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180 W. 128th Place  
Crown Point, Indiana 46307

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

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereinafter referred to as this "Security Instrument") made and entered into as of the 2/14/2002, by AJP Specialties, Inc., a Indiana Corporation having a mailing address of P.O. Box P.O. Box 16, Dyer, Indiana 46311 (hereinafter referred to as "Borrower"); and BuildersFirst Financial, a South Carolina corporation, having a mailing address of P.O. Box 1389, Greenville, SC 29602 (for U.S. Mail deliveries) and 531 South Main Street, Suite 301, Greenville, SC 29601 (for all other purposes) (hereinafter referred to as "Lender").

WITNESSETH:

WHEREAS, the Borrower is indebted to the Lender in the principal sum of One Hundred Forty-four Thousand and no/100 DOLLARS (\$144,000.00), as evidenced by a Promissory Note of even date herewith, the terms of which are incorporated herein by reference. The final due date for payment of said Promissory Note, if not sooner paid, is 2/13/2003.

NOW, THEREFORE, as security for said indebtedness, advancements and other sums expended by Lender pursuant to this Security Instrument and costs of collection (including reasonable attorneys fees as provided in the Promissory Note) and other valuable consideration, the receipt of which is hereby acknowledged, the Borrower hereby mortgages and warrants to Lender, its successors and/or assigns, all of the following described land and interests in land, estates, easements, rights, improvements, property, fixtures, equipment, furniture, furnishings, appliances and appurtenances (hereinafter collectively referred to as the "Premises"):

(a) All that certain tract, piece or parcel of land more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter referred to as the "Land").

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated or constructed on the Land.

(c) All construction supplies and materials, vehicles and other rolling stock, gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, plumbing and heating fixtures, draperies, carpeting and other floor coverings, fire extinguishers and any other safety equipment, washers, dryers, water heaters, water fountains, mirrors, mantels, air conditioning apparatus, refrigerators, cooking apparatus and appurtenances, window screens, awnings and storm sashes, and all other furnishings, furniture, and goods which are or are to become fixtures; machinery, equipment, inventory, supplies, appliances, and tangible personal property of every kind and nature whatsoever now or hereafter owned by Borrower and located in, on or about, or used or intended to be used with or in connection with the use, operation or enjoyment of the Premises, and all extensions, additions, improvements, betterments, after-acquired property, renewals, proceeds and replacements of any of the foregoing; together with the benefit of any deposits or payments now or hereafter made by Borrower or on behalf of Borrower, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Security Instrument.

(d) All of Borrower's rights, but not liability for any breach by Borrower, under all contracts for the purchase and sale of the Premises or any part thereof and all commitments (including any commitments for financing to pay any of the indebtedness secured hereby), insurance policies, contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to trademarks, trade names, goodwill and symbols) related to the Premises or the operation thereof.

(e) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower; prepaid insurance premiums, condemnation payments, rents and tenant security deposits, escrow funds and any other fees or payments accruing to Borrower in connection with the Premises.

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TO HAVE AND TO HOLD the said Premises and all parts, rights, members and appurtenances thereof unto the Trustee and the successors and assigns of the Lender until the indebtedness hereinafter described is paid in full. Borrower covenants that Borrower is lawfully seized and possessed of the Premises as aforesaid, and has good right to convey the same, that the same is unencumbered except for (i) the matters, if any, set forth under the heading "Permitted Exceptions" in Exhibit "B" hereto, which are Permitted Exceptions only to the extent the same are valid and subsisting and affect the Premises, (ii) the liens and security interests evidenced by this Security Instrument; and (iii) other liens and security interests (if any) in favor of Lender (the matters described in the foregoing clauses (i), (ii) and (iii) being herein called the "Permitted Encumbrances"). Borrower will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Lender. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Lender of any existing or future violation or other breach thereof by Borrower, by the Premises or otherwise. No part of the Premises constitutes all or any part of the principal residence of Borrower if Borrower is an individual. If any right or interest of Lender in the Premises or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Lender (whether or not named as a party to legal proceedings with respect thereto), is hereby authorized and empowered to take such steps as in its discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Lender, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Borrower hereby promises to pay) owing by Borrower to Lender, and Lender shall be subrogated to all rights of the person receiving such payment. Borrower does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Exceptions.

This Security Instrument is given to secure the following described indebtedness:

- (a) The debt evidenced by that certain Promissory Note dated of even date herewith, made by Borrower, payable to the order of Lender in the principal face amount of One Hundred Forty-four Thousand and no/100 Dollars (\$144,000.00), with the final payment being due on 2/13/2003; together with any and all amendments, modifications, reinstatements, substitutions, renewals and/or extensions of the said note (hereinafter referred to as the "Note" and to which Note reference is hereby made for all purposes);
- (b) Any and all additional future advances and readvances made by Lender under the Note or to protect or preserve the Premises or the lien or security title hereof on the premises, or for taxes, assessments or insurance premiums as hereinafter provided (whether or not the original Borrower remains the owner of the Premises at the time of such advances);
- (c) Any and all other sums owed by Borrower to Lender hereunder, under the Note, this Security Instrument, the Loan Agreement between Borrower and Lender of even date herewith (the "Loan Agreement"), or under any other instrument evidencing, securing or in any way concerning the debt evidenced by the Note (collectively the "Loan Documents") except that this Security Instrument does not secure Borrower's obligations under that certain Environmental Indemnity Agreement of even date herewith from Borrower to Lender; and
- (d) Any and all other indebtedness, liabilities, or obligations of Borrower to Lender, of any nature whatsoever, whether now existing or hereafter created, whether direct, indirect or secondary, and any and all modifications, extensions and/or renewals thereof.

BORROWER HEREBY FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

#### ARTICLE I

1.01 Payment of Indebtedness. Borrower will pay the Note according to the tenor thereof and all other sums now or hereafter secured hereby promptly as the same shall become due.

1.02 Taxes, Liens and Other Charges.

(a) Borrower will pay (to the extent same are not paid from the escrowed funds provided for in Paragraph 1.04), before the same become delinquent, all taxes, liens, assessments and charges of every character including all utility charges, whether public or private, already levied or assessed or that may hereafter be levied or assessed upon or against the Premises; and upon demand will furnish Lender receipted bills evidencing such payments.

(b) Borrower will not suffer any mechanic's, materialman's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Security Instrument to be created and to remain outstanding upon all or any part of the Premises.

1.03 Insurance.

(a) Borrower shall procure for, deliver to and maintain for the benefit of Lender during the term of this Security Instrument, certified copies of paid up policies of insurance with companies, in amounts, in form and in substance, and with expiration dates, deductibles and any co-insurance clauses all acceptable to Lender and containing a waiver of subrogation rights by the insuring company, non-contributory standard mortgagee benefit clauses or their equivalent, and a mortgagee loss payable endorsement in favor of and satisfactory to Lender, providing the following types of insurance on the Premises:

(i) insurance against loss or damage by fire; lightning; hurricane, tornado and wind damage; vandalism and malicious mischief; and against such other hazards as are presently included in so-called "all risk extended coverage" and against other such insurable hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location; the amount of which insurance shall not be less than the full replacement value of the Premises including all improvements and personal property thereon; and which policies of insurance shall provide for breach of warranty coverage, shall contain replacement cost endorsements satisfactory to Lender, and shall not permit co-insurance, such insurance to be in builder's risk (non-reporting) form during and with respect to any construction on the Premises providing all-risk coverage on all improvements on the Premises and products of construction, including materials stored on the Premises and elsewhere;

(ii) Public liability and property damage insurance in an amount not less than fifty thousand dollars (\$50,000.00) per person and not less than fifty thousand dollars (\$50,000.00) per incident (on which Lender shall be named as an additional insured), and flood insurance (if the Premises are or become located in an area which is considered a flood risk by the U.S. Department of Housing and Urban Development or if such coverage is considered advisable by BuildersFirst Financial), and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties which 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 thereof.

(iii) Statutory workers' compensation insurance with respect to any work on or about the Premises.

(iv) Such other insurance on the Premises as may from time to time be required by Lender (including but not limited to business interruption insurance, boiler and machinery insurance, earthquake insurance, and war risk insurance) and against other insurable hazards or casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the construction and location of buildings and improvements, or which are required by applicable state law.

(b) Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies maintained pursuant to this Paragraph 1.03, and to collect and receive the proceeds from any such policy or policies, and each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. The net proceeds collected by Lender, after deducting all of Lender's expenses incurred in the collection and administration of such sums, including attorneys fees, may be applied at Lender's option (i) to the payment of the indebtedness hereby secured, whether or not due and in whatever order Lender elects, (ii) to the repair and/or restoration of the Premises or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Security Instrument; all without affecting the lien of this Security Instrument. In the event Borrower is required to restore the Premises as set forth above, Borrower shall provide Lender with plans and specifications for the restoration with a construction budget, and with any and all construction contracts executed in connection with such restoration and Lender's approval thereof shall be required for any restoration involving costs in excess of \$10,000. If Lender shall approve such plans and specifications, budget and contracts, and provided further that no Default shall exist hereunder, Lender shall hold any amounts collected by Lender under any such insurance policy in escrow to finance such construction and will release such amounts to Borrower in accordance with the terms and conditions of the Loan Agreement and in such increments and at such times as Lender deems appropriate to finance such construction. If the proceeds of any such policy collected by Lender are, in the opinion of Lender, insufficient to restore the premises, Lender shall be under no obligation to hold such proceeds in escrow for Borrower or to release such proceeds to Borrower unless Borrower deposits with Lender funds to be held in escrow which, when added to the proceeds of any such insurance policy collected by Lender will, in the opinion of Lender, be sufficient to restore the Premises. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) All insurance policies required pursuant to this Security Instrument shall provide that the coverage afforded thereby shall not expire or be amended, cancelled or otherwise terminated without thirty (30) days prior written notice to Lender. At least ten (10) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.03, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. Borrower shall 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 hereunder. In the event of the foreclosure of this Security Instrument or any other transfer of title to the Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(d) Borrower shall at all times comply with the requirements of the insurance policies required hereunder and of the issuers of such policies and of any board of fire underwriters or similar body as applicable to or affecting the Premises.

1.04 Monthly Deposits. At the option of Lender, and to further secure the payment of the taxes and assessments referred to in Paragraph 1.02 and the premiums on the insurance referred to in Paragraph 1.03, Borrower will deposit with Lender, on the due date of each monthly installment under the Note, a sum which, in the estimation of Lender, shall be equal to one-twelfth (1/12) of the annual taxes, assessments and insurance premiums on the Premises; said deposits to be held by Lender, free of interest, and free of any liens or claims on the part of creditors of Borrower and as part of the security of Lender, and to be used by Lender to pay current taxes and assessments and insurance premiums on the Premises as the same accrue and are payable. Said deposits shall not be, nor be deemed to be, trust funds but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments and insurance premiums in full as the same become payable, Borrower will deposit with Lender such additional sum or sums as may be required in order for Lender to pay such taxes and assessments and insurance premiums in full. Upon any default in the provisions of this Security Instrument or the Note, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the indebtedness secured hereby in such manner as it may elect.

1.05 Condemnation. If all or any material portion of the Premises shall be damaged or taken through condemnation (which term when used in this Security Instrument shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable. Lender shall be entitled to receive all compensation, awards and other payments or relief thereof. Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in 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. Unless Borrower is required to restore the Premises to substantially the same condition as existed prior to condemnation by Lender, the net proceeds after deducting all of Lender's expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, may be applied, at Lender's option (a) to the payment of the indebtedness hereby secured, whether or not due and in whatever order Lender elects, (b) to the repair and/or restoration of the Premises or (c) for any other purposes or objects for which Lender is entitled to advance funds under this Security Instrument, all without affecting the lien or priority of this Security Instrument; and any balance of such moneys then remaining shall be paid to Borrower.

1.06 Compliance with Construction Schedule; Compliance with Laws; Repairs.

(a) Borrower will keep the buildings, parking areas, roads and walkways, landscaping and all other improvements of any kind now or hereafter erected on the Land or any part thereof, and the fixtures, furnishings and equipment therein and thereon, in first class condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Premises or any part thereof. Borrower will take appropriate and necessary measures to secure the Premises against burglars, thieves, arsonists, and other parties who might steal, damage or destroy improvements, materials, equipment and other items built, stored, or located thereon.

(b) Borrower will not remove or demolish nor alter the structural character of any improvement presently located or hereafter constructed on the Land without the written consent of Lender.

(c) If the Premises or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice thereof to Lender.

(d) Lender or its representative is hereby authorized to enter upon and inspect the Premises 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 Premises or any part thereof. Borrower will deliver to Lender within ten (10) days after Borrower's receipt thereof copies of any additional governmental permits, approvals, disapprovals or other notices issued with regard to the Premises or any portion thereof.

(f) If all or any part of the Premises shall be damaged by fire or other casualty, Borrower will promptly restore the Premises to the equivalent of its original condition, or, if the damaged improvements are under construction at the time, will initiate and diligently pursue restoration and the remainder of construction; and if a part of the Premises shall be damaged through condemnation,

Borrower will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to Lender. Notwithstanding the foregoing, Borrower shall not be obligated to so restore unless in each instance, Lender agrees to make available to Borrower (pursuant to the procedures set forth in Paragraphs 1.03 and 1.05 hereof) any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration. In the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises (as determined by an independent contractor which will be chosen by Lender in Lender's sole discretion and the expense of which will be paid by Borrower) exceeds the actual net insurance or condemnation proceeds received by Lender in connection with such damage or destruction.

1.07 Security Agreement. Insofar as (i) any of the property listed in paragraphs (b) through (d) on page 2 hereof, (ii) all other personal property either referred to or described in this Security Instrument, or in any way connected with the use or enjoyment of the Premises, and (iii) any and all building permits, zoning certificates, occupancy arrangements and permits, licenses, concessions, other agreements which grant a possessory interest, rents, issues, profits, revenues, proceeds, awards, accounts, security deposits and other benefits now or hereafter arising from the use and enjoyment of the Premises or any part thereof is concerned, this Security Instrument is hereby made and declared to be a security agreement, encumbering each and every item of personal property or fixtures described herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the state in which the Premises are located, and Borrower does hereby grant to Lender a continuing lien and security interest in and to all of said property and the proceeds thereof and all after-acquired property relating thereto to further secure the obligations of Borrower under the Note and the other Loan Documents and all other indebtedness secured hereby. A financing statement or statements reciting this Security Instrument to be a security agreement, affecting all of said property aforementioned, shall be executed by Borrower and Lender and appropriately filed. Borrower covenants and agrees that, prior to changing its name, identity or structure, it will so notify Lender and will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from becoming seriously misleading or losing its perfected status. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or here after enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of Borrower and Lender that every thing used in connection with the production of income from the Premises and/or adapted for use therein and/or which is described or reflected in this Security Instrument, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. The information contained herein is provided in order that this Security Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the state in which the Premises are located, for instruments to be filed as financing statements. The "Debtor" is the Borrower hereunder; the "Secured Party" is the Lender herein, the principal place of business of the "Debtor" is as set forth on Page 1 of this Security Instrument, the mailing addresses of the "Debtor" and the "Secured party" are as set forth on page 1 of this Security Instrument, and the types or items of collateral are as described hereinabove.

1.08 Expenses. Borrower will pay or reimburse Lender, upon demand therefor, for all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with administering or dealing with the loan secured by this Security Instrument, in connection with any amendment, extension or renewal thereof, or in connection with any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the indebtedness secured hereby, this Security Instrument or the interest created herein, or the Premises, including, but not limited to, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the indebtedness secured by the lien of this Security Instrument.

1.09 Subrogation. Lender shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the indebtedness secured hereby.

1.10 Books, Records, Accounts and Annual Reports. Borrower will keep and maintain or will cause to be kept and maintained proper and accurate books, records and accounts reflecting all receipts (including Loan proceeds) and all expenses related to the construction and operation of the Premises or in connection with any services, equipment or furnishings provided in connection with the construction or operation of the Premises. Lender shall have the right from time to time at all times during normal business hours to examine such books, records and accounts at the office of Borrower or such other person or entity maintaining such books, records and accounts and to make copies or extracts thereof as Lender shall desire.

1.11 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Security Instrument or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then *ipso facto* the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Security Instrument or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Paragraph 1.11 shall control every other provision of this Security Instrument and of the Note.

1.12 No Further Encumbrances. Borrower shall not, directly or indirectly (including, without limitation, by equipment leasing or similar arrangements, or by pledge or hypothecation of stock, bonds, partnership interests in Borrower, or by pledge or hypothecation of any interest in any partner of Borrower), further encumber the Premises, or any part thereof, it being understood by Borrower that the Premises, and all parts thereof, shall remain free and clear of any and all debt instruments or other obligations securing the repayment of money or any other obligations.

1.13 Restrictions on Transfers; Prohibition Against Occupancy. Borrower shall not, without first obtaining the prior written consent of Lender (which may be given or withheld by Lender in Lender's sole discretion), whether by operation of law or otherwise and whether with or without consideration, (i) transfer, sell, convey or assign all or any portion of the Premises, or contract to do any of the foregoing, including, with out limitation, options to purchase and so called "installment sales contracts", "land contracts", "bonds for title", or "contracts for deed", (ii) ground lease or sublease all or any substantial portion of the Premises or change the legal possession or use thereof, or (iii) permit the dilution, transfer, pledge, hypothecation or encumbrance of any general partner's partnership interest in Borrower, or of any stock, partnership or beneficial interests in any general partner of Borrower which is a corporation, partnership or a trust. Without limiting the generality of the preceding sentence, the prior written consent of Lender shall be required for any transfer made to a subsidiary or affiliate entity of Borrower, any transfer made to a reconstituted general or limited partnership, transfers by any partnership to its individual partners or vice versa, any transfer by any corporation to its stockholders or vice versa, and any corporate merger or consolidation. In the event that Lender, in Lender's sole discretion, is willing to consent to a transfer which would otherwise be prohibited by this paragraph, Lender may condition its consent on such terms as it desires, including, without limitation, an increase in the interest rate of the Note (and recalculation of the amortization provisions thereof), and the requirement that Borrower pay a transfer fee, together with any expenses incurred by Lender in connection with the granting of such consent (including, without limitation, attorneys' fees).

Borrower will not allow the purchaser of the residence to be built on the Premises, nor any tenant or any other party, to take possession of, reside in, or otherwise gain possessory rights on or over the Premises until the Note has been paid and satisfied in full.

## ARTICLE II

2.01 Events of Default. The terms "Default", "Event of Default" or "Events of Default", wherever used in this Security Instrument, shall mean any one or more of the following events:

- (a) Default in the payment of any principal, interest or other charges in respect of any of the indebtedness secured hereby for more than ten (10) days after the due date thereof;
- (b) Default in the observance or performance of any covenant or agreement of Borrower [other than those set forth in Paragraph 2.01(a) above] herein set forth or set forth in any of the Loan Documents or any other agreement, note or instrument heretofore or hereafter executed by Borrower in favor of Lender for more than thirty (30) days after written notice from Lender to Borrower of such default;
- (c) Any warranty or representation of Borrower herein contained, or contained in any instrument, transfer, certificate, statement, conveyance, assignment or loan agreement given with respect to the Indebtedness hereby, shall prove untrue or misleading in any material aspect;
- (d) Should the Premises be subject to actual or threatened waste, or any part thereof be removed, demolished or materially altered so that the value of the Premises be materially diminished except as provided for in Paragraphs 1.03 and 1.05 herein;
- (e) Should any federal tax lien or claim of lien for labor or material be filed of record against Borrower or the Premises and not be removed by payment or bond within ten (10) days from date of recording;
- (f) Should any claim of priority to this Security Instrument by title, lien or otherwise be asserted in any legal or equitable proceeding;
- (g) Should Borrower make any assignment for the benefit of creditors, or should a receiver, liquidator or trustee of Borrower or of any of Borrower's property be appointed, or should any petition for the bankruptcy, reorganization or arrangement of Borrower, pursuant to the Federal Bankruptcy

Act or any similar statute, be filed, or should Borrower be adjudicated a bankrupt or insolvent, or should Borrower in any proceeding admit his insolvency or inability to pay his debts as they fall due or should Borrower, if a corporation, be dissolved or partitioned, or, if a trust, be terminated or expire; or

(h) Should any event occur under any instrument, security instrument or agreement, given or made by Borrower to or with any third party, which would authorize the acceleration of any secured indebtedness to any such third party the acceleration of which would materially affect Borrower's ability to pay when due any amounts owed to Lender.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire indebtedness secured hereby shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence of this Security Instrument; and no omission on the part of Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Acceleration Upon Default, Additional Remedies. Upon the occurrence of any even of default Lender may declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Lender:

- a. may, to the extent permitted by law, either in person or by agent, with or without bringing any action or proceeding, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same in accordance with Section 2.03 hereof. The entering upon and taking possession of the premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and notwithstanding the continuance in possession of the premises or the collection, receipt and application of rents, issues or profits, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any event of default;
- b. may commence an action to foreclose this Security Instrument, appoint a receiver, or specifically enforce any of the covenants hereof and to take all such other actions permitted by applicable law;
- c. is hereby authorized and empowered, to sell or cause to be sold the Premises hereby mortgaged pursuant to the statute in such case made and provided, and out of the proceeds of such sale to retain the principal and interest of all sums then due to lender, as well as the costs and charges of such sale and the attorney fees provided by statute, rendering the surplus moneys (if any) to Borrower, its successors or assigns. Borrower understand that the statute pertaining to foreclosure by advertisement provides a means of foreclosure of this Security Instrument and sale of the Premises without hearing in any court or notice, other than as provided for herein. In case of any sale under this Security Instrument by virtue of judicial proceedings or otherwise, the Premises may be sold in one parcel and as an entirety or in such parcel, manner and order as Lender, in its sole discretion, may elect;
- d. may exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as enacted in the state in which the Premises are located, including, but not limited to:
  - i. Either personally or by means of a court appointed receiver, take possession of all or any of the personal property either referred to or described in this Security Instrument and exclude therefrom Borrower and all others claiming under Borrower, and make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect to said personal property or any part thereof. In the event Lender demands or attempts to take possession of said personal property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;
  - ii. Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in said personal property, including, without limitation, paying, purchasing,

contesting, or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

- iii. Require Borrower to assemble said personal property or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly deliver said personal property to Lender, or an agent or representative designated by it;
- iv. Sell, lease or otherwise dispose of said personal property at public sale, with or without having said personal property at the place of sale, and upon such terms and in such manner as Lender may determine. Lender may be a purchaser at any such sale;
- v. Unless said personal property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10) days prior written notice of the time and place of any public sale of said personal property or other intended disposition thereof. Such notice may be mailed to Borrower at the address set forth at the beginning of this Security Instrument.

The right of Lender under this Security Instrument shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others.

2.04 Foreclosure; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Lender shall have the right to foreclose the lien hereof for such indebtedness of part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Lender under this Security Instrument or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' costs and fees (including the costs and fees for environmental studies and assessments and all additional expenses incurred by Lender with respect to environmental matters, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to, the value of or the environmental condition of the Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceeding affecting this Security Instrument, the Note or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Borrower, with interest thereon at the post maturity rate and shall be secured by the Security Instrument.

2.05 Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises shall be distributed and applied in the following order or priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in the preceding paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidences by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; and fourth, any overplus to Borrower, its successors or assigns, as their rights may appear.

2.06 Appointment of Receiver. Upon, or at any time after the filing of a complaint to foreclose this Security Instrument, Lender shall be entitled to the appointment of a receiver of the Premises by the court in which such complaint is filed, and Borrower hereby consents to such appointment. Such appointment may be made either before or after sale, without regard to the solvency or insolvency of Borrower at the time of application for such receiver and without regard to the then value of the Premises or whether the same shall be then occupied as a homestead or not and Lender hereunder or any holder of the Note may be appointed as such receiver. Such receiver shall have power: (a) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit and, in case of a sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Borrower, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (b) to extend or modify any then existing leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of



any certificate of sale or deed to any purchaser; and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management, and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the indebtedness secured hereby, or by any decree foreclosing this Security Instrument, or any tax, special assessment or other lien which may be or become superior to the lien hereof or such decree, provided such application is made prior to foreclosure sale; or (b) the deficiency in case of a sale and deficiency.

2.07 Purchase by Lender. Upon any public auction or foreclosure sale, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the indebtedness secured hereby as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a public sale or foreclosure sale of the Premises, the proceeds of said sale shall be applied, unless otherwise required by law, first, to the expenses of such sale and of all proceedings in connection therewith, including attorney's fees, then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender, then to payment of all other sums due Lender except principal and interest, then to payment of accrued interest, then to payment of principal, and finally the remainder, if any, shall be paid to Borrower.

2.09 Borrower as Tenant Holding Over. In the event of any such foreclosure sale by Lender, 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 Appraisement, Valuation Stay, Homestead, Extension and Redemption Laws. Borrower, for Borrower, Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Property, agrees to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, moratorium, reinstatement, or forbearance, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Security Instrument, or the absolute sale of the Premises, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, notice of intention to mature or declare due the whole of the indebtedness secured hereby, notice of election to mature or declare due the whole of the indebtedness secured hereby, and the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

2.11 Uniform Commercial Code. Without limitation of Lender's rights of enforcement with respect to the property described in Paragraph 1.07 hereof (hereafter the "Collateral") or any part thereof in accordance with the procedures for foreclosure of real estate, Lender may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Uniform Commercial Code of the state in which the Collateral is located as amended (or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Lender may enter upon Borrower's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Lender may require Borrower to assemble the Collateral and make it available at a place Lender designates which is mutually convenient to allow Lender to take possession or dispose of the Collateral; (3) written notice mailed to Borrower as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in this Security Instrument; (5) in the event of a foreclosure sale, whether made by Lender under the terms hereof, or under judgment of a court, the Collateral and the other Premises may, at the option of Lender, be sold as a whole; (6) it shall not be necessary that Lender take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds from disposition of the Collateral under Paragraph 2.08 hereof, the costs and expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Lender; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the indebtedness secured hereby or as to the occurrence of any default, or as to Lender having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Lender, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Lender may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

2.12 Discontinuance of Proceedings and Restoration of the Parties. In case Lender shall have proceeded to enforce any right, power or remedy under this Security Instrument 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 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 had been undertaken.

2.13 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Security Instrument is intended to be exclusive of any other right, power or remedy, but each and every 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.

2.14 Waiver.

(a) No delay or omission of 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 this Security Instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default by Borrower in the performance of the obligations here under shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies arising by virtue of any breach or default by Borrower.

(b) If Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note; (iv) releases any part of the Premises from the lien or security title of this Security Instrument or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Security Instrument; (v) consents to the filing of any map, plat or replat affecting the Premises; (vi) consents to the granting of any easement or other right affecting the Premises; or (vii) makes or consents to any agreement subordinating the lien or security title hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Security Instrument or any other obligation of Borrower or any subsequent purchaser of the Premises 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 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 or security title of this Security Instrument be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Premises, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, 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 liabilities, obligations or undertakings.

2.15 Suits to Protect the Premises. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Premises by any acts which may be unlawful or any violation of this Security Instrument, (b) to preserve or protect its interest in the Premises and in the rents, issues, profits and revenues 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 Lender.

2.16 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower, or any of its creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire amount due and payable by Borrower under this Security Instrument at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

### ARTICLE III

3.01 Assignment of Rents and Leases. As additional security for the indebtedness secured hereby, Borrower hereby assigns to Lender all rents (hereinafter defined) and all of Borrower's rights in and under all leases (hereinafter defined). Upon the occurrence of an Event of Default hereunder, Lender shall have the right, power and privilege (but shall be under no duty) to demand possession of the rents, if any, which demand shall to the fullest extent permitted by applicable law be sufficient action by Lender to entitle Lender to immediate and direct payment of the rents (including delivery to Lender of rents collected for the period in which the demand occurs and for any subsequent period), for application as provided in this Security Instrument, all without the necessity of any further action by Lender, including, without limitation, any

action to obtain possession of the land, improvements or any other portion of the Premises. Borrower hereby authorizes and directs the tenants under any leases to pay rents to Lender upon written demand by Lender, without further consent of Borrower, without any obligation to determine whether a default has in fact occurred and regardless of whether Lender has taken possession of any portion of the Premises, and the tenants may rely upon any written statement delivered by Lender to the tenants. Any such payment to Lender shall constitute payment to Borrower under the leases, and Borrower hereby appoints Lender as Borrower's lawful attorney-in-fact for giving, and Lender is hereby empowered to give, acquaintances to any tenants for such payments to Lender after a default. The assignment contained herein shall become null and void upon the release of this Security Instrument. As used herein: (i) "lease" means each existing or future lease, sublease (to the extent of Borrower's rights thereunder), usufruct or other agreement under the terms of which any person has or acquires any right to occupy or use the Premises, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, usufruct, agreement or guaranty; and (ii) "rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Premises or arising from the use or enjoyment of any portion thereof or from any lease, including but not limited to liquidated damages following default under any such lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Premises, all of Borrower's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of lease defaults, including rejections, under any applicable debtor relief law, together with any sums of money that may now or at any time hereafter be or become due and payable to Borrower by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Premises or any part thereof, and all proceeds and other amounts paid or owing to Borrower under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Premises. Lender's acceptance of this assignment shall not be deemed to constitute Lender a "Lender in possession," nor obligate Lender to appear in or defend any proceeding relating to any lease or to the Premises, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any lease, or assume any obligation for any deposit delivered to Borrower by any tenant and not as such delivered to and accepted by Lender. Lender shall not be liable for any injury or damage to person or Premises in or about the Premises, or for Lender's failure to collect or to exercise diligence in collecting rents, but shall be accountable only for rents that it shall actually receive. Neither the assignment of leases and rents nor enforcement of Lender's rights regarding leases and rents (including collection of rents) nor possession of the Premises by Lender nor Lender's consent to or approval of any lease (nor all of the same), shall render Lender liable on any obligation under or with respect to any lease or constitute affirmation of, or any subordination to, any lease, occupancy, use or option. If Lender seeks or obtains any judicial relief regarding rents or leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Lender neither has nor assumes any obligations as lessor or landlord with respect to any lease. The rights of Lender under this assignment shall be cumulative of all other rights of Lender under the Loan Documents or otherwise.

#### ARTICLE IV

4.01 Successors and Assigns. This Security Instrument shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and permitted assigns. Whenever a reference is made in this Security Instrument to Borrower or Lender such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and permitted assigns thereof.

4.02 Terminology. All personal pronouns used in this Security Instrument whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Security Instrument itself, and all references herein to Articles, Paragraphs or subparagraphs thereof, shall refer to the corresponding Articles, Paragraphs or subparagraphs thereof, of this Security Instrument unless specific reference is made to such Articles, paragraphs or sub paragraphs thereof of another document or instrument.

4.03 Severability. If any provision of this Security Instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Security Instrument and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.04 Applicable Law. Borrower agrees that this Security Instrument shall be construed, interpreted and enforced with the laws of the state in which the Premises are located; provided, however, that if the conflict or choice of law rules of such state would choose the law of another state, Borrower waives such rules and agrees that the substantive, procedural and constitutional law of the state in which the Premises are located shall nonetheless govern.

4.05 Demands or Notices. Any demand or notice required or permitted to be given hereunder shall be given in writing and shall be deemed given and received in accordance with the requirements of Paragraph 18 of the Note and shall otherwise comply with such requirements.

4.06 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under this Security Instrument.

4.07 Interest on Advances; Compliance with Usury Laws. If Lender advances any sum under this Security Instrument, such sum shall bear interest from the date advanced until paid at the then-applicable default interest rate under the Note. It is the intent of Borrower and Lender and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Lender and Borrower (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Deed, the Note or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the necessity of execution of any amendment or new document. If Lender shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the Secured Indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Borrower or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Note or any other Secured Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Lender shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean the laws of the State of Indiana or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

4.08 Modification or Termination. The Loan Documents may only be modified or terminated by a written instrument or instruments intended for that purpose and executed by the party against which enforcement of the modification or termination is asserted. Any alleged modification or termination which is not so documented shall not be effective as to any party.

4.09 No Partnership, Etc. The relationship between Lender and Borrower is solely that of lender and borrower. Lender has no fiduciary or other special relationship with Borrower. Nothing contained in the Loan Documents is intended to create any partnership, joint venture, association or special relationship between Borrower and Lender or in any way make Lender a co-principal with Borrower with reference to the Premises. All agreed contractual duties between Borrower and Lender are set forth herein and in the other Loan Documents and any additional implied covenants or duties are hereby disclaimed. Any inferences to the contrary of any of the foregoing are hereby expressly negated.

4.10 Further Assurances. Borrower will, promptly on request of Lender, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Security Instrument or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, deeds of trust, deeds to secure debt, security agreements, financing statements, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Security Instrument and the other Loan Documents, to more fully identify and subject to the title, liens and security interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Premises) or as deemed advisable by Lender to protect the title, the lien or the security interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Lender to enable Lender to comply with the requirements or requests of any agency having jurisdiction over Lender or any examiners of such agencies with respect to the indebtedness secured hereby, Borrower or the Premises. Borrower shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Borrower (which Borrower hereby promises to pay) to Lender pursuant to this Security Instrument.

4.11 Fees and Expenses. Without limitation of any other provision of this Security Instrument or of any other Loan Document and to the extent not prohibited by applicable law, Borrower will pay, and will reimburse to Lender on demand to the extent paid by Lender: (i) all appraisal fees, filing, registration and recording fees, recordation, transfer and other taxes, brokerage fees and commissions, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, uniform commercial code search fees, judgment and tax lien search fees, escrow fees, reasonable attorneys' fees actually incurred, architect fees, engineer fees, construction consultant fees, environmental inspection fees, survey

fees, and all other costs and expenses of every character incurred by Borrower or Lender in connection with the preparation of the Loan Documents, the evaluation, closing and funding of the loan evidenced by the Loan Documents, and any and all amendments and supplements to this Security Instrument, the Note or any other Loan Documents or any approval, consent, waiver, release or other matter requested or required hereunder or thereunder, or otherwise attributable or chargeable to Borrower as owner of the Premises; and (ii) all costs and expenses, including reasonable attorneys' fees and expenses, actually incurred or expended in connection with the exercise of any right or remedy, or the defense of any right or remedy or the enforcement of any obligation of Borrower, hereunder or under any other Loan Document.

4.12 Taxes on Note or Deed. Borrower will promptly pay all income, franchise and other taxes owing by Borrower and any stamp, documentary, recordation and transfer taxes or other taxes (unless such payment by Borrower is prohibited by law) which may be required to be paid with respect to the Note, this Security Instrument or any other instrument evidencing or securing any of the indebtedness secured hereby. In the event of the enactment after this date of any law of any governmental entity applicable to Lender, the Note, the Premises or this Security Instrument deducting from the value of property for the purpose of taxation any lien or security interest thereon, or imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower, or changing in any way the laws relating to the taxation of deeds to secure debt, deeds of trust or mortgages or security agreements or debts secured by deeds to secure debt or mortgages or security agreements or the interest of the grantee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Security Instrument or the indebtedness secured hereby or Lender, then, and in any such event, Borrower, upon demand by Lender, shall pay such taxes, assessments, charges or liens, or reimburse Lender therefor; provided, however, that if in the opinion of counsel for Lender (i) it might be unlawful to require Borrower to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Lender may elect, by notice in writing given to Borrower, to declare all of the indebtedness secured hereby to be and become due and payable sixty (60) days from the giving of such notice.

4.13 Estoppel Certificate. Borrower shall at any time and from time to time furnish within seven (7) days of request by Lender a written statement in such form as may be required by Lender stating that (i) the Note, this Security Instrument and the other Loan Documents are valid and binding obligations of Borrower, enforceable against Borrower in accordance with their terms; (ii) the unpaid principal balance of the Note; (iii) the date to which interest on the Note is paid; (iv) the Note, this Security Instrument and the other Loan Documents have not been released, subordinated or modified; and (v) there are no offsets or defenses against the enforcement of the Note, this Security Instrument or any other Loan Document. If any of the foregoing statements in clauses (i), (iv) and (v) are untrue, Borrower shall, alternatively, specify the reasons therefor.

IN WITNESS WHEREOF, Borrower has executed this Security Instrument, as of the day and year first above written.



BORROWER:

*Andrew S. Moore*

AJP Specialties, Inc.  
By: Andrew S. Moore  
Title: President

STATE OF Indiana )  
 ) SS:  
COUNTY OF Lake )

Before me, a Notary Public in and for said County and State, personally appeared, known to me to be the President of AJP Specialties, Inc. a(n) Indiana Corporation and acknowledged the execution of the foregoing for and on behalf of said Indiana Corporation

WITNESS my hand and notarial seal this 14th day of February, ~~2000~~ 2002

*Tina Brakley*  
Notary Public – Signature

Notary public – Printed

TINA BRAKLEY  
Notary Public, State of Indiana  
County of Lake  
My Commission Expires Dec 26, 2007

My Commission Expires:

My County of Residence:

Lake

This instrument was prepared by and after recording should be returned to:

BuildersFirst Financial  
531 South Main Street, Suite 301  
Greenville, SC 29601



**LEGAL DESCRIPTION**

Lot 47 in Forest View Farms-Phase One, an Addition to the City of Crown Point, as per plat thereof, recorded in Plat Book 91 page 14, in the Office of the Recorder of Lake County, Indiana.

