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Shelby Cnty Judge of Probate, AL
12/18/2007 03:30:02PM FILED/CERT

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**THIS INSTRUMENT WAS PREPARED BY AND
UPON RECORDING SHOULD BE RETURNED TO:**

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1819 Fifth Avenue North
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STATE OF ALABAMA)
COUNTIES OF JEFFERSON)
AND SHELBY)

20071214001888840 1/24
Bk: LR200717 Pg:27382
Jefferson County, Alabama
I certify this instrument filed on:
12/14/2007 03:40:47 PM MTG
Judge of Probate- Alan L. King

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), dated the 14th day of December, 2007, between **HIGHWAY 11/31 LLC**, a Delaware limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is c/o Colonial Properties Trust, 2101 6th Avenue North, Suite 750, Birmingham, Alabama 35203, Attention: William A. Leitner, III and **REGIONS BANK**, an Alabama banking corporation (hereinafter called "Lender"), whose address is 1900 5TH Avenue North, 15th Floor, Birmingham, Alabama 35203, Attention: Commercial Real Estate Department.

WITNESSETH:

WHEREAS, Borrower is liable to the Lender in the principal sum of up to Forty Million and No/100 Dollars (\$40,000,000), for money loaned pursuant to that certain Promissory Note payable by the Borrower to Lender in said principal amount of \$40,000,000 (as amended, modified or restated, the "Note").

WHEREAS, the loan evidenced by the Note (the "Loan") is further evidenced by, and payable in accordance with the terms of this Mortgage, the Assignment of Rents and Leases from Borrower to the Lender of even date herewith, together with that certain Indemnity Agreement dated of even date herewith from the Borrower, and any and all other documents executed by the Borrower in connection with the Loan (the foregoing loan documents, along with the Note, are collectively referred to herein as the "Loan Documents").

WHEREAS, Lender has required the execution of this Mortgage as security for the Loan.

NOW, THEREFORE, the undersigned, in consideration of the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth, has bargained and sold and does hereby grant, bargain, sell, alien, mortgage and convey

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A
FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO
SECTION 7-9-502 (C), CODE OF ALABAMA 1975 AS AMENDED.**

unto the Lender, its successors and assigns, the following (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter collectively referred to as the "Mortgaged Property") to-wit:

(a) All estate, right, title, and interest of Borrower in and to that certain Ground Lease and Option Agreement dated December 1, 2005, by and between The Commercial Development Authority of the City of Alabaster, Alabama and Colonial Realty Limited Partnership (the "Ground Lease") recorded in Instrument 20060111000019860 and assigned by Assignment of Ground Lease and Option Agreement recorded in Instrument 200611100019870 and Instrument 20060111000019880 from Colonial Realty Limited Partnership to Highway 31 Alabaster Two, LLC and those tracts (or parcels) of land particularly described in Exhibit A attached hereto and made a part hereof and (collectively, the "Real Estate");

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Real Estate, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used solely or intended to be used solely in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterment, renewals and replacements to any of the foregoing; and

(c) All fixtures, attachments, appliances, equipment and tangible personal property owned by the Borrower and now or at any time hereafter located on or at the real estate more particularly described on the Real Estate and used or useful in connection with the operation of the retail center operated thereon including, but not limited to, all goods, machinery, tools, insurance proceeds, equipment (and including but not limited to fire sprinklers and alarm systems and equipment for air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), office and all other indoor or outdoor furniture, wall safes, furnishings, appliances, inventory, rugs, carpets and other floor covering, draperies and drapery rods and brackets, awnings, window shades, and other lighting fixtures and office maintenance and other supplies, and all other articles belonging to the Borrower or leased to the Borrower that are now or hereafter located in the buildings or on the grounds of the Real Estate, and any additions, substitutions or accessions thereto. Provided, however, that with respect to those items which are leased and not owned by Borrower, this security interest covers the leasehold interest only of Borrower, together with any options to purchase any of said items and any additional or greater rights with respect to such items which Borrower may hereafter acquire.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditament, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession,

claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets; and

(c) All Borrower's right in and to all permits, service and maintenance agreements, or any other contracts or agreements relating to the operation of the retail center on the Real Estate.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises of Borrower in each of the Loan Documents (all of the foregoing obligations of the Borrower and as set forth above being collectively referred to herein as the "Loan Obligations"), all without fraud, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record by Lender at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.

AND this Mortgage is made subject to the following covenants, agreements, representations and warranties:

ARTICLE 1.

1.1 Performance of Note and Mortgage. This Mortgage shall secure payment of the Note and the payment and performance of all of Borrower's obligations under this Mortgage and each of the other Loan Documents. Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by Borrower. Borrower specifically agrees that this Mortgage shall secure all indebtedness, liabilities or obligations of Borrower which may at any time become due under any hedge agreement, swap agreement or any other similar agreement entered into between Borrower and Lender (or Lender's affiliate in connection with the Note).

1.2 Warranty of Title. Borrower is lawfully seized of an indefeasible estate in fee simple in the Real Estate except for the portion subject to the Ground Lease and has good and absolute title to all other Mortgaged Property subject to matters of record and survey, and has good right, full power, and lawful authority to sell, convey, and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in Schedule B of the title insurance policy delivered to Lender in connection with the Loan, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature and except as listed on Schedule B, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 Monthly Tax Deposits. If required by Lender after an Event of Default, Borrower will pay to Lender with and in addition to the regular installment of principal and/or interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount under this Section 1.3 remaining to Borrower's credit.

1.4 Other Taxes, Utilities and Liens.

(a) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of the Loan or this Mortgage or the manner of collecting such taxes so as to adversely affect Lender, Borrower will promptly pay any such tax, after notice from the Lender prior to or on the due date of such tax provided such shall not apply to income taxes of Lender; if Borrower fails to make such prompt payment, then the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall, after ninety (90) days written notice, immediately become due and payable at the option of Lender.

(b) Borrower will pay, before the same become delinquent, all taxes, liens, assessments and charges of every character already levied or assessed or that may hereafter be levied or assessed upon or against the Mortgaged Property and Borrower will pay all utility charges, whether public or private; and upon demand therefor, Borrower will furnish Lender receipted bills evidencing such payment.

(c) Borrower will keep the Mortgaged Property free from all liens and encumbrances and will pay or cause to be paid prior to delinquency all persons or entities supplying work or materials for the Mortgaged Property and will discharge or remove by

bonding any mechanic's or other lien filed against the Mortgaged Property or the Borrower within thirty (30) days after receipt of notice thereof.

(d) Borrower shall have the right, after prior notice to Lender, to contest by appropriate legal proceedings diligently conducted in good faith, without cost or expense to Lender, the amount, validity or application of any taxes, liens and other charges of the nature referred to in Paragraphs 1.4 (a), (b) and (c) hereof, provided Borrower first furnishes Lender security, satisfactory to Lender, against the maximum amount, as reasonably estimated by Lender, of Borrower's potential ultimate liability, loss or injury by reason of such contest or delay should Borrower be unsuccessful, and, second, prosecutes the contest with due diligence, and, third, in the case any utility charges, such service is not interrupted and fourth, in the case of any lien or encumbrance, any enforcement against the Mortgaged Property is effectively stayed.

1.5 Insurance.

(a) Borrower will procure for, deliver to, and maintain for the benefit of Lender during the term of this Mortgage, original paid-up insurance policies issued by such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable or additional insured endorsement in favor of Lender, providing the following types of insurance covering the Mortgaged Property and the interest and liabilities incident to the ownership, possession, and operation thereof:

(i) Insurance against loss or damage by fire, flood, earthquake, subsidence, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, malicious mischief, and such other risks normally insured against under so-called "extended coverage" or such other risks which, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Mortgaged Property without deduction for depreciation and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) During the course of any construction or repair of the Mortgage Property, non-reporting builder's risk insurance with standard waiver of subrogation clauses;

(iii) If the Improvements existing or to be constructed on the Land lie within a flood hazard area, flood insurance equal to the lesser of (aa) the principal amount of the Note or (bb) the maximum amount of coverage available under the National Flood Insurance Program;

(iv) Comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury," including, without limitation, bodily injury, death, or property damage occurring on, in, or about the Mortgaged Property and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 with respect to personal injury or death to any one or more persons or damage to property;

(v) Worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of Borrower engaged on or with respect to the Mortgaged Property, in such amount as is reasonably satisfactory to Lender or in such amounts as might be established by law;

(vi) Rent or business interruption insurance against loss of income arising out of damage or destruction by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism, and malicious mischief, and such other hazards as are presently included in so-called "extended coverage" in an amount of not less than twelve (12) months' gross rental income from the Mortgaged Property; and

(vii) Such other insurance on the Mortgaged Property or any replacements or substitutions therefor and in such amounts as might from time to time be reasonably required by Lender against other insurable casualties that at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the Improvements, their construction, location, use, and occupancy, or any replacements or substitutions therefor.

(b) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss will be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower that might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of setoff, counterclaim, or deductions against Borrower.

(c) Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Section and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender as its interest might appear, instead of to Borrower and Lender jointly. If any insurance company fails to disburse directly and solely to Lender but instead disburses either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender to the extent of Lender's interest therein. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. Lender may, at its option, apply insurance proceeds or any part thereof, after deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such proceeds, including reasonable attorney's fees actually incurred, (i) to the payment of the Loan Obligations, whether or not due and in whatever order Lender elects, (ii) to the repair or restoration of the Mortgaged Property (such funds shall be paid out in accordance with Section 1.7 of this Mortgage), or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the security title and security interest created by this Mortgage, and any balance of such monies then remaining shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be held responsible for any failure to collect any insurance proceeds due wider the terms of any policy regardless of the cause of such failure.

(d) At least fifteen (15) days prior to the expiration date of each policy maintained pursuant to this Section, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower will deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security for the Loan Obligations. In the event of the foreclosure of this Mortgage or any other transfer of title to Mortgage Property in extinguishment or partial extinguishment of the Loan Obligations, all right, title, and interest of Borrower in and to all insurance policies then in force will pass to the purchaser or Lender, and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser or to Lender without accounting to Borrower for any unearned premiums thereon.

(e) If required by the Lender after an Event of Default, the Borrower will pay to the Lender together with and in addition to the regular installment of interest and/or principal and interest and monthly tax deposit (as required by paragraph 1.3 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for instance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and not interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the sum secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.6 Condemnation. If all or any portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, Lender shall be entitled to receive all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, who after deducting therefrom all reasonable expenses, including reasonable attorneys' fees, shall, subject to the provisions of Paragraph 1.7 hereof, apply the same at Lender's sole option, either to the full or partial payment of the indebtedness secured hereby in such order as Lender shall elect, whether then matured or to mature in the future, or to the repair and restoration of the Mortgaged Property, and any balance shall be paid to Borrower, all without affecting the lien of this Mortgage. Borrower agrees to execute such further assignment of any compensation, awards, damages, claims, rights of action and proceeds as Lender may require. In the event of any such taking of all of the Mortgaged Property then in such event, Lender may, at its option, declare the indebtedness secured hereby immediately due and payable.

1.7 Restoration and Repair of Mortgaged Property Damaged or Taken. Notwithstanding the provisions of Paragraphs 1.5 and 1.6 hereof, Lender agrees that Lender shall apply the net proceeds of insurance or a partial condemnation (after payment of costs and

expenses pursuant to Paragraphs 1.5 and 1.6) to the repair or restoration of the Mortgaged Property on the following terms and subject to Borrower's satisfaction of the following conditions:

(a) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no uncured event, which, but for expiration of any applicable grace period, would constitute an Event of Default on the part of Borrower under this Mortgage or under any other Loan Document;

(b) The property, buildings, improvements and fixtures for which a loss or damage has resulted shall be capable of being substantially restored to its pre-existing condition and utility with a value equal to or greater than prior to such loss or damage, shall be capable of being completed prior to the maturity of Note, and evidence thereof satisfactory to Lender shall have been provided to Lender;

(c) Within thirty (30) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(d) Within ninety (90) days following the date of notice under the preceding paragraph and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following unless waived by Lender:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage;

(ii) if loss or damage exceeds \$50,000, fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications;

(iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause;

(iv) such additional funds as in Lender's reasonable opinion are necessary to complete the repair and restoration and such funds shall be held in escrow account to be used for the repair and restoration (subject to any rights of setoff of Lender), and;

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(e) Lender will, at Borrower's expense, retain an independent inspecting consultant to review plans and specifications and completed construction and to certify all requests for disbursement;

(f) No portion of such proceeds shall be made available by Lender for purposes which are not directly attributable to the cost of reconstructing those portions of the property for which a loss or damage has occurred;

(g) Borrower shall commence such work within ninety (90) days of settlement of such loss or damage and shall diligently pursue such work to completion;

(h) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures for a typical construction loan made by Lender which procedures shall be sent in writing to Borrower upon the Borrower's election to restore in accordance with Section 1.7(c) of this Mortgage;

(i) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest;

(j) In the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fail to timely comply with the terms and conditions set forth herein, Lender shall be entitled upon five (5) days' written notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the indebtedness under the Note (principal, interest, and prepayment premium, if any), or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

1.8 Care of Premises.

(a) Borrower will keep the Mortgaged Property and improvements hereafter erected on or installed at the Mortgaged Property in good order, condition and repair, and will not do or suffer to be done anything which will materially increase the risk of fire or other hazard to the Mortgaged Property.

(b) Borrower will not commit or suffer any Waste, as herein defined, and will not remove or demolish any building, fixture, or other part of the Mortgaged Property without the written consent of Lender which shall not be unreasonably withheld or delayed. "Waste" shall mean neglect or misconduct resulting in material damage to or loss of the Mortgaged Property, but does not include ordinary depreciation of the Mortgaged Property due to age and normal use over a comparatively short period of time.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause in any material respect, Borrower will promptly give written notice of the same to Lender.

(d) Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) In accordance with the terms of this Mortgage, Lender is hereby authorized to cause the Mortgaged Property to be appraised and reappraised from time to time, as deemed necessary by Lender, whether or not an Event of Default has occurred hereunder (unless an Event of Default exists, Borrower shall only be responsible for the costs of one such appraisal).

(g) The Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Collateral or any part thereof.

(h) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, upon Lender making any insurance proceeds available to Borrower, the Borrower will promptly restore the Mortgaged Property, or cause the Mortgaged Property to be restored, in accordance with- Section 1.7 of this Mortgage, regardless of whether or not such insurance proceeds shall be sufficient for such purpose. If a part of the Mortgaged Property shall be physically damaged through condemnation, upon Lender making any condemnation proceeds available to Borrower, the Borrower will promptly restore, repair or alter the remaining Mortgaged Property, or cause the remaining Mortgaged Property to be restored, repaired or altered, in a manner reasonably satisfactory to the Lender regardless of whether or not such condemnation proceeds shall be sufficient for such purpose.

1.9 Further Assurances: After-Acquired Real Estate. At any time, and from time to time, upon reasonable request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender in its reasonable judgment (i) to perfect and protect the security interest created or purported to be created hereby; (ii) to enable the Lender to exercise and enforce its rights and remedies hereunder in respect of the Mortgaged Property; or (iii) to effect otherwise the purposes of this Mortgage, including, without limitation: (A) executing and filing such financing or continuation statements, or amendments thereto, as may be necessary or desirable or that the Lender may request in order to perfect and preserve the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower, (B) if certificates of title are now or hereafter issued or outstanding with respect to any of the Mortgaged Property, by immediately causing the interest of Lender to be properly noted thereon at Borrower's expense; and (C) furnishing to the Lender from time to time statements and schedules further identifying and describing the Mortgaged Property and such other reports in connection with the Mortgaged Property as the Lender may request, all in reasonable detail. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such financing statements, continuation statements, or amendments thereto, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired Real Estate attached to and used in the operation of the Mortgaged Property or any part thereof.

1.10 Indemnity; Expenses. Borrower will pay or reimburse Lender for all reasonable, out-of-pocket attorney's fees, costs and expenses incurred by Lender in any suit, action, trial,

appeal, bankruptcy or other legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the Loan Obligations, this Mortgage or the interest created herein, or the Mortgaged Property, or any appeal thereof, including, but not limited to, any foreclosure action, any condemnation action involving the Mortgaged Property or any action to protect the security hereof, any bankruptcy or other insolvency proceeding commenced by or against the Borrower, any lessee of the Mortgaged Property (or any part thereof), or any guarantor of any of the Loan Obligations, and any such amounts paid by Lender shall be added to the Loan Obligations and shall be secured by this Mortgage. Subject to any limitations in Indemnity, if any, Borrower will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including reasonable, out-of-pocket attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or Real Estate, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those Applicable Environmental Laws, provided Borrower shall not be required to indemnify Lender for matters to the extent caused by Lender's willful misconduct or gross negligence. Borrower acknowledges that it has undertaken the obligation to pay all taxes now or hereafter due in connection with the Loan and the Loan Documents (or the recording thereof), and Borrower agrees to indemnify and hold Lender harmless from any taxes, and any interest or penalties, which the Lender may hereafter be required to pay in connection with the Loan or Loan Documents (or the recording thereof). The agreements of this Section shall expressly survive satisfaction of this Mortgage and repayment of the Loan Obligations.

1.11 Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Mortgaged Property before the same becomes delinquent; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of the Loan Documents, then Lender, at its option, may perform or observe the same, and all payments made or costs incurred by Lender in connection therewith, shall be secured hereby and shall be, upon demand, immediately repaid by Borrower to Lender with interest thereon at a per annum rate equal to two percent (2%) in excess of the rate of interest specified in the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize its agents to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower.

1.12 Estoppel Affidavits. Borrower will, within thirty (30)' days after receipt of written request from Lender, furnish a written statement, duly acknowledged, setting forth the principal of, and interest on, the Note, whether or not any offsets or defenses exist against such principal and interest and such other matters as Lender may reasonably request.

1.13 Compliance with Applicable Environmental Law. The term "Applicable Environmental Law" shall mean any applicable laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous substances,

including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), as codified at 42 U.S.C. §9601 et ., as amended, the Resource Conservation and Recovery Act of 1976, as amended ("RCRA") and the Federal Emergency Planning and Community Right-To-Know Act of 1986. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments); notwithstanding the foregoing, provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such State. Except as set forth in the reports delivered to Lender, Borrower represents and warrants to Lender that, to actual its knowledge, the Mortgaged Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law. Except as set forth in the reports delivered to Lender, Borrower further represents and warrants that, to actual its knowledge, there are no facts, conditions, or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions, and circumstances, if any, were fully disclosed to the applicable governmental authority and Borrower will promptly notify Lender if Borrower becomes aware of any such facts, conditions or circumstances or any such investigation or inquiry. Borrower further represents and warrants that it has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law. Except as set forth in those reports delivered to Lender, Borrower represents and warrants that, to the best of Borrower's knowledge, no petroleum products, oil, substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property in violation of any Applicable Environmental Law. Borrower has executed a separate Indemnity Agreement in favor of the Lender, the terms and conditions of which are incorporated hereby by this reference, and Borrower agrees to perform its obligations thereunder.

1.14 Limit of Validity. To the extent the fulfillment of any provision of this Mortgage at the time such provision is to be performed, shall involve transcending the limit of validity presently prescribed by any applicable usury or similar law, the obligation to be fulfilled under such provision shall ipso facto be reduced to the limit of such validity.

1.15 Leases and Management Agreements Affecting Mortgage Property. The Borrower will comply with and observe its obligations as landlord under each lease agreement. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. The Borrower shall require any tenant under a lease agreement to enter in subordination, attornment and non-disturbance agreement substantially in the form previously submitted to the Borrower by the Lender. Except in the ordinary course of

operating a multi-tenant shopping center, the Borrower will not cancel, surrender, amend or modify any of its lease agreements affecting the Mortgaged Property without Lender's consent which shall not be unreasonably withheld or delayed. Borrower assigns to the Lender as additional security all such lease agreements, whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. Borrower shall not enter into any management agreement or agreement with a leasing agent relating to the Mortgaged Property without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed (no consent shall be required for a manager or leasing agent that is an affiliate of the Borrower, however, such manager or leasing agent shall execute a subordination agreement in form and content reasonably satisfactory to Lender). Any such consent, if given, will be conditioned upon Lender's receipt of a subordination agreement from such manager in form and content reasonably satisfactory to Lender.

1.16 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. In addition, Borrower will furnish to Lender, within ninety (90) days after the end of each respective fiscal year, a balance sheet and a statement of income and expenses of Borrower in reasonable detail and form reasonably satisfactory to Lender and certified by Borrower (or an officer thereof). The Borrower shall provide such other information as required by Section 5.8 of the Loan Agreement.

1.17 Mortgaged Property Compliance. Mortgaged Property shall at all times comply with all applicable laws, ordinances and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and laws, ordinances and regulations relating to zoning, building codes, set back requirements and environmental matters.

1.18 **Ground Lease.** Borrower is lessee under the Ground Lease. Borrower has delivered to Lender a true copy of the Ground Lease and all amendments and modifications thereof and neither Borrower nor, to Borrower's knowledge, Landlord is in default thereunder. Borrower agrees to notify Lender promptly of default by any party under the Ground Lease and deliver to Lender copies of any written notice of default received by Borrower. Borrower shall perform all of its obligations under the Ground Lease. Borrower shall not, without the prior written consent of Lender, agree to the surrender, cancellation, or modification of the Ground Lease or subordination of the Ground Lease to any mortgage or other interest. Any such surrender, cancellation, modification or subordination of the Ground Lease made without such consent shall be void. At the reasonable request of Lender, Borrower shall, from time to time, obtain estoppel certificates from Landlord. Borrower agrees that in the event Borrower acquires any additional interest in the real estate and personal property that is subject to the Ground Lease, the Ground Lease shall not be extinguished by merger and the lien of this mortgage shall extend to and include such interest. Any event of default under the Ground Lease shall be an Event of Default under the Loan Documents.

ARTICLE 2. EVENTS OF DEFAULT; REMEDIES

2.1 Event of Default. The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure of Borrower to make any payment of interest or principal, or any other sum due under the terms of the Note (however, the failure of Lender to auto debit Borrower's account for normal monthly principal and interest payments when Borrower has sufficient funds in s account to make such payment shall not be an Event of Default).

(b) Failure by Borrower duly to observe any covenant, condition, or agreement of this Mortgage, which failure is not cured within thirty (30) days after written notice thereof from Lender to Borrower (provided such Default is curable); or if such Default reasonably cannot be cured within said thirty (30) days, is not cured within such additional cure period (not to exceed an additional thirty (30) days) as shall be reasonably necessary to accomplish such cure, provided, however, that Borrower commences said cure within the initial thirty (30) day period and thereafter diligently and in good faith prosecutes said cure to completion.

(c) The occurrence of an "Event of Default" under any other Loan Document, including, but not limited to, the Note after the expiration of notice and cure periods set forth in the Loan Documents.

(d) Except for the Permitted Encumbrances, the creation or suffering to exist by Borrower of any lien or encumbrance (securing or relating to the payment of any obligation) on the Mortgaged Property, other than the lien of this Mortgage, the lien for ad valorem taxes not then delinquent, and mechanics, materialmen's, or laborer's liens which are removed of record, bonded off or dismissed within thirty (30) days of the filing thereof, without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion.

(e) The sale, assignment, or other transfer of any interest in the Mortgaged Property (except for commercial leasing of the Mortgaged Property or any portions thereof in the ordinary course of business) or any membership interest of the Borrower (notwithstanding the foregoing the present members of the Borrower may transfer their membership interests to other family members) except that the Mortgaged Property may be conveyed to a single asset entity owned and controlled by Borrower provided (i) organizational documents and ownership structure of the new entity are reasonably acceptable to Lender, (ii) unless otherwise waived by Lender in its sole discretion, the new entity shall assume the Loan and all the obligations of the Loan Documents and the present Borrower and new entity execute such documentation as reasonably required by Lender, including but not limited to a full and unconditional guaranty by present Borrower, (iii) an endorsement to the title policy is issued insuring the assumption agreement, changing the name of the fee simple owner on the policy to the new entity, and bringing the coverage current without any new exceptions, and (iv) such other documentation as Lender may reasonably request. Notwithstanding the foregoing, no notice shall be required if Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period, if any, shall commence with the date of such event rather than from the date of notice. Nothing herein shall require notice except as expressly set forth above or in the other loan documents referred to herein. Notwithstanding the above, the transfer or issuance of limited

partnership interests in Colonial Realty Limited Partnership and the transfer of shares in the Colonial Properties Trust shall be permitted without notice to or consent of Lender.

2.2 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the Note with interest accrued thereon shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.3 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession, and if and to the extent permitted by law, Lender may enter and take possession, of all the Mortgaged Property, and may exclude Borrower and its agents and employees wholly therefrom.

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

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, and purchase or otherwise acquire replacement fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in the interest of preserving the Mortgaged Property; and Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all reasonable and customary expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this Mortgage as Lender may determine to pay, (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agent of Lender; shall apply the remainder of the moneys so received by Lender to the payment of accrued interest, and to the payment of overdue installments of principal, all in such order and priority as Lender may determine.

(d) Whenever all such Events of Default have been cured and satisfied, Lender shall surrender possession of the Mortgaged Property to Borrower, its successors or

assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, as a matter of strict right, without notice, and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) Borrower will pay to Lender upon demand all reasonable expenses, including receiver's fees, attorneys' fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.4; and all such expenses shall be secured by this Mortgage.

2.5 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to them, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

2.6 Power of Sale. If an Event of Default shall exist, Lender may sell the Mortgaged Property, or any part thereof, at public outcry to the highest bidder for cash in front of the court house door in the county where said Real Estate is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in a general circulation newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.7 Purchase by Lender. Upon any foreclosure sale, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Loan Obligations as a credit to the purchase price.

2.8 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Mortgaged Property, the proceeds of said sale shall be applied, first, to the expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees and expenses; then to insurance premiums, liens, assessments, taxes and charges, including utility charges and any other amounts advanced by Lender hereunder, and interest

thereon; then to payment of the Loan Obligations in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower or to the person or entity lawfully entitled thereto.

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

2.10 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage.

2.11 Suits to Protect the Mortgaged Property. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, and (b) to preserve or protect its interests in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom.

2.12 Borrower to Pay the Note on Any Default in Payment Application of Moneys by Lender. Upon the occurrence of an Event of Default, then, upon demand of Lender, Borrower will pay to Lender the whole amount due and payable under the Note and in case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys.

2.13 Delay or Omission No Waiver. No delay or omission of Lender to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

2.14 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage, or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or Guarantor, nor shall any such act or omission preclude Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of

any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, at its option, without notice to any person or corporation hereby are authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as they might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.15 Discontinuance of Proceedings - Position of Parties, Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case (except as set forth in the foregoing determination) Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of Lender shall continue as if no such proceeding has been taken.

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

2.17 No Conditions Precedent to Exercise of Remedies. Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of Borrower to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

2.18 Release of Mortgage Property, Effect on Subordinate Liens. Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of Borrower under the Note and/or this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien.

2.19 Other Collateral. For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender, in such order and manner as Lender may elect without affecting their remedies under this Mortgage, to the maximum extent permitted by the laws of the State of Alabama.

2.20 Waiver of Redemption, Notice, Marshalling. Etc. Borrower hereby waives and releases, to the maximum extent permitted by the laws of the State of Alabama:

(a) all benefits that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisalment,

valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; and

(b) unless specifically required herein, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise, of any option or remedy under the Note or this Mortgage; and

(c) any right to have the Mortgaged Property marshaled; provided, that if any of the rights waived by Borrower in this Section affect or extend the time for sale of the said described Mortgaged Property, affect Lender's rights to enforce this Mortgage or affect Borrower's right to redeem, Lender shall have the right to elect to accept or reject the waiver of such right by Borrower, and such election may be made by Lender at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

ARTICLE 3. MISCELLANEOUS

3.1 Successors and Assigns Included in Parties. Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.2 Pleadings, etc. The headings of the articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.3 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this Mortgage or in any of the Note shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in said Notes shall in no way be affected, prejudiced, or disturbed thereby.

3.4 Lien on Personal Property. This Mortgage creates a lien on and grants a security interest in, the personal property of Borrower located and to be located on the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code. If an Event of Default occurs, Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.5 Future Advances. This Mortgage secures FUTURE ADVANCES, whether obligatory or at the option of Lender, including advances made from time to time by Lender to

Borrower as Borrower shall request, provided all future advances are made within twenty (20) years of the date of this Mortgage.

3.6 Notices. All notices and other communications provided for hereunder shall be in writing and shall be deemed received upon delivery in person or, as of the delivery date shown on the return receipt when sent by U.S. certified mail, return receipt requested, postage prepaid, and, if sent by overnight courier, on the next business day following delivery date by said courier, and in any case addressed as follows:

If to Borrower:

Highway 11/31 LLC
c/o Colonial Properties Trust
2101 6th Avenue North, Suite 750
Attention: William A. Leitner, III

With a copy to:

Highway 11/31 LLC
c/o Alabaster Trussville LLC
113 Hidden Glen Way
Dothan, Alabama 36303

If to Lender:

Regions Bank
1900 5th Avenue North
15th Floor
Birmingham, Alabama 35203
Attention: Commercial Real Estate Department

With a copy to:

William C. Byrd, II
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203

3.7 Waiver of Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH

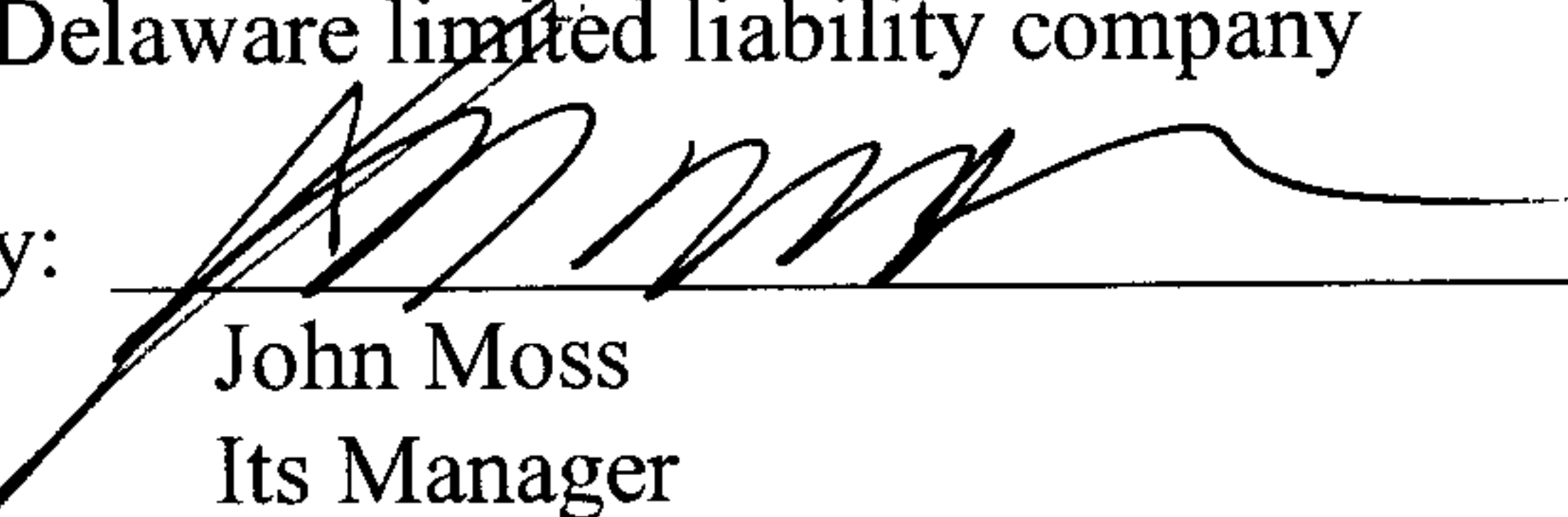
RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, Borrower has executed this Mortgage, through its duly-authorized member, on the day and year first above written.

BORROWER:

HIGHWAY 11/31 LLC,
a Delaware limited liability company

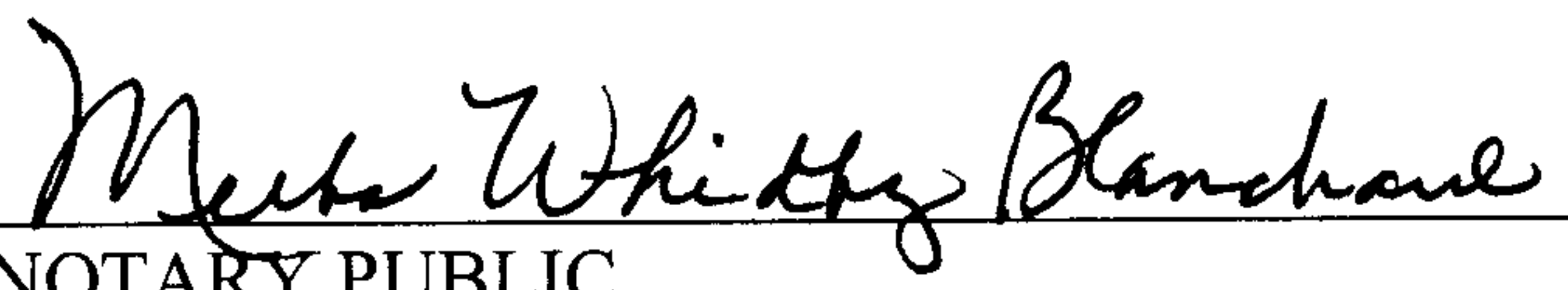
By: 
John Moss
Its Manager

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, Melba Whidby Blanchard, a Notary Public in and for said County in said State, certify that John Moss, whose name as Manager of Highway 11/31 LLC, a Delaware limited liability company, is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal, this 13 day of December 2007.

[SEAL]


NOTARY PUBLIC
Print Name: Melba Whidby Blanchard
My Commission Expires: 8/29/11


20071218000569450 23/24 \$81.00
Shelby Cnty Judge of Probate, AL
12/18/2007 03:30:02PM FILED/CERT

EXHIBIT "A"

LEGAL DESCRIPTION

Parcel I (As Conveyed by Highway 31 Alabaster LLC):

Lots 4, 5, and 6 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel II (As Conveyed by Highway 31 Alabaster TWO LLC):

Lots 2, 8, and 19 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel III(Assignment of Ground Lease by Highway 31 Alabaster TWO LLC):

Lots 9, 10, 11, 12, 13, 14, and 15 according to the survey of Colonial Promenade Alabaster South as recorded in Map Book 38, Page 119A and B, in the Probate Office of Shelby County, Alabama.

Together with that certain Slope Easement as recorded in Instrument 2006020600058230 in the Probate Office of Shelby County, Alabama.

Parcel IV (As Conveyed by CRLP):

Lot 12B and 12D according to the survey of Tutwiler Farm - Phase II Resurvey No. 4 as recorded in Map Book 227, Page 53, in the Probate Office of Jefferson County, Alabama, Birmingham Division.

20071218000569450 24/24 \$81.00
Shelby Cnty Judge of Probate, AL
12/18/2007 03:30:02PM FILED/CERT

SCHEDULE B

PERMITTED EXCEPTIONS

1. Taxes due and payable October 1, 2007.
2. All matter shown on Schedule B of the title policy issued to Lender in connection with the Loan.

20071214001888840 24/24
Bk: LR200717 Pg:27382
Jefferson County, Alabama
12/14/2007 03:40:47 PM MTG
Fee - \$62.00
Mortgage Tax -\$60000.00
Total of Fees and Taxes-\$60062.00
TINSLEY

*Recorder's Note:
see affidavit
in file.*