Impositions, as determined by Mortgagee. If Mortgagee exercises its right to require Mortgagor to make such deposits with Mortgagee, Mortgagor shall deliver to Mortgagee all bills, statements, and invoices relating to the Impositions immediately upon Mortgagor's receipt of such items. The amounts deposited by Mortgagor with Mortgagee pursuant to this Section 2.13 (collectively, the "Impound Funds") (i) shall not be deemed to be held by Mortgagee in trust or as agent of Mortgagor; (ii) shall not bear interest, except as otherwise expressly required by law; (iii) shall be applied by Mortgagee to the payment of the Impositions in such order of priority as Mortgagee shall determine, provided Mortgagor has delivered to Mortgagee the appropriate bills, statements and invoices relating to the Impositions not later than thirty (30) days prior to the due date thereof; and (iv) may be commingled by Mortgagee with its general funds. If, at any time within thirty (30) days prior to the due date of any of the Impositions, Mortgagee determines that the Impound Funds then held by Mortgagee are insufficient to pay such Impositions in full, upon Mortgagee's demand, Mortgagor shall deposit with Mortgagee the amount of such deficiency, as determined by Mortgagee. If the Impound Funds held by Mortgagee exceed the amount necessary to discharge the Impositions for which such Impound Funds were deposited, Mortgagee, at its option, may either refund such excess to Mortgagor or may hold such excess and reduce proportionately the periodic deposits required to be made by Mortgagor for payment of the Impositions.

(b) **Security Interest.** Mortgagor grants a security interest to Mortgagee in all Impound Funds deposited by Mortgagor with Mortgagee under this Section 2.13 to secure the Obligations. Upon the occurrence of any Event of Default, Mortgagee, at its option and without regard to the adequacy of any other collateral securing the Obligations, shall have the right to apply any or all of the Impound Funds to any or all of the Obligations in such amounts and order as Mortgagee may determine.

(c) **Assignment; Reconveyance.** If Mortgagee assigns this Mortgage, Mortgagee shall have the right to transfer all Impound Funds held by Mortgagee to Mortgagee's assignee. Upon such transfer, Mortgagee shall have no further liability of any kind with respect to the Impound Funds, and Mortgagee's assignee shall be deemed to have assumed all liabilities of Mortgagee with respect to the Impound Funds. Following full payment and performance of all of the Obligations and the reconveyance of the Property under this Mortgage, Mortgagee shall refund to Mortgagor any Impound Funds then held by Mortgagee.

(d) **No Liability for Insufficient Impound Funds.** Nothing contained in this Section 2.13 shall be deemed (i) to require Mortgagee to pay any amounts on account of any Impositions in excess of the Impound Funds held by Mortgagee; or (ii) to impair, prejudice or otherwise affect any of Mortgagee's rights or remedies under this Mortgage or under applicable law to pay any or all of the Impositions if the Impound Funds then held by Mortgagee are insufficient for such purposes and to add the amount paid by Mortgagee to the Obligations.

2.14 Absolute Assignment of Rents and Profits.

(a) **Absolute Assignment.** Mortgagor absolutely, irrevocably and unconditionally grants, transfers and assigns to Mortgagee all Rents and Profits. Prior to the occurrence of an Event of Default, Mortgagor shall have a license to collect and retain on the terms of this Section 2.14 all Rents and Profits as they become due and payable. Upon the occurrence of an Event of Default, Mortgagor's license to collect the Rents and Profits shall automatically be revoked without notice to Mortgagor. Following such revocation, Mortgagee shall be entitled to collect and retain all Rents and Profits, whether or not Mortgagee has taken possession of the Property, and Mortgagor shall immediately pay or deliver to Mortgagee any Rents and Profits then held or thereafter collected by Mortgagor. All Rents and Profits collected by or on behalf of Mortgagee may be applied by Mortgagee to the Obligations in such order and amounts as Mortgagee may determine. If Mortgagee elects to seek the appointment of a receiver following the occurrence of an Event of Default, Mortgagor irrevocably and unconditionally consents to the appointment of a receiver without regard to the adequacy of the security for any of the Obligations. Notwithstanding anything to the contrary contained in this Mortgage, the assignment of Rents and Profits contained in this Section is an absolute assignment and not an assignment as security. Neither the assignment of Rents and Profits contained in this Section nor any action taken by Mortgagee to collect the Rents and Profits shall be deemed to make Mortgagee a mortgagee-in-possession of the Property or shall be deemed to render Mortgagee directly or indirectly liable or responsible for (i) the use, control, condition, care, operation, occupancy, management, repair, or leasing of the Property; (ii) the production of Rents and Profits from the Property; or (iii) the performance or observance of any or all of Mortgagor's duties, obligations, representations, or warranties under any Leases or other agreements relating to the Rents and Profits. Mortgagee shall have no responsibility or liability of any kind for any failure or delay by Mortgagee in enforcing any of the terms or conditions of this Section 2.14.

(b) **Applications of Rents and Profits Prior to Revocation of License.** Mortgagor shall apply the Rents and Profits to the payment of all reasonable and necessary operating costs and expenses of the Property, installment payments due in connection with the Loan and any Future Advances, payment of Impositions, and a reasonable reserve for future reasonable and necessary expenses, repairs and replacements relating to the Property before using the Rents and Profits for any other purpose which does not directly benefit the Property.

(c) **Notices to Tenants.** Upon revocation of the license described in Section 2.14(a) above, Mortgagor irrevocably authorizes and directs all Tenants under the Leases to comply with any notice or demand by Mortgagee for payment to Mortgagee of any Rents and Profits or for the performance of any of the Tenant's other respective obligations under the Leases, regardless of any conflicting demand by Mortgagor or notice by Mortgagor to any Tenant that Mortgagee's demand is invalid or

wrongful. No Tenant shall have any duty to inquire as to whether any default by Mortgagor has occurred under the Loan Documents in connection with any notice or demand by Mortgagee under this Section.

2.15 Sales, Transfers, and Further Encumbrances. Mortgagee shall have the right, at its option and without notice to or demand on Mortgagor, to declare any or all Obligations to be immediately due and payable if any of the following events occurs without Mortgagee's prior written consent: (a) the sale, conveyance, transfer, mortgage, encumbrance, lease or alienation of all or any part of the Property or any interest in the Property, whether voluntary or involuntary, or Mortgagor's grant of any option or agreement to effect any such transaction; (b) if Mortgagor or any General Partner or Manager of Mortgagor is a partnership, the admission, withdrawal, retirement or removal of any general partner of Mortgagor or any of Mortgagor's General Partners or Managers, or the sale or transfer of more than twenty-five percent (25%) of the beneficial interests in Mortgagor or any of Mortgagor's General Partners or Managers; (c) if Mortgagor or any General Partner or Manager of Mortgagor is a corporation, the sale or transfer of an aggregate of more than twenty-five percent (25%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Mortgage; (d) if Mortgagor or any General Partner or Manager of Mortgagor is a limited liability company, the appointment, withdrawal, retirement or removal of any Manager of Mortgagor or any of Mortgagor's General Partners or Managers or the sale or transfer of more than twenty-five percent (25%) of the beneficial interests in Mortgagor or any of Mortgagor's General Partners or Managers; (e) if Mortgagor or any of Mortgagor's General Partners or Managers is a corporation, partnership, or limited liability company, the dissolution or liquidation of Mortgagor or any of Mortgagor's General Partners or Managers; or (f) any change in the character or use of all or part of the Property, including drilling for or the extraction of oil, gas or any other hydrocarbon substance or the lease of all or any part of the Property for any such purpose. Without limiting the generality of any provision of this Mortgage (including Section 6.8 below), Mortgagee's consent to any or all of the events described in this Section may be withheld by Mortgagee in its sole and absolute discretion. Mortgagee's consent to any event described in this Section shall not be deemed to be a consent to, or a waiver of the right to require such consent for, any other event. For purposes of this Mortgage, (i) the term "partnership" includes a general partnership, limited partnership, limited liability partnership, and joint venture; and (ii) the term "Manager" means any Person who is acting as a manager of a limited liability company, including any member who is acting in such capacity.

2.16 Request for Mortgagee's Consent to Transfers. All requests by Mortgagor for Mortgagee's consent under Section 2.15 above (a) shall specifically describe the transaction with respect to which Mortgagee's consent is requested; (b) shall be delivered to Mortgagee not less than sixty (60) days before Mortgagor proposes to take the action with respect to which Mortgagee's consent is requested; (c) shall be accompanied by complete and accurate copies of all documents relating to the transaction with respect to which Mortgagee's consent is requested, including financial statements and other information regarding the proposed transferee; and (d) shall be accompanied by a non-refundable review fee payable to Mortgagee in an amount required by Mortgagee, which amount shall not be less than \$1,500. Mortgagor acknowledges and agrees that Mortgagee's right to withhold its consent, in its sole and absolute discretion, to any or all of the events described in Section 2.15 above is based, in part, on the fact that Mortgagor's particular financial condition, credit history, character, experience, ability and expertise, as represented by Mortgagor to Mortgagee, were material and important factors in Mortgagee's decision to make the Loan, and that Mortgagee will continue to rely on such matters to insure satisfactory compliance with the Loan Documents during the entire term of the Loan. If Mortgagee, in its sole and absolute discretion, consents to any of the transactions described in Section 2.15 above, (i) such consent shall not be deemed to release Mortgagor or any other Person liable for payment or performance of the Obligations, and Mortgagor and such Persons shall continue to remain liable for payment and performance of the Obligations in accordance with the terms of the Loan Documents; and (ii) such consent shall be conditioned on [A] the payment to Mortgagee of all costs, fees, and expenses incurred by Mortgagee in connection with its review, analysis, and preparation of documents with respect to the proposed transaction, including all attorneys' fees and costs incurred by Mortgagee; and [B] the satisfaction of such other conditions as Mortgagee, in its sole and absolute discretion, may establish in connection with the proposed transaction. Nothing contained in this Section constitutes or shall be construed as an agreement by Mortgagee to consent to any or all of the transactions described in Section 2.15 above or to impair or otherwise affect in any way Mortgagee's right to withhold its consent to any or all of such transactions in Mortgagee's sole and absolute discretion.

2.17 Subordinate Mortgages. If Mortgagee consents to any other Lien on the Property ("Subordinate Mortgage"), or if the prohibition on Mortgagor's execution of any Subordinate Mortgage is unenforceable under applicable law, Mortgagor shall not execute any Subordinate Mortgage unless Mortgagor has first delivered to Mortgagee a written agreement, acceptable to Mortgagee, executed by the holder of the Subordinate Mortgage which provides that (a) the Subordinate Mortgage is and shall at all times remain unconditionally subject and subordinate to this Mortgage; (b) if any action or proceeding is commenced to foreclose the Subordinate Mortgage, no Tenant under any Lease shall be named as a defendant in such action or proceeding, nor shall such action or proceeding terminate any Lease, without Mortgagee's prior written consent; (c) all Rents and Profits, whether collected directly by the holder of the Subordinate Mortgage or through a receiver, shall be applied first to the Obligations, second to the payment of the Impositions, and thereafter to payment of maintenance and operating costs relating to the Property; and (d) the holder of the Subordinate Mortgage shall give written notice to Mortgagee not later than ten (10) days prior to commencing any judicial action or proceeding to foreclose the Subordinate Mortgage. Mortgagor acknowledges and agrees that Mortgagee's determination as to whether or not to grant its consent to any proposed Subordinate Mortgage shall be based upon, among other things, the debt coverage ratio of the combined Obligations secured by this Mortgage and the indebtedness to be secured by such proposed Subordinate Mortgage, in addition to such other factors as Mortgagee, in its sole and absolute discretion, shall determine to be relevant or appropriate.

2.18 Fixtures. Notwithstanding Section 2.15 above, Mortgagor may from time to time replace any Fixtures constituting a part of the Property, provided that prior to the replacement of such Fixtures, Mortgagor shall provide Mortgagee with evidence acceptable to Mortgagee that (a) the replacement property for such Fixtures is at least equivalent in value, character, and quality to the Fixtures being replaced; (b) Mortgagor has good and marketable title to such replacement property free and clear of all liens,



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claims, and interests other than the lien of this Mortgage; and (c) this Mortgage shall constitute a first lien on such replacement Property.

2.19 Permitted Leasing. Notwithstanding Section 2.15 above, Mortgagor shall have the right to enter into Leases without Mortgagee's prior written consent, provided that all of the following conditions are satisfied: (a) the term of such Lease, including any extension or renewal options, does not exceed a total of five (5) years; (b) the form used for such Lease has been approved in writing by Mortgagee prior to Mortgagor's execution of the Lease, such form has not been modified, amended or supplemented in any material respect, and Mortgagee's approval of such form has not been modified or revoked at the time the Lease is executed by Mortgagor; (c) the rental and all other charges under such Lease are not more favorable to the Tenant than pro forma rental and other charges which have been approved in writing by Mortgagee not more than six (6) months prior to Mortgagor's execution of such Lease, and such approval has not been modified or revoked at the time the Lease is executed by Mortgagor; (d) such Lease is unconditionally subordinate to this Mortgage and contains an attornment provision consistent with Section 2.21 below; (e) no Event of Default has occurred prior to Mortgagor's execution of such Lease; and (f) Mortgagor provides Mortgagee with an accurate and complete copy of such Lease within five (5) business days after such Lease is executed by Mortgagor.

2.20 Leases. Upon Mortgagee's request, Mortgagor shall execute, acknowledge and deliver to Mortgagee an absolute and unconditional assignment acceptable to Mortgagee of all of Mortgagor's interests in all Leases and all guaranties of and security for the Tenants' respective obligations under the Leases.

2.21 Attornment at Mortgagee's Option. Each Tenant who enters into a Lease for the Property after the date of recordation of this Mortgage (each such Lease is referred to as a "Subordinate Lease") and who has not entered into a written non-disturbance and attornment agreement with Mortgagee shall be deemed to have agreed to attorn to Mortgagee and accept Mortgagee as the landlord under its Lease on the terms of this Section. If Mortgagee acquires title to the Property by judicial foreclosure under this Mortgage, Mortgagee, at its option, shall have the right to require any or all Tenants under Subordinate Leases to attorn to and accept Mortgagee as the landlord under such Tenant's Subordinate Lease (the "Attornment Option") by giving written notice to such Tenant within thirty (30) days after the date on which Mortgagee acquires title to the Property (the "Acquisition Date"). If Mortgagee exercises the Attornment Option with respect to any Subordinate Lease, such attornment shall be effective and self-operative as of the Acquisition Date without the execution of any further documents on the part of the Tenant, Mortgagee, or any other party, and the Tenant under the Subordinate Lease shall be bound to Mortgagee under all of the terms, covenants, and conditions of the Subordinate Lease for the remaining balance of the term thereof, with the same force and effect as if Mortgagee were the landlord under such Lease. Whether or not Mortgagee exercises its Attornment Option with respect to any Subordinate Lease, Mortgagee (a) shall not be liable for any act or omission of any prior landlord under any Subordinate Lease, including Mortgagor; (b) shall not be subject to any offset, defense, or claim which any Tenant may have against any prior landlord under any Subordinate Lease, including Mortgagor; (c) shall not be obligated (i) to return any security deposit now or hereafter paid by any Tenant; (ii) to return any prepaid rent or other amounts prepaid by any Tenant; or (iii) to grant any Tenant a credit for any such security deposit, prepaid rent or other prepaid amounts (excluding monthly rent and other charges which have not been prepaid for more than one month in advance), except to the extent, if any, that Mortgagee has actually and unconditionally received such security deposit, prepaid rent or other prepaid amounts; and (d) shall not be obligated to complete the construction of any or all Improvements. Without limiting the terms of this Section, upon Mortgagee's request, each Tenant under a Subordinate Lease shall execute and deliver to Mortgagee any document which Mortgagee determines to be necessary or appropriate to evidence such Tenant's attornment to Mortgagee on the terms of this Section, including a new lease with Mortgagee on the same terms and conditions as the Subordinate Lease for a term equal to the unexpired term of the Subordinate Lease. Nothing contained in this Section shall be deemed to obligate Mortgagee to recognize any Subordinate Lease or accept an attornment by any Tenant upon Mortgagee's acquisition of title to the Property. If Mortgagee elects not to exercise the Attornment Option within the time period specified in this Section with respect to any Subordinate Lease, such Subordinate Lease and all of the rights, privileges and powers of the Tenant thereunder shall automatically terminate and shall be of no further force or effect from and after the Acquisition Date.

2.22 Compliance with Leases. Mortgagor (a) shall perform all obligations of the landlord under the Leases and shall not permit or suffer any default by Mortgagor under the terms of any of the Leases; and (b) shall diligently enforce all remedies available to Mortgagor in the event of a default by any Tenant under any of the Leases.

2.23 Termination or Modification of Leases. Without Mortgagee's prior written consent, and except as otherwise expressly permitted by the Loan Documents, Mortgagor shall not (a) terminate, cancel, accept a surrender of, modify, amend or waive any of Mortgagor's rights under any of the Leases, except cancellation of a Lease based on a material default by the Tenant thereunder; (b) collect rent under any of the Leases for more than one (1) month in advance; (c) agree to subordinate any of the Leases to any other Lien; (d) discount the rent or other amounts payable under any of the Leases or release any Tenant or any other party liable for the performance of any Tenant's obligations under any of the Leases; (e) consent to any sublease or to the assignment of all or part of any Tenant's interest under the Leases; or (f) in any other manner impair Mortgagee's rights with respect to or interest in the Rents and Profits. Any attempted termination, cancellation, surrender, modification, amendment, or subordination of a Lease in violation of this Section shall be void. Mortgagor shall give immediate written notice to Mortgagee of (i) any material default by any Tenant under any of the Leases; (ii) any notice received by Mortgagor from any Tenant under any of the Leases claiming any default or breach by Mortgagor under such Tenant's Lease; and (iii) any other default by Mortgagor under any of the Leases of which Mortgagor is aware. Upon Mortgagee's request, Mortgagor shall furnish to Mortgagee all information which Mortgagee may require regarding Mortgagor's performance under any or all of the Leases.

2.24 Financial Statements; Books and Records; Estoppel Certificates.

(a) **Financial Statements.** Within ninety (90) days after the close of Mortgagor's fiscal year, Mortgagor shall deliver to Mortgagee a balance sheet and a statement of profit and loss for Mortgagor for such fiscal year. Within ninety (90) days after the close of the fiscal year for (a) each Guarantor; (b) each general partner of Mortgagor ("General Partner"), if Mortgagor is a partnership; (c) each Manager of Mortgagor, if Mortgagor is a limited liability company; and (d) each Person who is affiliated with Mortgagor and who occupies or operates a business on all or a part of the Property ("Affiliate"), Mortgagor shall cause each such Guarantor, General Partner, Manager, and Affiliate to provide Mortgagee with a balance sheet and a statement of profit and loss for such Guarantor, General Partner, Manager and Affiliate for such fiscal year. Mortgagor shall cause all financial statements furnished to Mortgagee under this Section to be certified by the party to whom such statements apply. If Mortgagor or any Guarantor, General Partner or Manager has audited financial statements prepared, Mortgagor shall cause a copy of such audited financial statements to be delivered to Mortgagee within thirty (30) days after such statements are received by Mortgagor or the Person to whom such statements apply. Mortgagor and each Person whose financial statements are provided to Mortgagee under this Section shall, by submitting such statements to Mortgagee, be conclusively deemed to have certified to Mortgagee, in addition to any other certifications contained in such statements, that the financial statements furnished to Mortgagee (i) are accurate and complete in all respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the statements apply as of the date and for the period shown in such statements; and (iii) disclose all suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statements apply. Mortgagor shall provide Mortgagee with such other information concerning the financial condition and affairs of Mortgagor, the Guarantors, the General Partners, Managers, and any Affiliate as Mortgagee may require within ten (10) business days after Mortgagee's request for such information. Mortgagor shall deliver to Mortgagee, or cause to be delivered to Mortgagee, a complete and accurate copy of each federal income tax return filed by Mortgagor and any Guarantor, General Partner, Manager, and Affiliate within thirty (30) days after the date on which each such return is filed. For purposes of this Mortgage, the term "Affiliate" shall include the following Persons who occupy or operate a business on all or part of the Property: [1] any Person who directly or indirectly controls, is controlled by, or is under common control with Mortgagor, any Guarantor, or any General Partner or Manager; [2] any Person, five percent (5%) or more of the outstanding securities or equity interests of which are held beneficially or of record by Mortgagor, any Guarantor, or any General Partner or Manager; [3] any shareholder, officer, director, or agent of Mortgagor, any Guarantor, or any General Partner or Manager; or [4] if Mortgagor, any Guarantor, or any General Partner or Manager is an officer, director, or partner of any partnership or corporation other than Mortgagor, the partnership or corporation for which such Person acts in such capacity. For purposes of this Section, the term "control" means the direct or indirect power or effective ability to cause the direction of the management or policies of any Person, whether through the ownership of voting securities, by contract, family relationship, or otherwise.

(b) **Operating Statements.** If the Property consists of a Commercial Project, within thirty (30) days after the end of each calendar year, and within ten (10) business days after Mortgagee's request from time to time, Mortgagor shall deliver to Mortgagee an accurate and complete annual operating statement for the Property for the immediately preceding calendar year or twelve (12) month period, as applicable. All such operating statements shall be in a form acceptable to Mortgagee and shall contain such detail as Mortgagee may require to provide Mortgagee with a complete and accurate statement of all income, receipts, payments, rents, reimbursements, deposits, and other revenues of every kind from the Property and all operating expenses of every kind paid or incurred with respect to the Property, including taxes, insurance, utilities, salaries, wages and personnel costs, leasing costs and commissions, maintenance and repair costs, legal and accounting fees and expenses, advertising and promotion costs, management fees, and expenditures for capital improvements. Each operating statement delivered by Mortgagor to Mortgagee under this Section shall be signed by Mortgagor and shall be certified as being accurate and complete by Mortgagor. At any time after Mortgagee's receipt of any of the operating statements described in this Section or in Section 2.24(e) below, within ten (10) business days after Mortgagee's request, Mortgagor shall deliver to Mortgagee copies of such invoices, bank statements, canceled checks, and other supporting documentation as Mortgagee may designate to substantiate any or all matters reflected in the operating statements received by Mortgagee.

(c) **Rental Statements.** If the Property consists of a Commercial Project, within thirty (30) days after the end of each calendar year, and within ten(10) business days after Mortgagee's request from time to time, Mortgagor shall deliver to Mortgagee an accurate and complete rent statement for the Property (the "Rent Statement") as of the last day of the most recent calendar month showing (i) the leasing status of all space in the Buildings, including information as to whether such space is vacant or subject to a Lease; and (ii) with respect to each space in the Buildings that has been leased, [A] the name of the Tenant renting the space; [B] the premises occupied by each of the Tenants; [C] the current monthly rent and all other amounts payable by such Tenant under such Lease; [D] the total amount of all prepaid rent received by Mortgagor from such Tenant; [E] the total amount of any security deposit or other deposit received by Mortgagor from such Tenant; [F] the expiration date of the term of such Lease or nature of the tenancy under such Lease; [G] the rent payment dates and the amount of any delinquent rent or other payments owing by such Tenant; [H] extension or renewal options under the Leases; [I] any rent or other concessions granted to, and any claims or offsets asserted by, any Tenants; and [J] such other information as Mortgagee may designate. Each Rent Statement delivered by Mortgagor to Mortgagee under this Section or Section 2.24(e) below shall be signed by Mortgagor and shall be certified as being accurate and complete by Mortgagor. Mortgagor shall provide Mortgagee with the Rent Statements described in this Section whether the Buildings are occupied by one or more Affiliates, a single tenant or user, or multiple tenants or users.

(d) **Books and Records.** If the Property consists of a Commercial Project, Mortgagor shall keep and maintain complete and accurate Books and Records at Mortgagor's principal place of business, and Mortgagor shall not remove the Books and Records from such location without Mortgagee's prior written consent. Mortgagee shall have access to the Books and Records at all reasonable times for the purposes of examination, inspection, verification, copying and for any other reasonable purpose. The Books and Records shall include a complete and accurate record of all costs incurred and payments made in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair, and marketing of the Property. If (i) Mortgagor fails to provide Mortgagee with any annual financial statement or income tax return,

annual operating statement, or annual Rent Statement which Mortgagor is required to deliver to Mortgagee under Sections 2.24(a), 2.24(b) and 2.24(c) above within the required time period; and (ii) Mortgagor fails to cure such failure within thirty (30) days after the date on which the latter of two separate written notices is given by Mortgagee to Mortgagor (the second of which shall be given by Mortgagee not sooner than ten (10) days after the date on which the first of such notices is given) notifying Mortgagor of such failure and of the fact that a late charge will be imposed on Mortgagor if Mortgagor fails to cure the failure within the time provided by this Section, then Mortgagor shall immediately pay a late charge to Mortgagee equal to \$2,500 to compensate Mortgagee for administrative costs and expenses incurred in connection with such late performance by Mortgagor. Mortgagor agrees that the actual damages suffered by Mortgagee because of any failure to deliver the information described in the immediately preceding sentence are extremely difficult and impracticable to ascertain, and the late charge described in this Section represents a reasonable attempt to fix such damages under the circumstances existing at the time this Mortgage is executed. Mortgagee's acceptance of any late charge shall not constitute a waiver of any breach by Mortgagor of its obligation to provide the information required by Section 2.24 of this Mortgage or any of the other terms of the Loan Documents and shall not affect Mortgagee's right to enforce any of its rights and remedies against Mortgagor or any other any Person under the Loan Documents.

(e) **Additional Reports and Information.** If the Property consists of a Commercial Project, within ten (10) business days after Mortgagee's request from time to time, Mortgagor shall deliver to Mortgagee such additional information available to Mortgagor and reports as Mortgagee may request concerning the Property and the business and affairs of Mortgagor or any Guarantor, General Partner, Manager, Tenant, or Affiliate that Mortgagee may request, including (i) a balance sheet and profit and loss statement for the most recent fiscal year and for the most recent fiscal year-to-date quarterly period or periods of Mortgagor or any Guarantor, General Partner, Manager, Tenant, or Affiliate, each of which shall be certified and otherwise prepared in accordance with the requirements of Section 2.24(a) above; (ii) monthly operating statements from Mortgagor for the Property for each calendar month containing the same detailed information required to be included in the operating statements described in Section 2.24(b) above; (iii) monthly Rent Statements from Mortgagor for the Property for each calendar month containing the same detailed information required to be included in the Rent Statements described in Section 2.24(c) above; (iv) copies of all financial statements and reports that Mortgagor sends to its partners or shareholders, if any; (v) copies of all reports which are available for public inspection or which Mortgagor is required to file with any Governmental Authorities; (vi) a certificate executed by Mortgagor, dated within ten (10) business days of the date of delivery of such certificate to Mortgagee, stating that Mortgagor knows of no Event of Default under the Loan Documents or, if an Event of Default exists, stating the nature of the default and what action Mortgagor has taken or proposes to take with respect to such Event of Default; (vii) complete and accurate as-built plans for all Buildings located on the Land; (viii) complete and accurate copies of all Leases and any currently effective letters of intent or proposals to lease all or part of the Property received or made by or behalf of Mortgagor; and (ix) the most recent years' federal income tax returns for Mortgagor or any Guarantor, General Partner, Manager, or Affiliate. All financial statements that are required to be provided to Mortgagee under this Section 2.24 shall be on Mortgagee's standard form of financial statement, unless Mortgagee specifically requires or approves an alternate form, in which case such financial statements shall be provided on such alternate form. Mortgagee may exercise its rights to require additional reports and information under this Section at any time and from time to time on such periodic basis as Mortgagee shall determine to be necessary or appropriate, including annual requests on the anniversary of the date of recordation of this Mortgage.

(f) **Notice of Certain Matters.** Mortgagor shall promptly notify Mortgagee in writing of (i) any claim, demand, right, or Lien relating to the Property which may be adverse to the lien of this Mortgage; (ii) any material loss, depreciation, or adverse change in the value of the Property and any other occurrence which may materially and adversely affect Mortgagee's lien on the Property; (iii) any adverse change in Mortgagor's ability to perform any or all of the Obligations; (iv) any event or condition which constitutes an Event of Default; and (v) any dispute between Mortgagor and any Governmental Authority relating to the Property which may have a material adverse effect on the Property.

(g) **Estoppel Certificates.** Within ten (10) business days after Mortgagee's request, Mortgagor shall deliver to Mortgagee a written statement signed and acknowledged by Mortgagor stating (i) the amount of all monetary Obligations secured by this Mortgage; (ii) whether Mortgagor contends that any offsets or defenses exist against the Obligations secured by this Mortgage and whether Mortgagor has any claims of any kind against Mortgagee; and (iii) such other information with respect to the Obligations or the Loan Documents as Mortgagee may reasonably require, including evidence acceptable to Mortgagee of Mortgagor's compliance with any of the terms of the Loan Documents which are specifically identified in Mortgagee's request. With respect to all statements, information and reports that Mortgagor submits to Mortgagee pursuant to this Mortgage, including pursuant to this Section 2.24, Mortgagor shall be deemed conclusively to have certified to Mortgagee, whether or not such statements, information or reports have been signed by Mortgagor, that [A] such statements, information and reports are accurate and complete in all material respects as of the date or for such periods as may be shown in the statements, information, and reports; and [B] such statements, information, and reports do not omit to state any facts or other information so as to make the statements, information, or reports submitted to Mortgagee misleading in any material respect.

2.25 Inspection. Mortgagee shall have the right at all reasonable times (a) to enter upon and inspect the Property, including any entry which Mortgagee determines is necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Mortgagee under the Loan Documents; (b) to contact any Person to verify any information provided or disclosed by Mortgagor to Mortgagee; and (c) to release such information regarding the Property, Mortgagor, or the Obligations as Mortgagee may determine to be necessary or appropriate in connection with enforcing or exercising any right, remedy or power available to or conferred on Mortgagee under the Loan Documents. Without limiting any other provision of the Loan Documents, Mortgagor, for itself and on behalf of each Manager of Mortgagor, each General Partner of Mortgagor, and each Guarantor, as applicable, irrevocably authorizes Mortgagee, without further notice to or approval of Mortgagor or any other Person, to request and obtain at any time and from time to time (whether before or after the closing of the Loan) any and all information and to make or have made any other investigative inquiries that Mortgagee determines to be necessary or appropriate in connection with Mortgagee's origination, closing, servicing, administration, modification, extension, renewal, transfer,

or enforcement of the Loan or in connection with any of the transactions that are the subject of the Loan Documents, including (i) information bearing on the credit worthiness, credit standing, credit capacity, character, general reputation, experience, or expertise of Mortgagor, each Manager of Mortgagor, each General Partner of Mortgagor, and each Guarantor, respectively, as applicable; and (ii) credit reports and other reports from one or more credit reporting agencies or bureaus bearing on the credit worthiness, credit standing, credit capacity, character, general reputation, experience, or expertise of Mortgagor, each Manager of Mortgagor, each General Partner of Mortgagor, and each Guarantor, respectively, as applicable. Mortgagee shall have no obligation or duty to inspect the Property or the Books and Records or to perform any investigations, and all such inspections and investigations by Mortgagee shall be for Mortgagee's sole benefit and not for the benefit of Mortgagor or any other Person.

2.26 Defense of Actions and Protection of Security by Mortgagor. Mortgagor shall appear in and defend any action or proceeding commenced by any Person other than Mortgagee which affects or which Mortgagee determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Mortgagee's or Mortgagor's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Mortgagee by reason of its interest in the Property. Mortgagor shall promptly commence and diligently prosecute all actions and proceedings which are necessary or appropriate or which Mortgagee determines may be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property Proceeds; or (iii) to preserve, protect, maintain, and defend the Property and Mortgagee's lien thereon.

2.27 Leasehold Estates.

(a) Mortgagor's Obligations under Ground Lease. If this Mortgage encumbers a Ground Lease, Mortgagor (i) shall perform all obligations of the tenant under the Ground Lease and shall not permit or suffer any default by Mortgagor under the terms of the Ground Lease; (ii) shall not amend, modify, terminate, cancel, or surrender its interest in the Ground Lease without Mortgagee's prior written consent; (iii) shall give immediate written notice to Mortgagee of [1] any default by the landlord under the Ground Lease (the "Lessor"); [2] any notice received by Mortgagor from the Lessor of any default by Mortgagor under the Ground Lease; and [3] any other default by Mortgagor under the Ground Lease of which Mortgagor is aware; and (iv) shall furnish to Mortgagee all information which Mortgagee may require regarding Mortgagor's performance under the Ground Lease.

(b) Leasehold Estate. Whenever the context of this Mortgage so requires, the term Property shall be deemed to include the leasehold estate under the Ground Lease and any other interest of Mortgagor in the real property which is the subject of the Ground Lease.

(c) Acquisition of Title. If Mortgagor shall, directly or indirectly, acquire fee title or any other estate or interest in the real property which is the subject of the Ground Lease, this Mortgage shall attach to and encumber such fee title or other estate or interest without further action by Mortgagor or Mortgagee.

(d) No Merger. There shall be no merger of the leasehold estate arising under the Ground Lease with all or any portion of the fee estate in the real property which is the subject of the Ground Lease by reason of the fact that such leasehold estate may be held by any Person who shall hold all or any portion of such fee estate in the real property which is the subject of the Ground Lease, unless Mortgagee shall expressly agree otherwise in writing.

(e) Cure Rights. If Mortgagor fails to perform any of its obligations as tenant under the Ground Lease, Mortgagee shall have the right to pay or perform any or all of such obligations in such manner and to such extent as Mortgagee determines to be necessary or appropriate to preserve or protect the security for the Obligations. All costs and expenses, including without limitation attorneys' fees, incurred by Mortgagee in connection with the payment or performance of such obligations shall be payable by Mortgagor to Mortgagee on Mortgagee's demand, shall bear interest at the rate specified in the Note from the date of expenditure, and shall be deemed to be secured by this Mortgage and all other agreements given by Mortgagor to secure the Note. Nothing contained in this Mortgage shall be construed to obligate Mortgagee to pay or perform any of Mortgagor's obligations under the Ground Lease, and no election by Mortgagee to pay or perform such obligations shall constitute a waiver of any default by Mortgagor under this Mortgage.

2.28 Enforcement of Covenants and Restrictions. If any of the Covenants and Restrictions apply to Persons owning or occupying real property which is adjacent to or in the vicinity of the Property, Mortgagor shall diligently enforce the Covenants and Restrictions against such Persons if (a) such Persons have breached their obligations under the Covenants and Restrictions; and (b) such breach has not been cured by such Persons within ninety (90) days after a request by Mortgagee to Mortgagor to enforce the Covenants and Restrictions.

2.29 Agricultural Property. If the Property consists in whole or in part of agricultural property, Mortgagor (a) shall farm the same using good and proper practices of husbandry; (b) shall keep all crops, trees and vines on the Property properly cultivated, irrigated, fertilized, sprayed, fumigated and maintained; and (c) shall promptly replace all dead or unproductive crops, trees or vines.

2.30 Further Assurances. Upon Mortgagee's request, Mortgagor shall execute, acknowledge and deliver to Mortgagee such further documents and agreements and take such further actions as Mortgagee may reasonably require from time to time to effectuate or carry out the purposes of the Loan Documents or to evidence, perfect, maintain, preserve or protect Mortgagee's lien on the Property, including Mortgagor's execution of security agreements, assignments, financing statements, and

continuation financing statements. Upon Mortgagee's request, Mortgagor shall execute, acknowledge and deliver to Mortgagee an assignment acceptable to Mortgagee of such additional rights, privileges, Governmental Permits, and documents relating to the Property as Mortgagee may reasonably determine to be necessary or appropriate in connection with the design, construction, improvement, development, use, ownership, operation, maintenance, repair or marketing of the Property.

ARTICLE 3

EVENTS OF DEFAULT

Mortgagee, at its option, shall have the right to declare Mortgagor to be in default under this Mortgage and the other Loan Documents upon the occurrence of any or all of the following events:

3.1 Payment of Note and Other Monetary Obligations. If Mortgagor fails to pay any of its indebtedness under the Note or perform any of its other obligations under the Loan Documents requiring the payment of money to Mortgagee or any third Person within ten (10) days after the date on which such indebtedness or monetary obligation is due; provided, however, that the ten (10) day grace period contained in this Section 3.1 shall not apply to Mortgagor's obligation to pay the outstanding principal balance and all accrued but unpaid interest under the Note on the stated maturity date of the Note;

3.2 Performance of Non-Monetary Obligations Under Other Loan Documents. If (a) Mortgagor fails to perform any of its non-monetary obligations to Mortgagee or any third Person under any of the Loan Documents when due; and (b) Mortgagor fails to diligently complete a cure of its breach of such non-monetary obligation as soon as reasonably practicable after written notice by Mortgagee to Mortgagor setting forth such non-monetary breach, but in any event within thirty (30) days after such notice is given; provided, however, that the thirty (30) day cure period contained in this Section 3.2 shall not be deemed to apply if Mortgagor commits more than two (2) non-monetary breaches within any twelve (12) calendar month period. For purposes of this Section 3.2, the term "non-monetary obligation" means any non-monetary obligation of Mortgagor under any of the terms of the Loan Documents, the breach of which is reasonably susceptible to being cured by Mortgagor. Without limiting the generality of the immediately preceding sentence, a non-monetary obligation shall not include any of Mortgagor's obligations to make payments of principal, interest, or other amounts under the terms of the Note or any of the other Loan Documents. Without limiting any of the terms of this Section 3.2, the cure provision contained in this Section 3.2 (the "Cure Provision") shall not apply with respect to any violation of Section 2.15 of this Mortgage. Notwithstanding anything to the contrary contained in this Section 3.2 or Section 3.1 above, if Mortgagor breaches any of the terms of the Loan Documents, and if Mortgagee, in its good faith business judgment, determines that such breach impairs Mortgagee's security for the Loan, Mortgagee, immediately upon the occurrence of any such breach, shall have the right to take such actions and exercise such remedies under the Loan Documents as Mortgagee may in good faith determine to be necessary or appropriate to avoid such impairment. The preceding sentence is specifically intended, among other things, to grant Mortgagee the right to immediately obtain fire and extended coverage and other forms of insurance with respect to the Property if Mortgagor fails to obtain or maintain any such insurance in effect in accordance with the terms of the Loan Documents, notwithstanding the existence of the Cure Provision or any other cure period in favor of Mortgagor;

3.3 Other Agreements with Mortgagee. If (a) Mortgagor fails to pay any of its indebtedness or to perform any of its obligations under any other document between the Mortgagor and Mortgagee when due; and (b) Mortgagor fails to diligently complete a cure of its breach of such obligation as soon as reasonably practicable after written notice by Mortgagee to Mortgagor setting forth such breach, but in any event within thirty (30) days after such notice is given; provided, however, that the thirty (30) day cure period contained in this Section 3.3 shall not be deemed to apply if Mortgagor commits more than two (2) breaches under such other document or documents within any twelve (12) calendar month period;

3.4 Misrepresentation. If any request, statement, information, certification, or representation, whether written or oral, submitted or made by Mortgagor to Mortgagee in connection with the Loan or any other extension of credit by Mortgagee to Mortgagor is false or misleading in any material respect;

3.5 Insolvency of Mortgagor. If (a) a petition is filed by or against Mortgagor under the federal bankruptcy laws or any other applicable federal or state bankruptcy, insolvency or similar law; (b) a receiver, liquidator, trustee, custodian, sequestrator, or other similar official is appointed to take possession of Mortgagor or the Property, or Mortgagor consents to such appointment; (c) Mortgagor makes an assignment for the benefit of creditors or fails generally to pay its debts as they become due; (d) Mortgagor takes any action in furtherance of any of the foregoing; or (e) there is a material adverse change in Mortgagor's financial condition as represented to Mortgagee in connection with Mortgagee's approval of the Loan and Mortgagee reasonably determines that such change materially impairs Mortgagor's ability to perform any or all of the Obligations; provided, however, that Mortgagor shall have forty-five (45) days within which to cause any involuntary bankruptcy proceeding to be dismissed or the involuntary appointment of any receiver, liquidator, trustee, custodian, or sequestrator to be discharged. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure provisions contained in the Loan Documents;

3.6 Insolvency of Other Persons. If any of the events specified in parts (a) through (e) of Section 3.5 above occurs with respect to (a) any General Partner of Mortgagor, if Mortgagor is a partnership; (b) any of the Guarantors; or (c) any Manager of Mortgagor, if Mortgagor is a limited liability company;

3.7 Performance of Obligations to Senior Lien Holders. If Mortgagor fails to pay any of its indebtedness or to perform any of its obligations under any agreement between Mortgagor and any other Person who holds a Lien senior to this Mortgage when due, provided Mortgagee determines in good faith that such failure has an actual or potential material adverse effect

on the Property or Mortgagor's ability to perform any or all of the Obligations. Nothing contained in this Section constitutes or shall be construed as Mortgagee's consent to any Lien being placed on the Property which is senior to the lien of this Mortgage;

3.8 Attachment. If all or any material part of the assets of Mortgagor, any of the Guarantors, or any General Partner or Manager of Mortgagor are attached, seized, subjected to a writ or levied upon by any court process and Mortgagor fails to cause such attachment, seizure, writ or levy to be fully released or removed within forty-five (45) days after the occurrence of such event. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

3.9 Injunctions. If a court order is entered against Mortgagor, any of the Guarantors, or any General Partner or Manager of Mortgagor enjoining the conduct of all or part of such Person's business and Mortgagor fails to cause such injunction to be fully stayed, dissolved or removed within forty-five (45) days after such order is entered. The cure provision contained in this Section shall be in lieu of, and not in addition to, any and all other cure periods contained in the Loan Documents;

3.10 Dissolution. If Mortgagor, any of the Guarantors, or any General Partner or Manager of Mortgagor is a corporation, partnership, limited liability company or trust, the dissolution, liquidation, or termination of existence of such Person;

3.11 Transfers of Partnership Interests. If Mortgagor is a partnership (a) the admission, withdrawal, death, retirement, or removal of any General Partner of Mortgagor; (b) the sale or transfer of an aggregate of more than twenty-five percent (25%) of the beneficial interests in Mortgagor; or (c) Mortgagee's receipt of any conflicting written instructions or written demands relating to the Loan from any partners of Mortgagor;

3.12 Transfers of Corporate Ownership. If Mortgagor is a corporation, the sale or transfer of an aggregate of more than twenty-five percent (25%) of any class of stock in such corporation or the issuance by such corporation of additional stock to any Person who is not a shareholder in such corporation as of the date of this Mortgage;

3.13 Transfer of Manager's Interests. If Mortgagor is a limited liability company, (a) the appointment, withdrawal, death, retirement or removal of any Manager of Mortgagor; (b) the sale or transfer of an aggregate of more than twenty-five percent (25%) of the beneficial interests of Mortgagor; or (c) Mortgagee's receipt of any conflicting written instructions or written demands relating to the Loan from any members of Mortgagor;

3.14 Death; Incompetency. If Mortgagor, any of the Guarantors, or any General Partner or Manager of Mortgagor is an individual, the death or incompetency of such Person, except where applicable law limits or prohibits Mortgagee's declaration of a default based on such occurrences; provided, however, that Mortgagee shall not declare an Event of Default to exist based solely on the death or mental incompetence of any individual Guarantor, General Partner, or Manager if, within ninety (90) days after the occurrence of such event, (a) in the case of the death or mental incompetence of a Guarantor, Mortgagor causes a substitute guarantor to execute and deliver to Mortgagee a continuing guaranty in the form previously executed by the affected Guarantor, and Mortgagee in good faith determines that such substitute guarantor's financial condition is comparable to that of the affected Guarantor and that such substitute Guarantor is otherwise reasonably acceptable to Mortgagee; and (b) in the case of the death or mental incompetence of a General Partner or Manager, Mortgagor causes a substitute general partner or manager, as applicable, to be admitted to Mortgagor or appointed, and Mortgagee in good faith determines that the financial condition, credit history, character, experience, ability and expertise of such substitute general partner or manager are comparable to the affected General Partner or Manager and that such substitute general partner or manager is otherwise reasonably acceptable to Mortgagee;

3.15 Impairment of Priority. If (i) the priority of this Mortgage or Mortgagee's security interest under any of the other agreements securing any or all of the Obligations is impaired for any reason; or (ii) the value of the Property has deteriorated, declined or depreciated as a result of any intentional tortious act or omission by Mortgagor;

3.16 Condemnation. If any condemnation proceeding or action is pending or commenced by any Governmental Authority with respect to all or any material part of the Property, and such action or proceeding results in the Governmental Authority acquiring title to or possession of all or any material part of the Property;

3.17 Failure to Repair Casualty. If there is an uninsured casualty with respect to the Property, and Mortgagor (a) fails to commence repairs and reconstruction of the Property within sixty (60) days after such damage; or (b) thereafter fails to diligently prosecute such repairs and reconstruction to completion;

3.18 Transfers of Property. If any of the events described in Section 2.15 above occurs without Mortgagee's prior written consent;

3.19 Default by Guarantors. If any Guarantor fails to pay any of its indebtedness or perform any of its obligations under any of the Guaranties when due or the revocation, limitation or termination or attempted revocation, limitation or termination of any of the obligations of any Guarantor under any of the Guaranties, except in accordance with the express written terms of the Guaranties; or

3.20 Misrepresentation by Guarantors. If any request, statement, information, certification, or representation, whether written or oral, submitted or made by any Guarantor to Mortgagee in connection with the Loan or any other extension of credit by Mortgagee to Mortgagor or such Guarantor is false or misleading in any material respect.

ARTICLE 4

REMEDIES

Upon Mortgagee's election to declare Mortgagor to be in default under this Mortgage and the other Loan Documents pursuant to Article 3 above, Mortgagor shall be deemed to be in default under this Mortgage and the other Loan Documents, and Mortgagee shall have the following rights and remedies:

4.1 Acceleration. Mortgagee shall have the right to declare any or all of the Obligations to be immediately due and payable, including the entire principal amount and all accrued but unpaid interest under the Note and all Future Advances, and notwithstanding the stated maturity of the Note or any Future Advances, such Obligations shall thereupon be immediately due and payable.

4.2 Entry by Mortgagee. Whether or not Mortgagee elects to accelerate any or all of the Obligations under Section 4.1 above, Mortgagee shall have the right (a) to enter, take possession of, and manage, operate and lease the Property; (b) to take possession of any or all Books and Records; (c) to collect any or all Rents and Profits, whether or not Mortgagee has taken possession of the Property; and (d) to take any or all actions which Mortgagee determines to be necessary or appropriate in connection therewith or to preserve, protect, maintain and defend the Property and Mortgagee's lien thereon, including (i) the exercise and enforcement of all of Mortgagor's rights under any or all of the Leases; (ii) the termination, acceptance of a surrender, modification or amendment of any or all of the Leases; (iii) the execution of new Leases on such terms and conditions as Mortgagee determines to be appropriate; and (iv) the repair, alteration, improvement or completion of the Property in such manner and to such extent as Mortgagee determines to be necessary or appropriate. If Mortgagee elects to take possession of the Property or to take any or all of the other actions described in this Section by court process, Mortgagor irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose pursuant to Section 4.6 below.

4.3 Enforcement. Mortgagee shall have the right to commence an action or proceeding to foreclose this Mortgage and to enforce any or all of the terms of the Loan Documents, including specific performance of the covenants of Mortgagor under this Mortgage. In connection therewith, at the option of Mortgagee, this Mortgage may be foreclosed in any manner now or hereafter provided by Alabama law, and the Mortgagee, or its agent, may sell the Property or any part of the Property at one or more public sales before the front or main door of the courthouse of the county or counties, as may be required, in which the Land or any part of the Land is situated, after having first given notice of the time, place, terms of sale and description of the Property the subject of the foreclosure at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, as may be required. At any such sale, Mortgagee may execute and deliver to the purchaser a conveyance of the Property or any part of the Property. Mortgagee shall have the right to enforce any of its remedies set forth herein without notice to Mortgagor, except for such notice as may be required by law. In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Property may be sold as an entirety or in separate parcels and in such manner or order as Mortgagee in its sole discretion may elect, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the Uniform Commercial Code of the state in which the Land is located, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Property is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Mortgagee at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Mortgagee may determine. Said sale may be adjourned by the Mortgagee, or its agent, and reset at a later date; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set, and the original notice shall be published once again with a statement at the bottom that said sale has been postponed and the new date when it will occur. In the event of any sale of the Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. Mortgagee may, in addition to and not in abrogation of the rights provided under this Section, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy to pursue any other remedy available to it, all as Mortgagee in its sole discretion shall elect. Upon any foreclosure sale or sale of all or any portion of the Property under the power herein granted, Mortgagee may bid for and purchase the Property if the highest bidder therefor. In the event of any such foreclosure sale or sale under the powers herein granted, Mortgagor (if Mortgagor shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

4.4 Application of Sales Proceeds. Mortgagee shall apply the proceeds of the sale or sales in the following order of priority: (a) first, to payment of all expenses of such sale or sales and all costs, expenses, fees, and liabilities of Mortgagee including attorneys' fees, costs of other evidence of title, and Mortgagee's fees in connection with such sale or sales; (b) second, to all amounts advanced by Mortgagee under any of the terms of this Mortgage which have not then been repaid, together with interest thereon at the rate applicable to principal under the Note or, with respect to Mortgagee, the maximum rate permitted by law to be

charged by Mortgagee; (c) third, to the payment of all other Obligations in such order and amounts as Mortgagee determines; and (d) the remainder, if any, to the Person or Persons legally entitled thereto.

4.5 Appointment of a Receiver. Mortgagee shall have the absolute and unconditional right to apply to any court having jurisdiction and obtain the appointment of a receiver or receivers of the Property, and Mortgagor irrevocably and unconditionally consents to such appointment and agrees that Mortgagee shall have the right to obtain such appointment (a) without notice to Mortgagor or any other Person; (b) without regard to the value of the Property or any other collateral securing the Obligations; and (c) without acceleration of the Obligations or commencement of foreclosure proceedings under this Mortgage. Any such receiver or receivers shall have the usual powers and duties of receivers in similar cases and all powers and duties necessary or appropriate to exercise the rights of Mortgagee as provided in this Mortgage.

4.6 Protection of Mortgagee's Security. Mortgagee, without obligation to do so and without notice to or demand on Mortgagor, and without releasing Mortgagor from any of its Obligations or waiving Mortgagee's rights under the Loan Documents, shall have the right to perform any Obligation which Mortgagor has breached in such manner, at such time, and to such extent as Mortgagee determines to be necessary or appropriate to preserve, protect, maintain and defend the Property and Mortgagee's lien thereon.

4.7 Assembly of Property. Upon Mortgagee's request, Mortgagor shall assemble and make available to Mortgagee at the location of the Land all Property which has been removed from or which is not located on the Land.

4.8 Discontinuation of Disbursements Under Loan and Advances under Other Extensions of Credit. Mortgagee shall have the (a) right to discontinue or withhold any or all disbursements of the proceeds of the Loan and any Future Advances; and (b) to discontinue advancing money or extending credit to or for the benefit of Mortgagor in connection with any other document between Mortgagee and Mortgagor.

4.9 Easements. Without limiting the effect of any right or remedy exercised by Mortgagee under the Loan Documents, any Easements granted by Mortgagor or other agreement made by Mortgagor in violation of any of the terms of this Mortgage shall, at the option of any purchaser at any judicial foreclosure sale under this Mortgage, be voidable, and any such purchaser shall have the right to take possession of the Property free from the terms of such Easement or agreement.

4.10 Exercise of Rights Under Other Loan Documents. Mortgagee shall have the right to exercise any or all rights and remedies which Mortgagee may have under any or all of the other Loan Documents and applicable law.

4.11 Remedies Upon Default. At any time after an Event of Default has occurred, the Secured Obligations shall become due at Mortgagee's option forthwith or thereafter at the continuing option of Mortgagee, and this Mortgage shall remain in force, and Mortgagee may exercise any right, power or remedy hereunder or under the Note or Loan Agreement or otherwise permitted to it by law or by contract, and in particular, without limiting the generality of the foregoing, Mortgagee shall have the absolute right, at its option and election, to pursue one or more of the following rights:

(a) Mortgagee shall be entitled thereupon or thereafter without notice or demand, to the extent permitted by the laws of the State, (i) to institute suit at law or in equity to enforce the rights of Mortgagee, and (ii) to enforce, at Mortgagee's continuing option, payment of all sums secured hereby by action at law or by suit in equity to foreclose this Mortgage, either or both, concurrently or otherwise; and one action or suit shall not abate or be a bar to or waiver of Mortgagee's right to institute or maintain the other, provided Mortgagee shall have only one payment and satisfaction of the indebtedness secured hereby; and

(b) Mortgagee shall have the right from time to time to take action to recover any sums, whether interest, principal or any installment of either, or any other sums required to be paid under the terms of this Mortgage, the Note, the Loan Agreement or any of the other Loan Documents, as the same become due, without regard to whether or not the principal sum secured, or any other sums secured, by this Mortgage shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of foreclosure, or any other action, for any Event or Events of Default existing at the time such earlier action was commenced.

4.12 Multiple Foreclosures. Mortgagee shall have the option to proceed with foreclosure in satisfaction of any part of the Secured Obligations without declaring the whole of the Secured Obligations as immediately matured, and such foreclosure may be made subject to the unmatured part of the Secured Obligations, and it is agreed that such foreclosure, if so made, shall not in any manner affect the unmatured part of the Secured Obligations, but as to such unmatured part this Mortgage, as well as the other Loan Documents, shall remain in full force and effect just as though no foreclosure had been made. Several foreclosures may be made without exhausting the right of foreclosure for any unmatured portion of the Secured Obligations, it being the purpose hereof to provide for a foreclosure of the security for any matured portion of the Secured Obligations without exhausting the power of foreclosure respecting Mortgaged Property for any other part of the Secured Obligations.

4.13 Entry by Mortgagee. During the continuance of any Event of Default, Mortgagee personally, or by its agents or attorneys, may enter into and upon all or any part of the Mortgaged Property, and each and every part thereof, and may exclude Mortgagor, its agents and servants wholly therefrom and, having and holding the same, may use, occupy and control the Mortgaged Property, either personally or by its superintendents, Manager, agents, servants, attorneys or receivers; and upon every such entry Mortgagee, at the expense of the Mortgaged Property or Mortgagor, from time to time, either by purchase, repairs or construction, may maintain and restore the Mortgaged Property, and may complete the construction or development of any improvements and in the course of such completion may make such changes in the contemplated improvements as it may deem desirable and may

insure the same; and likewise, from time to time, at the expense of the Mortgaged Property or Mortgagor, Mortgagee may make all necessary or proper repairs, renewals and replacements and such useful alterations, additions, betterments and improvements thereto and thereon as may seem advisable to Mortgagee; and in every such case Mortgagee shall have the right to manage and operate the Mortgaged Property and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as it shall deem best; and Mortgagee shall be entitled to collect and receive all earnings, revenues, rents, issues, profits and income of the Mortgaged Property and every part thereof; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, betterments and improvements and amounts necessary to pay for taxes, assessments, insurance and prior or other proper charges on the Mortgaged Property, or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees or representatives by it properly engaged and employed, Mortgagee shall apply the monies arising as aforesaid, first, to the payment of the Secured Obligations, when and as the same shall become payable and, second, to the payment of any other sums required to be paid by Mortgagor under this Mortgage or the other Loan Documents.

4.14 Appointment of Receiver. Upon the occurrence of any Event of Default, Mortgagee shall be entitled without notice to Mortgagor to apply at any time to a court having jurisdiction thereof for the appointment of a receiver of the Mortgaged Property or any part thereof and of all rents, incomes, profits, issues and revenues thereof, from whatever source derived; and thereupon it is hereby expressly covenanted and agreed that the court shall forthwith appoint such receiver with the usual powers and duties of receivers in like cases; and said appointment shall be made by the court ex parte as a matter of strict right to Mortgagee, and without reference to the adequacy or inadequacy of the value of the Mortgaged Property, or to the solvency or insolvency of Mortgagor or any party defendant to such suit. Mortgagor hereby specifically waives the right to object to the appointment of a receiver as aforesaid and hereby expressly consents that such appointment shall be made ex parte and without notice to Mortgagor as an admitted equity and as a matter of absolute right to Mortgagee. In order to maintain and preserve the Mortgaged Property and to prevent waste and impairment of its security, Mortgagee may, at its option, advance monies to the appointed receiver and all such sums advanced shall become Secured Obligations and shall bear interest from the date of such advance at the Default Rate specified in the Loan Agreement.

4.15 Remedies Cumulative. No remedy conferred upon or reserved to Mortgagee herein or in the Loan Agreement or any of the other Loan Documents is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every remedy given to Mortgagee or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default herein or in the Loan Agreement or any default under the other Loan Documents shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein; and every power and remedy given by this Mortgage or in the Loan Agreement or any of the other Loan Documents to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Loan Agreement or in any of the other Loan Documents shall affect the obligation of Mortgagor to pay its obligations under the Note and the Loan Agreement in the manner and at the time and place therein respectively expressed. In the event of foreclosure, Mortgagor shall be fully liable for any deficiency.

4.16 No Waiver. Any failure by Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Loan Agreement or the other Loan Documents shall not be deemed to be a waiver of any of the terms and provisions hereof, or of the Loan Agreement or the other Loan Documents, and Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Mortgagor of any and all the terms and provisions of this Mortgage or of the Loan Agreement or the other Loan Documents to be performed by Mortgagor; and Mortgagee may resort for the payment of the Secured Obligations to the Mortgaged Property or to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

4.17 Attornment by Tenants. In the event the Mortgaged Property or any part thereof is hereafter occupied by a tenant under a lease, and in the event of any foreclosure hereunder, such tenant shall, at the option of the purchaser of the Mortgaged Property, either (i) immediately surrender possession of the Mortgaged Property to such purchaser, or (ii) agree to attorn to and to execute an agreement reasonably satisfactory to such purchaser, which agreement shall recognize such purchaser as the landlord under such lease.

4.18 Waiver of Redemption and Other Rights. To the extent permitted by the laws of the State, Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, or any exemption from execution or sale of the Mortgaged Property or any part thereof; nor will Mortgagor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor will Mortgagor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and Mortgagor covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who claim under it, waives, to the extent that it lawfully may, all right to have the Mortgaged Property, or any other assets which secure the Secured Obligations, marshaled upon any foreclosure hereof.

ARTICLE 5

WARRANTIES AND REPRESENTATIONS

5.1 Warranties and Representations. As a material inducement to the Mortgagee's extension of credit to Mortgagor in connection with the Loan, Mortgagor warrants and represents to the Mortgagee as follows:

(a) **Corporate Existence.** If Mortgagor is a corporation, Mortgagor is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and Mortgagor is qualified to do business and is in good standing under the laws of the state in which the Property is located.

(b) **Partnership or Limited Liability Company Existence.** If Mortgagor is a partnership or limited liability company, Mortgagor is duly organized, validly existing and in good standing under the laws of the state in which Mortgagor is organized, and Mortgagor is qualified to do business and is in good standing under the laws of the state in which the Property is located.

(c) **Existence of Trust.** If Mortgagor is a trust, Mortgagor is duly organized and validly existing, and the trustees of Mortgagor are qualified to act in such capacity.

(d) **Authority.** Mortgagor has the full power and authority to carry on its business and to enter into and perform all of its obligations under the Loan Documents, and the Loan Documents, when executed by the Persons signing this Mortgage on behalf of Mortgagor, shall constitute legal, valid and binding obligations of Mortgagor enforceable in accordance with their respective terms. The Persons executing this Mortgage on behalf of Mortgagor are duly authorized to execute the Loan Documents and all other documents required by Mortgagee in connection with the Loan on behalf of Mortgagor. No consent of any other Person and no consent, approval, authorization or other action by or filing with any Governmental Authorities is required in connection with the execution, delivery and performance of Mortgagor's obligations under the Loan Documents.

(e) **No Violations.** The consummation of the transactions contemplated by the Loan Documents and the performance of Mortgagor's obligations thereunder will not result in a breach or violation of (i) any Governmental Requirements of any Governmental Authorities or any judgment, writ, injunction, decree or order of any court relating to Mortgagor or the Property; (ii) any mortgage, agreement, commitment, restriction, or other document to which Mortgagor is a party or by which Mortgagor or the Property is bound; (iii) Mortgagor's agreement or certificate of limited partnership, if Mortgagor is a limited partnership; (iv) Mortgagor's agreement or statement of partnership, if Mortgagor is a general partnership; (v) Mortgagor's articles of incorporation or bylaws, if Mortgagor is a corporation; (vi) Mortgagor's trust agreement, if Mortgagor is a trust; or (vii) Mortgagor's articles of organization or operating agreement, if Mortgagor is a limited liability company.

(f) **Utilities.** All utility services necessary for the use and occupancy of the Property, including water, storm drains, sewers, gas, electric and telephone facilities, are either available at the boundaries of the Land or, if this Mortgage secures a construction loan, Mortgagor has taken all necessary steps to assure that all such utility services will be available upon completion of the Improvements.

(g) **Access.** All public streets and rights of way necessary for the use and occupancy of the Property have been completed or, if this Mortgage secures a construction loan, Mortgagor has taken all necessary steps to assure that such public streets and rights of way shall be completed upon completion of the Improvements.

(h) **Governmental Restrictions.** To the best of Mortgagor's knowledge, there are no conditions or restrictions affecting the use or development of the Property and no agreements or contracts with any Governmental Authorities, including local, regional, state, or federal governmental authorities, affecting the use or development of the Property which have not been disclosed in writing by Mortgagor to Mortgagee.

(i) **Litigation.** To the best of Mortgagor's knowledge, there are no actions, suits, proceedings or investigations pending or threatened against or affecting Mortgagor or the Property in any court or before any other Governmental Authorities, nor does Mortgagor know of any basis for any such action, suit, proceeding or investigation.

(j) **Ownership.** Upon recordation of this Mortgage, Mortgagor will be the sole legal and beneficial owner of, and will have good and marketable title to, the Property and all other collateral which is the subject of the Loan Documents.

(k) **Liens.** To the best of Mortgagor's knowledge, there are no Liens, claims, encroachments, Covenants and Restrictions, Leases, Easements, or other rights affecting the Property which would not be disclosed by a customary search of the records relating to the Land of the county recorder for the county in which the Property is located.

(l) **Condemnation.** There is no condemnation, zoning change, or other proceeding or action pending or, to the best of Mortgagor's knowledge, threatened or contemplated by any Governmental Authority which would in any way affect the Property.

(m) **Repair Orders.** To the best of Mortgagor's knowledge, no orders or directives have been issued by any Governmental Authorities requiring that any work of repair, maintenance or improvement be performed with respect to the Property.

(n) **Transfers.** Mortgagor has not sold, transferred, leased or encumbered the Property or entered into any agreement for the sale, transfer, lease or encumbrance of the Property, except as described in the Loan Documents.

(o) **No Affiliation With Tenants.** Neither (i) Mortgagor; (ii) any General Partner or Manager of Mortgagor, if Mortgagor is a partnership or limited liability company, (iii) any shareholder in Mortgagor, if Mortgagor is a corporation; or (iv) any Guarantors have any direct or indirect financial or other interest in any Tenant, except for such interests as have been specifically disclosed to and approved in writing by Mortgagee prior to the date of recordation of this Mortgage.

(p) **Financial Statements.** All statements respecting the financial condition of Mortgagor, any General Partner or Manager of Mortgagor, and any Guarantors which have been furnished to the Mortgagee (i) are accurate and complete in all material respects as of the dates appearing thereon; (ii) present fairly the financial condition and results of operations of the Person to whom the financial statement applies as of the dates and for the periods shown on such statements; and (iii) disclose all suits, actions, proceedings and contingent liabilities affecting the Person to whom the financial statement applies. Since the last date covered by such financial statements, there has been no material adverse change in the financial condition of the Persons to whom such statements apply.

(q) **Other Financing.** As of the date of recordation of this Mortgage, no other financing for the Property will be in effect or encumber the Property, except such subordinate financing as has been specifically disclosed to and approved in writing by Mortgagee prior to the date of recordation of this Mortgage.

(r) **Commissions.** Mortgagor has not dealt with any Person who is or may be entitled to any finder's fee, brokerage commission, loan commission or other similar sum in connection with the consummation of the transactions contemplated by the Loan Documents, except for such commissions as have been specifically disclosed to and approved in writing by Mortgagee prior to the date of recordation of this Mortgage.

5.2 Continuing Warranties and Representations. The warranties and representations contained in this Article 5 shall be true and correct as of the date of recordation of this Mortgage, shall survive the closing of the Loan, and shall remain true and correct as of the date on which such warranties and representations are given.

ARTICLE 6

MISCELLANEOUS

6.1 Mortgagee Statement; Certain Charges. With respect to (a) any statement, accounting, or similar information requested by Mortgagor or any other Person pursuant to the laws of the State of Alabama or any other provision of applicable law; or (b) any other document furnished to Mortgagor or any other Person by Mortgagee at Mortgagor's request, Mortgagee shall have the right to charge the maximum amount then permitted by law or, if there is no such maximum, Mortgagee's customary charge for providing such statement, accounting, or other information. Mortgagor shall pay Mortgagee its customary charge for any other service rendered by Mortgagee in connection with the Loan or the Property, including the issuance of a request for full or partial reconveyance of this Mortgage, transmitting Loan proceeds to an escrow holder and changing Mortgagee's records relating to the Obligations.

6.2 Release of Mortgage. Upon (a) Mortgagee's written request stating that all Obligations secured by this Mortgage have been paid or performed in full; (b) surrender to Mortgagee of this Mortgage, the Note and all other documents evidencing the indebtedness secured by this Mortgage; and (c) payment of Mortgagee's fees and expenses of this Mortgage, Mortgagee shall reconvey the Property then held under this Mortgage without warranty of any kind. The recitals in the reconveyance of any matters or facts shall be conclusive proof of their truthfulness. The grantee in such reconveyance may be described as the "person or persons legally entitled thereto". Such reconveyance shall operate as a reassignment of the Rents and Profits assigned to Mortgagee under this Mortgage. Mortgagee may destroy this Mortgage and the Note five (5) years after issuance of the full reconveyance; provided, however, that Mortgagee, in its sole discretion, may deliver this Mortgage and the Note after full reconveyance to the Person or Persons legally entitled thereto.

6.3 Execution of Instruments by Mortgagee. Without notice to or affecting the liability of Mortgagor or any other Person for the payment or performance of the Obligations, without affecting the lien or priority of this Mortgage or Mortgagee's rights and remedies under the Loan Documents, and without liability to Mortgagor or any other Person, Mortgagee shall have the right, at any time and from time to time, to do any one or more of the following: (a) reconvey any part of the Property; (b) consent in writing to the making of any map or plat relating to the Property; (c) join in or consent to the granting of any Easement affecting the Property; and (d) execute any extension agreement relating to any or all of the Obligations, any document subordinating the lien of this Mortgage to any other Lien or document, or any other document relating to the Property, Obligations, or Loan Documents.

6.4 Late Charges. If any payment under the Note or any note evidencing a Future Advance is not paid when due, Mortgagor shall pay any late charge provided for in the Loan Documents.

6.5 Requests by Mortgagor for Approvals by Mortgagee. All requests by Mortgagor for Mortgagee's consent to or approval of any transaction or matter requiring Mortgagee's consent or approval under the Loan Documents (a) shall be made by Mortgagor in writing; (b) shall specifically describe the transaction or matter with respect to which Mortgagee's consent or approval is requested; (c) shall be accompanied by such information and documentation as Mortgagee may require in connection with such request; and (d) shall be delivered to Mortgagee not less than fifteen (15) days before Mortgagor proposes to take the action or effect the transaction with respect to which Mortgagee's consent or approval is requested, unless a different period of time is expressly provided for in the Loan Documents.

6.6 Approvals by Mortgagee. Whenever (a) the terms of the Loan Documents grant Mortgagee the right to consent to or approve any transaction or matter; (b) Mortgagee is authorized or empowered under the Loan Documents to make a determination with respect to any transaction or matter; or (c) the Loan Documents provide that any document or other item must be approved by or acceptable to Mortgagee, then except as otherwise expressly provided in the Loan Documents, (i) Mortgagee shall have the right to grant or withhold such approval or consent and make such determination in its sole and absolute discretion; and (ii) the form and substance of such document or other item must be satisfactory to Mortgagee in its sole and absolute discretion. Whenever the terms of the Loan Documents require Mortgagee's consent to or approval of any transaction, matter, or document, such consent or approval shall not be deemed to be effective unless it is set forth in a written instrument executed by Mortgagee.

6.7 Transfers by Mortgagor; No Release of Mortgagor. The following provisions shall apply if Mortgagor sells, conveys, transfers or alienates the Property or any interest in the Property with or without Mortgagee's consent:

(a) **No Release of Mortgagor.** No such action by Mortgagor nor any assumption of any or all of the Obligations by any transferee of the Property ("Transferee") shall be deemed to release Mortgagor or any other Person, including any Guarantor, from any liability under the terms of the Loan Documents, and Mortgagor and such Persons shall remain liable to Mortgagee for the payment and performance of all of their respective obligations under the Loan Documents.

(b) **Actions Without Mortgagor's Consent.** Mortgagor agrees that Mortgagee may do any one or all of the following without notice to or the consent of Mortgagor and without affecting Mortgagee's rights or remedies against Mortgagor: (i) accelerate, accept partial payment of, compromise, settle, renew, extend the time for payment or performance of, or refuse to enforce any of Mortgagor's Obligations to Mortgagee under or in connection with this Mortgage or any of the other Loan Documents; (ii) grant any indulgence or forbearance to the Transferee or any other Person under or in connection with any or all of the Loan Documents; (iii) release, waive, substitute or add any or all collateral securing payment of any or all of the Obligations; (iv) release, substitute or add any one or more endorsers or guarantors of any or all of the Obligations; (v) amend, supplement, alter or change in any respect whatsoever any term or provision of the Loan Documents or any other agreement relating to the Obligations; and (vi) exercise any right or remedy with respect to the Obligations or any collateral securing the Obligations, notwithstanding any effect on or impairment of Mortgagor's subrogation, reimbursement or other rights against the Transferee, whether by operation of the laws of the State of Alabama or otherwise.

(c) **Waivers.** Mortgagor waives all rights which it may have (i) to require Mortgagee to exhaust its rights and remedies against the Transferee, any other Person, or any collateral securing any or all of the Obligations before pursuing its rights and remedies against Mortgagor; (ii) to require Mortgagee to exercise any right or power or to pursue any remedy which Mortgagee may have under the Loan Documents or applicable law before pursuing its rights and remedies against Mortgagor; and (iii) to assert any defense to Mortgagee's enforcement of its rights and remedies against Mortgagor based on an election of remedies by Mortgagee or the manner in which Mortgagee exercises any remedy which destroys, diminishes or interferes with any or all of Mortgagor's subrogation, reimbursement or other rights against the Transferee, whether by operation of the laws of the State of Alabama or otherwise.

6.8 Taxes Imposed on Mortgagee. If, after the date of this Mortgage, any Governmental Requirements are enacted for the purpose of taxing any lien on the Property or changing in any way the laws for the taxation of mortgages secured by mortgages, so as to impose on Mortgagee payment of all or part of any Taxes assessed against the Property, then prior to the due date of such Taxes, Mortgagor shall pay all such Taxes and agree to pay such Taxes when levied or assessed against the Property or Mortgagee; provided, however, that if such payment or agreement by Mortgagor shall not be permitted by law, Mortgagee, at its option, shall have the right to declare any or all of the Obligations to be immediately due and payable upon notice to Mortgagor. Nothing contained in this Section shall be deemed to require Mortgagor to pay any franchise, estate, inheritance, income or similar tax imposed on Mortgagee.

6.9 Recourse Against Separate Property. Each Mortgagor who is a married person agrees that Mortgagee shall have the right to recourse against his or her community property and separate property for any or all Obligations to the fullest extent permitted by law.

6.10 Defense of Actions and Protection of Security by Mortgagee. Whether or not an Event of Default has occurred, Mortgagee shall have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Mortgagor, any of the Guarantors, or any other Person, which affects or which Mortgagee determines may affect any or all of the following: (a) the Property; (b) the Insurance Claims, Condemnation Claims, or Property Claims; (c) Mortgagee's or Mortgagor's respective rights and obligations under the Loan Documents; (d) the Obligations; or (e) any other transaction or matter which affects Mortgagee by reason of its interest in the Property. Mortgagee shall have the right, but not the obligation, to commence and prosecute any action or proceeding which Mortgagee determines to be necessary or appropriate to do any or all of the following: (i) prevent any damage, destruction, or injury to the Property; (ii) enforce or recover upon the Insurance Claims, Condemnation Claims, or Property Claims or collect the Insurance Proceeds, Condemnation Proceeds, or Property

Proceeds pursuant to this Mortgage; (iii) preserve, protect, maintain, and defend the Property and Mortgagee's lien thereon; or (iv) enforce or exercise any right, remedy or power available to or conferred on Mortgagee under the Loan Documents or applicable law. Mortgagee shall each have the right to discontinue, suspend or dismiss any such action or proceeding which has been commenced by Mortgagee at any time.

6.11 Expenses. Mortgagee shall have the right to incur and pay all costs, fees, expenses, and liabilities that Mortgagee determines to be necessary or appropriate in connection with any or all of the following matters (all such costs, fees, expenses and liabilities, excluding ordinary overhead expenses of Mortgagee's regular business premises and salary expenses for Mortgagee's respective clerical and supervisory personnel, are referred to collectively as the "Reimbursable Costs"): (a) costs and expenses incurred in the management, servicing, or administration of the Loan and any Future Advances which relate to Mortgagee's review of those documents, transactions or other matters requiring Mortgagee's approval under the terms of the Loan Documents; (b) the exercise of any or all of Mortgagee's respective rights and remedies under the Loan Documents, including (i) all premiums and other costs and expenses paid or incurred by Mortgagee in connection with Mortgagee's obtaining any Insurance Policies; and (ii) all costs and expenses, including attorneys' fees and costs, incurred in connection with Mortgagee's review, preparation, analysis, or negotiation, as applicable, of any of the further documents or other matters that are contemplated by the Loan Documents or that Mortgagee has the right to require, review or approve pursuant to the Loan Documents, including Leases, estoppel certificates from any Tenant under any Lease or from any other Person, and non-disturbance, subordination or attornment agreements by any Tenant under any Lease or by any other Person; (c) the enforcement of any or all of the Obligations or any other obligation of any Person liable to Mortgagee in connection with the Loan or any Future Advance, whether or not any legal action or proceeding is commenced by Mortgagee; (d) the preservation, protection, maintenance, or defense of the Property or Mortgagee's lien thereon; (e) the sale or disposition of the Property or any other collateral securing any or all of the Obligations; (f) the defense of any action or proceeding commenced by Mortgagor, any of the Guarantors, or any other Person under Section 6.12 above; or (g) the commencement and prosecution of any action or proceeding by Mortgagee with respect to any or all of the matters described in this Section or in Section 6.12 above, including an action for relief from any stay, injunction, or similar order or enactment arising under any federal or state bankruptcy, insolvency or similar law. Without limiting the terms of this Section, Mortgagee shall have the right to do any or all of the following in connection with any of the matters described in this Section, and all costs, fees, expenses, and liabilities incurred or paid in connection therewith shall constitute Reimbursable Costs: (1) select, retain, and consult with attorneys, accountants, appraisers, contractors, brokers, architects, engineers and such other experts, consultants, advisors and third Persons as Mortgagee determines to be necessary or appropriate; (2) settle, purchase, compromise or pay any or all claims, demands, and Liens; and (3) obtain any title insurance coverage relating to the Property which Mortgagee determines to be necessary or appropriate.

6.12 Payment of Advances by Mortgagor. All Reimbursable Costs and all other costs, fees, expenses and liabilities incurred or paid by Mortgagee under any other provision of the Loan Documents or under applicable law in connection with the Obligations or the Property (a) shall be payable by Mortgagor to Mortgagee on Mortgagee's demand; (b) shall constitute additional indebtedness of Mortgagor to Mortgagee; (c) shall be secured by this Mortgage; and (d) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. Nothing contained in this Mortgage shall be deemed to obligate Mortgagee (i) to incur any costs, fees, expenses, or liabilities; (ii) to make any appearances in or defend any action or proceeding; or (iii) to commence or prosecute any action or proceeding relating to any matter.

6.13 No Third Party Beneficiaries. The Loan Documents are entered into for the sole protection and benefit of Mortgagee, Mortgagor and their respective permitted successors and assigns. No other Person shall have any rights or causes of action under the Loan Documents.

6.14 Notices. All notices and demands by Mortgagee to Mortgagor under this Mortgage shall be in writing and shall be effective on the earlier of personal delivery to Mortgagor or two (2) days after deposit in first-class or certified United States mail, postage prepaid, addressed to Mortgagor at the address set forth in this Mortgage, except that service of any notice of default or notice of sale provided or required by law shall, if mailed, be deemed effective on the date of mailing. All notices and demands by Mortgagor to Mortgagee under this Mortgage shall be in writing and shall be effective on actual receipt by Mortgagee at Mortgagee's address set forth in this Mortgage; provided, however, that nonreceipt of any such notice or demand by Mortgagee as a result of Mortgagee's refusal to accept delivery or Mortgagee's failure to notify Mortgagor of Mortgagee's change of address shall be deemed receipt by Mortgagee. Mortgagor's and Mortgagee's respective addresses set forth in this Mortgage may be changed by written notice given to the other party in accordance with this Section. If Mortgagor consists of more than one Person, service of any notice or demand on any one of such Persons by Mortgagee shall be effective service on Mortgagor for all purposes.

6.15 Performance of Covenants. Mortgagor shall perform and comply with all of its obligations under this Mortgage at Mortgagor's sole cost and expense.

6.16 Severability. If any provision of the Loan Documents shall be held by any court of competent jurisdiction to be unlawful, voidable, void, or unenforceable for any reason, such provision shall be deemed to be severable from and shall in no way affect the validity or enforceability of the remaining provisions of the Loan Documents.

6.17 Interpretation. Whenever the context of the Loan Documents reasonably requires, all words used in the singular shall be deemed to have been used in the plural, and the neuter gender shall be deemed to include the masculine and feminine gender, and vice versa. For purposes of this Mortgage, all references to the Property or Improvements shall be deemed to refer to all or any part of the Property or Improvements, respectively. The headings to sections of this Mortgage are for convenient reference only, and they do not in any way define or limit any of the terms of this Mortgage and shall not be used in interpreting this

Mortgage. For purposes of this Mortgage, the term "including" shall be deemed to mean "including without limitation," and the term "document" shall include all written contracts, commitments, restrictions, agreements, mortgages, and instruments.

6.18 Time of the Essence. Time is of the essence in the performance of each provision of the Loan Documents by Mortgagor.

6.19 Amendments. The Loan Documents (excluding the Guaranties) may be modified only by written agreement signed by Mortgagee and Mortgagor.

6.20 Entire Agreement. The Loan Documents contain the entire agreement concerning the subject matter of the Loan Documents and supersede all prior and contemporaneous negotiations, agreements, statements, understandings, terms, conditions, representations and warranties, whether oral or written, between Mortgagee and Mortgagor concerning the Loan and any Future Advances which are the subject matter of the Loan Documents.

6.21 No Waiver by Mortgagee. No waiver by Mortgagee of any of its rights or remedies in connection with the Obligations or of any of the terms or conditions of the Loan Documents shall be effective unless such waiver is in writing and signed by Mortgagee. Without limiting the generality of this Section, (a) no delay or omission by Mortgagee in exercising any of its rights or remedies in connection with the Obligations shall constitute or be construed as a waiver of such rights or remedies; (b) no waiver by Mortgagee of any default by Mortgagor under the Loan Documents or consent by Mortgagee to any act or omission by Mortgagor shall constitute or be construed as a waiver of or consent to any other or subsequent default, act or omission by Mortgagor; (c) no disbursement of the proceeds of the Loan or any Future Advance by Mortgagee following any Event of Default shall constitute or be construed as a waiver of such Event of Default or obligate Mortgagee to make any other disbursement under the Loan Documents; (d) no acceptance by Mortgagee of any late payment or late or defective performance of any of the Obligations by Mortgagor shall constitute a waiver by Mortgagee of the right to require prompt payment and performance strictly in accordance with the Loan Documents with respect to any other payment or performance of any of the Obligations; (e) no acceptance by Mortgagee of any payment or performance following any notice of default which has been given or recorded by Mortgagee shall constitute a waiver of Mortgagee's right to proceed with the exercise of its remedies with respect to any Obligations which have not been paid or performed in full; (f) no acceptance by Mortgagee of any partial payment or performance shall constitute a waiver by Mortgagee of any of its rights or remedies relating to any Obligations which have not been paid or performed in full; and (g) no application of Rents and Profits, Insurance Proceeds, Condemnation Proceeds or Property Proceeds to any of the Obligations shall constitute or be construed as a waiver by Mortgagee or cure of any Event of Default or impair, prejudice, invalidate or otherwise affect any action by Mortgagee in response to such default.

6.22 Waivers by Mortgagor. Mortgagor waives presentment, demand for payment, protest, notice of demand, dishonor, protest and non-payment, and all other notices and demands in connection with the delivery, acceptance, performance, default under, and enforcement of the Loan Documents. Mortgagor waives the right to assert any statute of limitations as a defense to the enforcement of any or all of the Loan Documents to the fullest extent permitted by law and all rights of redemption.

6.23 Waiver of Marshaling. Mortgagor and all Persons holding a Lien affecting the Property who have actual or constructive notice of this Mortgage waive (a) all rights to require marshaling of assets or liens in the event of Mortgagee's exercise of any of its rights and remedies under this Mortgage, including any judicial foreclosure sale of the Property; (b) all rights to require Mortgagee to exhaust its rights and remedies against any other collateral securing any or all of the Obligations before pursuing its rights and remedies under this Mortgage; and (c) all rights to require Mortgagee to exercise any other right or power or to pursue any other remedy which Mortgagee may have under any document or applicable law before pursuing its rights and remedies under this Mortgage.

6.24 Waiver of Subrogation. Mortgagor waives all rights to recover against Mortgagee for any loss or damage incurred by Mortgagor from any cause which is insured under any of the Insurance Policies, except that the foregoing waiver of subrogation shall not be effective with respect to any Insurance Policy if the coverage under such policy would be materially reduced or impaired as a result of such waiver. Mortgagor shall use its best efforts to obtain Insurance Policies which permit the waiver of subrogation contained in this Section.

6.25 Cumulative Remedies. No right or remedy of Mortgagee under this Mortgage or the other Loan Documents shall be exclusive of any other right or remedy under the Loan Documents or to which Mortgagee may be entitled. Mortgagee's rights and remedies under the Loan Documents are cumulative and in addition to all other rights and remedies which Mortgagee may have under any other document with Mortgagor and under applicable law. Mortgagee shall have the right to exercise any one or more of its rights and remedies in connection with the Obligations at Mortgagee's option and in its sole and absolute discretion, without notice to Mortgagor or any other Person (except as otherwise expressly required by law or under the Loan Documents), and in such order as Mortgagee may determine in its sole and absolute discretion. If Mortgagee holds any collateral in addition to the Property for any of the Obligations, Mortgagee, at its option, shall have the right to pursue its rights or remedies with respect to such other collateral either before, contemporaneously with, or after Mortgagee's exercise of its rights or remedies with respect to the Property. Upon the occurrence of an Event of Default, Mortgagee, at its option, shall have the right to offset against any debt or monies due from Mortgagee to Mortgagor against all or part of the Obligations.

6.26 Subrogation to Lien Rights. If any or all of the proceeds of the Note or any Future Advance are directly or indirectly used to pay any outstanding Lien against the Property, or if Mortgagee pays or discharges any Lien pursuant to any of the

terms of the Loan Documents or under applicable law, Mortgagee shall be subrogated to all rights and liens held by the holder of such Lien, regardless of whether such Lien is reconveyed.

6.27 Joint and Several Liability. Each Person signing this Mortgage as Mortgagor shall be jointly and severally liable to Mortgagee for the performance of Mortgagor's obligations under the Loan Documents. If Mortgagor consists of more than one Person, the occurrence of any Event of Default with respect to any one or more of such Persons shall constitute an Event of Default and entitle Mortgagee to exercise its rights and remedies under Article 4 of this Mortgage.

6.28 Sale of Loan Documents and Participations. Mortgagee shall have the right to sell, transfer, pledge or assign any or all of Loan Documents or sell, transfer, pledge or assign participations in the Loan Documents to any other Person without notice to or the consent of Mortgagor or any other Person; provided, however, that no such sale of a participation shall relieve Mortgagee of any of its obligations under the Loan Documents. Mortgagee is authorized to disclose to any participant, assignee or prospective participant or assignee all documents and information in Mortgagee's possession or control relating to Mortgagor, the Guarantors, the Obligations or the Property, provided that such disclosure shall be made exclusively in connection with the proposed assignment of Loan Documents or sale of a participation. Mortgagor's obligations to indemnify Mortgagee under the Loan Documents shall apply with respect to each such participant and such participant's officers, directors, agents, employees, representatives, shareholders, affiliates, successors and assigns, with the same force and effect as the same indemnification obligations apply with respect to Mortgagee and its officers, directors, agents, employees, representatives, shareholders, affiliates, successors and assigns.

6.29 Applicable Law; Jurisdiction.

(a) Applicable Law. This Mortgage is entered into and performable in the State of Alabama, and the substantive laws, without giving effect to principles of conflict of laws, of the United States and the State of Alabama shall govern the construction of this Mortgage and the documents executed and delivered pursuant hereto and the rights and remedies of the parties hereto and thereto, except as otherwise expressly provided in the Loan Documents.

(b) JURISDICTION. MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY:

(1) SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF ALABAMA, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF ALABAMA, AND APPELLATE COURTS FROM ANY THEREOF;

(2) CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS, AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME;

(3) AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO MORTGAGOR AT ITS ADDRESS SET FORTH ABOVE OR AT SUCH OTHER ADDRESS OF WHICH THE MORTGAGEE SHALL HAVE BEEN NOTIFIED PURSUANT THERETO; AND

(4) AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION.

(c) JURY TRIAL WAIVER. MORTGAGOR AND MORTGAGEE HEREBY:

(1) IRREVOCABLY AND UNCONDITIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM OF ANY TYPE AS TO ANY MATTER ARISING DIRECTLY OR INDIRECTLY OUT OF OR WITH RESPECT TO THIS MORTGAGE, THE NOTE, OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION HEREWITH OR THEREWITH; AND

(2) AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS MORTGAGE WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED FOR AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY OF ANY KIND WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

6.30 Successors. Subject to the restrictions contained in the Loan Documents, the Loan Documents shall be binding upon and inure to the benefit of Mortgagee and Mortgagor and their respective permitted successors and assigns.

6.31 Power of Attorney. Mortgagor irrevocably appoints Mortgagee, with full power of substitution, as Mortgagor's attorney-in-fact, coupled with an interest, with full power, in Mortgagee's own name or in the name of Mortgagor (a) to take any or all of the actions specified in Article 4 above with respect to the Property; and (b) to sign and record notices of completion, notices of

cessation of labor, and any other similar notice or document which Mortgagee determines to be necessary or appropriate to protect its interests in connection with the Obligations. Mortgagee shall have the right to exercise the power of attorney granted in this Section directly or to delegate all or part of such power to one or more agents of Mortgagee. Nothing contained in this Mortgage shall be construed to obligate Mortgagee to act on behalf of Mortgagor as attorney-in-fact.

6.32 No Merger. There shall be no merger of any estate in the Property which Mortgagor acquires after the date of this Mortgage with all or any portion of the estate in the Property which Mortgagor holds as of the date of this Mortgage, unless Mortgagee shall expressly agree otherwise in writing.

6.33 Request for Notices. Mortgagor hereby requests that a copy of any notice of default and notice of sale as may be required by law be mailed to Mortgagor at its address stated above.

6.34 Waiver of Homestead, Appraisement, Valuation, Etc. Mortgagor hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Property as against the collection of the Obligations, or any part thereof. Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the lien of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

ARTICLE 7

UNIFORM COMMERCIAL CODE SECURITY AGREEMENT

7.1 Uniform Commercial Code Security Agreement. Article 7 of this Mortgage constitutes a security agreement pursuant to the Uniform Commercial Code of the State in which the Property is located (the "Code"). All terms that are used in this Article 7 but which are not specifically defined in this Mortgage shall have the meanings given to such terms in the Code. To secure payment and performance of the Obligations, Mortgagor grants Mortgagee a security interest in all now owned and hereafter acquired personal property of Mortgagor now or hereafter located on the Property or now or hereafter obtained for, used in connection with, or otherwise relating to the design, planning, construction, development, use, operation, maintenance, or marketing of the Property (collectively, the "Personal Property Collateral"), including the following: (a) all fixtures, machinery, machines, motor vehicles, tools, parts, equipment, pumps, engines, motors, boilers, incinerators, building materials, inventory, supplies, goods, systems for the supply or distribution of heat, air conditioning, electricity, gas, water, air or light, elevators and related machinery and equipment, fire prevention and extinguishing equipment, security and access control equipment, plumbing, showers, bath tubs, water heaters, toilets, sinks, stoves, ranges, refrigerators, dishwashers, disposals, laundry equipment, wall, window and floor coverings, partitions, doors, windows, hardware, waste and rubbish removal equipment, recreational equipment, signs, furniture, furnishings, appliances, telephone equipment, computer systems, office equipment and supplies, plants, carpets, rugs, sculptures, art work, mirrors, tables, lamps, beds, television sets, light fixtures, chandeliers, desks, cabinets, bookcases, chairs, sofas, benches, and janitorial and maintenance equipment and supplies, and all substitutions, accessories, accessions, replacements, improvements, and additions to any or all of the foregoing; (b) all deposits, advance payments, security deposits, and rental payments made by or on behalf of Mortgagor to others in connection with the Property and relating to any or all of the following: (i) management or operational services; (ii) marketing services; (iii) architectural, engineering, or design services; (iv) utility services; (v) cleaning, maintenance, security, or repair services; (vi) rubbish or refuse removal services; (vii) sewer services; (viii) rental of furnishings, fixtures or equipment; (ix) parking; or (x) any service similar to any or all of the foregoing; (c) all reports, appraisals, drawings, plans, blueprints, studies, specifications, certificates of occupancy, building permits, grading permits, and surveys relating to all or part of the Property, and all amendments, modifications, supplements, general conditions and addenda thereto; (d) all trade names, trademarks, trade styles, service marks, domain names, computer software and computer software products, logos, letterheads, advertising symbols, goodwill, telephone numbers, advertising rights, negatives, prints, brochures, flyers, pamphlets and other media items used or intended to be used in connection with the Property; (e) all warranties and guaranties, whether written or oral, from any third Person which directly or indirectly relate to all or part of the Property or personal property described in parts (a) through (d) of this Section 7.1; (f) all legal and equitable claims, causes of action, and rights against architects, engineers, designers, contractors, subcontractors, suppliers, materialmen and any other Persons supplying labor, services, materials or equipment, directly or indirectly, in connection with the design, planning, construction, development, use, operation, maintenance, or marketing of all or part of the Property; (g) all Condemnation Claims, Condemnation Proceeds, Property Claims (including commercial tort claims), Property Proceeds, Insurance Claims, and Insurance Proceeds (regardless of whether or not Mortgagee required Mortgagor to obtain or maintain in effect the Insurance Policy or Insurance Policies under which the Insurance Claims arise or the Insurance Proceeds are payable); (h) all real property tax refund claims, general intangibles (including payment intangibles), letters of credit, letter-of-credit rights, supporting obligations, accounts, deposit accounts, documents, instruments, chattel paper (including electronic chattel paper and tangible chattel paper), health-care-insurance receivables, and accounts receivable relating to the design, planning, construction, development, use, operation, maintenance or marketing of all or part of the Property or any business now or hereafter conducted on the Property, including any right to payment for goods sold or leased or to be sold or leased or for services rendered or to be rendered, however evidenced, including purchase orders, negotiable documents, notes, drafts, acceptances, claims, instruments, insurance policies, and all other forms of obligations and receivables; and (i) all products and proceeds of any or all of the foregoing personal property, including all money, deposit accounts, accounts, chattel paper,



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documents, notes, drafts, instruments, insurance proceeds, and all other tangible and intangible property resulting from the sale, lease, or other disposition of any or all of the foregoing personal property.

7.2 Filing. Mortgagor agrees that Mortgagee may file this Mortgage, or a reproduction thereof, in the real estate records or other appropriate index, as a financing statement for any of the items of Personal Property Collateral specified in Section 7.1 above which is or may be part of the Property. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. Mortgagor (a) irrevocably authorizes Mortgagee to file a financing statement with respect to any or all of the Personal Property Collateral and such other financing statements, addenda thereto, and financing statement amendments, termination statements, continuation statements, and assignments in such filing offices or with such other Governmental Authorities as Mortgagee may deem to be necessary or appropriate in order to perfect the security interest granted to Mortgagee under this Article 7 or to otherwise effectuate the terms of this Article 7; (b) agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any or all of such documents in such form as Mortgagee may require to perfect the security interest granted to Mortgagee under this Article 7 or to otherwise effectuate the terms of this Article 7. Mortgagor shall pay all costs of filing of such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements that Mortgagee may reasonably require.

7.3 Additional Covenants of Mortgagor. Mortgagor, at its sole cost and expense, (a) shall give Mortgagee at least thirty (30) days prior written notice of (i) if Mortgagor is an individual, any change in Mortgagor's principal residence; (ii) if Mortgagor is a registered organization as to which the state or other Governmental Authority under which Mortgagor is organized maintains a public record showing Mortgagor to have been organized (a "Registered Organization"), any change in the state or Governmental Authority under which Mortgagor is organized; (iii) if Mortgagor is an organization which is not a Registered Organization, any change in Mortgagor's place of business or chief executive office; and (iv) the acquisition or use of a trade name or style by Mortgagor; (b) shall promptly notify Mortgagee in writing of any claim, lien, security interest, right, encumbrance or any other occurrence which may be adverse to Mortgagee's security interest in the Personal Property Collateral; (c) shall defend the Personal Property Collateral from all claims, liens, security interests, rights, encumbrances and other matters which are adverse to Mortgagee's security interest in the Personal Property Collateral; (d) shall promptly pay all costs and expenses relating to the purchase, ownership, or use of the Personal Property Collateral, including all liens, taxes, assessments and charges of Governmental Authorities levied, assessed or imposed on all or part of the Personal Property Collateral; (e) shall not sell, transfer, pledge, hypothecate, lease or otherwise dispose of or abandon all or part of the Personal Property Collateral without Mortgagee's prior written consent, except for the sale of inventory in the ordinary course of Mortgagor's business, the disposition of any Personal Property Collateral which is obsolete or which has a de minimus value, and the disposition of any Personal Property Collateral which is promptly replaced with new Personal Property Collateral of substantially comparable value and utility; (f) shall not remove any material part of the Personal Property Collateral which consists of tangible personal property from its location on the Property without Mortgagee's prior written consent, except for the sale of inventory in the ordinary course of Mortgagor's business, the disposition of any Personal Property Collateral which is obsolete or which has a de minimus value, and the disposition of any Personal Property Collateral which is promptly replaced with new Personal Property Collateral of substantially comparable value and utility; (g) shall, upon Mortgagee's request, give notice, in form and substance acceptable to Mortgagee, to any or all account debtors or Persons obligated on an instrument designated by Mortgagee of Mortgagor's grant of a security interest in any Personal Property Collateral which consists of accounts, contract rights, instruments, documents, or general intangibles (referred to collectively as the "Accounts" and individually as an "Account"); (h) following the occurrence of any Event of Default, shall not compromise, settle, adjust, or grant any discount, credit, or allowance to any Account debtor without Mortgagee's prior written consent; (i) shall undertake any and all other acts necessary or appropriate to maintain, preserve and protect the Personal Property Collateral and Mortgagee's security interest therein, including any actions requested by Mortgagee; and (j) shall execute and deliver to Mortgagee such other documents as Mortgagee may request in order to evidence, effectuate, perfect, maintain, preserve or protect Mortgagee's security interest in the Personal Property Collateral, including security agreements and assignments. If Mortgagor fails to execute and deliver to Mortgagee any document requested by Mortgagee pursuant Section 7.3(j) within ten (10) days after such request, then Mortgagor irrevocably appoints Mortgagee, with full power of substitution, as Mortgagor's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Mortgagor, to execute such document on behalf of Mortgagor. Mortgagor has set forth above its full and correct name, and Mortgagor does not presently use any other names or tradenames, except for those tradenames specifically disclosed in writing by Mortgagor to Mortgagee prior to the recordation of this Mortgage. Nothing contained in this Article 7 shall be construed to obligate Mortgagee to act on behalf of Mortgagor as attorney-in-fact.

7.4 Rights and Additional Remedies of Mortgagee under Uniform Commercial Code. Without limiting Article 4 above, upon the occurrence of an Event of Default, Mortgagee shall have the following additional rights and remedies with respect to the Personal Property Collateral: (a) Mortgagee shall have all the rights and remedies of a secured party under the Code and under any other applicable law, and, at Mortgagee's option, shall also have the right to invoke any or all of the remedies provided in Article 4 of this Mortgage with respect to the Personal Property Collateral, and in exercising any of such remedies, Mortgagee may proceed against the items of real property and any items of Personal Property Collateral separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Code or of the remedies provided in Article 4 of this Mortgage; (b) Mortgagee, at its option, shall have the right (i) to direct any or all Account debtors to make payment directly to Mortgagee; (ii) to demand, collect, receive and give receipts for any and all money and other property due or to become due in connection with all or part of the Personal Property Collateral, including any of the Accounts; (iii) to take possession of and endorse and collect any or all notes, checks, drafts, money orders, or other instruments of payment relating to all or part of the Personal Property Collateral or proceeds of the Personal Property Collateral, including any of the Accounts; and (iv) to file any claim and take any other action which Mortgagee determines to be appropriate for the purpose of collecting any or all of the Accounts and to compromise, adjust or settle Accounts for less than face value thereof, and to execute all releases and other documents in connection therewith; provided, however, that Mortgagee shall not be obligated in any manner to make any demand for or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any action to collect or

enforce the payment of any or all of the Accounts; (c) should Mortgagee seek to take possession of any or all of the Personal Property Collateral by court process, Mortgagor irrevocably and unconditionally agrees that a receiver may be appointed by a court for such purpose without regard to the adequacy of the security for the Obligations; and (d) Mortgagor irrevocably appoints Mortgagee, with full power of substitution, as Mortgagor's attorney-in-fact, coupled with an interest, with full power, in its own name or in the name of Mortgagor to take any or all of the actions described in Section 7.4(b) after the occurrence of an Event of Default. Mortgagee, at its option, and whether or not an Event of Default exists, shall at all times have the right [A] to take such actions as Mortgagee determines to be necessary or appropriate to maintain, preserve and protect the Personal Property Collateral and Mortgagee's security interest therein; and [B] to give notice to any Account debtor containing such information and instructions concerning the existence of Mortgagee's security interest and rights in the Personal Property Collateral under this Mortgage as Mortgagee determines to be necessary or appropriate to protect its interest.

7.5 Fixtures. The Personal Property Collateral in which Mortgagee has a security interest under this Article 7 includes goods which are or may become Fixtures on the Property. This Mortgage constitutes a fixture filing pursuant to the terms of Section 9502 of the Code which shall be recorded in the real estate records of the county in which the Property is located and that relates to the Property more particularly described in this Mortgage. In that regard, the following information is provided:

Name of Debtor: **Tower Capital, LLC, a California limited liability company, as to an undivided seventy percent (70%) interest, and Forest Square, LLC, an Alabama limited liability company, as to an undivided thirty percent (30%) interest, as tenants in common**

Address of Debtor: **c/o Rabin Michael 814 South Westgate Avenue #127, Los Angeles, California 90049**

Name of Secured Party: **Imperial Capital Bank**

Address of Secured Party: **500 North Brand Boulevard, Suite 1500
Glendale, California 91203**

Owner of Land: **Tower Capital, LLC, a California limited liability company, as to an undivided seventy percent (70%) interest, and Forest Square, LLC, an Alabama limited liability company, as to an undivided thirty percent (30%) interest, as tenants in common**

NOTICE TO MORTGAGOR: THIS DOCUMENT OR THE NOTE SECURED BY THIS DOCUMENT MAY CONTAIN PROVISIONS FOR A VARIABLE INTEREST RATE AND FOR VARIABLE PAYMENT AMOUNTS.

SEE RIDER ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE FOR ADDITIONAL TERMS AND CONDITIONS REGARDING, AMONG OTHER MATTERS, ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION BY MORTGAGOR.

IN WITNESS WHEREOF, this Mortgage has been duly executed as of the day and year first above written.

MORTGAGOR:

Tower Capital, LLC, a California limited liability company

By: 
Rabin Michael, Manager/Member

Forest Square, LLC, an Alabama limited liability company

By: 
Rabin Michael, Manager/Member



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MORTGAGE

EXHIBIT "A"

LEGAL DESCRIPTION

THE REAL PROPERTY REFERRED TO HEREIN IS ALL THAT CERTAIN REAL
PROPERTY LOCATED IN THE CITY OF ALABASTER, COUNTY OF SHELBY,
STATE OF ALABAMA DESCRIBED AS FOLLOWS:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS
REFERENCE.

ASSESSORS PARCEL NUMBER: 58-23-1-02-1-002-027

COMMONLY KNOWN AS: 104 – 144 MARKET CENTER DRIVE
ALABASTER, ALABAMA 35007

END OF LEGAL DESCRIPTION

Exhibit "A" – Legal Description

A parcel of land located in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ and the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ and the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Begin at the intersection of the South right of way line of 6th Avenue Southwest and the Easterly right of way line of the L&N Railroad line, thence run Southwesterly along said railroad right-of-way line a distance of 603.00 feet; thence 88 deg. 37 min. left, in a Southeasterly direction, a distance of 257.00 feet; thence 90 deg. right, in a Southwesterly direction, a distance of 15.00 feet; thence 90 deg. 04 min. 19 sec. left, in a Southeasterly direction, a distance of 187.28 feet to a point on the Northwesterly right of way line of Alabama Highway No. 119, said point being on a curve, having a radius of 1352.49 feet; thence 70 deg. 11 min. 08 sec. left to tangent of said curve, in a Northeasterly direction along the arc of said curve to the right and along said right of way line, a distance of 259.97 feet to end of said curve; thence 13 deg. 40 min. 48 sec. right from tangent of said curve, in a Northeasterly direction along said right of way line, a distance of 119.83 feet; thence 89 deg. 06 min. 48 sec. left, in a Northwesterly direction, a distance of 328.80 feet; thence 22 deg. 08 min. right, in a Northerly direction, a distance of 219.24 feet to a point on said South right of way line of 6th Avenue Southwest; thence 89 deg. 48 min. left, in a Westerly direction along said South right of way line, a distance of 365.68 feet to the point of beginning; being situated in Shelby County, Alabama.

Less and except:

A part of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ and the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, and being more fully described as follows:

Commencing at the northeast corner of said Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$; thence west along the north line of said Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$, a distance of 820 feet, more or less, to the present northwest right of way line of Alabama Highway #119 and the point of beginning of the property herein to be conveyed; thence southwesterly along said right of way line, a distance of 870 feet, more or less, to the southwest property line; thence northwesterly along said southwest property line, a distance of 50 feet, more or less, to a point that is 85 feet northwesterly of and at right angles to the centerline of Survey of Alabama Highway #119; thence northeasterly 85 feet northwesterly of and parallel with said centerline, a distance of 900 feet, more or less, to a point that is 85 feet northwesterly of and at right angles to said centerline at Station 551+00; thence northeasterly along a line (which, if extended, would intersect a point that is 65 feet northwesterly of and at right angles to the centerline of Relocated Alabama Highway #119 at Station 552+56.95), a distance of 120 feet more or less, to the northeast property line; thence southeasterly along said northeast property line, a distance of 20 feet, more or less, to the present northwest right of way line of Alabama Highway #119; thence southwesterly along said right of way line, a distance of 118 feet, more or less to the point of beginning, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.



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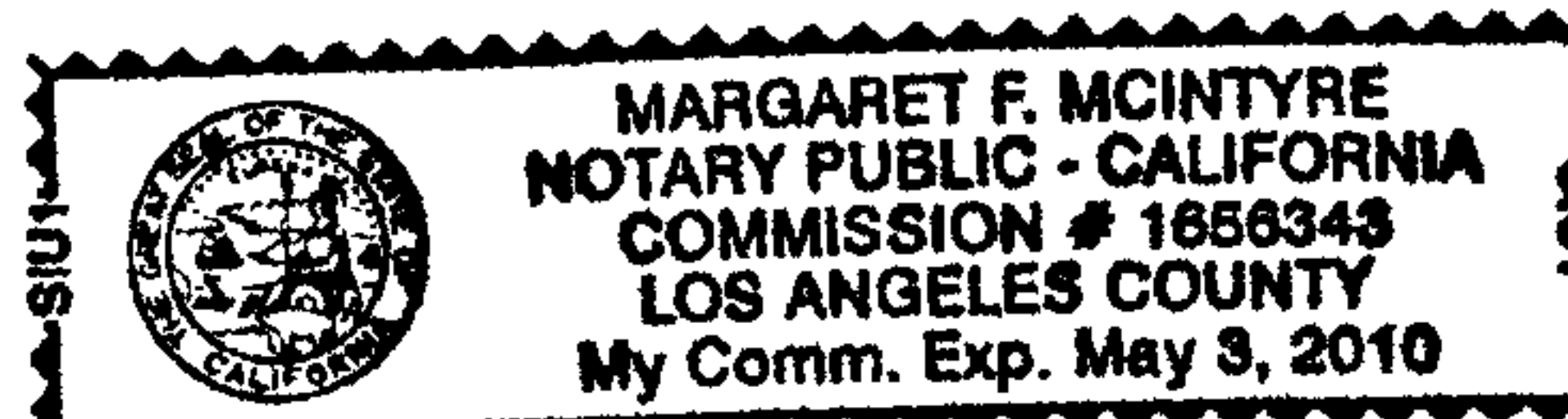
ALL PURPOSE ACKNOWLEDGMENT

STATE OF California }
COUNTY OF Los Angeles }

On June 26, 2007 before me, Margaret F. McIntyre (notary public) personally appeared RABIN Michael, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret F. McIntyre



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type Mortgage
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____

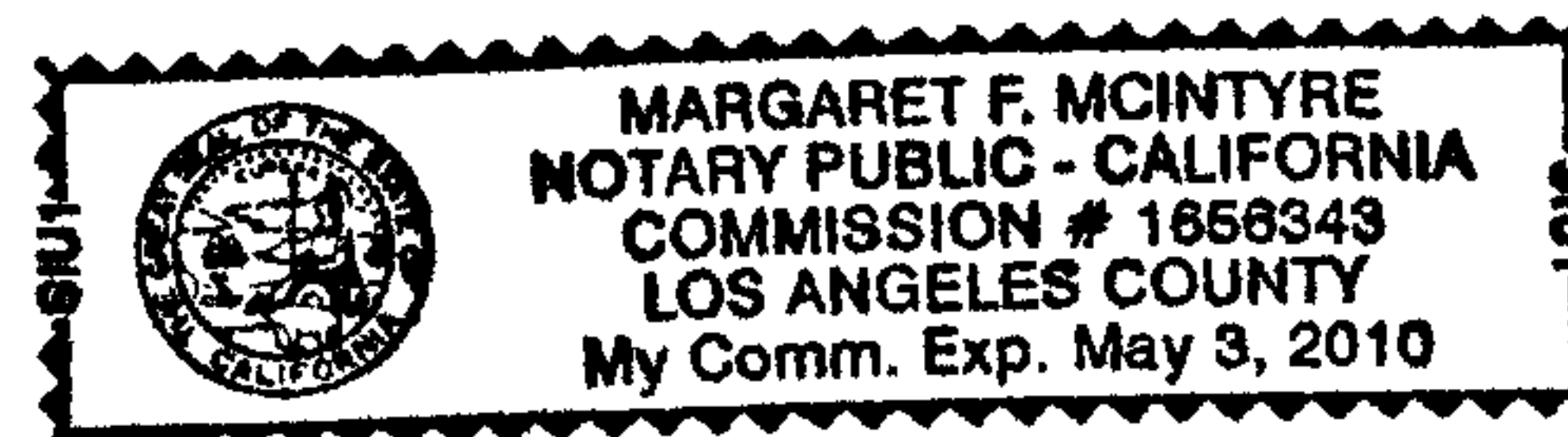
ALL PURPOSE ACKNOWLEDGMENT

STATE OF California }
COUNTY OF Los Angeles }

On June 26, 2007 before me, Margaret F. McIntyre (notary public) personally appeared RABIN Michael, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(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 authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Margaret F. McIntyre



(NOTARY SEAL)

ATTENTION NOTARY: Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to another document.

THIS CERTIFICATE **MUST** BE ATTACHED TO
THE DOCUMENT DESCRIBED AT RIGHT.

Title of Document Type Mortgage
Number of Pages _____ Date of Document _____
Signer(s) Other Than Named Above _____



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RIDER TO MORTGAGE, FIXTURE FILING,
ASSIGNMENT OF RENTS, AND SECURITY AGREEMENT
(ENVIRONMENTAL COMPLIANCE)

This Rider is attached to and made a part of the Mortgage, Fixture Filing, Assignment of Rents, and Security Agreement dated **June 21, 2007** (the "Mortgage") executed by **Tower Capital, LLC**, a California limited liability company, as to an undivided seventy percent (70%) interest, and **Forest Square, LLC**, an Alabama limited liability company, as to an undivided thirty percent (30%) interest, as tenants in common (collectively, the "Mortgagor"), naming **IMPERIAL CAPITAL BANK** ("Mortgagee"), as Mortgagee, and encumbering the real property described in the Mortgage.

For valuable consideration, the Mortgage is amended by adding the following new Article 8:

ARTICLE 8
ENVIRONMENTAL COMPLIANCE

8.1. Certain Definitions. For purposes of this Rider, the following terms shall have the following definitions:

(a) **Governmental Authority.** "Governmental Authority" means, collectively, (1) the United States; (2) the state, county, city, and any other political subdivision in which the Property is located; (3) all other governmental or quasi-governmental authorities, boards, bureaus, agencies, commissions, departments, administrative tribunals, and other instrumentalities or authorities; and (4) all judicial authorities and public utilities having or exercising jurisdiction over Mortgagor or the Property.

(b) **Hazardous Substance.** "Hazardous Substance" means any:

(1) Substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to any or all of the following statutes and regulations, as the same may be amended from time to time:

[A] The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq. ("CERCLA");

[B] The Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.;

[C] The Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq., ("RCRA");

[D] The Toxic Substances Control Act, 15 U.S.C. Sections 2601, et seq.;

[E] The Clean Water Act, 33 U.S.C. Sections 1251, et seq.;

[F] All other existing and future federal, state and local laws, ordinances, rules, regulations, orders, requirements, and decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material;

(2) Any substance, product, waste or other material of any nature whatsoever which may give rise to liability [1] under any of the statutes or regulations described in clauses [A] through [F] of Section 8.1.(b)(1) above; [2] under any statutory or common law theory, including negligence, trespass, intentional tort, nuisance or strict liability; or [3] under any reported decisions of any state or federal court;

(3) Petroleum, petroleum products and by-products, gasoline or crude oil, other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(4) Asbestos or asbestos containing materials.

(c) **Hazardous Substance Laws.** "Hazardous Substance Laws" means all existing and future laws, ordinances, rules, regulations, orders and requirements of all Governmental Authorities (including the statutes and regulations identified in Section 8.1.(b)(1) above and all licenses, permits, plans and approvals granted or issued under or pursuant to such statutes and regulations) relating to any or all of the following:

(1) Any Hazardous Substance, including the use, storage, generation, production, treatment, disposal, handling, release, discharge, transportation, repair, cleanup, remediation, removal or decontamination of any Hazardous Substance; and

(2) Industrial hygiene or the environmental conditions in, on, under or about the Property or any Surrounding Property, including soil, air, and groundwater conditions.

(d) **Indemnified Parties.** "Indemnified Parties" means the Mortgagee and its Loan participants, and each of them, and each of their respective officers, directors, agents, attorneys, employees, representatives, shareholders, parent companies, subsidiaries, affiliates, successors and assigns.

(e) **Hazardous Substance Claims and Losses.** "Hazardous Substance Claims and Losses" means all claims, demands, damages (including special and consequential damages), liabilities, actions, causes of action, legal proceedings, administrative proceedings, suits, injuries, costs, losses, debts, liens, interest, fines, charges, penalties and expenses (including attorneys', accountants', consultants', and expert witness fees and costs) of every kind and nature (all of the foregoing are referred to collectively as the "Claims and Losses") which directly or indirectly arise out of or relate to any or all of the following, but only to the extent such Claims and Losses are incurred or suffered by any of the Indemnified Parties or are asserted against any or all of the Indemnified Parties prior to the Lien Termination Date:

(1) Any breach by Mortgagor of any representation, warranty or obligation contained in the Mortgage;

(2) The existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, or under the Property, whether caused by Mortgagor or any other Person, including any prior owner, Tenant, or occupant of the Property;

(3) The release (including any "release" as defined in Alabama Statutes Annotated), discharge, or transport of any Hazardous Substance onto or from the Property, including contamination of any Surrounding Property from the Property or any natural resources (including

groundwater), whether caused by Mortgagor or any other Person, including any prior owner, Tenant, or occupant of the Property;

(4) The violation of any Hazardous Substance Laws, whether by Mortgagor or any other Person, including any prior owner, Tenant, or occupant of the Property; or

(5) Any repair, cleanup, remediation, removal, closure, or decontamination activity relating to any Hazardous Substance existing in, on, or under the Property, including any preparation for and investigation, testing, and monitoring relating to any such activity, whether or not such activity is undertaken or required as a result of any requirement of any Governmental Authority; or

(6) Any personal injury, death, or property damage resulting from or relating to any or all of the matters described in clauses (1) through (5) above.

(f) **Lien Termination Date.** "Lien Termination Date" means the earlier to occur of the following dates: (a) the date on which the Mortgagee or any other Person acquires title to all or part of the Property as a result of a foreclosure or deed in lieu of foreclosure under the Mortgage; or (b) the date on which Mortgagee reconveys the Property under the Mortgage.

(g) **Surrounding Property.** "Surrounding Property" means all real property which is located adjacent to or within two thousand (2,000) feet of the Property.

8.2 Compliance with Hazardous Substance Laws. Mortgagor shall comply and cause the Property to comply with all Hazardous Substance Laws. Without limiting the generality of the preceding sentence, Mortgagor shall not cause or permit (a) the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property, whether such activities are conducted by Mortgagor or any other Person, including any Tenant or occupant of the Property, including the installation of any underground storage tanks or facilities for the deposit or storage of any Hazardous Substances; or (b) the release, discharge, or transport of any Hazardous Substance onto or from the Property, including the contamination of any Surrounding Property or any natural resources, including groundwater. All lease agreements, if any, entered into by Mortgagor with respect to the Property shall contain a provision prohibiting the Tenant under such lease from conducting any of the activities described in clauses (a) and (b) of this Section 8.2. Notwithstanding anything to the contrary contained in this Section, nothing contained in this Section shall be deemed to prohibit the use or existence on the Property of any or all of the following (collectively, the "Permitted Substances"): (1) gasoline, motor oil, or lubricants contained within vehicles or machinery operated on the Property in a regular and customary manner and in compliance with all applicable Hazardous Substance Laws; and (2) general office supplies and products, cleaning supplies and products, and other commonly used supplies and products [A] which are customarily used in the ordinary course of business by Mortgagor or by Tenants under and in compliance with Leases that either do not require Mortgagee's approval under the terms of the Loan Documents or which have been approved by Mortgagee in accordance with the Loan Documents (collectively, the "Approved Leases"); [B] which are used in the manner for which there were designed; [C] which are used in such amounts as may be normal and prudent for the business operations conducted on the Property pursuant to the Approved Leases; and [D] which are handled, stored and disposed of in compliance with all applicable Hazardous Substance Laws. The references to the term "Hazardous Substances" in this Rider shall not be deemed to include the Permitted Substances.

8.3 Environmental Assessment. Within forty-five (45) days after the Mortgagee's written request to Mortgagor from time to time, Mortgagor shall cause to be prepared and delivered to the Mortgagee, at Mortgagor's expense, an environmental site assessment and report for the Property, or an update of any such environmental site assessment and report which has previously been prepared by or for Mortgagor, prepared by a qualified, state-registered, professional environmental auditor reasonably acceptable to the Mortgagee (the "Assessment Report"). Following the closing of the Loan, the Mortgagee may only request an Assessment Report following the occurrence of an Event of Default under the Mortgage or where the Mortgagee has learned of or reasonably suspects (a) the existence,

presence, use, storage, handling, generation, production, treatment, disposal or handling of any Hazardous Substance in, on, under or about the Property; (b) the release, discharge or transport of any Hazardous Substance onto or from the Property; or (c) the threatened release, discharge, or transport of any Hazardous Substance onto or from the Property.

8.4 Contents of Assessment Report. If specifically requested by the Mortgagee, each Assessment Report shall include the following information: (a) a description of the presence, character, location or amount of Hazardous Substances in, on, under or about the Property or any Surrounding Property; (b) a review and audit of all books, records, permits, notices, citations, orders and other data and information in the possession or control of Mortgagor relating to Hazardous Substances in, on, under or about the Property or any Surrounding Property, including historical data and information (if such data and information is not covered in any prior Assessment Report received by the Mortgagee); (c) a review and report on any records or listings of any Governmental Authority concerning Hazardous Substances in, on, under or about the Property or any Surrounding Property; (d) an investigation and report on the history of ownership and use of the Property or any Surrounding Property, unless covered in any prior Assessment Report received by the Mortgagee; (e) a report of interviews with the current Tenants and occupants, if any, of the Property concerning their use of the Property; (f) an evaluation of the likelihood of any soil or groundwater contamination resulting from any Hazardous Substances in, on, under or about the Property or any Surrounding Property; and (g) such other information or recommendations as the Mortgagee may reasonably require.

8.5 Remedial Actions by Mortgagor. If the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property, or the release, discharge, or transport of any Hazardous Substance onto or from the Property (a) gives rise to or threatens to give rise to any Hazardous Substance Claims and Losses; (b) causes or threatens to cause a significant public health effect; or (c) pollutes or threatens to pollute the environment, then in any of such circumstances, Mortgagor shall, subject to Section 8.9 below, promptly commence and diligently prosecute all actions and proceedings which are reasonably necessary or appropriate (i) to repair, cleanup, remediate, and decontaminate the Property and any Surrounding Property (if the presence of Hazardous Substances in, on, or under the Surrounding Property was caused by a release by Borrower or any of its agents or from the Property) with respect to such Hazardous Substances and remove such Hazardous Substances therefrom; (ii) to mitigate any exposure to liability by Mortgagor or the Mortgagee with respect to such Hazardous Substances; and (iii) to preserve, protect, and maintain the value of the Property, whether or not any or all of the actions described in clauses (i) through (iii) of this Section are required by any Hazardous Substance Law or any Governmental Authority.

8.6 Indemnity. Mortgagor shall indemnify and hold the Mortgagee and the other Indemnified Parties harmless from and against any and all Hazardous Substance Claims and Losses. The Indemnified Parties' right to indemnification under this Section shall not directly or indirectly be limited, prejudiced, impaired or eliminated in any way by any finding or allegation that the conduct of any Indemnified Party in connection with the Hazardous Substance Claims and Losses is active, passive or subject to any other classification or that any Indemnified Party is directly or indirectly responsible under any theory of any kind, character or nature for any act or omission by Mortgagor or any other Person. Notwithstanding anything to the contrary contained in this Section, Mortgagor shall not be obligated to indemnify any Indemnified Party for any liabilities resulting from the negligence or intentional tortious conduct of such Indemnified Party, which such Indemnified Party is determined by the final judgment or a court of competent jurisdiction to have committed. All costs, fees, expenses, advances, and other amounts paid by any Indemnified Party in connection with any Hazardous Substance Claims and Losses (a) shall be payable by Mortgagor to such Indemnified Party on such Indemnified Party's demand; and (b) shall bear interest from the date of expenditure by such Indemnified Party at the same rate of interest applicable to principal under the Note. Notwithstanding anything to the contrary contained in this Mortgage, Mortgagor's obligations, representations and warranties under this Article 8 shall survive and remain effective following the repayment of the Obligations, the reconveyance of the Property under this Mortgage, and any foreclosure, deed in lieu of foreclosure, or similar proceeding through which Mortgagee or any other Person obtains title to the Property. Without limiting any of the terms of the Loan Documents, each of the Indemnified Parties, in its sole and absolute discretion, (i) shall have the right to

select, retain and direct attorneys, accountants, consultants, and experts acceptable to such Indemnified Party to represent or advise it in connection with any of the Hazardous Substance Claims and Losses, and all reasonable costs, fees expenses and advances made or incurred by such Indemnified Party in connection therewith shall be deemed to be included in the Hazardous Substance Claims and Losses; and (ii) shall have the right to settle, compromise, adjust, and pay any or all of the Hazardous Substance Claims and Losses asserted against or incurred or suffered by it for such amounts and on such terms as the Indemnified Party may reasonably and in good faith determine; provided, however, that as long as Mortgagor is complying with its obligations to indemnify the Indemnified Parties with respect to the costs, fees, and expenses of defending against the Hazardous Substance Claims and Losses, Mortgagee shall not enter into such settlement, compromise or adjustment without Mortgagor's written consent, which consent shall not be unreasonably withheld or delayed. Nothing contained in this Mortgage shall be deemed to obligate any Indemnified Party to pay any Hazardous Substance Claims and Losses.

8.7 No Impairment of Mortgagor's Indemnification Obligations. Mortgagor's indemnification obligations under Section 8.6 above shall not be impaired, diminished, or otherwise affected in any way as a result of any information, data, documents, or notice given to or received or obtained by any Indemnified Party regarding or relating to the release, threatened release, presence, existence, character, or magnitude of any Hazardous Substances in, on, under or about the Property or any Surrounding Property. No Indemnified Party shall be deemed to have permitted, caused, contributed to, or acquiesced in any "release" [as defined in Alabama Statutes Annotated] as a result of the fact that such Indemnified Party had actual or constructive notice or knowledge of such release. If Mortgagor consists of more than one Person, each Person who enters into this Mortgage as Mortgagor agrees that (a) it shall have no right of subrogation or contribution (whether under CERCLA or otherwise) against any other Mortgagor unless and until all indemnification obligations of such Person under Section 8.6 above to the Mortgagee have been paid or satisfied in full; and (b) if and to the extent that the waiver of its rights of subrogation and contribution under this Section is found by a court of competent jurisdiction to be void, voidable or unenforceable for any reason, any rights of subrogation or contribution that such Person may have shall be junior and subordinate to the Indemnified Parties' rights against each Mortgagor under this Mortgage.

8.8 Notices. Promptly upon receipt by Mortgagor, Mortgagor shall deliver complete and accurate copies of all notices, correspondence, and information which Mortgagor receives from or forwards to any Governmental Authority regarding (i) any Hazardous Substance in, on, under or about the Property or the Surrounding Property; or (ii) any actions instituted, contemplated, or threatened by any such Governmental Authority concerning any Hazardous Substance which affects or may affect the Property or any Surrounding Property. Mortgagor shall promptly notify the Mortgagee in writing of (a) any information that Mortgagor obtains regarding any Hazardous Substance in, on, under or about the Property or any Surrounding Property; (b) any information that Mortgagor obtains regarding the release, discharge, or transport of any Hazardous Substance onto or from the Property or any Surrounding Property; (c) any Hazardous Substance Claims and Losses of which Mortgagor is aware; (d) any occurrence or condition on any Surrounding Property that might cause the Property to be classified as "border-zone property" under the provisions of applicable law, or any regulation adopted in accordance therewith, or otherwise to be subject to any restrictions on the ownership, use, occupancy, or transferability of the Property under any Hazardous Substance Law. Without limiting Section 2.24 of the Mortgage, within five (5) business days after the Mortgagee's request, Mortgagor, at its expense, shall provide the Mortgagee with complete and accurate copies of all Books and Records relating to Hazardous Substances in, on, under or about the Property or any Surrounding Property which may be requested by the Mortgagee.

8.9 Notice to Mortgagee of Remedial Actions. Not less than thirty (30) days prior to (a) taking any action in response to the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property or any Surrounding Property, or to the release, discharge, or transport of any Hazardous Substance onto or from the Property; or (b) entering into any settlement agreement, consent decree, or other compromise or agreement regarding any Hazardous Substance Claims and Losses (such agreements and decrees are referred to collectively as "Hazardous Substance Agreements"), Mortgagor shall provide the Mortgagee

with a written notice (the "Remediation Notice") describing in reasonable detail the action proposed to be taken by Mortgagor or the nature of the Hazardous Substance Agreement to be entered into by Mortgagor as described in clauses (a) and (b) of this Section. The Mortgagee, at its option, shall have the right to notify Mortgagor of any objections which the Mortgagee has with respect to any matter described in the Remediation Notice. In the event of any such objection by the Mortgagee, Mortgagor (i) shall not take the actions described in the Remediation Notice as to which the Mortgagee has reasonably objected; and (ii) shall take such actions as may be reasonably required by the Mortgagee to address and resolve the Mortgagee's objections. If the Mortgagee fails to give Mortgagor written notice of any such objections by the Mortgagee within twenty (20) days after the Mortgagee's receipt of the Remediation Notice, Mortgagor may proceed to take the actions described in the Remediation Notice; provided, however, that neither the Mortgagee's failure to object, in whole or in part, to any proposed action described in any Remediation Notice, nor any communication between the Mortgagee and Mortgagor relating to any such proposed action, shall constitute or be construed as the Mortgagee's approval of any such actions. Mortgagor shall have the sole responsibility for all aspects of Mortgagor's business and the development, use, ownership, operation, maintenance, and repair of the Property, including [1] the suitability and adequacy of any proposed actions described in any Remediation Notice; and [2] the suitability and adequacy of any other action taken by Mortgagor with respect to the existence, presence, use, storage, generation, production, treatment, disposal, or handling of any Hazardous Substance in, on, under or about the Property or any Surrounding Property or the release, discharge, or transport of any Hazardous Substance onto or from the Property. Without limiting any of the terms of the Loan Documents, Mortgagor agrees that the Mortgagee shall not be directly or indirectly liable or responsible in any way or under any circumstances to Mortgagor or any other Person for any or all of the matters described in clauses (a) and (b) of this Section. Mortgagor shall not be required to provide the Mortgagee with a Remediation Notice pursuant to this Section if Mortgagor reasonably determines that immediate action is reasonably required in connection with any matter described in clauses (a) or (b) of this Section and it is not practical to give the Mortgagee the Remediation Notice prior to taking such action. Under such circumstances, Mortgagor shall provide the Mortgagee with written notice of any such action taken by Mortgagor as soon as reasonably practicable. If Mortgagor breaches any its obligations under this Article 8, the Mortgagee, at its option and its sole and absolute discretion, but without any obligation whatsoever to do so, may enter upon the Property and take any or all actions which Mortgagor was obligated to take and which the Mortgagee reasonably determines to be necessary or appropriate [A] to repair, cleanup, remediate, or decontaminate the Property and any Surrounding Property with respect to any Hazardous Substances; and [B] to mitigate any exposure to Hazardous Substance Claims and Losses by the Mortgagee with respect to any Hazardous Substances; and [C] to preserve, protect, and maintain the value of the Property, whether or not any or all of the actions described in clauses [A] through [C] of this Section are required by any Hazardous Substance Law or any Governmental Authority.

8.10 Defense of Actions and Protection of Security by Mortgagee. Whether or not an Event of Default has occurred, the Mortgagee shall have the right, but not the obligation, to appear in and defend any action or proceeding, whether commenced by or against Mortgagor or any other Person, relating to any Hazardous Substance Claims and Losses. The Mortgagee shall have the right to incur and pay all reasonable costs, fees, expenses and liabilities that the Mortgagee determines to be necessary or appropriate in connection with any such action or proceeding, and all such reasonable costs, fees, expenses and liabilities incurred or paid by the Mortgagee (a) shall be payable by Mortgagor to the Mortgagee on the Mortgagee's demand; (b) shall constitute additional indebtedness of Mortgagor to the Mortgagee; and (c) shall bear interest from the date of expenditure at the rate of interest applicable to principal under the Note. Nothing contained in this Mortgage shall be deemed to obligate the Mortgagee to make any appearance in or defend any action or proceeding.

8.11 Breach of Obligations. If Mortgagor (a) willfully breaches any or all of its obligations under Section 8.2 of this Rider; and (b) fails to commence to cure such breach within thirty (30) days after written notice by Mortgagee to Mortgagor and thereafter to diligently pursue such cure to completion with reasonable diligence, then such breach shall conclusively be deemed to constitute bad faith waste by Mortgagor with respect to the Property.

8.12 Inspection; Appointment of Receiver. The Mortgagee, acting directly through its authorized agents or through a court-appointed receiver, shall have the right to enter upon and inspect the Property for the purpose of determining the existence, character, and magnitude of any Hazardous Substances in, on, under, or about the Property or any Surrounding Property. Such entry by the Mortgagee shall be made during normal business hours and upon not less than two (2) business days prior notice by the Mortgagee to Mortgagor, except when the Mortgagee in good faith determines that an emergency exists, in which case the Mortgagee shall have the right to enter upon the Property without notice and at such different times as the Mortgagee in good faith determines may be necessary or appropriate for the protection of the Mortgagee's interests. Whether or not the Mortgagee has elected to accelerate any or all of the Obligations, and regardless of whether or not an Event of Default exists, the Mortgagee shall have the absolute and unconditional right to apply to any court of competent jurisdiction and obtain the appointment of a receiver or receivers to enforce the Mortgagee's inspection rights relating to Hazardous Substances as authorized by applicable law, including in accordance with the provisions of Alabama Statutes Annotated. If the Mortgagee obtains the appointment of a receiver under any of the terms of this Mortgage or applicable law, Mortgagee, in its sole and absolute discretion, shall have the right to seek and obtain a court order authorizing the receiver (a) to operate and maintain the Property, take custody of all Rents and Profits and use and apply the Rents and Profits in order to repair, cleanup, remediate, and decontaminate the Property with respect to any Hazardous Substances, and bring the Property into compliance with Hazardous Substance Laws; (b) to take any other action necessary or appropriate to ensure the Property's compliance with Hazardous Substance Laws, including the retention of consultants and contractors and negotiations with Governmental Authorities; and (c) to incur such other obligations and take such other actions as are ordinarily incurred by owners of real property, without any personal liability on the part of the receiver. The Mortgagee's rights of inspection under this Section shall be superior to any rights in the Property granted by Mortgagor to any third Person, and all Tenants of the Property shall be deemed to have acquired their interests in the Property subject to Mortgagee's rights under this Section. The Mortgagee shall have no obligation or duty of any kind to enter on or inspect the Property or to examine or review any of Mortgagor's Books and Records relating to any Hazardous Substances. All such inspections and reviews by the Mortgagee, including the Mortgagee's review of any Assessment Report or proposed plan of testing, monitoring, cleanup or remediation, shall be for the Mortgagee's sole benefit and not for the benefit of Mortgagor or any other Person. No inspection of the Property by the Mortgagee shall constitute or be construed as a representation or determination by the Mortgagee that the Property complies with any Hazardous Substance Laws or that Hazardous Substances are or are not present in, on, under, or about the Property or any Surrounding Property. All information prepared by or for the Mortgagee in connection with the exercise of its rights under this Mortgage shall at all times be and remain the Mortgagee's property, and the Mortgagee shall have no obligation to disclose or otherwise make such information available to Mortgagor or any other Person, except as otherwise required by applicable law.

8.13 Environmental Provisions. For purposes of this Mortgage, the term "Environmental Provisions" means, collectively, (a) all of the terms of this Article 8; and (b) all other representations, warranties, indemnities, promises and covenants of Mortgagor contained in any or all of the Loan Documents relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, or future release, or threatened release, of any Hazardous Substances into, onto, beneath, or from the Property, or to past, present, or future compliance with any Hazardous Substance Laws. All Environmental Provisions contained in the Loan Documents shall be deemed to constitute "environmental provisions" within the meaning of Alabama Statutes Annotated.

8.14 Mortgagee's Right to Bring Separate Actions to Enforce Environmental Provisions. Without limiting any of the terms of the Loan Documents, Mortgagor agrees that the Mortgagee and the other Indemnified Parties shall each have the right to commence and prosecute one or more separate actions (a) for Mortgagor's breach of any Environmental Provisions; (b) for the recovery of damages based upon any such breach; (c) for enforcement of any of the Environmental Provisions, including Mortgagor's obligation to indemnify the Indemnified Parties with respect to Hazardous Substance Claims and Losses; and (d) for injunctive relief enforcing any or all of the Environmental Provisions, including an action in accordance with the provisions of applicable law. No such separate action shall in any way be deemed to be an "action" within the meaning of Alabama Statutes Annotated or constitute a money

judgment for a deficiency or a deficiency judgment within the meaning of Alabama Statutes Annotated. Mortgagor agrees that Mortgagee shall have the right to bring one or more actions under this Section (i) without acceleration of the Obligations or commencement of foreclosure proceedings under this Mortgage; and (ii) whether or not Mortgagor is in default under the Note and whether or not any other Event of Default exists or has been declared by the Mortgagee.

8.15 Waiver of Lien at Mortgagee's Sole Option. Upon the occurrence of an Event of Default, Mortgagee, at its option and in its sole and absolute discretion, but without any obligation whatsoever to do so, shall have the right (a) to waive its lien against all or part of the Property, to the extent such property is environmentally impaired, in accordance with applicable law; and (b) to exercise any and all rights and remedies of an unsecured creditor against Mortgagor and all of Mortgagor's assets and property, including seeking an attachment order under applicable law. As between Mortgagee and Mortgagor, Mortgagor shall have the burden of proving that Mortgagor or any party related to Mortgagor (or any affiliate or agent of Mortgagor or any such related party) (a) did not knowingly or negligently cause or contribute to, or knowingly or willfully permit or acquiesce in, the release or threatened release of the Hazardous Substances which caused the environmental impairment of the Property. The delivery of an execution original of this Rider to Mortgagor constitutes a written request for information by Mortgagee to Mortgagor concerning the environmental condition of the Property. Nothing contained in this Mortgage shall be deemed to obligate the Mortgagee to exercise any election that the Mortgagee may have under Alabama Statutes Annotated.

8.16 Arbitration at Election of Mortgagee Regarding Environmental Impairment. If a dispute between the Mortgagee and Mortgagor arises with respect to the issue of whether or not all or part of the Property contains any Hazardous Substances within the meaning of Alabama Statutes Annotated, then the Mortgagee, at its option and in its sole and absolute discretion, may elect to have such dispute resolved and settled by arbitration on the following terms and conditions:

(a) **American Arbitration Association Rules.** The arbitration shall be determined by three (3) arbitrators (the "Arbitrators") in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the decision rendered by the Arbitrators in such proceeding may be entered in any court of competent jurisdiction.

(b) **Procedure.** In the arbitration proceeding, the provisions of in Alabama Statutes Annotated, or any successor or amended statute or law containing similar provisions, shall be applicable. The hearing on the matter shall be heard either in Los Angeles, California or in the county where the Property is situated, at the option of Mortgagee. The judgment upon the decision rendered in any such arbitration shall be final and binding on the parties. The Arbitrators shall use their reasonable efforts to render a decision in such arbitration proceeding as expeditiously as possible and, in any event, within ninety (90) days after written notice of intention to arbitrate has been given by the Mortgagee to Mortgagor. The Arbitrators shall have the power and authority to render a decision solely with respect to the issue of whether or not the Property, or the portion thereof which is the subject of the arbitration proceeding, is "environmentally impaired" within the meaning of Alabama Statutes Annotated. The Arbitrators shall render their decision in writing and shall cause a copy of such decision to be provided to the parties.

(c) **Costs.** All costs and expenses of any arbitration proceeding, excluding attorneys' fees, shall be shared equally by the Mortgagee and Mortgagor. Each party shall bear its own attorneys' fees; provided, however, that if the Arbitrators determine that the Property is environmentally impaired under Alabama Statutes Annotated, Mortgagor shall pay all costs and expenses of the Mortgagee in the arbitration proceeding, including attorneys' fees and costs incurred by the Mortgagee.

(d) **Arbitration Election Held Solely by Mortgagee.** Mortgagor acknowledges and agrees that the arbitration provisions contained in this Section may be invoked at the sole option and election of the Mortgagee, and that Mortgagor shall have no right to require that the dispute described in this Section be submitted to arbitration. The Mortgagee shall not be deemed to have invoked the arbitration procedure contained in this Section unless and until written notice of intention to arbitrate has been given by the Mortgagee to Mortgagor.

8.17 Reimbursable Costs. Without limiting any of the terms of the Loan Documents, all costs, fees, expenses and other amounts advanced by the Mortgagee under the terms of this Article 8 shall be deemed to constitute Reimbursable Costs under this Mortgage.

8.18 Assignment of Assessment Reports. Without limiting Section 1.28 of this Mortgage, the Property Claims that have been assigned by Mortgagor to the Mortgagee under this Mortgage shall be deemed to include all claims, actions, causes of action, demands, liens, rights, judgments, settlements, awards, compensation and damages against any environmental consultant or third Person who prepared any Assessment Report for Mortgagor.

8.19 Warranties and Representations by Mortgagor. Mortgagor represents and warrants to the Mortgagee as follows:

(a) **No Hazardous Substances.** To the best of Mortgagor's knowledge, (i) the Property does not contain any Hazardous Substances, and no underground storage tanks or underground deposits of Hazardous Substances are or previously have been located on the Property, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the date of this Rider (the "Rider Date"); and (ii) Mortgagor is in compliance with all Hazardous Substance Laws relating to the Property and the use of the Property, including those relating to disclosure to Tenants of the Property, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to Rider Date. All information provided by Mortgagor to the Mortgagee in any environmental questionnaire or disclosure statement requested by the Mortgagee is accurate and complete in all respects.

(b) **No Hazardous Substance Release.** To the best of Mortgagor's knowledge, no Hazardous Substance is being or has been released, discharged or transported onto or from the Property, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the Rider Date;

(c) **Hazardous Substance Litigation.** To the best of Mortgagor's knowledge, there is no pending or threatened action or proceedings before any Governmental Authority in which any Person alleges the existence, presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, under or about the Property, or the transportation to or from the Property of any Hazardous Substance, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the Rider Date;

(d) **Notices from Governmental Authorities.** Mortgagor has not received any notice and has no knowledge or reason to believe that any Governmental Authority has determined or threatens to determine that (i) any Hazardous Substance exists or is present in, on, under or about the Property; (ii) any Hazardous Substance is being stored, generated, produced, treated, disposed of, or handled in, on, under or about the Property; or (iii) any Hazardous Substance has been or is being released, discharged, or transported onto or from the Property, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the Rider Date;

(e) **Agreements Regarding Hazardous Substances.** There have been no communications or agreements by Mortgagor with any Governmental Authority or any other Person, including any prior owners of the Property, relating in any way to the presence, release, threat of release, placement on, under or about the Property, or the use, manufacture, handling, generation, storage, treatment, discharge, burial or disposal in, on, under or about the Property, or the transportation to or from the Property, of any Hazardous Substance, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the Rider Date; and

(f) **Border Zone Property.** To the best of Mortgagor's knowledge, Mortgagor has not discovered and does not know of any occurrence or condition on any Surrounding Property that could cause the Property to be subject to any restrictions on the ownership, occupancy, transferability or use of the Property under any Hazardous Substances Law, except as specifically disclosed in writing by Mortgagor to the Mortgagee prior to the Rider Date.

8.20 Continuing Warranties and Representations. For purposes of Section 8.19 above, the term "to the best of Mortgagor's knowledge" shall be deemed to mean to the best knowledge of Mortgagor after a commercially reasonable and diligent investigation, inspection, and inquiry by Mortgagor. The warranties and representations contained in Section 8.19 above shall constitute continuing warranties and representations by Mortgagor to the Mortgagee and shall survive the recordation of the Mortgage and any investigation, inspection or inquiry by the Mortgagee.

8.21 Operations and Maintenance Program. For purposes of this Section, the term "Lawful Hazardous Substances" means Hazardous Substances located in, on or under the Property, the presence of which does not violate any Hazardous Substance Laws and which are not required to be removed, remediated, abated, cleaned up, or otherwise remedied under any Hazardous Substance Laws (such as non-friable encapsulated asbestos contained in construction materials or elements of the Improvements). In the event that (i) on or before the Rider Date, Mortgagee has approved in writing the existence of Lawful Hazardous Substances; or (ii) subsequent to the Rider Date, Mortgagor discovers for the first time the existence of Lawful Hazardous Substances, then (a) Mortgagor shall promptly adopt and implement a commercially reasonable operations and maintenance program for the control and monitoring of such Lawful Hazardous Substances, which program shall comply with all applicable Hazardous Substance Laws and shall be prepared by a qualified, state-registered, professional environmental reasonably acceptable to Mortgagee (such program is referred to as the "O&M Program");

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(b) the O&M Program adopted by Mortgagor shall include, among other things, (i) notification to tenants of the Property regarding the existence of the Lawful Hazardous Substances in compliance with all applicable notification requirements under Hazardous Substance Laws; (ii) provisions for an ongoing operations and maintenance program which includes periodic reinspections and surveillance of the Lawful Hazardous Substances; (iii) measures to minimize any release of the Lawful Hazardous Substances; (iv) information and training systems and programs for Mortgagor's tenants and engineering and maintenance personnel; and (v) record keeping procedures by Mortgagor to demonstrate implementation of the O&M Program; (c) Mortgagor shall promulgate rules and regulations for tenants of the Property to ensure compliance with the O&M Program by such tenants, and Mortgagor shall incorporate such rules and regulations in all new leases and lease extensions and modifications affecting the Property; and (d) Mortgagor shall incorporate a form of indemnification in all new leases and lease extensions and modifications pursuant to which the tenant under each such lease indemnifies Mortgagor and Mortgagee against all claims, liabilities, costs and expenses (including attorneys' fees and costs) arising out of relating to such tenant's failure to comply with the O&M Program.

Dated: **June 21, 2007.**

MORTGAGOR:

Tower Capital, LLC, a California limited liability company

By: 
Rabin Michael, Manager/Member

Forest Square, LLC, an Alabama limited liability company

By: 
Rabin Michael, Manager/Member