

This instrument Prepared By:

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**FUTURE ADVANCE ACCOMMODATION MORTGAGE
AND FIXTURE FILING
(ALABAMA)**

STATE OF ALABAMA

COUNTY OF SHELBY

THIS INDENTURE (herein this "**Mortgage**") made this 3rd day of March, 2009, between **CITY OF CALERA, ALABAMA**, an Alabama municipal corporation (the "**Accommodation Mortgagor**"), **CALERA CROSSINGS, LLC**, an Alabama limited liability company (the "**Borrower**"), and **COMPASS BANK**, an Alabama banking corporation (hereinafter called "**Bank**"), Mortgagee. Borrower joins in to this Mortgage for the purpose of consenting to the provisions hereof to the extent they affect the Borrower, or affect the Loan, the Note and the other Loan Documents (as hereafter defined), and agrees to those provisions hereof which are to be performed by the Borrower.

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502(c) OF THE CODE OF ALABAMA.

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9A-334(h) OF THE CODE OF ALABAMA AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

W I T N E S S E T H:

WHEREAS, Borrower is justly indebted to Bank on a loan (the "**Loan**") in the principal sum of EIGHT MILLION TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$8,200,000.00), or so much as may from time to time be disbursed thereunder, as evidenced by a promissory note dated March 3, 2009, payable to Bank with interest thereon as provided therein (the "**Note**"); and

WHEREAS, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (the Bank and any subsequent holder of this Mortgage being referred to herein as "**Lender**"); and

WHEREAS, Lender is willing to make the Loan to Borrower only on the condition that Accommodation Mortgagor grants to Lender a mortgage on certain real property owned by Accommodation Mortgagor and described on **Exhibit A** attached hereto, together with other property more particularly described herein; and

WHEREAS, this Mortgage is being given by Accommodation Mortgagor to induce Lender to make the Loan and is a part of a plan for the development of the property described on **Exhibit A** to enhance the economic interests of the City of Calera; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancings of any part of the Note and any and all other additional indebtedness of Borrower to Lender, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and any renewals, extensions, modifications and refinancings thereof, and whether incurred or given as maker, endorser, guarantor or otherwise, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise, including all obligations incurred by the Borrower under any agreement between Borrower and Lender or any affiliate of Lender, whether now existing or hereafter entered into, which provides for an interest rate currency, equity, credit or commodity swap, cap, floor or collar, spot or foreign currency exchange transaction, cross currency rate swap, currency option, any combination of, or option with respect to, any of the foregoing or similar transactions, for the purpose

This Mortgage is given as additional security for the Loan referenced herein, such Loan being originally secured by that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement recorded as Instrument No. 2009030000081470 in the Probate Office of Shelby County, Alabama.

of hedging the Borrower's exposure to fluctuations in interest rates, exchange rates, currency, stock, portfolio or loan valuations or commodity prices (herein "**Other Indebtedness**").

NOW, THEREFORE, the Accommodation Mortgagor, in consideration of Lender's making the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower or Accommodation Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Note and such other documents are sometimes referred to herein as the "**Loan Documents**"), and as may be set forth in instruments evidencing or securing Other Indebtedness (the "**Other Indebtedness Instruments**") has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, and grant to Lender, its successors and assigns a security interest under the Alabama Uniform Commercial Code in, the following described land, real estate, estates, buildings, improvements, fixtures, furniture and personal property (which together with any additional such property in the possession of the Lender or hereafter acquired by the Accommodation Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "**Mortgaged Property**") to-wit:

- (a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the "**Land**");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property of every nature whatsoever now or hereafter owned by the Accommodation Mortgagor and used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "**Improvements**");
- (c) All accounts (as presently or hereafter defined in the UCC), general intangibles, goods, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) 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, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, 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 the Accommodation Mortgagor, 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 the Accommodation Mortgagor of, in and to the same, including but not limited to:
 - (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and
 - (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Accommodation Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released;
- (e) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c) or (d) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c) or (d) above.



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

AND the Accommodation Mortgagor further represents, warrants, covenants and agrees with the Lender as follows:

ARTICLE I GENERAL

1.01 Performance of Mortgage; No Liability for Borrower's Indebtedness to Lender. The Accommodation Mortgagor, to the full extent applicable, shall perform, observe and comply with all provisions hereof. **ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, ACCOMMODATION MORTGAGOR SHALL HAVE NO OBLIGATIONS OR LIABILITY TO LENDER WITH RESPECT TO ANY INDEBTEDNESS OWED BY BORROWER TO LENDER.**

1.02 Warranty of Title. Accommodation Mortgagor hereby warrants that, subject to those matters set forth on **Exhibit B** hereto, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on **Exhibit A** hereto, and has good and absolute title to all existing personal property hereby granted as security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, 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 that Accommodation Mortgagor shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances, Revolving and Open-End Loans, and Other Debts. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also future advances and any and all Other Indebtedness, obligations and liabilities, direct or contingent, of the Borrower to the Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancings of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located, and whether the same be evidenced by note, open account, assignment, endorsement, guaranty, pledge or otherwise. The Loan and the Other Indebtedness may, if provided in the applicable loan instruments, provide for revolving or open-end loans and advances, all of which shall be secured by this Mortgage.

1.04 Monthly Tax Deposit. INTENTIONALLY DELETED.

1.05 Other Taxes, Utilities and Liens.

- (a) The Accommodation Mortgagor or Borrower shall pay or cause to be paid promptly, when and as due, all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.04 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) The Accommodation Mortgagor or Borrower promptly shall pay or shall cause to be paid and shall not suffer any mechanic's, laborer's, statutory or other lien to be created or to remain outstanding upon any of the Mortgaged Property.

- (c) 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 mortgages or debts secured by mortgages or the manner of collecting taxes, then Accommodation Mortgagor or Borrower immediately shall pay any increased taxes if allowed by law, and if Accommodation Mortgagor or Borrower fails to pay such additional taxes, or if Accommodation Mortgagor or Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.06 Insurance.

- (a) INTENTIONALLY DELETED.
- (b) The Lender hereby is authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company hereby is authorized and directed to make payment for all such losses directly to the Lender instead of to the Accommodation Mortgagor (and/or Borrower) and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said funds, the Lender may apply the net proceeds, at its option, either toward repairing or restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be used to repair such improvements, or to build new improvements in their place or for any other purpose and in a manner satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be liable to Accommodation Mortgagor or Borrower or otherwise responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.
- (c) INTENTIONALLY DELETED.

1.07 Condemnation. If all or any part 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 or private authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief for any condemnation and hereby is authorized, at its option, to commence, appear in and prosecute, in its own or the Accommodation Mortgagor'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 the Accommodation Mortgagor to the Lender, which, after deducting therefrom all its expenses, including attorneys' fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Accommodation Mortgagor. The Accommodation Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. The Accommodation Mortgagor promptly shall notify the Lender in the event of the institution of any condemnation or eminent domain proceeding or in the event of any threat thereof. The Lender shall be entitled to retain, at the expense of the Accommodation Mortgagor, its own legal counsel in connection with any such proceedings or threatened proceedings. Lender shall be under no obligation to the Accommodation Mortgagor or to Borrower or to any other person to determine the sufficiency or legality of any condemnation award and may accept any such award without question or further inquiry.

1.08 Care of the Property.

- (a) The Accommodation Mortgagor and Borrower will preserve and maintain, or cause to be preserved and maintained, the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.
- (b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender.
- (c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Accommodation Mortgagor shall give immediate written notice of the same to the Lender.
- (d) The Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect the Accommodation Mortgagor's or Accommodation Mortgagor's agent's, or the Borrower's or the Borrower's



agent's records, with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.

(e) INTENTIONALLY DELETED.

1.09 Further Assurances; After-Acquired Property.

- (a) At any time, and from time to time, upon request by the Lender, the Accommodation Mortgagor, at Accommodation Mortgagor's expense, will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and the obligation of Accommodation Mortgagor under this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Accommodation Mortgagor. Upon any failure by the Accommodation Mortgagor so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Accommodation Mortgagor, and the Accommodation Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Accommodation Mortgagor so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other than accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof. Lender is hereby authorized to file financing statements in the name of the Accommodation Mortgagor and/or the Borrower (as debtors) to perfect the security interests granted herein.
- (b) Without limitation to the generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.09, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by the Accommodation Mortgagor by whatsoever means, including that in the event the Accommodation Mortgagor is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage the Accommodation Mortgagor obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of the Accommodation Mortgagor or the Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Accommodation Mortgagor hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.

1.10 Additional Security. The Lender also shall have and hereby is granted a security interest in all monies, securities and other property of the Borrower, now or hereafter assigned, held, received, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower, and any and all claims of Borrower or Accommodation Mortgagor against Lender, at any time existing) whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, the Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as the Lender may determine, any such monies, securities or other property held or controlled by the Lender. No such application of funds shall, unless otherwise expressly agreed by the Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.

1.11 Leases Affecting Mortgaged Property. The Accommodation Mortgagor shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Accommodation Mortgagor shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Accommodation Mortgagor shall not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Accommodation Mortgagor shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. The Accommodation Mortgagor shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the written consent of the Lender.



1.12 Expenses. INTENTIONALLY DELETED.

1.13 Performance by Lender of Defaults by Accommodation Mortgagor. If the Accommodation Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.04 and 1.05 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Accommodation Mortgagor to the Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at the rate set forth in the Note, plus two percentage points (2%). The 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. The Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Accommodation Mortgagor or Borrower or any person in possession holding under the Accommodation Mortgagor or under Borrower for trespass or otherwise.

1.14 Books and Records. INTENTIONALLY DELETED.

1.15 Estoppel Affidavits. INTENTIONALLY DELETED.

1.16 Alienation or Sale of Mortgaged Property. The Accommodation Mortgagor shall not sell, assign, mortgage, encumber, grant a security interest in or otherwise convey all or any part of the Mortgaged Property without obtaining the express written consent of the Lender at least thirty (30) days prior to such conveyance. If Accommodation Mortgagor should sell, assign, mortgage, encumber, grant a security interest in or convey all, or any part, of the Mortgaged Property without such consent by Lender, then, in such event, the entire balance of the indebtedness (including the Loan and all Other Indebtedness) secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

1.17 Environmental and Compliance Matters. Accommodation Mortgagor represents, warrants and covenants, to the best of its knowledge and belief, as follows:

- (a) No Hazardous Materials (hereinafter defined) have been, are, or will be, while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, generated, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "**Hazardous Materials**" includes, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 ("**CERCLA**") (42 U.S.C. Sections 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801, *et seq.*), the Resource Conservation and Recovery Act ("**RCRA**") (42 U.S.C. Sections 6901, *et seq.*), the Clean Water Act (33 U.S.C. Sections 1251, *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401, *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sections 2601, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration ("**OSHA**") pertaining to occupational exposure to asbestos, as amended from time to time, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;
- (b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;
- (c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;
- (d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;
- (e) The Accommodation Mortgagor promptly shall comply with all present and future laws, ordinances, rules, regulations, orders and decrees of any governmental authority affecting the Mortgaged Property or any part thereof. Without limiting the foregoing, the Accommodation Mortgagor represents and covenants that the Mortgaged Property is in present compliance with, and in the future shall comply with, as applicable, the Americans With Disabilities Act of 1990, ("**ADA**") (42 U.S.C. Sections 12101, *et seq.*) and the Rehabilitation

Act of 1973 ("**Rehabilitation Act**") (29 U.S.C. Sections 749, *et seq.*), each such Act as amended from time to time, and in the rules and regulations adopted and publications promulgated pursuant thereto.

- (f) Accommodation Mortgagor shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.17, or of any notice of other claim relating to the environmental or physical condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

Accommodation Mortgagor and Borrower, jointly and severally, agree to and do hereby indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation or warranty set forth in this Paragraph 1.17, (ii) Accommodation Mortgagor's failure to perform any obligations of this Paragraph 1.17, (iii) Accommodation Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, with all occupational health and safety laws, rules and regulations, with the ADA or the Rehabilitation Act, as applicable, or (iv) any other matter related to environmental or physical conditions on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, and any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. However, this indemnification shall not apply to any new Hazardous Materials first stored, generated or placed on the Mortgaged Property after the acquisition of title to the Mortgaged Property by Lender through foreclosure or deed in lieu of foreclosure or purchase from a third party after the Loan has been paid in full.

1.18 Inspection Rights and Easements. In addition to other inspection rights of Lender, the Accommodation Mortgagor and Borrower (to the extent of its interests) shall and hereby do grant and convey to the Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents, an easement and license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and improvements, subsurface exploration and testing and groundwater testing (herein "**Inspections**"), as the Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, the ADA and the Rehabilitation Act, as applicable, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above easement and license to the Lender, the Lender shall have no obligation to perform any such Inspections, or to take any remedial action. All the costs and expenses incurred by the Lender with respect to any Inspections which the Lender may conduct or take pursuant to this Paragraph 1.18, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid or cause to be repaid by the Accommodation Mortgagor, with interest, and shall be secured by this Mortgage and the other Loan Documents.

1.19 Use, Governmental Compliance, etc. The Borrower shall: (a) use the Mortgaged Property solely for the uses provided for in the Loan Agreement or Construction Loan Agreement executed by Borrower and Lender in connection with the Loan, or otherwise as permitted in writing by the Lender; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for (i) compliance with the environmental laws, rules and regulations referenced in Paragraph 1.17(a) hereof or as otherwise may be applicable to the Mortgaged Property from time to time, (ii) the use of the Mortgaged Property and the conduct of any business or activity on the Mortgaged Property, and (iii) the construction, completion and occupancy of the improvements constructed or to be constructed on the Mortgaged Property, including all required zoning, building, land use, environmental, wetlands, coastal development, endangered species, cultural resources, storm water discharge, liquor, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Mortgaged Property or any business or activity conducted thereon; and (d) not permit any act to be done on the Mortgaged Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto. For the purposes hereof, (a) a "**Governmental Authority**" means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof having jurisdiction over or with respect to all or any part of the Mortgaged Property, and (b) "**Governmental Requirements**" means all laws, rules, regulations, ordinances, judgments, decrees, codes, order, injunctions, notices and demand letters of any Governmental Authority.

ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.01 Assignment. Accommodation Mortgagor, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Accommodation Mortgagor, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto the Lender all leases, subleases and lease guaranties



of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including without limitation those certain leases, if any, specifically described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by the Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to the Lender, and the Accommodation Mortgagor does hereby appoint irrevocably the Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as the Lender would have upon taking possession of the Mortgaged Property pursuant to the provisions hereinafter set forth.

2.02 Prepayment of Rent. The Accommodation Mortgagor represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one installment in advance and that the payment of none of the rents to accrue for any portion of said Mortgaged Property has been or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by the Accommodation Mortgagor. The Accommodation Mortgagor waives any right of setoff against any person in possession of any portion of the Mortgaged Property. The Accommodation Mortgagor agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

2.03 Not Mortgagee in Possession; No Liability. Nothing herein contained shall be construed as constituting the Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by the Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted the Lender, no liability shall be asserted or enforced against the Lender, all such liability being expressly waived and released by the Accommodation Mortgagor and Borrower.

2.04 Present Assignment. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Accommodation Mortgagor shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and provided further, that Accommodation Mortgagor's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.

2.05 No Obligation of Lender Under Leases. The Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and the Accommodation Mortgagor and Borrower, jointly and severally, shall and do hereby agree to indemnify and hold the Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should the Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against the Lender in connection with any one or more of said leases, subleases or agreements, the Accommodation Mortgagor and Borrower, jointly and severally, agree to reimburse the Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by the Accommodation Mortgagor, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

2.06 Instruction to Lessees. The Accommodation Mortgagor does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon in any lease, sublease or tenancy to the Lender upon receipt of demand from said Lender to pay the same.

2.07 Default (Assignment). Upon the occurrence of any Event of Default, as described in Paragraph 4.01 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

ARTICLE III SECURITY AGREEMENT

[ARTICLE III IS INTENTIONALLY DELETED]



ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

4.01 Event of Default. The term "**Event of Default**," wherever used in this Mortgage, shall mean the occurrence or existence of an Event of Default under the Construction Loan Agreement between Lender and Borrower relating to the Loan. Accommodation Mortgagor acknowledges that it has received a copy of the Construction Loan Agreement.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

4.03 Right of Lender to Enter and Take Possession.

- (a) If an Event of Default shall have occurred and be continuing, the Accommodation Mortgagor (and Borrower, to the extent of its interests), upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of the Accommodation Mortgagor or then owner of the Mortgaged Property relating thereto, and may exclude the Accommodation Mortgagor and Borrower and their agents and employees wholly therefrom.
- (b) Upon every such entering upon or taking of possession, the Lender, as attorney-in-fact or agent of the Accommodation Mortgagor and of the Borrower, or in its own name as mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of the Accommodation Mortgagor (and Borrower, to the extent of its interests) in its name or otherwise, with respect to the same, including legal actions for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle the Accommodation Mortgagor (or Borrower, to the extent of its interests) to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as the Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, Lender shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph 1.04; third to the payment of any other sums required to be paid by Borrower or Accommodation Mortgagor under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.
- (c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Accommodation Mortgagor, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.04 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled, 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, royalties and revenues thereof.

- (b) The Accommodation Mortgagor and Borrower shall pay to the Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.04; and all such expenses shall be secured by this Mortgage.

4.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, the 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 Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as the Lender may elect.

4.06 Rights of a Secured Party. Upon the occurrence of an Event of Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:

- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Accommodation Mortgagor or Borrower and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Accommodation Mortgagor at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Accommodation Mortgagor agrees shall be reasonable notice of any sale or disposition of the Collateral;
- (c) The right to require Accommodation Mortgagor, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Accommodation Mortgagor and Lender; and
- (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Accommodation Mortgagor and Borrower do each hereby irrevocably appoint Lender attorney-in-fact for Accommodation Mortgagor or borrower, as the case may be, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Accommodation Mortgagor or Borrower, respectively, could do, and to sell, assign, and transfer any collateral to Lender or any other party.

4.07 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, 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 the 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 as Lender may elect. The provisions of Paragraph 4.06 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

4.08 Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 4.07, or any sale pursuant to Paragraph 4.06, shall be applied as follows:

- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as

applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;

- (c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due;
- (d) Fourth, the balance, if any, shall be paid as provided by law.

4.09 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Accommodation Mortgagor or Borrower, a defense to any proceedings instituted by the Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.10 Waiver of Exemption. Accommodation Mortgagor and Borrower waive all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Accommodation Mortgagor and borrower waive the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.

4.11 Suits to Protect the Mortgaged Property. The 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 in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

4.12 Borrower to Pay the Note on any Default in Payment; Application of Moneys by Lender. If default shall occur in the payment of any amount due under this Mortgage, the Note, any of the other Loan Documents or any of the Other Indebtedness Instruments, or if any other Event of Default shall occur under this Mortgage, then, upon demand of the Lender, the Borrower shall pay to the Lender the whole amount due and payable under the Note and under all Other Indebtedness Instruments; and in case the Borrower shall fail to pay the same forthwith upon such demand, the 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 the Lender's agents and attorneys.

4.13 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note 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 the Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

4.14 No Waiver of One Default to Affect Another. No waiver of any default hereunder, under any of the other Loan Documents, or under any of the Other Indebtedness Instruments 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 the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, in any of the other Loan Documents, or in any of the Other Indebtedness Instruments; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, any of the other Loan Documents or the Other Indebtedness Instruments; (e) consents to the filing of any map, plat, or replat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, the other Loan Documents, or the Other Indebtedness Instruments of the 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 the 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 the Lender shall the provisions 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, the Lender, without notice to any person, corporation or other entity (except notice shall be given to Borrower and Accommodation Mortgagor so long as Borrower remains liable under the Note, this Mortgage

or any of the other Loan Documents) hereby is 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, or of the other Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings — Position of Parties Restored. In case the 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 the Lender, then and in every such case the Accommodation Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had been taken.

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

4.17 Additional Agreements of Accommodation Mortgagor. Accommodation Mortgagor further agrees as follows:

- (a) **Actions of Lender With Respect to Indebtedness.** Lender is authorized, without notice or demand and without affecting this Mortgage, from time to time to (i) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrower, or any part thereof, including increase or decrease of the rate of interest thereof; (ii) take and hold security for the payment of the Note or any Other Indebtedness of Borrower, and exchange, enforce, waive and release any such security; and (iii) apply such security and direct the order or manner of sale thereof as Lender in its discretion may determine. Lender may without notice assign this Mortgage in whole or in part.
- (b) **Waiver of Accommodation Mortgagor; No Right of Subrogation.** Accommodation Mortgagor waives any right to require Lender to (i) proceed against Borrower or any guarantor or other person or entity whatsoever; (ii) proceed against or exhaust any security held from Borrower; (iii) pursue any other remedy in Lender's power whatsoever. Accommodation Mortgagor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower. Until the Note and all Other Indebtedness of Borrower to Lender shall have been paid in full, Accommodation Mortgagor shall have no right of subrogation, and waives any right to enforce any remedy which Lender now has or may hereafter have against Borrower, and waives the benefit of, and any right to participate in any security now or hereafter held by Lender. Accommodation Mortgagor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.
- (c) **Other Security or Collateral of Lender.** It is the intent hereof that this Mortgage shall be and remain unaffected, (i) by the existence or non-existence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrower or (ii) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Borrower, or any part thereof; or (iii) by resort on the part of the Lender to any other security or remedy for the collection of any indebtedness of Borrower; or (iv) by the bankruptcy of Borrower and in case of any such bankruptcy, by failure of Lender to file claim against such bankrupt's estate, for the amount of such bankrupt's liability to Lender.
- (d) **Mortgage Independent of Obligations of Borrower.** This Mortgage is independent of the obligations of Borrower, and Lender may exercise its rights under this Mortgage whether or not action is brought against Borrower or any other person or entity liable for the indebtedness secured hereby or any part thereof; and Accommodation Mortgagor waives the benefit of any statute of limitations or other defenses affecting this Mortgage or the enforcement thereof.

ARTICLE V MISCELLANEOUS

5.01 Binding Effect. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower, or by or on behalf of Accommodation Mortgagor, or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not. Notwithstanding the foregoing, neither the Accommodation Mortgagor nor Borrower shall be entitled to assign any of its rights, titles, and interests hereunder, or to delegate any of its obligations, liabilities, duties, or responsibilities hereunder, and will not permit any such

assignment or delegation to occur (voluntarily or involuntarily, or directly or indirectly), without the prior written consent of the Lender.

5.02 Headings. 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. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.

5.03 Gender; Number. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.

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

5.05 Loan Documents. Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.

5.06 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

5.07 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements

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| (a) | Name of Borrower: | CALERA CROSSINGS, LLC,
an Alabama limited liability company |
| | Address of Borrower: | 2 Office Park Circle, Suite 110
Birmingham, Alabama 35223
Attention: Mr. Murray Legg |
| (b) | Name of Accommodation
Mortgagor: | CITY OF CALERA, ALABAMA,
an Alabama municipal corporation |
| | Address of Accommodation
Mortgagor: | 10947 Highway 25
Calera, Alabama 35040
Attention: Mayor |
| (c) | Name of Lender (Secured Party): | COMPASS BANK |
| | Address of Lender: | 321 Bel Air Boulevard, 2nd Floor
Mobile, Alabama 36606
Attention: Commercial Real Estate |
| (d) | Record Owner of Real Estate
described on Exhibit A hereto: | CITY OF CALERA, ALABAMA,
an Alabama municipal corporation |
| (e) | Record Owner of Leasehold
interest on Exhibit A hereto: | CALERA CROSSINGS, LLC,
an Alabama limited liability company |

5.08 Applicable Law. This Mortgage shall be governed in all respects by the laws of the State of Alabama.

5.09 Borrower. Wherever in this Mortgage the Borrower agrees or consents to a matter relating to the Mortgaged Property, such agreement or consent shall be deemed to be made "to the extent of Borrower's interests," whether or not so stated.

5.10 Application of Insurance and Condemnation Proceeds. Notwithstanding the provisions of Paragraphs 1.06 and 1.07 hereof, respectively relating to the application of insurance proceeds and condemnation proceeds:

- (a) if (1) the damage through casualty or condemnation to that portion of the Mortgaged Property demised under that certain lease from Borrower to Publix Alabama, LLC (the "Publix Lease") can be repaired (i) in a timely and economically feasible manner and in compliance with the requirements of all applicable building, subdivision and zoning codes, and (ii) in a manner which remains in compliance with the Publix Lease, (2) Publix Alabama, LLC is not in default in the payment of fixed minimum rent beyond the applicable cure period set forth in the Publix Lease (unless Publix Alabama, LLC has in good faith contested such event of default by written notice to Borrower and Lender of such contest), and (3) Lender has received evidence reasonably satisfactory to Lender that, upon completion of the repair or restoration of the improvements under the Publix Lease, Publix Alabama, LLC will re-open for business and, to the extent required under the Publix Lease, operate, then Lender agrees that it will make such proceeds available to the construction costs of, or to reimburse Borrower for those costs of construction incurred by Borrower in, effecting the repair and restoration of those portions of the Mortgaged Property demised under the Publix Lease which shall have been condemned, damaged or destroyed in accordance with the conditions and procedures set forth below.
- (b) if the damage through casualty or condemnation to any portion of the Mortgaged Property which is not then leased to Publix Alabama, LLC can be repaired in a timely and economically feasible manner, and in a manner which remains in compliance with all leases on such portion of the Mortgaged Property and in compliance with the requirements of all applicable building, subdivision and zoning codes, Lender agrees that it will make such proceeds available to the construction costs of, or to reimburse Borrower for those costs of construction incurred by Borrower in, effecting the repair and restoration of those portions of the Mortgaged Property which shall have been condemned, damaged or destroyed in accordance with the conditions and procedures set forth below.

The conditions and procedures for disbursement are as follows:

- (i) There shall then exist no uncured Event of Default on the part of Borrower hereunder or under any other Loan Document;
- (ii) No portion of such proceeds shall be made available by Lender for purposes which are not directly attributable to the costs of reconstructing those portions of the Mortgaged Property which are so taken, damaged or destroyed;
- (iii) Borrower shall have first provided assurances reasonably satisfactory to Lender that such repair can be timely completed to the satisfaction of Lender (including without limitation delivering to Lender an executed fixed price or maximum price contract for such repair or restoration, and depositing with Lender such amounts as shall in the opinion of Lender may be required in addition to the available insurance or condemnation proceeds, to fully pay the cost of such repair and restoration); and
- (iv) Each disbursement by Lender of such proceeds and deposits (i) shall be funded on a periodic basis, but no more frequently than monthly, (ii) shall not in any instance be in an amount greater than the actual cost of such repair and restoration which has been performed (aa) since the date of performance of that portion of such work which was reimbursed with the immediately preceding disbursement, or (bb) with respect to the first disbursement, since the date of commencement of such work (which cost shall be verified in writing in each instance by an architect, engineer or other party theretofore approved by Lender), (iii) shall be conditioned in part upon the delivery to Lender of a current title insurance policy, (iv) shall be further conditioned upon Lender's satisfaction that any undisbursed proceeds and deposits are sufficient to fully pay the then remaining costs of completing such repair and restoration, and (v) conditioned upon the approval of each draw request by an architect or engineer approved by Lender (whose expenses shall be paid by Borrower) as to the matters described in (i) - (iv) above and that the work is being performed in accordance with plans and specifications for such work which have been previously submitted to and approved in writing by Lender. In the event and to the extent such insurance proceeds or condemnation proceeds are not required or used for the repair and restoration of the Mortgaged Property as aforesaid, Lender, at its option, may apply such sums on account of the indebtedness secured by this Mortgage, regardless of whether the same shall then be due and payable, or may pay such sums to Borrower to be used for current and future expenses related to the Mortgaged Property.



IN WITNESS WHEREOF, Accommodation Mortgagor and Borrower have caused this Mortgage to be executed and effective as of the day and year first above written.

witness:

ACCOMMODATION MORTGAGOR:

CITY OF CALERA, ALABAMA,
an Alabama municipal corporation

Mike Kent
Name: MIKE KENT

By: George W. Roy
Name: George W. Roy
Title: Mayor

STATE OF ALABAMA

COUNTY OF Shelby

I, Connie B. Payton, a notary public in and for said county in said state, hereby certify that George W. Roy, whose name as Mayor of **CITY OF CALERA, ALABAMA**, an Alabama municipal corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said municipal corporation


Given under my hand and official seal this 3 day of March, 2009.

Connie B. Payton
Notary Public

[Notarial Seal]

My Commission Expires: _____

NOTARY PUBLIC STATE
OF ALABAMA AT LARGE
MY COMMISSION EXPIRES
OCT 10, 2012


20100809000253840 15/20 \$70.00
Shelby Cnty Judge of Probate, AL
08/09/2010 12:08:42 PM FILED/CERT

WITNESS:

Lauri A. Watts
Name: Lauri A. Watts

BORROWER:

CALERA CROSSINGS, LLC,
an Alabama limited liability company

By: W. Murray Legg
Name: W. Murray Legg
Title: Manager

STATE OF ALABAMA

COUNTY OF Jefferson


I, Ann H. McNew, a notary public in and for said county in said state, hereby certify that W. Murray Legg, whose name as Manager of **CALERA CROSSINGS, LLC**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27th day of February, 2009.

Ann H. McNew
Notary Public

[Notarial Seal]

My Commission Expires: MY COMMISSION EXPIRES FEBRUARY 9, 2010


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Shelby Cnty Judge of Probate, AL
08/09/2010 12:08:42 PM FILED/CERT

WITNESS:

Lauri A. Watts
Name: Lauri A. Watts

BORROWER:

CALERA CROSSINGS, LLC,
an Alabama limited liability company

By: Donald P. Kelly, Jr.
Name: Donald P. Kelly, Jr.
Title: Manager

STATE OF ALABAMA

COUNTY OF Jefferson

I, Ann H. Myer, a notary public in and for said county in said state, hereby certify that Donald P. Kelly, Jr., whose name as Manager of **CALERA CROSSINGS, LLC**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 27th day of February, 2009.

Ann H. Myer
Notary Public

[Notarial Seal]

My Commission Expires: MY COMMISSION EXPIRES FEBRUARY 8, 2010



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Shelby Cnty Judge of Probate, AL
08/09/2010 12:08:42 PM FILED/CERT

EXHIBIT A
DESCRIPTION OF MORTGAGE PROPERTY

Commence at a 3 inch capped iron found locally accepted to be the Southeast corner of Section 33, Township 21 South, Range 2 West, Shelby County, Alabama; thence run North 01 degrees, 10 minutes, 29 seconds East along the East line of said Section 33 for a distance of 468.18 feet to a 2 inch open top iron found; thence run North 87 degrees, 44 minutes, 46 seconds West for a distance of 596.15 feet to an iron pin set at the point of beginning; thence continue North 87 degrees, 44 minutes, 46 seconds West for a distance of 470.90 feet to a one half inch rebar found; thence run North 89 degrees, 21 minutes, 49 seconds West for a distance of 959.20 feet to a Shiflett Capped Iron found; thence run North 00 degrees, 00 minutes, 07 seconds West for a distance of 263.28 feet to an iron pin set; thence run South 89 degrees, 48 minutes, 23 seconds East for a distance of 162.92 feet to an iron pin set; thence run North 04 degrees, 37 minutes, 59 seconds East for a distance of 335.64 feet to an iron pin set; thence run South 89 degrees, 19 minutes, 36 seconds East for a distance of 279.61 feet to an iron pin set; thence run North 04 degrees, 37 minutes, 59 seconds East for a distance of 200.45 feet to an iron pin set on the South right-of-way of Alabama Highway No. 70 said iron pin set also being on a curve to the right, having a central angle of 14 degrees, 15 minutes, 33 seconds, a radius of 1,403.43 feet, a chord bearing of South 87 degrees, 33 minutes, 59 seconds East and a chord of 348.37 feet; thence run in a Southeasterly direction along the arc of said curve and also along said South right-of-way line for a distance of 349.27 feet to an iron pin set; thence run South 80 degrees, 26 minutes, 15 seconds East along said South right-of-way line for a distance of 512.62 feet to an iron pin set; thence run South 10 degrees, 28 minutes, 18 seconds West for a distance of 443.20 feet to a half inch rebar found; thence run South 89 degrees, 37 minutes, 38 seconds East for a distance of 142.37 feet to an iron pin set; thence run South 00 degrees, 25 minutes, 12 seconds East for a distance of 201.30 feet to an iron pin set on a curve to the left, having a central angle of 87 degrees, 19 minutes, 33 seconds, a radius of 25.00 feet, a chord bearing of South 44 degrees, 04 minutes, 59 seconds East and a chord of 34.52 feet; thence run in a Southeasterly direction along the arc of said curve for a distance of 38.10 feet to an iron pin set; thence run South 87 degrees, 44 minutes, 46 seconds East for a distance of 5.69 feet to an iron pin set; thence run South 02 degrees, 33 minutes, 15 seconds West for a distance of 60.00 feet to the point of beginning; Said parcel containing 20.56 acres, more or less.



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EXHIBIT B


PERMITTED EXCEPTIONS TO TITLE

1. Ad valorem taxes for tax year 2009 and subsequent years;
2. Easement to the City of Calera, recorded in Deed Book 275, page 641, in the Probate Office of Shelby County, Alabama;
3. Less and except any portion within the right of way of a public road;
4. Transmission Line Permit to Alabama Power Company as shown by instrument recorded in Deed Book 99, page 465; Deed Book 203, page 553, in the Probate Office of Shelby County, Alabama (said easements are limited to those shown on the survey by Surveying Solutions, Inc. dated June 9, 2008, as last revised);
5. Easement to Alabama Power Company as shown by instrument recorded in Real 224, page 597, in the Probate Office of Shelby County, Alabama (said easement is limited to that shown on the survey by Surveying Solutions, Inc. dated June 9, 2008, as last revised);
6. Transmission Line Permit to Alabama Power Company as shown by instrument recorded in Deed Book 130, page 154; and Deed Book 239, page 212, in the Probate Office of Shelby County, Alabama (said easements are limited to those shown on the survey by Surveying Solutions, Inc. dated June 9, 2008, as last revised);
7. 30' Easement as shown on Map Book 36, page 62, in the Probate Office of Shelby County, Alabama;
8. Easement to the City of Calera, recorded in Instrument No. 20040310000121920, in the Probate Office of Shelby County, Alabama;
9. Right of way granted to Alabama Power Company recorded in Deed Book 99, page 465, in the Probate Office of Shelby County, Alabama (said easement is limited to that shown on the survey by Surveying Solutions, Inc. dated June 9, 2008, as last revised);
10. Easements as granted to parties set forth in deeds recorded in Instrument No. 20060809000386910, Instrument No. 20030922000637270 and Instrument No. 20070604000257180, in the Probate Office of Shelby County, Alabama;
11. Pump Station Easement as shown by Map Book 36, page 62, in the Probate Office of Shelby County, Alabama and as shown on the survey by Surveying Solutions, Inc. dated June 9, 2008, as last revised;



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12. That certain Easement for Signage granted by First Financial Bank to Calera Crossings, LLC, to be recorded simultaneously with this Statutory Warranty Deed;
13. That certain easement to use the asphalt drive running along the southern line of Parcel IIIA, as granted by First Financial Bank in favor of Porter Bridge Loan Company, by Statutory Warranty Deed to be recorded simultaneously with this Statutory Warranty Deed;
14. Agreement of Easements, Covenants, Conditions and Restrictions between Calera Crossings, LLC and James L. Lane, to be recorded simultaneously herewith, in the Probate Office of Shelby County, Alabama; and
15. Memorandum of Lease between Calera Crossings, LLC (Landlord) and Publix Alabama, LLC (Tenant), dated August 4, 2008, as amended by First Amendment to Memorandum of Lease, all as recorded simultaneously herewith in the Probate Office of Shelby County, Alabama.


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