

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

THIS INDENTURE, made and entered into on this the 26
day of August, 1983, by and between WREN DEVELOPMENT, a
general partnership created and existing under the laws of Alabama whose
membership consists of Harold W. Ripps, Fanny Ripps Meisler, Herbert A.
Meisler, Nall Partnership, Ltd., Alfred J. Wolnski, and The Mutual Life
Insurance Company of New York (herein called "Mortgagor"), and The
Mutual Life Insurance Company of New York (herein called "Mortgagee"),

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee for money
loaned, as evidenced by promissory note of even date herewith, in the
amount of six hundred forty-eight thousand seven hundred fifty and no/100
dollars (\$648,750.00), the final payment of which is due and payable
thirteen years and seven months after the date hereof.

WHEREAS, Mortgagor is desirous of securing the prompt
payment of the indebtedness evidenced by said note, and the several
installments of principal and interest therein provided for; and

WHEREAS, Mortgagor may hereafter become indebted to said
Mortgagee for additional sums loaned and/or on account of indebtedness
which may accrue to Mortgagee on account of any future advances,
payments or expenditures made by Mortgagee under the provisions of this
mortgage and/or the note evidencing the indebtedness secured hereby; and
Mortgagor wishes to execute this conveyance for the security and enforce-
ment of the payment both of said present and any such future indebtedness;

NOW, THEREFORE, the undersigned, in consideration of said
premises, the present disbursement to Mortgagor of the sum of six hundred
forty-eight thousand seven hundred fifty and no/100 dollars (\$648,750.00),

BRADLEY, ARANT, ROSE & WHITE

1400 PARK PLACE TOWER

BIRMINGHAM, ALABAMA 35203

BOOK 436 PAGE 317

the receipt of which is acknowledged, to secure the prompt payment of said indebtedness with interest thereon, and all renewals, extensions, modifications and replacements thereof, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and further to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, and in any other instruments securing said note, Mortgagor has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the 1.60 acre tract of land abutting Riverchase Parkway East, which is situated in the SW 1/4 of SE 1/4 of Section 19, Township 19 South, Range 2 West, Shelby County, Alabama, and easements which are more particularly described on Exhibit A attached hereto and made a part hereof as if fully set forth herein.

TOGETHER WITH all and singular the rights, easements, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and all rights, title and interests, if any, of Mortgagor in and to any streets, alleys, roads or highways abutting the described premises; and

TOGETHER WITH Mortgagor's right, title and interest in all oral and written leases with, or other agreements for use and occupancy made or agreed to by, any person or entity pertaining to all or any part of the property herein mortgaged (hereinafter called "mortgaged premises"), whether such leases have been heretofore or are hereafter made or agreed to and all rents, issues and profits of the mortgaged premises, the property described in this clause being hereby pledged primarily and on a parity with the mortgaged premises and not secondarily.

TOGETHER WITH all machinery, apparatus, equipment, fittings, furniture and fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Equipment"), now or hereafter located in, upon or under said property or any part thereof and used or usable in connection

with any present or future operation of said property, including but not limiting the generality of the foregoing, all heating, air conditioning, sprinklers, freezing, lighting, laundry, incinerating and dynamo and generating equipment; engines, pipes, pumps, tanks, motors, conduits; switchboards, plumbing and plumbing fixtures; lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus; boilers, ranges, furnaces, oil burners or units thereof; appliances, air-cooling and air-conditioning apparatus; vacuum cleaning systems; elevator, escalators; shades, awnings, screens; storm doors and windows; mechanical equipment, gas and electric fixtures; partitions, mantels, built-in-mirrors, window shades, blinds, furniture of public spaces, halls and lobbies; attached cabinets; partitions, ducts and compressors; rugs and carpets; draperies, furniture and furnishings used in the operation of the premises; together with all additions thereto and replacements thereof (Mortgagor hereby agreeing with respect to all additions and replacements, to execute and deliver from time to time such further instruments as may be requested by Mortgagee to confirm the conveyance, transfer and assignment of any of the foregoing).

TOGETHER WITH (a) the reversion or reversions, remainder and remainders, rents, issues and profits thereof, which are now due or may hereafter become due by reason of the renting, leasing and bailment of property improvements thereon and Equipment; (b) all the estate, right, title and interest, claim and demand whatsoever of Mortgagor of, in and to the same, and of, in and to every part and parcel thereof; and (c) any and all awards or payments, including interest thereon, and the right to receive the same as a result of (i) the exercise of the right of eminent domain; (ii) the alteration of the grade of any street; or (iii) any other injury to, taking of, or decrease in the value of, the premises to the extent of all amount which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee, and of the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

TOGETHER WITH (1) all of Mortgagor's rights further to encumber said property for debt except by such encumbrance which shall have been first approved by Mortgagee in writing, and which by its actual terms and specifically expressed intent shall be and at all times remain subject and subordinate to (i) any and all tenancies in existence when such encumbrance becomes effective and (ii) any tenancies thereafter created; Mortgagor hereby (i) representing as a special inducement to the Mortgagee to make the loan secured hereby that as of the date hereof there are no encumbrances to secure debt junior to this mortgage and (ii) covenanting that there are to be none as of the date this mortgage becomes of record, except in either case encumbrances having the prior written approval of Mortgagee herein, and (2) all of Mortgagor's rights to enter into any lease or lease agreement which would create a tenancy that is or may become subordinate in any respect to any mortgage other than this mortgage.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto Mortgagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of said premises and has a good right to sell and convey the same as aforesaid; that the said premises are free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to said premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

(1) Mortgagor will pay all indebtedness secured hereby whether presently existing or hereafter incurred.

(2) That concurrently with payments of principal and interest, Mortgagor will pay to the Mortgagee monthly on the first day of each month after the date hereof, and until the principal sum secured

hereby is fully paid, a sum equal to taxes and assessments next due on the premises covered hereby (all as estimated by the Mortgagee) less all sums already paid therefor divided by the number of months to elapse before one month prior to the date when such taxes and assessments will become delinquent, such sums to be held by Mortgagee in trust, without interest to pay said taxes and special assessments. Mortgagor shall deliver to Mortgagee all bills for such taxes, assessments or other charges received by Mortgagor. The Mortgagee, upon receipt of the bills shall pay from such fund all such taxes, assessments and other charges as they become due. Mortgagee shall not be required to determine the accuracy of any bill or the validity of any such taxes, assessments and other charges.

All payments mentioned in the preceding subsection of this paragraph and the payments to be made on the note secured hereby shall be added together and the aggregate amount thereof shall be paid by the Mortgagor each month in a single payment to be applied by the Mortgagee to the following items in the order set forth:

- (i) taxes and special assessments;
- (ii) interest on the balance of the principal due and owing hereunder; and
- (iii) amortization of principal hereunder.

Any excess funds accumulated under the provisions hereof remaining after payment of the items herein mentioned shall be credited at Mortgagee's option to subsequent monthly payments of the same nature required hereunder; but if any such item shall exceed the estimate therefor the Mortgagor shall without demand forthwith make good the deficiency. Failure to do so before the due date of such item shall be a default hereunder. If the property is sold under foreclosure or is otherwise acquired by the Mortgagee after default, any remaining balance of the accumulations under this provision (2) shall be credited to the principal of or accrued interest on the indebtedness secured by this mortgage as of the date of

commencement of foreclosure proceedings or as of the date the property is otherwise acquired, as Mortgagee shall elect.

(3) That, for the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage, malicious mischief, and rent coverage insurance policies and, when available and required by Mortgagee, war damage and other hazard insurance with respect to any and all buildings on said premises, such insurance policies to contain an agreement by the issuer thereof that no party thereto may cancel any policies without at least twenty (20) days' prior written notice to Mortgagee, and such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee the fire and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest at the augmented annual interest rate of the note from the date of payment by Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, in such order as Mortgagee may elect, either in whole or in part, or, at the option of the holder of said debt, same may be applied in

BOOK 436 PAGE 322

payment for any repair or replacement of such building, or buildings, without affecting the lien of this mortgage for the full amount hereby secured. Mortgagee is hereby authorized (but not obligated) to act as attorney-in-fact for Mortgagor in obtaining, adjusting, settling and cancelling all insurance on the mortgaged premises, in endorsing any checks or drafts drawn by insurers of the mortgaged premises and in directing Mortgagor to endorse any such checks or drafts as Mortgagee may direct. Notwithstanding any other provision of this Mortgage or the Note, no application of insurance proceeds to the indebtedness shall result in a prepayment premium or have the effect of curing any default or extending the time for making any payment due hereunder or under the Note. Mortgagee shall not be held responsible for failure to collect any insurance proceeds due under the terms of any policy provided for herein regardless of the cause of such failure. Mortgagor agrees to give Mortgagee notice in writing of any damage to the mortgaged premises caused by fire or other casualty within ten (10) days after the occurrence of any such damage. Not less than ten (10) days prior to the expiration dates of each policy required of the Mortgagor pursuant to this paragraph, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to Mortgagee.

(4) That said premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and Mortgagee and its agents shall have access to the mortgaged premises at all reasonable times. Taxes and assessments or other charges which may be levied upon or accrue against said premises, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this mortgage.

(5) No building or other improvement on the premises shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this

mortgage and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagor. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(6) That any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

(7) That any and all legal requirements of any department of the city or any other governmental unit, wherein said premises are located shall be fully complied with by Mortgagor.

(8) If Mortgagor fails to insure said property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to, inferior to, or in parity with the lien of this mortgage, Mortgagee may, at its option, insure said property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specially secured, shall be secured by this mortgage, shall bear interest at the augmented rate called

BOOK 436 PAGE 324

for by the note, from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(9) No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to any remedies which Mortgagee may be entitled, including without limitation to, the right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

(10) If Mortgagee shall be made a party to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to, inferior to, or in parity with, the lien of this mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the augmented rate called for by the note, from the date it is paid or incurred and shall be at once due and payable.

(11) All expenses incurred by Mortgagee, including attorney's fee, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured, and shall bear interest at the augmented rate called for by the note, from the date it is paid or incurred and shall be at once due and payable.

(12) Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this mortgage.

(13) Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be selfexecuting, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the note which this mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this mortgage.

(14) If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, or of any other instruments securing said indebtedness. Mortgagee may, in addition to any other remedies available at law or in equity to Mortgagee, proceed to collect the rent, income and profits from the premises, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

(15) It is further agreed that if Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal sum or any installment of interest thereon, or any other sum the payment of which is

hereby secured, as they or any of them mature, either by lapse of time, optional declaration or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment now, or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in any of the covenants, conditions and agreements herein contained, or of any other security instruments, then and in that event the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of said property and after, or without, taking such possession of the same, sell the mortgaged property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limita-

tion to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the mortgaged premises, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(16) In the event of any default under this mortgage, irrespective of whether the right to foreclose the mortgage has accrued to Mortgagee, whether the entire debt has then been accelerated or whether foreclosure proceedings have been commenced, Mortgagee may, without notice to or demand upon Mortgagor, take possession of the mortgaged premises. While in possession of the mortgaged premises, Mortgagee shall have the following rights and powers:

(i) To collect the rents and manage, lease, alter and repair the mortgaged premises, cancel or modify existing leases, obtain insurance and in general have all powers and rights customarily incident to absolute ownership; and

(ii) To pay out of the rents so collected and management and repair charges, taxes, insurance, commissions, fees and all other expenses and, after creating reasonable reserves, apply the balance (if any) on account of the indebtedness secured hereby.

Mortgagee may remain in possession of the mortgaged premises, in the event of foreclosure, until the foreclosure sale and thereafter during the entire period of redemption (if any), if a deficiency

exists. Mortgagee shall incur no liability for, nor shall Mortgagor assert any claim or set-off as a result of, any action taken while Mortgagee is in possession of the mortgaged premises, except only for Mortgagee's own gross negligence. In the event no foreclosure proceedings are commenced, Mortgagee may remain in possession as long as there exists a default.

(17) In the event of the enactment of any law by the State of Alabama, after the date of this mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

(18) Should Mortgagor become insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed; or should Mortgagor intentionally damage or attempt to remove any improvements upon said mortgaged real estate; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on said property prior to the lien hereof; or in case of an error or defect in the above described note or this instrument or in the execution or the acknowledgment thereof; or if a homestead claim be set up to said property or any part thereof adverse to this mortgage and if the said Mortgagor shall fail for thirty (30) days after demand by the Mortgagee, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or homestead claim, or to correct any error in said note or this instrument or its execution; then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof,

shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by the power of sale herein contained or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect.

(19) It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of said lands and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

If the Mortgagor with the prior written approval of Mortgagee shall grant any lien of any nature on the property conveyed hereby junior to this mortgage, such junior lien shall be subject to the condition that the time for the payment of the indebtedness hereby secured and the manner and amount of payment thereof, the rate of interest payable thereon, and the benefits of the security afforded hereby and by the note evidencing the indebtedness secured hereby, or any obligation contained in said note or in an instrument substituted therefor; may, without the consent of such junior lienholder, and without any obligation to give notice of any kind thereto, be changed, increased, extended, reextended or suspended on any terms whatsoever without in any manner affecting the priority of this mortgage as security for the payment of the indebtedness secured hereby.

BOOK 436 PAGE 330

(20) Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor that if it or any one or more of them shall hold possession of the above described property or any part thereof subsequent to foreclosure hereunder, (except for a tenant who has executed a subordination, attornment and non-disturbance agreement with Mortgagee) it or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(21) The mortgaged property is improved with an office building, space in which is, or will be, leased to one or more tenants, under the provisions of a lease or lease agreements. By an agreement executed contemporaneously herewith Mortgagor has assigned all leases presently existing, or hereafter made, including without limitation, rentals payable in respect thereof, to Mortgagee as additional security for the repayment of the indebtedness secured hereby. Mortgagor agrees not to permit any lease to be made of any portion or all of the mortgaged premises, without the prior written consent of Mortgagee as to the form and content of each such lease (which approval, with such reasonable conditions as may be imposed by Mortgagee, may be made as to the form and content of a standard lease to be used for all leases for portions of the mortgaged premises) and not permit any modification, surrender, termination or concession with respect to any approved or existing lease without the prior written consent of Mortgagee. Mortgagor agrees not to collect rent under any of said leases for more than two months in advance of the accrual thereof and to faithfully perform the covenants imposed on Mortgagor by the said leases, and lease assignment, and agrees that any default in the performance of the obligations under any of said leases and/or lease assignment shall constitute a default under the

provisions of this mortgage and shall entitle Mortgagee to all remedies provided herein in the event of default hereunder.

(22) Mortgagor shall furnish to Mortgagee within ninety (90) days after the close of each fiscal year of Mortgagor an annual statement of the operation of the mortgaged property which shall include, without limitation to, a detailed statement of income and expenditures. Such statement shall be in form and detail satisfactory to Mortgagee and shall be prepared by a certified public accountant acceptable to Mortgagee or shall be supported by the affidavit of Mortgagor.

(23) Mortgagor covenants and agrees to provide and maintain, during the term of the loan secured hereby, paved parking area on the mortgaged property sufficient to comply with all zoning and other government regulations, but in any event there shall be provided space for not less than eighty-seven (87) standard size American automobiles on the mortgaged property.

(24) When and if Mortgagor and Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement affecting property either referred to or described herein, or in any way connected with the use and enjoyment of these premises, this mortgage shall be deemed the Security Agreement as defined in said Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein contained shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said financing statement by the specific statutory consequences now or hereafter enacted and specified in the Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a financing statement 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 the parties hereto, that everything used in connection with the production of income from the mortgaged property (office equipment only

excepted) and/or adapted for use therein and/or which is described or reflected 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 (i) any such item is physically attached to the improvements, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital contained herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code Records.

(25) Mortgagor covenants and agrees that, unless plans and specifications for construction have been first submitted to Mortgagee, and have been approved by it in its judgment as entailing no prejudice to the loan secured hereby, which approval shall not be unreasonably withheld, there shall be no additional improvements constructed on the property herein mortgaged, or on any adjoining land owned or controlled by Mortgagor or related business entities.

(26) Mortgagor covenants and agrees that, so long as the loan secured by this mortgage is outstanding, the mortgaged property is to

be managed by competent professional management satisfactory to Mortgagee, that the property will be operated in a first-class manner, and that there shall be no change in the ownership (which shall be deemed to include a change in the partners of Mortgagor) of the mortgaged property or any interest therein, or change in the management of the property without the prior written consent of Mortgagee, which Mortgagee agrees shall not be unreasonably withheld. In the event this covenant is breached, Mortgagee may, without notice, immediately accelerate the indebtedness secured hereby and, if the same is not paid, avail itself of all the remedies provided herein in the event of a default hereunder.

(27) Mortgagee is hereby granted the right of first and last refusal of providing financing for any improvements to be built on properties adjacent to the mortgaged property which is owned or controlled by Mortgagor or related business entities. In the event this covenant is breached, Mortgagee may avail itself of any and all remedies provided herein in the event of a default hereunder.

(28) Mortgagor covenants and agrees that so long as the loan secured by this mortgage is outstanding there will be no secondary financing with respect to the mortgaged property other than that which Mortgagee has previously approved in writing. Mortgagee agrees not to unreasonably withhold such approval. Any violation of this covenant shall entitle Mortgagee to accelerate the indebtedness secured hereby, and, in the event of any default by Mortgagor in the payment thereof, Mortgagee shall be entitled to exercise the remedies herein provided it in the case of a default by Mortgagor in the observance of and compliance with the terms and conditions of this mortgage. It is further understood and agreed that, notwithstanding other provisions in this mortgage which make reference to junior liens or secondary financing, such provisions shall not be deemed to constitute express or implied approval by Mortgagee of any junior liens or secondary financing, and that such provisions shall be deemed to apply to all junior liens or secondary financing.

BOOK 436 PAGE 334

(29) That the Mortgagee, in any action to foreclose this Mortgage, or upon the actual or threatened waste to any part of the Premises, shall be at liberty to apply for the appointment of a receiver of the rents and profits of the Premises without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Premises as security for the amounts due the Mortgagee, or the solvency of any person or corporation liable for the payment of such amounts.

(30) Mortgagor has recently constructed on the mortgaged property an office building, space in which will be leased to tenants. A septic tank and underground field lines located on adjoining property owned by The Harbert-Equitable Joint Venture presently provide the facility with sewage services. Mortgagor is using such facilities pursuant to the provisions of a temporary easement agreement dated September 11, 1979, which is recorded in Vol. _____ at page _____ of the Shelby County Probate Records. This agreement provides, among other things, that at such time as an operating sewage treatment system is made available to the mortgaged property, whether such sewage treatment system is owned and operated by a municipality, county or other governmental authority or is privately owned and operated, the rights, privileges and easements granted by said easement agreement shall expire and terminate. Mortgagor covenants and agrees that it will at its expense connect the improvements on the mortgaged property to such operating sewage treatment system either prior to or contemporaneously with the expiration of said easement rights. The failure of Mortgagor to comply with this covenant will constitute an event of default hereunder and will permit Mortgagee to exercise all rights and privileges to which it is entitled in the event of default.

(31) Provided always that if Mortgagor pays the indebtedness secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amounts it may have expended pursuant to the authorization of this mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall

do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

(32) Wherever and whenever in this mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: Wren Development
165 West Valley Avenue
Birmingham, Alabama 35209

To Mortgagee: Vice President for Real Estate and
Mortgage Investments
The Mutual Life Insurance Company
of New York 1740 Broadway
New York, New York 10019

or to such other address as either party may have given to the other by notice as hereinabove provided.

(33) Singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

(34) The unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

(35) Mortgagor shall execute and deliver (and pay the costs of preparation and recording thereof) to Mortgagee and to any subsequent

holder from time to time, upon demand, any further instrument or instruments, including, but not limited to, mortgages, security agreements, financing statements, assignments and renewal and substitution notes, so as to reaffirm, to correct and to perfect the evidence of the obligation hereby secured and the legal security title of Mortgagee to all or any part of the Premises intended to be hereby mortgaged, whether now mortgaged, later substituted for, or acquired subsequent to the date of this Mortgage and extensions or modifications thereof.

(36) That the Mortgagor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the mortgage debt within six (6) days in case the request is made personally, or within ten (10) days after the mailing of such request in case the request is made by mail.

(37) That if at any time the United States of America or the State of Alabama or other governmental authority in Alabama shall require internal revenue stamps to be affixed to the note, the Mortgagor will pay for the same with any interest or penalties imposed in connection therewith.

(38) Mortgagee agrees that it will not at any time bring any action, suit or proceedings against Mortgagor, or the maker of the note evidencing the indebtedness secured hereby, its successors or assigns, to recover a money judgment for the indebtedness secured hereby, except in an action to foreclose the said mortgage and in such foreclosure action, Mortgagee agrees, for itself, its successors and assigns, as evidenced by the acceptance of said note and said mortgage, to waive its right to a deficiency judgment and agrees to look only to the security for the satisfaction of the foreclosure suit money judgment.

(39) Mortgagor heretofore on, to-wit, March 18, 1982, executed a promissory note to Mortgagee to evidence an indebtedness in the

BOOK 436 PAGE 338

amount of \$645,000.00. To secure such indebtedness, Mortgagor executed a mortgage to Mortgagee, which is recorded in Book 419 at page 328 of the Probate Records of Shelby County, Alabama and an Assignment of Lessor's Interest which is recorded in Book 44 at page 459 of said Probate Records. It is agreed that a default by Mortgagor in the performance of any of its obligations under the said \$645,000.00 note, the said mortgage on the said Assignment of Lessor's Interest shall constitute a default under the provisions hereof and shall entitle Mortgagee to exercise any and all remedies which are available to it on account of a default hereunder.

(40) This mortgage shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, Mortgagor has caused these presents to be executed for and in its name and on its behalf, by all of its partners, on this the 26 day of August, 1983.

WREN DEVELOPMENT

By Harold W. Ripps
Harold W. Ripps

By Fanny R. Ripps Meisler
Fanny Ripps Meisler

By Herbert A. Meisler
Herbert A. Meisler
Nall Partnership, Ltd.

By J. Wallace Nall, Jr.
J. Wallace Nall, Jr. - General Partner

By Alfred J. Wolnski
Alfred J. Wolnski

and

THE MUTUAL LIFE INSURANCE
COMPANY OF NEW YORK

By *[Signature]*
Its Vice President

Partners

STATE OF ALABAMA)

Jefferson COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that Harold W. Ripps, whose name as a general partner of Wren Development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such partner and with full authority, executed the same voluntarily for and on behalf of said partnership.

Given under my hand and official seal this 6 day of September, 1982.

Jewel Phillips Anderson
Notary Public

[NOTARIAL SEAL]

My Commission expires: MY COMMISSION EXPIRES OCTOBER 29, 1986

STATE OF ALABAMA)

_____ COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that Fanny Ripps Meisler, whose name as a general partner of Wren Development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such partner and with full authority, executed the same voluntarily for and on behalf of said partnership.

Given under my hand and official seal this 6 day of September, 1982.

Jean B. Hubbard
Notary Public

[NOTARIAL SEAL]

My Commission expires: Dec 4, 1986

BOOK 436 PAGE 339

STATE OF ALABAMA)
 :
_____ COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that Herbert A. Meisler, whose name as a general partner of Wren Development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such partner and with full authority, executed the same voluntarily for and on behalf of said partnership.

Given under my hand and official seal this 6 day of September, 1983.

Jean B. Hubbard
Notary Public

[NOTARIAL SEAL]

My Commission expires: Dec 4, 1986

STATE OF ALABAMA)
 :
Jefferson COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that J. Wallace Nall, whose name as a general partner of Nall Partnership Ltd., a general partner of Wren Development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such partner of said partnerships and with full authority, executed the same voluntarily for and on behalf of said partnerships.

Given under my hand and official seal this 6 day of September, 1983.

Jean Phillips Anderson
Notary Public

[NOTARIAL SEAL]

My Commission expires: MY COMMISSION EXPIRES OCTOBER 29, 1986

STATE OF ALABAMA)
 :
Jefferson COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that Alfred J. Wolnski, whose name as a general partner of Wren Development, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of

BOOK 436 PAGE 340

the contents of said instrument, he, as such partner and with full authority, executed the same voluntarily for and on behalf of said partnership.

Given under my hand and official seal this 6 day of September, 1982.



James Phillips Anderson
Notary Public

[NOTARIAL SEAL]

My Commission expires: MY COMMISSION EXPIRES OCTOBER 29, 1986

STATE OF New York)
New York COUNTY)

I, the undersigned authority in and for said county in said state, hereby certify that Thomas P. Walsh, whose name as Vice Pres. of The Mutual Life Insurance Company of New York, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such partner and with full authority, executed the same voluntarily for and on behalf of said partnership.

Given under my hand and official seal this 26th day of August, 1982.

Lynne Deri
Notary Public

[NOTARIAL SEAL]

My Commission expires: 3-30-85

LYNNE DERI
NOTARY PUBLIC, State of New York
No.
Qualified in Queens County
Term Expires March 30, 1985

BOOK 436 PAGE 341

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
NOTICE WAS FILED

1983 SEP 13 AM 8:14

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

Mtg TAX	973.20
Rec	37.50
Ind	1.00
	<u>1011.70</u>