

1878

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

**MORTGAGE
AND SECURITY AGREEMENT**

THIS INDENTURE is being made by and between the following-described Borrower, as Mortgagor, and Lender, as Mortgagee, and the terms used herein shall have the meanings ascribed to them as follows, unless the context requires a different meaning:

- a. "Borrower" shall refer to BIRMINGHAM I ASSOCIATES, LTD., a Georgia limited partnership.
- b. "Borrower's Notice Address" shall refer to 5775-A Peachtree-Dunwoody Road, Suite 300, Atlanta, Georgia 30342.
- c. "Lender" shall refer to AMSOUTH BANK N.A.
- d. "Lender's Notice Address" shall refer to Post Office Box 11007, Birmingham, Alabama 35288, Attention Mr. John C. Ham.
- e. "Loan" shall refer to that certain loan made by Lender to Borrower this date in an amount equal to the Loan Amount.
- f. "Loan Amount" shall refer to \$10,600,000.
- g. "Loan Documents" shall refer to the Note, Construction Loan Agreement, Assignment of Rents and Leases, Additional Interest Agreement, UCC-1 Financing Statements, and all other documents and instruments which evidence or secure the Note or which are related thereto, now or hereafter given by or on behalf of Borrower to Lender, and the guarantees of the Loan given to the Lender by John Lie-Nielsen and George H. Lane, III.
- h. "Note" shall refer to that certain Promissory Note of even date herewith made by Borrower to Lender in the amount of the Loan, to evidence the Loan and to all replacements, extensions, substitutions, and modifications to the said Promissory Note.

The Lender is making the Loan to Borrower evidenced by the Note. In consideration of the Loan, to induce the Lender to make the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, the Borrower has this day executed the Loan Documents in favor of Lender, and Borrower hereby does irrevocably grant, bargain,

Please Return This Instrument To
GUY V. MARTIN, JR.
LEWIS, MARTIN BURNETT & DUNKLE
1900 SouthTrust Tower
BIRMINGHAM, ALABAMA 35203

- 1 -

This Instrument was prepared by
GUY V. MARTIN, JR.
1900 SouthTrust Tower
BIRMINGHAM, ALABAMA 35203

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sell, alien, remise, release, confirm and convey to Lender, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, the following described property (all of which as described in (A) through (H) below, is referred to herein as the "Mortgaged Property"):

(A) The real property (the "property") described in the attached Exhibit A which is incorporated into this Mortgage by reference, and all minerals, oil, gas and other hydrocarbon substances on the property, as well as all development rights, air rights, water, water rights, and water stock relating to the property, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of the Borrower of, in and to the same, including but not limited to the other rights herein enumerated, subject to the Permitted Encumbrances specified in Exhibit B attached hereto.

(B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the property, whether now owned or hereafter acquired by Borrower, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the property, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the property, including without limitation all swimming pools, tennis courts, and related facilities, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the property, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the property (the "Improvements").

(C) All appurtenances of the property and all rights of the Borrower in and to any streets, roads or public places, easements or rights of way, relating to the property, including but not limited to all rights of the Borrower to any septic system, sewer line, agreements, permits, easements, equipment, licenses, resolutions, and related rights pertaining to any sewer and septic system constructed on the property.

(D) All of the rents, royalties, profits and income of the property, and all rights of the Borrower under all present and future leases affecting the property, including but not limited to any security deposits.

(E) All proceeds and claims arising on account of any damage to or taking of the property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the property or any Improvements.

(F) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the

property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the property or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements.

(G) All general intangibles relating to the development or use of the property, including but not limited to all governmental permits relating to construction on the property, all names under or by which the property or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names, and all trademarks and goodwill in any way relating to the property; and

(H) All water stock relating to the property, all shares of stock or other evidence of ownership of any part of the property that is owned by the Borrower in common with others, and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the property.

This instrument secures:

(1) Payments and performance of the Borrower's indebtedness and obligations under the Note evidencing the Loan, including all extensions, renewals, substitutions and modifications of and to the Note.

(2) The payment and performance of the Borrower's obligations under this Mortgage, and under all of the other Loan Documents.

(3) The payment of all sums advanced or paid out by the Lender under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) The payment of the principal and interest on all other future loans or advances made by the Lender to the Borrower (or any successor in interest to the Borrower as the owner of all or any part of the Mortgaged Property) ("FUTURE ADVANCES"), including all extensions, renewals and modifications of any Future Advances.

(5) The payment and performance of the Borrower's obligations under all other present and future agreements executed by the Borrower in favor of the Lender and relating to the Note or any one or more of the Loan Documents; and the payment of any and all other indebtedness owing by the Borrower to the Lender.

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(6) The payment of all other indebtedness, obligations and liabilities of the Borrower to the Lender of every kind and description whatsoever, arising directly between the Borrower and the Lender or acquired outright, as a participation or as collateral security from another by the Lender, direct or indirect; absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all other indebtedness due from Borrower to Lender, and shall keep, perform and observe all and singular the covenants and promises in the Note, this Mortgage, the Additional Interest Agreement, and in all of the other Loan Documents, and any renewal, extension or modification thereof, expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

ARTICLE I

COVENANTS OF BORROWER

In addition to covenants contained elsewhere herein, the Borrower covenants and agrees with the Lender as follows:

1. To pay and perform all indebtedness and obligations that are secured by this Mortgage and the other Loan Documents in accordance with the terms thereof.

2. Borrower covenants and represents that all of the Loan Documents have been duly executed and delivered and are valid and enforceable obligations of Borrower in accordance with the terms thereof. Borrower agrees to execute and deliver to the Lender on demand and at Borrower's cost and expense any documents, further required mortgages, and instruments of further assurance required or desired by Lender in Lender's reasonable business judgment to effectuate, complete, enlarge, or perfect, or to continue and preserve (a) the obligations of the Borrower under the Note, this Mortgage, all of the other Loan Documents, and (b) the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower, subject to the Permitted

Exceptions described in Exhibit B. Upon any failure of Borrower to do so, Lender may execute and record any such instruments for and in the name of Borrower and Borrower irrevocably appoints Lender the agent and the attorney-in-fact of Borrower to do so. The lien hereof will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property.

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3. (a) All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Lender. Upon any default by the Borrower (and expiration of any applicable notice and cure periods), Lender may in its discretion at any time without notice to the Borrower collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by the Lender to collect any rents, royalties, income or profits will make the Lender a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by the Lender. All rents, royalties, income and profits collected by the Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order the Lender directs in its absolute discretion and without regard to the adequacy of its security. The provisions of this paragraph are subject to the provisions of the Assignment of Rents and Leases executed by Borrower in favor of Lender herewith.

(b) Borrower will not execute any leases, management or leasing agreements, or occupancy agreements affecting any of the Mortgaged Property without first having received the prior written approval from Lender of the form and content of the same and/or of the managing agent. Without limiting the foregoing, any managing, leasing, or similar fee shall be subordinated to the lien of this instrument.

(c) Without the prior written consent of the Lender, the Borrower shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of the Mortgaged Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair the Borrower's interest in the rents, royalties, income and profits of the Mortgaged Property. The Borrower will perform all covenants of the lessor under any such leases or occupancy agreements. Upon the Lender's request, the Borrower will execute and deliver to Lender for recordation an Assignment of Leases on the Lender's form.

(d) Nothing herein shall render Lender liable under any existing or future lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Borrower under such leases.

4. Without the prior written consent of the Lender, (a) the Borrower shall not encumber any interest in the Mortgaged Property or sell, contract to sell (excepting only a contract to sell which, under its terms, is contingent upon approval by the Lender within 30 days after execution thereof by both parties thereto and the purchaser has no rights to possession of or income from the property prior to closing, and which contract is in fact delivered to Lender for its consent pursuant to the

terms hereof), lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property; (b) no general or limited partner of Borrower (if Borrower is a partnership) shall contract to sell, lease with option to purchase, or otherwise transfer any interest in Borrower as a partner of Borrower; (c) no stockholder of Borrower (if Borrower is a corporation) shall contract to sell, lease with option to purchase, or otherwise transfer any interest in Borrower as a stockholder of Borrower; and (d) Borrower shall not sell, assign or otherwise dispose of or permit the sale, assignment or other disposition of, any legal or beneficial interest in the stock of Borrower, if a corporation, or in any general or limited partnership interest in Borrower, if a general or limited partnership. As used in this paragraph, a joint venture shall be deemed to be a general or limited partnership. The foregoing restrictions shall also apply to any sale, conveyance, transfer or pledge of a beneficial interest in Borrower, if a trust or any other entity. Lender shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer [all said encumbrances, sales, contracts, leases, and other transfers described above being collectively referred to as a "Prohibited Transfer"], and Lender's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Lender's security or whether or not it may or may not be reasonable (commercially or otherwise) for Lender to consent to any Prohibited Transfer. Without limiting the foregoing, Lender's consent may, if given in Lender's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Lender with a manager acceptable to Lender, an assignment to Lender of any security given to Borrower in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or in any of the related loan documents. Any Prohibited Transfer made without the consent of Lender shall be void. Provided, however, so long as no uncured default exists under any of the Loan Documents, the Lender agrees to the following sole exceptions to the foregoing on a one-time basis [the intention being that, subject to fulfillment of the conditions to the exceptions stated in subparagraphs (i)-(iii) below, only one transfer covered by each said subparagraph will be covered by the following exceptions]:

- (i) the Lender agrees not to unreasonably withhold its consent to a conveyance or sale of the Mortgaged Property (and not to increase the interest rate or payment terms in connection with such transfer) provided that (1) the creditworthiness and experience (in ownership of projects similar to the project to be constructed on the property) of the proposed transferee is reasonably acceptable to Lender; (2) a management company and management contract reasonably acceptable to the Lender are contracted with and executed, respectively, by the transferee, (3) the transferee must execute such documents as are reasonably acceptable to Lender to evidence the assumption (subject to the provisions of Paragraph 3.11 of the Note) by the transferee of all obligations of Borrower under the Loan Documents, including but not being limited to the Additional Interest Agreement; and (4) the proposed transferee must not be an Affiliate (as such term is defined in the Additional Interest Agreement) of Borrower, and the proposed sale must be an arms-length sale;

- (ii) up to an aggregate of a 10% limited partnership interest in Borrower may be transferred by any limited partner to any other person, said 10% interest comprising the maximum limited partnership interest that may be transferred within the exception of this subparagraph (ii) during the term of the Loan; and
- (iii) upon fulfillment by Borrower with the Syndication Covenants contained in Paragraph 4.22 of Article IV, the Borrower may sell limited partnership interests in Borrower.

No such consent by the Lender shall relieve the Guarantors of liability under the guaranties executed by the Guarantors on this date, and as a condition to any of the foregoing consents John Lie-Nielsen and George H. Lane, III (the "Guarantors") shall (if deemed necessary or desirable by the Lender), execute such documents as may be required by the Lender to confirm that such transfer consented to by the Lender will not release or otherwise impair the guaranties executed by Guarantors in favor of the Lender ("Guaranties"). If the Lender consents to any transfer pursuant to the foregoing procedures, (aa) said transferee shall not be obligated to pay any Additional Interest accruing to and including the date of the transfer, provided the same are actually paid by the transferor under the Additional Interest Agreement as more particularly described in the Additional Interest Agreement (the foregoing not being intended as impairing the liability of the transferee for all said Additional Interest due at any time under the Additional Interest Agreement, excepting Additional Interest actually paid by the transferor); and (bb) Lender shall not be obligated to consent to any more than one transfer covered by the each of the exceptions specified in subparagraph (i), (ii) or (iii).

5. (a) Borrower will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the Mortgaged Property. Borrower will maintain the Mortgaged Property and all Improvements thereon in good condition and repair. No Improvements may be removed, demolished or materially altered without the prior written consent of Lender. No personal property in which the Lender has a security interest may be removed from the Mortgaged Property unless it is immediately replaced by similar property of at least equivalent value on which Lender will immediately have a valid first lien and security interest.

(b) Without the prior written consent of Lender, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Mortgaged Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property, including but not limited to those contained in any declaration and constituent documents of any condominium, cooperative or planned development project on the Mortgaged Property. Borrower will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property.

6. Borrower will keep at all times full, true, and accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient to reflect correctly the results of all operations, leasing, and other income-producing activities by Borrower on the Mortgaged Property, and to permit the preparation of financial statements therefrom in accordance with generally accepted accounting

principles. Lender will have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. Borrower will deliver to Lender, upon such times as may be requested by Lender, and in no event less than sixty (60) days after the end of every calendar year from date hereof, whether or not requested by Lender, financial and operating statements for the Mortgaged Property, including but not limited to balance sheets, profit-and-loss statements, and all schedules and exhibits thereto as are customarily required by sound accounting practices reflecting all items of income and expenses for the Mortgaged Property. Such statements and information shall be prepared in accordance with generally accepted accounting principles and shall be certified by Borrower or, at Lender's option (after notice to Borrower), by an independent certified public accountant (at Lender's expense) approved by Lender in advance of delivery of such statements and information.

7. Borrower will, at its own expense, appear in and defend any action or proceeding that might affect Lender's security or the rights or powers of the Lender or that purports to affect any of the Mortgaged Property. If the Borrower fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect the Lender's interest in the Mortgaged Property or the Lender's right to enforce its security, then the Lender may, at its option, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Borrower to perform its covenants (without, however, waiving any default of the Borrower). Borrower agrees to pay all reasonable expenses of the Lender thus incurred (including but not limited to fees and disbursements of counsel). Any sums disbursed by the Lender will be additional indebtedness of the Borrower secured by this Mortgage, will bear interest at the After-Maturity Rate required by the Note, and will be payable by the Borrower upon demand. This paragraph will not be construed to require Lender to incur any expenses, make any appearances, or take any actions.

8. This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Lender is granted a security interest thereunder, and Lender shall have all of the rights and remedies of a secured party under the ALABAMA UNIFORM COMMERCIAL CODE as well as all other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Lender shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Lender shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Lender's attorneys' fees and legal expenses. Borrower, upon demand of Lender, shall assemble such personal property and make it available to Lender at the Premises, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

9. The Borrower covenants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the claims of all persons whomsoever. The provisions of this paragraph are subject to the Permitted Encumbrances attached as Exhibit B.

10. The Borrower will pay or reimburse the Lender for all attorney's fees, costs and expenses incurred by the Lender in connection with the closing of this loan (whether or not collected at closing and including without limitation all title, recording, survey, and legal fees and expenses), in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is involved or is made a party, or appears as party plaintiff or defendant, affecting the Note, Mortgage, and other Loan Documents, Borrower or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof and in any situation where Lender employs an attorney to protect the Lender's rights hereunder, whether or not legal proceedings are commenced or involved; and any such amounts paid by the Lender shall be added to the indebtedness and secured by the lien of this Mortgage.

11. Borrower understands that any septic system or sewage treatment facility or sewer line on the property or to be constructed from the property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Mortgaged Property, whether located on the property described in Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender, except as may be required under the Permitted Encumbrances described in Exhibit B. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to the Lender, and

that the Lender will have the first right and lien as secured hereby to any moneys or revenues arising from any such tie-ons, connections, or use.

ARTICLE II

EVENTS OF DEFAULT

Borrower will be in default under this Mortgage if:

(a) Borrower breaches any of the covenants contained in this Mortgage in Article I, Paragraph 1.4 (sales and encumbrances) or Article IV, Paragraph 4.4 (insurance), which breach shall immediately thereupon, without notice or opportunity to cure, constitute an event of default hereunder; or

(b) Any material representation or warranty made by Borrower in the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents proves to be untrue, misleading or is not fulfilled, which representation or warranty is not cured within ten (10) days after written notice thereof by Lender to Borrower; or

(c) Borrower fails to make any payment required by the Note, or the other Loan Documents, which failure continues for ten (10) days after written notice thereof by Lender to Borrower; provided, however, that any late charge, After-Maturity Interest (reserved under the Note) or other amounts due and payable as a result of such failure shall be due and payable as part of any cure of such failure; or

(d) Borrower breaches any other covenant in the Loan Documents or fails to observe or perform any other covenant, agreement, condition, term or provision of any of the Loan Documents or any certificate or side letter delivered in connection with the Loan Documents, or any other event occurs which, under the Note or under any other Loan Document, constitutes a default by the Borrower or gives the Lender the right to accelerate the maturity of any part of the indebtedness secured by this Mortgage, which breach or failure or event continues for thirty (30) days after written notice thereof by Lender to Borrower; or

(e) Borrower terminates or suspends its business, or permits an attachment or judicial seizure of any substantial part of its assets; or

(f) Borrower, or any trustee of the Borrower, files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor-relief under any present or future law relating to bankruptcy or debtor-relief, or such a petition is filed against the Borrower, or against any maker or endorser of the Note having an interest in any of the Mortgaged Property or any trustee of the Borrower, and Borrower does not oppose that filing or the petition is not dismissed within 60 days after filing, or Borrower makes an assignment for the benefit of its creditors.

The notice and cure periods set forth herein shall not be in addition to any notice and cure periods set forth in any other Loan Documents, it being the

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intention that the foregoing notice and cure periods shall be the exclusive notice and cure periods under all Loan Documents.

ARTICLE III

REMEDIES

1. If the Borrower is in default, the Lender may, at its continuing option, and without notice to or demand upon the Borrower:

(a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately;

(b) Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Lender's judgment to manage and operate the Mortgaged Property, and the Lender may apply any rents, royalties, income or profits collected against the indebtedness secured by this Mortgage without in any way curing or waiving any default to the Borrower;

(c) Bring a court action at law or in equity (1) to foreclose this Mortgage (2) or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lenders right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the indebtedness;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

(e) Exercise any other right or remedy available under law or in equity;

(f) Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

2. The proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the rate provided under the Note on all advances made by the Lender.

SECOND: Payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided under the Note.

THIRD: Payment of the indebtedness and obligations of the Borrower secured by this Mortgage in any order that the Lender chooses.

FOURTH: The remainder, if any, to the person or persons appearing of record to be the owner of the premises.

3. Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

4. All remedies contained in this Mortgage are cumulative, and the Lender also has all other remedies provided by law or in any other agreement between the Borrower and the Lender. No delay or failure by the Lender to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or of any default by the Borrower. The Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

5. Borrower will pay all of the Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title charges.

ARTICLE IV

GENERAL PROVISIONS

4.1 **Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

4.2 **Monthly Tax Deposits.** If requested by Lender at any time: The Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the

Lender, and no interest shall be payable in respect thereof. Such amounts shall be used by Lender to pay ad valorem taxes and assessments when due, or before they become delinquent. Upon demand of the Lender the Borrower agrees to deliver to the Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. In the event of a default by the Borrower in the performance of any of the terms, covenants or conditions in the Note or Mortgage, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph remaining to the Borrower's credit.

4.3 Other Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property. Provided, however, that Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, after written notice of the same to Lender. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to the delinquency of the lien, Borrower deposits with Lender cash or other security, in form satisfactory to Lender in its sole unfettered discretion, adequate to cover the payment of such lien and any obligation, whether matured or contingent, of Borrower or Lender therefor, together with interest, costs and penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the lien, interest, cost and penalties thereon shall be paid prior to the dates such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation (referred to as "New Laws"), subsequent to the date hereof, in any manner changing or modifying the laws now in

force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender with respect to the Loan, the entire balance of the principal sum secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender; except, however, that Borrower shall have the right, within 10 days after receipt of notice from Lender of its exercise of said option, to pay the amount by which the yield to the Lender has been decreased as a result of the New Laws, in accordance with Lender's calculations, upon receipt of which by Lender the Loan will not be accelerated.

4.4 Insurance. The Borrower will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require, but in no event less than the greater of (a) the aggregate amount of the Note, or (b) the full replacement cost of the Mortgaged Property, and with no more than \$5,000 deductible from the loss payable for any casualty, insuring the Mortgaged Property against fire, extended coverage, flood, liability, vandalism and malicious mischief, tornado, war damage (if available), collapse, loss of rents or rental value (with coverage in an amount to cover a minimum of twelve months of fair rental value or projected gross annual rentals at 100% occupancy of the Mortgaged Property), business interruption, and such other insurable hazards, casualties and contingencies as the Lender may reasonably require. If the property is located in a flood hazard area, flood insurance in an amount acceptable to Lender shall also be provided by Borrower. The policies shall include without being limited to a "Replacement Cost Endorsement," a "Difference in Conditions" endorsement, boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment, and insurance against loss of occupancy or use arising from any such breakdown. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies; except, however, for losses under \$50,000 per loss, Borrower shall have the right to adjust and compromise the same so long as no default exists hereunder, all insurance proceeds are used to restore the loss, and Borrower contributes any additional funds necessary to restore the loss. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either (a) toward restoring the improvements

or (b) as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place, or Lender may select any combination of the above, subject to the provisions of Paragraph 4.6(f) below. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If requested by Lender at any time: The Borrower will pay to the Lender on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit until the note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, the Borrower agrees to deliver to the Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums. In the event of a default by the Borrower in the performance of any of the terms, covenants and conditions in the Note or Mortgage, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

4.5 Condemnation. If all or any part of the Mortgaged Property in excess of twenty percent (20%) of the real property or twenty percent (20%) of the total square feet of buildings constructed on the real property, shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, or if any part of the Mortgaged Property shall be so damaged or taken such that the Lender's security is substantially impaired, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

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4.6 Care of the Property/Re-Amortization.

(a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Fifteen Thousand Dollars (\$15,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

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

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

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

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty (a "Casualty"), the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient (subject, however, to the remaining provisions of this paragraph). If a part of the Mortgaged Property shall be physically damaged through condemnation (a "Taking"), the Borrower will promptly restore, repair or alter the remaining property in a manner reasonably satisfactory to the Lender. Provided, however, upon a Casualty or Taking, and application by Lender of the insurance proceeds or the Taking proceeds to the reduction of the indebtedness secured hereby (i) Borrower shall be obligated only to remove any debris from the Mortgaged Property and take such actions as are necessary to make the undamaged or non-taken portion of the Mortgaged Property into a functional economic unit, insofar as is practicable under the circumstances and (ii) the principal indebtedness shall be re-amortized using the same amortization formula prescribed by the Note except that the principal debt shall be the debt resulting after application thereto of the insurance proceeds or the Taking proceeds.

In the event the Lender requires restoration of the Mortgaged Property as a result of any Taking or Casualty, the Lender shall not have the right to require application of the insurance proceeds or condemnation awards to the indebtedness secured hereby (except to the extent of any surplus over the amount required for restoration).

4.7 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then the Lender, after notice to Borrower, at its option, may perform or observe the same, and all payments made for costs paid or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at the after-maturity rate set forth in the note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender 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 covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

4.8 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same. Within a reasonable period of time after written request of Borrower, the Lender agrees to provide to Borrower a written statement setting forth whether, to the Lender's actual knowledge, the Loan is current, and setting forth the principal balance and accrued interest (excepting Additional Interest) due on the Loan.

4.9 Receiver.

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

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

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

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

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

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; (g) makes or consents to any agreement subordinating the lien or change hereof; or (h) enters into any agreement with the Borrower or any partner or stockholder thereof or any one or more of them changing any term of the Note or documents relating to the Loan or releasing any partner or stockholder of Borrower or any security or respecting any matter whatsoever, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with

reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

4.16 Notices. All notices given under this Mortgage and the other Loan Documents (unless otherwise expressly provided therein) must be in writing and will be effectively served upon personal delivery, or by overnight courier service with guaranteed next day delivery or by mailing in certified United States Mail, postage prepaid, sent to the Lender at Lender's Notice Address and sent to the Borrower at Borrower's Notice Address, or to such other address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given in the case of personal delivery, when received; in case of delivery by courier service with guaranteed next day delivery, said notice shall be deemed given on the next day or the day designated for delivery, and in case of delivery by certified United States Mail, said notice shall be deemed given two (2) business days after deposit therein. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

4.17 Entries.

(a) The Lender and its respective agents and representatives, will have the right at any reasonable time to enter the Property and inspect all parts thereof. The Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of the Borrower relating to the Mortgaged Property.

(b) The Lender is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and records. Any inspection or examination by the Lender is for the sole purpose of protecting the Lender's security and preserving the Lender's rights under this Agreement. No default of the Borrower will be waived by any inspection by the Lender.

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4.18 Status and Authority. If Borrower has executed this instrument as a corporation or partnership:

(a) The Borrower warrants that (i) it is duly organized and validly existing under the State of its organization, and is in good standing under the laws of the State of Alabama, (ii) it is duly qualified to do business in the State of Alabama, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the corporation or partnerships, as applicable.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not make any changes in its structure or in the beneficial ownership of Borrower or dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Lender, subject to the provisions of Article I, Paragraph 4.

(c) The Borrower agrees that it will keep proper books and records of account in accordance with generally accepted accounting principles and will furnish to the Lender such information respecting the business, affairs, operations and financial condition on a consolidated basis of the Borrower as may be reasonably requested.

4.19 Miscellaneous/Actions By Lender. The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender, and also any future owner or holder, including pledgees, assignees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Mortgage are for convenience only and do not limit its provisions. Whenever in any of the Loan Documents, the Borrower agrees to pay the attorney's fees and costs of the Lender, the same shall refer to the reasonable attorney's fees and costs actually incurred by the Lender.

4.20 Successors. The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of the Borrower and the Lender. If the Borrower consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of the Borrower.

4.21 Survival of Lien. Notwithstanding any other provision of this Mortgage or the other Loan Documents to the contrary, this Mortgage and all representations and covenants of Borrower herein contained and the lien of this Mortgage and the Assignment of Rents and Leases executed herewith, shall survive the maturity of and the repayment in full of all amounts due under the Note, and the lien of this Mortgage and all other Loan Documents shall continue in full force and effect and Borrower shall not have the right to the release of the Mortgaged Property from the

encumbrance of either thereon or release of any other security for the Loan until all Borrower's obligations (the "Other Amounts") under the Note, Additional Interest Agreement, and other Loan Documents have been paid and performed in full; provided that, so long as no uncured default exists under the Loan Documents, (i) with respect to "Net Cash Flow Interest" (as that term is defined in the Additional Interest Agreement), in the event of a "Sale" or "Prepayment" (as those terms are defined in Section 4 of the Additional Interest Agreement) and to the extent the Net Cash Flow Interest due through the date of such Sale or Prepayment has not been computed at the time of such Sale or Prepayment, then Lender shall release the Property from this Mortgage and Security Interest and the lien hereof to the extent it serves to secure such Net Cash Flow Interest if and on the condition that both Guarantors acknowledge in writing that their guarantees remain in full force and effect with respect to any unpaid Net Cash Flow Interest; and (ii) with respect to any "Appreciation Interest" (as that term is defined in the Additional Interest Agreement) in the event of a "Prepayment" (as defined in the Additional Interest Agreement) if such Appreciation Interest has not been computed or otherwise agreed to as of the date of such Prepayment, Lender shall release the Property from this Mortgage and Security Interest and lien thereof to the extent that it serves as security for such Appreciation Interest if and on the condition that (A) both Guarantors acknowledge that their Guaranties remain in full force and effect with respect to such unpaid Appreciation Interest and (B) to the extent such unpaid Appreciation Interest is determined by Lender to exceed \$150,000.00, the Guarantors or the Borrower, if required by Lender, shall provide substitute collateral in form and amount reasonably acceptable to Lender. [Under either (i) or (ii) above, if at either such time the Guaranty of Payment and Guaranty of Payment and Completion have been released by the Lender, then each Guarantor shall also be obligated to execute and deliver to the Lender a Guaranty of Payment acceptable to the Lender guaranteeing payment of all Additional Interest.]

4.22 Syndication Covenants. So long as no uncured default exists under the Loan Documents, the Borrower shall have a one-time right to sell limited partnership interests in the Borrower as a result of a public or private syndication, provided that the Borrower fulfills all the following covenants and conditions:

(a) Neither the Lender nor its counsel will agree to review or evaluate any economic, federal or state income tax, or securities law (state or federal) aspects of the offering, nor will the Lender or its counsel agree to participate or have any involvement to any extent in the preparation of any offering memorandum or prospectus or in the purchase or sale of any limited partnership units or in any decision to cause any sale or offering to be made; and

(b) The Lender shall receive a certification by Borrower and reputable securities counsel that any such offering has been conducted in compliance with all applicable federal and state securities laws and regulations and that the offering memorandum contains no material misrepresentation of fact and is true and correct in all material respects; and

(c) In the event that the Lender or any of its officers, directors, shareholders and/or representatives ("Lender") is made a party in any action or

proceeding claiming or alleging any violation of any federal or state securities laws or otherwise arising out of the offering and sale of limited partnership interests in Borrower, Borrower and Guarantors shall immediately, upon demand, reimburse any and all such persons for all costs and expenses incurred by reason of or in connection with such action or proceeding, including reasonable attorney's fees, and Borrower and Guarantors shall indemnify and hold harmless the Lender from any damages awarded in any such action against the Lender; and Borrower and Guarantors shall deliver to the Lender, prior to any such syndication, an indemnity agreement acceptable to the Lender in all respects consistent with the preceding provisions; and

(d) Any amounts received in connection with the syndication, less attorney's fees, publication costs, and other ordinary and necessary syndication costs paid to persons other than Affiliates of the Borrower (as such term is defined in the Additional Interest Agreement) shall be subject to the provisions of the Additional Interest Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand and seal this 13th day of April, 1987.

BORROWER:

BIRMINGHAM I ASSOCIATES, LTD., a
Georgia limited partnership

By: REALTY DEVELOPMENT CORPORATION,
a Georgia corporation, its
General Partner

ATTEST:

By:

Name:

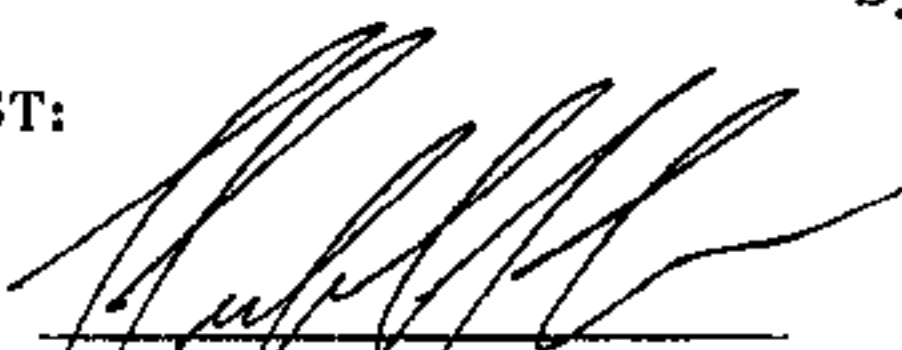
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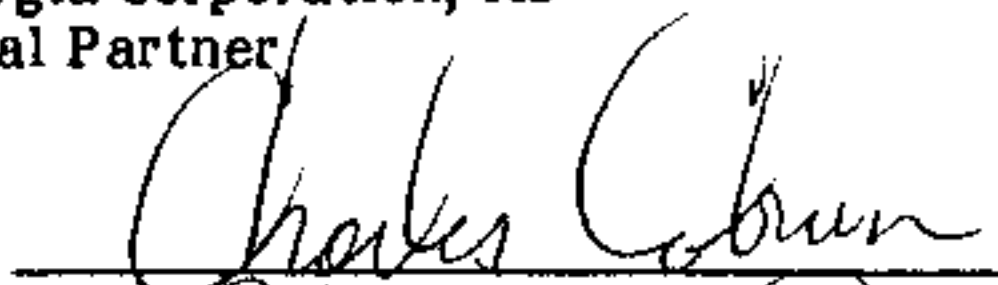
By:

Name:

Its

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Nicholas N. Sears
Asst Secretary


CHARLES COBURN
Vice President

Georgia
STATE OF ALABAMA)
JEFFERSON COUNTY Fulton)
County)

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Charles Coburn and Nicholas D. Sears, whose names as Vice President and Asst. Secretary of Realty Development Corporation, a Georgia corporation, as general partner of Birmingham I Associates, Ltd., a Georgia limited partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation as general partner of said partnership.

Given under my hand and official seal this 13 day of April, 1987.

Rebecca W. Jordan
Notary Public

My Commission Expires: 4-20-90

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EXHIBIT A

Commence at the Southeast corner of the Northwest One-Quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama; run thence in a Westerly direction along the South line of said Quarter Section for a distance of 2,300.55 feet; thence turn an angle to the right of 86 degrees and run in a Northwesterly direction along the Northeasterly right-of-way line of U.S. Highway No. 31 South for a distance of 1,096.84 feet; thence turn an angle to the right of 101 degrees 03 minutes 10 seconds and run in an Easterly direction for a distance of 346.16 feet to the point of beginning; from the point of beginning thus obtained thence turn an angle to the left of 71 degrees 19 minutes 50 seconds and run in a Northeasterly direction for a distance of 580 feet; thence turn an angle to the right of 18 degrees 59 minutes 22 seconds and run in a Northeasterly direction for a distance of 525.54 feet; thence turn an angle to the right of 101 degrees 40 minutes 03 seconds and run in a Southeasterly direction for a distance of 526.96 feet; thence turn an angle to the right of 31 degrees 30 minutes and run in a Southeasterly direction for a distance of 176.65 feet; thence turn an angle to the right of 00 degrees 14 minutes 53 seconds and run in a Southeasterly direction for a distance of 60 feet; thence turn an angle to the left of 90 degrees to the tangent of the following described course, said course being situated on a curve to the left having a central angle of 15 degrees 10 minutes 25 seconds and a radius of 438.82 feet; thence run in a Northeasterly direction along the arc of said curve for a distance of 116.21 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 87 degrees 12 minutes 41 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Northeasterly, Easterly, and Southeasterly direction for a distance of 38.05 feet to the end of said curve; thence run along the tangent extended to last described course in a Southeasterly direction for a distance of 424.16 feet to the point of beginning of a curve to the right, said curve having a central angle of 19 degrees 26 minutes 05 seconds and a radius of 349.57 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 118.57 feet to the end of said curve; thence run along the tangent extended to said curve in a Southeasterly direction for a distance of 20.40 feet to the point of beginning of a curve to the left, said curve having a central angle of 12 degrees 15 minutes 04 seconds and a radius of 889.71 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 190.24 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 93 degrees 01 minutes 06 seconds and a radius of 25 feet; thence run along the arc of said curve to the right in a Southeasterly and Southwesterly direction for a distance of 40.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 25 degrees 18 minutes and a radius of 483.33 feet; thence run along arc of said curve in a Northwesterly direction for a distance of 213.43 feet to the end of said curve; thence run along the tangent extended to said curve in a Northwesterly direction for a distance of 35.74 feet to the point of beginning of a curve to the left, said curve having a central angle of 25 degrees 39 minutes 10 seconds and a radius of 271.57 feet; thence run along the arc of said curve in a Northwesterly and Southwesterly direction for a distance of 121.59 feet to the end of said curve and the point of beginning of a curve to the right, said curve having a central angle of 20 degrees 18 minutes 07 seconds and a radius of 591.13 feet; thence run along the arc of said curve in a Southwesterly, Westerly, and Northwesterly direction for a distance of 209.46 feet to the end of said curve; thence turn an angle to the right from tangent of last described course of 34 degrees 45 minutes 06 seconds and run in a Northwesterly direction for a distance of 307.91 feet; thence turn an angle to the right of 44 degrees 55 minutes 56 seconds and run in a Northerly direction for a distance of 142.00 feet; thence turn an angle to the left of 84 degrees 31 minutes 38 seconds and run in a Northwesterly direction for a distance of 335.53 feet; thence turn an angle to the right of 40 degrees 30 minutes and run in a Northwesterly direction for a distance of 153.91 feet to the point of beginning.

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EXHIBIT A

Together with a perpetual easement for a sanitary sewer pipeline over, along, and through the following described real estate, for the benefit of the real property described hereinabove:

Description of a 20-foot wide sanitary sewer easement situated in the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, the centerline of which is more particularly described as follows: From the Southeast corner of the SE 1/4 of the NW 1/4 of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama, run West along the South line of said SE 1/4 of the NW 1/4 for a distance of 1170.59 feet; thence turn an angle to the right of 110 degrees 52 minutes 50 seconds and run in a North-easterly direction for a distance of 32.41 feet to the center of an existing sanitary sewer manhole and the point of beginning of the centerline of the 20 foot wide sanitary sewer easement herein described; from the point of beginning, thus obtained, continue along the last described course for a distance of 175.15 feet; thence turn an angle to the left of 15 degrees 58 minutes 58 seconds and run in a Northeasterly direction for a distance of 178.66 feet; thence turn an angle to the right of 8 degrees 19 minutes 00 seconds and run in a Northeasterly direction for a distance of 160.00 feet, more or less, to a point on the Southern boundary line of the above described property, and the end of said sanitary sewer easement.

Also, an easement 15-feet in width for sanitary sewer easement over, along and through that certain property described in the easement recorded in Real Record 097, Page 535, in the Probate Office of Shelby County, Alabama.

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EXHIBIT B

Permitted Encumbrances

Taxes for 1987 and subsequent years. 1987 taxes are a lien but not due and payable until October 1, 1987.

Title to minerals underlying caption lands together with mining rights and privileges belonging thereto as conveyed in Deed Book 4, page 464 (as to E 1/2 of NW 1/4); and oil, gas, petroleum and sulphur as reserved in Deed Book 127, page 140, (as to W 1/2 of NW 1/4), in the Probate Office of Shelby County, Alabama.

Agreement with Blue Cross-Blue Shield as recorded in Misc. Book 19, page 690, in said Probate Office.

NOTE: Caption lands are described in Exhibit "B" to said instrument.

15-foot utility easement over the Northwest side and a triangular portion of a sanitary sewer easement on the East side of caption lands as shown on survey of Jimmy A. Gay, Reg. No. 8759, dated June 10, 1986.

Declaration of Protective Covenants, Agreements, Easements and Charges and Liens for Riverchase (Business) as recorded in Misc. Book 13, page 50, as Amended by Amendment No. 1 in Misc. Book 15, page 189, and further amended by Amendment No. 2 as recorded in Misc. Book 19, page 633, in said Probate Office.

Item 6 in deed recorded in Deed Book 331, page 757, in said Probate Office to-wit: Said property conveyed by this instrument is hereby restricted to use as a multi-family development and related uses with a density not to exceed Twelve (12) units per acre as defined in the Riverchase Architectural Committee Development Criteria for Planned Multi-Family (PR-2) District of Riverchase, dated April 11, 1980, unless a change in use is authorized pursuant to the Riverchase Business Covenants as described in paragraph 5 in deed, said restriction to be effective for the same period of time as the Riverchase Business Covenants.

Easements as shown in deed recorded in Real Record 086, Page 332, in the Probate Office of Shelby County, Alabama.

Terms and conditions of the instruments creating the easements insured herein.

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

1987 APR 15 PM 3:16

H. Thomas A. Sullivan, Jr.
JUDGE OF PROBATE

Document Fee	\$	_____
State Tax		<u>15,900.00</u>
Recording Fee		<u>65.00</u>
Endorsement Fee		<u>1.00</u>
TOTAL		<u>15,966.00</u>