

THIS INSTRUMENT PREPARED BY:

Frank A. Baker, Esq.
4431 Lafayette Street
Marianna, FL 32446
850-526-3633

RESERVED FOR USE BY CLERK OF COURT

**AMENDED AND RESTATED MORTGAGE AND
SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND PROCEEDS
AND NOTICE OF ADDITIONAL SECURED AMOUNT**

KNOW ALL MEN BY THESE PRESENTS:

THIS INSTRUMENT is made and entered into as of August 22, 2008, by and between BREAKERS PROPERTIES, LLC, whose address is 2605 Thomas Drive, Suite 150, Panama City Beach, FL 32408 ("Breakers Properties" herein), in favor of SUPERIOR BANK, 2424B Jenks Avenue, Panama City, FL 32405 ("Lender" herein).

WHEREAS, Bay Breakers, Inc., has previously executed and delivered a mortgage to Beach Community Bank in the original secured principal amount of \$10,400,000.00 dated November 9, 2004, and recorded November 10, 2004, at OR Book 2525, page 1928, public records of Bay County, Florida, and assigned to Superior Bank by instruments recorded 6/8/2006 at OR Book 2789, page 169, public records of Bay County, Florida, and recorded August 28, 2006, at OR Book 2823, page 332, public records of Bay County, Florida, and as modified by instrument recorded 5/12/2006 at OR Book 2777, page 80, public records of Bay County, Florida, to reflect an additional advance of \$1,925,000.00; on which the current principal balance is \$10,492,382.19; and **on which \$10,492,382.19 all documentary and intangible tax stamps have previously been paid**; which instrument is referred to herein as "the Mortgage"; and

WHEREAS, Breakers Properties has executed and delivered its additional secured note dated August 22, 2008, in the principal amount of **\$2,007,544.62** to Lender, which the parties desire to also be secured by the lien of the Mortgage, as amended herein, and on which **\$2,007,544.62** documentary and intangible tax stamps are being paid at the time of recording of this instrument;

The parties therefore agree as follows:

1. The Mortgage is amended to provide that it shall also secure the August 22, 2008, Assumption Agreement and the additional **\$2,007,544.62** August 22, 2008, note and all promises and covenants thereunder (all of which are incorporated herein by reference), and that such obligations shall be considered part of sums secured by the Mortgage.

2. The Mortgage is further amended to provide as follows:

2.1 The pledged Property shall also include:

- i. All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land (hereinafter referred to as the "Improvements").
- ii. All now owned or hereafter acquired easements, rights-of-way, strips, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, 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, licenses, causes of action, claims, condemnation proceeds, profits, concessions and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Breakers Properties of, in and to the same.

- iii. Any and all present and future attachments, accessions, replacements, additions, products and proceeds of any of the property listed in subparagraphs (a) through (b) above.
 - iv. Any and all awards or payments, including interest thereon, and the right to receive the same, as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to, taking of, or decrease in the value of the Land or personal property.
 - v. All of the right, title and interest of Breakers Properties in and to all unearned premiums accrued, accruing or to accrue under any and all insurance policies now or hereafter provided pursuant to the terms of insurance agreements, and all proceeds of sums payable for the loss of or damage to: (a) the Land or personal property; or (b) rents, revenues, income, profits or proceeds from service or other agreements or contracts, leases, franchises, concessions or licenses of or on any part of the Land, or otherwise with respect to the Land.
 - vi. All licenses, permits, approvals, certificates and agreements with or from all boards, agencies, departments, governmental or otherwise, relating directly or indirectly to the ownership, use, operation and maintenance of the Premises, or the use, construction or development of the Improvements on the Land, whether heretofore or hereafter issued or executed; and
- (g) All proceeds, profits, substitutions, accessions and replacements of or from any of the foregoing;

(hereinafter referred to collectively as the "Land")

TOGETHER WITH every security agreement, stock power, mortgage, deed of trust, loan agreement, security deed and/or other instrument covering personal or real property (the "Security Agreements") which secures an obligation by Breakers Properties to the Lender, including any Security Agreement for any of the Notes and all separate agreements which are of even date herewith.

2.2 The Mortgage shall be deemed given to secure the following described indebtedness (collectively the "Indebtedness"):

- (a) All sums referred to in the Assumption Agreement dated August 15, 2008, and in the additional note referred to above, being the principal sums of \$12,246,692.56 and \$253,307.44 (hereinafter collectively referred to as the "Notes") dated of even date herewith, made by Breakers Properties (also referred to as "Borrower" herein), payable to the order of the Lender, together with interest thereon, with the final payment being due on the Maturity Date defined and described in the Notes, unless extended as provided in the Notes; together with any and all modifications, renewals and/or extensions of the Notes;
- (b) Any and all additional advances made by the Lender to protect or preserve the Premises or the lien hereof on the Premises, or for taxes, assessments or insurance premiums as hereinafter provided (whether or not the original Breakers Properties remains the owner of the Premises at the time of such advances); provided, however, that Lender shall not in any event be required to make any such additional advances; and
- (c) Any and all other sums owed by Breakers Properties to the Lender and the liabilities and obligations of Breakers Properties hereunder or under the Security Documents (as defined below) or any and all other indebtedness, liabilities, or obligations of Breakers Properties to the Lender, of any nature whatsoever, whether now existing or hereafter created, whether direct, indirect or secondary, and any and all modifications, extensions or renewals thereof, including without limitation sums owed under any other instrument evidencing securing or in any way concerning the debt evidenced by the Notes or with respect to any other debt or liability of Breakers Properties to Lender on any account or basis whatsoever, whether now existing or hereafter created or accruing; and including specifically that obligation referred to in paragraph (a) above. This mortgage is given to secure the payment of the promissory Notes and of each other Notes or contract given by Breakers Properties to any person or firm and owned or held by Lender (whether directly or by assignment or operation of law), and all renewals, advances or additions to any such Notes or obligations, the performance by Breakers Properties of all other promises by Breakers Properties accruing to the benefit of Lender under any agreement entered into by Breakers Properties, and the payment

of any additional past or future sums now or hereafter due or owing from Breakers Properties to Lender on any account or matter.

- (d) Any and all additional advances made by the Lender to or for the benefit of Breakers Properties, whether such advances are obligatory or are made at the option of the Lender or otherwise, at any time within twenty (20) years from the date of this Mortgage, with interest thereon at the rate agreed upon at the time of each additional advance, whether or not such additional advance is evidenced by a promissory Notes and whether or not identified by a recital that it is secured by this Mortgage; provided that the aggregate amount of principal indebtedness outstanding and so secured at any one time shall not exceed twice the original amount of the Notes referred to above (it being understood and agreed that this additional advance provision shall not be construed to obligate the Lender to fund such additional advance).

2.4 Security Agreement and Fixture Filing. Insofar as (i) any of the property listed in paragraphs (b) through (s) in the introductory paragraph A of this Mortgage (beginning on page 1 hereof) and, (ii) all other personal property either referred to or described in this Mortgage, or in any way connected with the use or enjoyment of the Premises which is now or hereafter owned by Breakers Properties (hereinafter all collateral defined in clauses (i) and (ii) of this paragraph shall be collectively referred to as "Collateral"), this Mortgage, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Florida, as it may be amended from time to time (the "UCC"), is hereby made and declared to be: (x) a security agreement, encumbering the Collateral and (y) a fixture filing. Breakers Properties does hereby grant to the Lender a continuing lien and security interest in and to all of said Collateral and all replacements, substitutions, additions and proceeds thereof and all after-acquired property relating thereto. A financing statement or statements reciting this Mortgage to be a security agreement, affecting all of the Collateral aforementioned, shall be executed by Breakers Properties and appropriately filed. Breakers Properties covenants and agrees that, prior to changing its name, identity or structure, it will so notify the Lender in writing and will promptly execute any financing statements or other instruments deemed necessary by the 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 hereafter enacted and specified in the UCC, all at Lender's sole and absolute discretion. Breakers Properties 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 in anywise derogating from or impairing this declaration and hereby stated intention of Breakers Properties and Lender that everything used in connection with the production of income from the Premises, adapted for use therein, and/or which is described in this Mortgage, 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. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any insurance policy relating to the Premises (bb) any award in eminent domain proceedings for a taking or for loss of value, or (cc) Breakers Properties's interest as lessor in any present or future lease, sublease, or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease, sublease, or otherwise, shall never be construed as in anywise altering any of the rights of Lender as determined by this Mortgage or impugning the priority of Lender's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of Lender in the event any court shall at any time hold with respect to the foregoing (aa), (bb) or (cc), that notice of Lender's priority of interest to be effective against a particular class of persons, must be filed in the UCC records. The information contained herein is provided in order that this Mortgage shall comply with the requirements of the UCC for instruments to be filed as financing statements. The "Debtor" is Breakers Properties herein and; the "Secured Party" is Lender herein. The principal place of business of the "Debtor" is as set forth on Page 1 of this Mortgage, the mailing addresses of the "Debtor" and "Secured Party" are as set forth on Page 1 of this Mortgage, and the types or items of collateral are as described hereinabove.

2.5 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.

2.6 No Further Encumbrances. Breakers Properties shall not without the prior written consent of Lender, directly or indirectly (including, without limitation, by equipment leasing or similar arrangements, or by pledging or hypothecation of partnership interests in Breakers Properties), further encumber the Premises, or any part thereof, it being understood by Breakers Properties that the Premises, and all parts thereof, shall remain free and clear of any and all debt instruments or other obligations for repayment of money except those given in connection with the loan evidenced by the Notes.

2.7 Restrictions on Transfers.

- (a) Breakers Properties shall not, without first obtaining the prior written consent of the Lender (which may be given or withheld by the Lender in the Lender's sole and absolute discretion), whether voluntarily or involuntarily by operation of law or

otherwise (i) transfer, sell, convey or assign all or any portion of the Premises or any ownership interest in Breakers Properties, or contract to do any of the foregoing, including, without limitation, enter into options to purchase, installment sales contracts, land contracts, real estate contracts or contracts for Mortgage, (ii) lease all or any portion of the Premises or change the legal possession or use thereof, (iii) except as provided in this Section, permit the dilution, sale, transfer, assignment, pledge, hypothecation or encumbrance of any ownership interest in Breakers Properties, or (iv) permit the assignment, transfer, delegation, change, modification or any diminution of the duties or responsibilities of any Managing Agent (as defined in Section 1.12 hereof) (except to a professional management company or companies acceptable to Lender, in Lender's sole discretion). Without limiting the generality of the preceding sentence, the prior written consent of the Lender shall be required for (i) any transfer made to a subsidiary or affiliate entity of Breakers Properties, (ii) any transfer by any corporation to its stockholders or vice versa and (iii) any corporate merger or consolidation. In the event that the Lender, in the Lender's sole discretion, is willing to consent to a transfer which would otherwise be prohibited by this Section 1.10(a), the Lender may condition its consent on such terms as it desires, including, without limitation, an increase in the interest rate of the Notes (and recalculation of the amortization provisions thereof), and the requirement that Breakers Properties pay a transfer fee, together with any expenses incurred by the Lender in connection with the granting of such consent (including, without limitation, reasonable attorneys' fees). Breakers Properties specifically acknowledges and agrees that Lender may, pursuant to the provisions of this Section 1.10(a), exercise its discretion in determining its satisfaction of certain terms and conditions hereof. Breakers Properties acknowledges that Lender shall have no obligation of reasonableness in granting or withholding its consent under this Section 1.10, except where the proposal transfer is to an entity controlled by the principals of the general partners of Breakers Properties existing as of the date hereof, in which case Mortgagee consent to such transfer shall not unreasonably be withheld.

- (b) If Breakers Properties violates the terms of Section 1.10(a) hereof, in addition to any other rights or remedies which Lender may have herein, in any other Security Document or at law or in equity, Lender may increase the interest rate charged on the Indebtedness up to the Default Rate, such interest being due on demand and being secured by this Mortgage.
- (c) Breakers Properties shall not enter into any easements, rights of way, agreements affecting property lines or similar agreements affecting title to the Premises without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed.

2.8 Events of Default. The terms "Event of Default" or "Events of Default", wherever used in this Mortgage, shall mean any one or more of the following events, after any applicable cure period has lapsed:

- (d) Failure by Breakers Properties to pay when due (subject to any applicable cure period), any sum due under the Notes, this Mortgage, or any payment of tax or insurance deposit or premium when due; or
- (e) Failure by Breakers Properties to duly observe, comply with or perform within thirty (30) days after written notice of such failure is given to Breakers Properties any other term, covenant, condition or agreement of this instrument, except if such failure by Breakers Properties to observe, comply with or perform any other term, covenant, condition, or agreement of this Mortgage is, by its very nature, not capable of being cured within such thirty (30) day period, and if Breakers Properties has commenced the curing of such noncompliance and has given reasonable assurances to Lender that Breakers Properties will diligently pursue the curing of such noncompliance; or
- (f) The occurrence of a default or event of default under or failure by Breakers Properties to perform any of its obligations under any of the Security Documents, which is not cured within any applicable grace or cure period; or
- (g) Any warranty, or representation of Breakers Properties contained in this Mortgage or in any other instrument, document, transfer, conveyance, assignment, loan agreement or financial statement made by Breakers Properties with respect to the Indebtedness secured hereby, is incomplete, untrue or misleading in any material respect; or
- (h) The filing by Breakers Properties of a voluntary petition in bankruptcy or adjudication of Breakers Properties as a bankrupt or insolvent, or the filing by Breakers Properties of any petition or answer seeking or acquiescing in any

reorganization, arrangement, composition readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of Breakers Properties, or of all or any substantial part of the Premises or of any or all of the rents, issues, profits or revenues thereof, or the making by Breakers Properties of any general assignment for the benefit of creditors, or the admission in writing by Breakers Properties, of its inability to pay its debts generally as they become due; or

- (i) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition, filed against Breakers Properties, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Breakers Properties, or of all or any substantial part of the Premises or of any or all of the rents, issues, profits or revenues thereof without the consent or acquiescence of Breakers Properties, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or
- (j) The termination, liquidation, dissolution, or death of Breakers Properties; or
- (k) Any default under any other Notes, mortgage or other document, evidencing or securing indebtedness of Breakers Properties or any general partner of Breakers Properties, in favor of the Lender; or
- (l) The entry by a court of competent jurisdiction of a judgment against Breakers Properties in excess of Five Thousand and 00/100 Dollars (\$5,000.00) or the filing of any construction lien against the Premises unless, in either event, such judgment or lien has, within sixty (60) days of entry or filing, been vacated, stayed or transferred to security other than the Premises; or a default under the loan agreement entered into on even date herewith, or any other written or oral agreement or instrument between Lender (whether on its own behalf or by assignment, merger or succession of interest) and Breakers Properties (whether on its own behalf or by assignment, merger or succession of interest), including, but not limited to, any attempt to disavow, revoke, or object to the original or continuing effectiveness of any written agreement between Borrower and Lender, with respect to this debt or any other matter;
- (m) Any default under any of the other Loan Documents.

2.9 Remedies. If an Event of Default shall occur, Lender may, at Lender's election, exercise any or all of the following rights, remedies and recourses as set forth herein, in addition to any other remedy which Lender may have.

A) Acceleration and Subsequent Advances. Lender may declare the entire Indebtedness, including but not limited to the then unpaid principal balance on the Notes, the accrued but unpaid interest thereon, court costs and reasonable attorney's fees hereunder, immediately due and payable, without notice, presentment, protest, demand or action of any nature whatsoever (each of which hereby is expressly waived by Breakers Properties), whereupon the same shall become immediately due and payable. Additionally, Lender shall not be required to make any further advances on the Notes or other Security Documents upon the occurrence of an Event of Default or an event which, with the giving of notice or passing of time, would constitute an Event of Default.

B) Entry on Premises. Lender may enter upon the Premises and take exclusive possession thereof and of all books, records and accounts relating thereto without notice and without being guilty of trespass. If Breakers Properties remains in possession of all or any part of the Premises after an Event of Default and without Lender's prior written consent thereto, Lender may, without notice to Breakers Properties, invoke any and all legal remedies to dispossess Breakers Properties. Nothing contained in the foregoing sentence shall, however, be construed to impose any greater obligation or any prerequisites to acquiring possession of the Premises after an Event of Default than would have existed in the absence of such sentence.

C) Operation of Premises. Lender may hold, lease, manage, operate or otherwise use or permit the use of the Premises, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Lender may deem to be prudent and reasonable under the circumstances (making such repairs, alterations, additions and improvements thereto and taking any and all other action with reference thereto, from time to time, as Lender shall deem necessary or desirable), and apply all rents and other amounts collected in connection therewith in accordance with the provisions of

Section 2.14 herein. Breakers Properties hereby irrevocably appoints Lender as the agent and attorney-in-fact of Breakers Properties, with full power of substitution, and in the name of Breakers Properties, if Lender elects to do so, to (a) endorse the name of Breakers Properties on any checks or drafts representing proceeds of the insurance policies, or other checks or instruments payable to Breakers Properties with respect to the Premises, (b) prosecute or defend any action or proceeding incident to the Premises, and (c) take any action with respect to the Premises that Lender may at any time and from time to time deem necessary or appropriate. Lender shall have no obligation to undertake any of the foregoing actions, and if Lender should do so, it shall have no liability to Breakers Properties for the sufficiency or adequacy of any such actions taken by Lender, except for Lender's willful misconduct.

D) Enforcement. In each and every Event of Default, Lender is authorized, to proceed by suit or suits at law or in equity or by any other appropriate remedy to protect and enforce its rights, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted, to enforce payment of the Notes, and to foreclose this Mortgage.

E) Divestment of Rights; Tenant at Sufferance. After foreclosure of this Mortgage and after any judicial sale of the Premises, or any portion thereof, Breakers Properties will be divested of any and all interest and claim thereto, including any interest or claim to all insurance policies, bonds, loan commitments and other intangible property covered hereby. Additionally, after a sale of all or any portion of the Premises, Breakers Properties will be considered a tenant at sufferance of the purchaser of the same, and said purchaser shall be entitled to immediate possession thereof, and if Breakers Properties shall fail to vacate the Premises immediately, the purchaser may and shall have the right, without further notice to Breakers Properties, to go into any court of competent jurisdiction in any city or county in which the Premises is located and file an action in ejectment, which action shall lie against Breakers Properties or its assigns or legal representatives, as a tenant at sufferance. This remedy is cumulative of any and all remedies the purchaser may have hereunder or otherwise.

F) Receiver.

(1) The Lender, upon application to a court of competent jurisdiction, shall be entitled without notice and without regard to the occupancy or value of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect, apply and use the rents, issues, profits and revenues thereof, including those past due as well as those accruing thereafter, and said receiver shall have the benefit of all operating expenses and deposits prepaid by Breakers Properties and being acknowledged by Breakers Properties that if an Event of Default shall have occurred, that Lender shall have the right to the Premises and that the Premises and the rents and profits therefrom in such event will be in danger of being lost, or materially injured or impaired. The receiver shall have all of the rights and powers permitted under the laws of the State of Florida. Breakers Properties will pay to the Lender upon demand all expenses, including receiver's fees, reasonable attorney's fees and costs and agents' compensation, incurred pursuant to the provisions of this paragraph; and all such expenses shall be secured by this Mortgage.

(2) Lender may exercise any and all other rights, remedies and recourses granted under the Security Documents or now or hereafter existing in equity, at law, by virtue of statute or otherwise.

2.10 Assignment of Rents and Proceeds; Enforcement. That Breakers Properties hereby absolutely assigns as additional collateral all rents, income, profits and proceeds of and from the subject property (which sums shall be immediately paid and directed to the Lender upon the giving of notice to any tenant or lessee and to Breakers Properties to redirect said sums); and that in the event that at the beginning of or at any time pending any suit upon this Mortgage, or to foreclose it, or to reform it, and/or to enforce payment of any claims hereunder, said Lender shall apply to the Court having jurisdiction thereof for the appoint of a Receiver, such Court shall forthwith appoint a receiver to receive and marshal all proceeds and income from the property, including all of the rents, income, profits, issues and revenues from whatever source derived; each and every of which is hereby mortgaged as if specifically set forth and described in the granting and habendum clauses hereof. Such Receiver's appointment shall be made by such Court as an admitted equity and a matter of absolute right to said Lender, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of said Breakers Properties and/or of the defendants. As an additional and supplemental right, Breakers Properties agrees and understands that the Lender, upon the service of a written demand by Lender after the occurrence of any event of default, all rents from the property shall be absolutely assigned to the Lender pursuant to Fla. St. section 697.07. Breakers Properties understands and agrees that, after service of such a demand, all rights to the rents from the subject property shall vest immediately and unconditionally in the Lender, and Breakers Properties shall have no further equitable or legal interest therein. After the service of such demand, Breakers Properties shall immediately deliver all such rents in Breakers Properties' possession or thereafter coming into Breakers Properties' possession to the Lender, without limitation or deduction of any kind. Breakers Properties agrees and understands that any failure to deliver or any disposition by Breakers Properties of any portion of those rents, profits, proceeds and income after service of such a demand shall constitute a conversion and a theft by Breakers Properties of that portion of those sums not so delivered or otherwise disposed of. Breakers Properties further appoints the Lender or Lender's appointee as attorney-in-fact for Breakers Properties, for the purpose of exercising any and all powers necessary or appropriate to implement the provisions hereof.

2.11 Remedies Cumulative, Concurrent and Nonexclusive. Lender shall have all rights, remedies and recourses granted in the Security Documents and available at law or equity (including specifically those granted by the UCC) and same (a) shall be cumulative and concurrent; (b) may be pursued separately, successively or concurrently against Breakers Properties or others obligated under the Notes, or against the Premises, or against any one or more of them at the sole discretion of Lender; (c) may be exercised as often as occasion therefor shall arise, it being agreed by Breakers Properties that the exercise or failure to exercise any of the same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (d) are intended to be, and shall be, nonexclusive.

2.12 Release of and Resort to Collateral. Any part of the Premises may be released by Lender without affecting, subordinating or releasing the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the rearrangement, extension or renewal of the Indebtedness, or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby or affect the liability of Breakers Properties, or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any rearrangement, renewal or extension of the Indebtedness secured hereby, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Premises not expressly released until the Indebtedness is completely paid.

2.13 Waiver of Redemption, Notice and Marshalling of Assets . To the fullest extent permitted by law, Breakers Properties hereby irrevocably and unconditionally waives and releases (a) all benefits that might accrue to Breakers Properties by any present or future laws exempting the Premises from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (b) all notices of any Event of Default (except as may be specifically provided for under the terms hereof), presentment, demand, notice of intent to accelerate, notice of acceleration and any other notice of Lender's election to exercise or the actual exercise of any right, remedy or recourse provided for under the Security Documents; (c) any right to appraisal or marshalling of assets or a sale in inverse order of alienation; (d) the exemption of homestead; and (e) the administration of estates of decedents, or other matter to defeat, reduce or affect the right of Lender under the terms of this Mortgage to sell the Premises for the collection of the Indebtedness secured hereby (without any prior or different resort for collection) or the right of Lender, under the terms of this Mortgage, to the payment of the Indebtedness out of the proceeds of sale of the Premises in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted).

2.14 Discontinuance of Proceedings. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted under this Mortgage or under the Security Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right so to do and, in such event, Breakers Properties and Lender shall be restored to their former positions with respect to the Indebtedness, the Security Documents, the Premises and otherwise, and the rights, remedies, recourses and power of Lender shall continue as if the same had never been invoked.

2.15 Application of Proceeds; Deficiency Obligation. The proceeds of any sale of, and the rents and other income generated by the holding, leasing, operating or other use of the Premises shall be applied by Lender (or the receiver, if one is appointed) to the extent that funds are so available therefrom in the following orders of priority (to the extent such order of application is permitted by the laws of the State of Florida): (a) first, to the payment of the costs and expenses of taking possession of the Premises and of holding, using, leasing, maintaining, repairing, improving and selling the same, including, without limitation, (i) receiver's fees; (ii) costs of advertisement; (iii) attorneys' and accountants' fees; and (iv) court costs, if any; (b) second, to the payment of all amounts, other than the principal amount and accrued but unpaid interest on the Notes, which may be due to Lender under the Security Documents, including all indebtedness and obligations, together with interest thereon as provided therein, in such order and manner as Lender may determine; (c) third, to the payment of all accrued but unpaid interest due on the Notes in such order and manner as Lender may determine; (d) fourth, to the payment of the principal amount outstanding on the Notes in such order and manner as Lender may determine and all other Indebtedness; and (e) fifth, to Breakers Properties. Breakers Properties and any other party liable on the Indebtedness shall be liable for any deficiency adjudged by a court of competent jurisdiction remaining in the Indebtedness. In the event the laws of the State of Florida require application of the proceeds of any sale of, or the rents, income or profits from, the Premises in an order different from the order set forth herein, such funds shall be applied in the order required by the laws of the State of Florida.

2.16 Purchase by Lender. Lender shall have the right to become the purchaser at any judicial foreclosure sale of the Premises hereunder and shall receive a credit up to the amount of its bid for the Indebtedness due and owing as of the date of such sale.

2.17 Performance by Lender After Occurrence of Events of Default. Upon the occurrence of an Event of Default, Lender may, at its option, without waiving the right to accelerate the maturity of the Indebtedness, pay, perform or observe any term covenant or condition of this Mortgage to be performed or observed by Breakers Properties. Lender shall be the sole and absolute judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted

term, covenant or condition without thereby becoming liable to Breakers Properties or any person in possession holding under Breakers Properties.

2.18 Interest After an Event of Default. If any payment due hereunder is not paid within ten (10) days from when due, then and in such event, Breakers Properties shall pay interest thereon from and after the date on which such payment first becomes due at a rate equal to the lesser of (i) the default rate provided in the Notes or (ii) the highest lawful contractual rate, and such interest shall be due and payable, on demand, whether or not any action shall have been taken or proceeding commenced to recover the same or to foreclose this Mortgage. Nothing in any provision of this Mortgage shall constitute an extension of the time of payment of the Indebtedness.

2.19 Waiver.

No delay or omission of Lender or of any holder of the Notes to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein, and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default by Breakers Properties in the performance of the obligations hereunder 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 Breakers Properties 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 Breakers Properties.

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, in the Notes or in the Security Documents; (iv) releases any part of the Premises from the lien of this Mortgage or otherwise changes any of the terms, covenants, conditions or agreements of the Notes, this Mortgage or of any Security Document; (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 hereof, any such act or omission shall not (except as specifically provided by Lender in connection with any such action) release, discharge, modify, change or affect the original liability under the Notes, this Mortgage or any other obligation of Breakers Properties or any subsequent purchaser of the Premises or any part thereof; 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 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 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, 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 or obligations.

All rights and remedies of Lender shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, Breakers Properties, and having consulted with counsel of its choosing: (a) hereby waives trial by jury (to induce the Lender to enter into this agreement and extend the credit, each Breakers Properties hereby irrevocably waives trial by jury on or in any action or proceeding brought by the Lender or any Breakers Properties, by complaint, counter-claim, cross-claim, or third party complaint, arising from or relating in any fashion to this instrument, to any obligation secured hereby, or to any other past, present or future transaction with the Lender); (b) agrees that it will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Premises or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Premises, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, or (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (c) hereby expressly waives all benefit or advantage of any such law or laws; and (d) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Lender, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Breakers Properties, for itself and all who may claim under it,

waives, to the extent that it lawfully may, all right to have the Premises marshalled upon any foreclosure hereof.

2.20 Stamp and Excise Tax. It is contemplated that, upon request by any governmental entity or agency, Breakers Properties will pay any and all documentary or intangible stamp and other taxes applicable to the full face amount of the Notes. If any additional stamp or excise tax shall become applicable with respect to this Mortgage, the Notes, any loan or credit extended hereunder, or any other Security Document, including any modifications thereof, Breakers Properties shall promptly pay such tax in full (including interest and penalties, if any) and shall hold the Lender harmless with respect thereto.

2.21 No Release. Breakers Properties agrees that in the event the Premises are sold and Lender enters into any agreement with the then owner of the Premises extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, Breakers Properties shall continue to be liable to pay the indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Lender.

2.22 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Breakers Properties under this Mortgage.

2.23 In the event Breakers Properties, or its successors or assigns, asserts any claim (including without limitation, counterclaims and third party claims) or seeks any relief in any way relating or pertaining to the loan evidenced by the Notes, including any such claim relating to any act or omission by Lender, or its successors or assigns, or the officers, directors, shareholders, employees, agents or attorneys of any of the foregoing (i) such claim or relief may be sought or asserted only against the then holder and owner of the Notes and the Mortgage, (ii) Breakers Properties, for Breakers Properties and its successors and assigns, expressly covenants not to sue, make claim or seek relief against any prior holder of the Notes or this Mortgage, or any officer, director, shareholder, employee, agent or attorney of any past, present or future holder of the Notes or this Mortgage, and (iii) Breakers Properties shall not seek to recover in connection with any such claim, and Breakers Properties hereby waives its right to seek or recover any nominal, consequential, punitive or exemplary damages if being agreed that any damage award should be limited to actual damages proved by Breakers Properties. Those parties other than Lender which are described in the subparagraph are intended beneficiaries hereof. Notwithstanding anything in this Mortgage, the Notes or any other document evidencing, securing, setting forth the terms of the loan evidenced by the Notes, the terms of this subparagraph shall survive indefinitely, notwithstanding any payment of the indebtedness secured hereby or any satisfaction, cancellation or release of this Mortgage and shall not be subject to any term or provision of any such document limiting the liability of Breakers Properties.

2.24 IN ANY ACTION OR PROCEEDING BETWEEN Breakers Properties AND THE LENDER OR THE RESPECTIVE SUCCESSORS AND ASSIGNS TO ENFORCE OR DEFEND ANY RIGHTS, REMEDIES IN ANY WAY RELATING TO THE PREMISES, THE LOAN EVIDENCED BY THE Notes, OR ANY ACT OR OMISSION OF ANY PERSON OR ENTITY RELATING TO SUCH LOAN OR THE DOCUMENTATION FOR THE LOAN EVIDENCED BY THE Notes, WHETHER BY COMPLAINT, DEFENSE, COUNTER-CLAIM, CROSS-CLAIM OR OTHER PLEADING OR PROCEEDING, Breakers Properties AND ITS SUCCESSORS AND ASSIGNS HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO A JURY TRIAL. Breakers Properties WILL NOT SEEK TO CONSOLIDATE ANY SUCH ACTION, IN WHICH JURY TRIAL HAS BEEN WAIVED, WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THE PROVISIONS OF THIS SECTION HAVE BEEN FULLY DISCUSSED BY THE PARTIES HERETO, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS. Breakers Properties ACKNOWLEDGES THAT ITS WAIVER OF TRIAL BY JURY HAS BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY Breakers Properties AS PART OF A BARGAINED FOR LOAN TRANSACTION. Breakers Properties HAS NOT IN ANY WAY AGREED WITH OR REPRESENTED TO ANY OTHER PARTY THAT THE PROVISIONS OF THIS SECTION WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

2.25 No Partnership or Joint Venture. Nothing contained herein or in the Notes or any other document relating to the loan evidenced by the Notes, nor the acts or omissions of the parties hereto, shall be construed to create a partnership or joint venture between Breakers Properties and Lender. The relationship between Breakers Properties and Lender is the relationship of "debtor" and "creditor". Breakers Properties shall indemnify and hold Lender harmless from and against any and all suits, action, claims, proceedings (including third party proceedings), damages, losses, liabilities, and expenses (including, without limitation, reasonable attorneys' fees) which may be incurred by or asserted against Lender with respect to any claim or assertion which if true, would be inconsistent with or contradict the statements made in the preceding two sentences. The provisions of this Section 3.10 shall survive the repayment of the Indebtedness.

3. Any default under the Mortgage, the Notes and Liabilities secured thereby, or any other written agreement between Breakers Properties and Lender shall constitute a default under each and every of the Mortgage, the Notes and Liabilities and the remaining written agreements.

4. The rights of the Lender and the obligations and duties of Breakers Properties under the Notes and Liabilities and agreements secured hereby and under the Mortgage and under this amendment shall

be deemed cumulative. To the extent of any irreconcilable conflict between any provision of this instrument and the Mortgage, the provisions of this instrument shall control. However, this instrument shall not, under any circumstances, be deemed a novation of the Mortgage, but rather shall be considered solely an amendment to the terms thereof.

5. Except as modified herein, the Mortgage (all of the terms of which are incorporated herein by reference) are hereby extended, reinstated, reaffirmed and rerecorded as of this date for all purposes under law and shall remain in full force and effect, and the liens of the Mortgage are extended and shall be and continue unabated. Breakers Properties shall pay all cost of preparation and recording of and any tax stamps on this instrument, the Notes, and any other instrument related in any way to the obligations secured by the Mortgage, as amended.

6. Breakers Properties waives any defenses (whether known or unknown) to the original mortgage and Notes (and any other loan agreement or promise made by Breakers Properties with respect to the loan) and agrees to be bound by all of those obligations and promises, without limitation. The undersigned acknowledge that the Lender is entitled to and has relied upon such waiver in order to accept this amendment. Any and all of Lender's rights against any and all parties, including, but not limited to, all original makers and guarantors, are hereby expressly reserved.

7. Except as contained herein, the undersigned absolutely and unconditionally releases the Lender, its directors, officers, agents, attorneys and employees from all known and unknown liabilities, claims, causes of action, and demands of any kind or nature, whether matured or unmatured, which any of the undersigned have against the Lender and any of the above-specified persons by reason of or in respect to any act, cause, matter or thing whatsoever, including (but not limited to) any act or action, matter, cause or thing related to or arising out of the subject (or any prior) mortgage or Notes, or any other instrument related thereto; and the undersigned jointly and severally release, acquit and discharge any and all such liabilities, claims, causes of action, demands, and rights.

IN WITNESS WHEREOF, the undersigned has signed and delivered this instrument on the date first written above.

1843
Witness - Fawn A Barber

H. Harrison Parrish (SEAL)
Breakers Properties, LLC, by its
Managing Member, H. Harrison Parrish

Sheryl L. Branning
Witness - Sheryl L. Branning

STATE OF FLORIDA
COUNTY OF JACKSON

THE FOREGOING INSTRUMENT was sworn to, executed, and acknowledged before me this August 22, 2008, by H. Harrison Parrish, as Managing Member and on behalf of Breakers Properties, LLC, who is personally known to me and who did take an oath.

SHERYL L. BRANNING
Notary Public, State of Florida
My comm. exp. Nov. 23, 2011
Comm. No. DD 707922

Sheryl L. Branning
Notary Public
My Commission Expires: