

This Instrument Prepared By:  
Joan Ragsdale, Esquire  
Sirote, Permutt, McDermott,  
Slepian, Friend, Friedman,  
Held & Apolinsky, P.C.  
2222 Arlington Avenue South  
Birmingham, Alabama 35205

STATE OF ALABAMA )  
COUNTY OF SHELBY )

8/4

REAL ESTATE MORTGAGE

THIS MORTGAGE, made and entered into as of the 10<sup>th</sup>  
day of August, 1988, by and between TWIN PINES,  
INC. (hereinafter referred to as "Mortgagor") and THE COLONIAL  
BANK - NORTHERN REGION (hereinafter referred to as  
"Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Mortgagee  
in the initial principal sum of One Million Six Hundred  
Thousand and No/100 Dollars (\$1,600,000.00) as evidenced by  
that certain note bearing even date herewith and payable in  
accordance with the terms of said note;

WHEREAS, Mortgagor may hereafter become further  
indebted to Mortgagee pursuant to obligations evidenced by the  
promissory note described above or documents given to secure  
such note, and it is the intent of the parties hereto that  
this mortgage shall secure all of such indebtedness of  
Mortgagor to Mortgagee, whether now existing or hereafter  
arising, due or to become due, absolute or contingent,  
liquidated or unliquidated, direct or indirect, and this  
mortgage is to secure not only the indebtedness evidenced by  
the note but also other debts, obligations or liabilities of  
Mortgagor to Mortgagee arising from documents given to secure  
such note, now existing or hereafter arising, and any and all  
extensions or renewals of same, or any part thereof, whether  
evidenced by note, open account, endorsement, guaranty, pledge  
or otherwise.

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*Land Title Co.*

NOW, THEREFORE, Mortgagor and all others executing this mortgage, in consideration of the premises, and to secure the payment of said indebtedness evidenced by the note hereinabove specifically referred to, and any and all other indebtedness due or to become due under the note or documents given to secure such note as hereinabove generally referred to, and further, to secure the payment of the indebtedness of John R. Saunders and Doris Saunders to Mortgagee evidenced by a note in the original principal amount of \$1,000,000 and the obligations of all documents given to secure such note and the compliance with all of the covenants and stipulations herein contained, has bargained and sold, and does hereby grant, bargain, sell, alien, convey, transfer and mortgage unto Mortgagee, its successors and assigns, that certain real estate located in Shelby County, Alabama and described on Exhibit "A" attached hereto, the terms of which are incorporated herein by reference, together with buildings and improvements thereon (hereinafter sometimes called the "real estate" or the "mortgaged real estate"), together with all awards received through eminent domain, and payments upon any insurance policies covering the real estate, and all rights, privileges, tenements, and appurtenances thereunto belonging or in anywise appertaining to said real estate including easements and rights-of-way appurtenant thereto and all gas, steam, electric and other heating, cooling and lighting apparatus, elevators, refrigerators, plumbing, stoves, doors and other fixtures appertaining to the real estate and improvements located thereon, all of which shall be deemed realty and conveyed by this mortgage.

TO HAVE AND TO HOLD the real estate, and every part thereof, unto Mortgagee, its successors and assigns forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of the real estate in fee simple and has a good right to sell and convey the same as aforesaid; that the real estate is free of all encumbrances except as herein set out, and

Mortgagor will warrant and forever defend the title to the real estate unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions, agreements, and provisions:

1. PAYMENTS. That Mortgagor shall pay the said indebtedness secured hereby and interest thereon when and as it (they) shall become due, whether in course or under any condition, covenant or agreement contained in the note or documents given to secure the note, together with any other indebtedness(es) which Mortgagor may owe to Mortgagee, it being further agreed that any statement, any note or obligation that is secured by this mortgage shall be conclusive evidence of such fact.

2. INSURANCE, TAXES.

(i) That Mortgagor shall provide, maintain and deliver to Mortgagee policies of fire insurance (with extended coverage), and such other insurance as Mortgagee may from time to time require in companies, form, types, and amounts satisfactory to Mortgagee and shall assign, with endorsements satisfactory to Mortgagee, and deliver to Mortgagee with mortgage clauses satisfactory to Mortgagee all insurance policies of any kind or in any amount now or hereafter issued with respect to the real estate. Not later than the first day prior to the expiration date of any and all such insurance policies and at any time upon request of Mortgagee, Mortgagor shall furnish Mortgagee certificates of insurance issued by insurance companies satisfactory to Mortgagee showing that the amount and type of insurance required by Mortgagee hereunder is in effect. All renewal policies, with premiums paid, shall be delivered to Mortgagee at least thirty (30) days before the expiration of the old policies. If any insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by Mortgagor's breach of any condition thereof, or become void or

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unsafe by reason of the failure or impairment of the capital of any company by which the insurance may then be carried, or if for any reason whatever the insurance shall be unsatisfactory to Mortgagee, Mortgagor shall procure and deliver to Mortgagee new insurance on the premises, satisfactory to Mortgagee. If Mortgagor fails to procure and deliver such new insurance, Mortgagee may, but shall not be obligated to, procure same, and upon demand, Mortgagor shall reimburse Mortgagee all such costs expended with interest on such advance at the rate set forth in the note secured hereby. Mortgagor shall give immediate notice in writing to Mortgagee of any loss, injury or damage affecting the mortgaged real estate caused by any casualty or occurrence. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand, receive, and receipt for all monies becoming payable thereunder and to assign absolutely all policies to any holder of the note or to the grantee of the real estate in the event of the foreclosure of this mortgage and security agreement or other transfer of title to the real estate in extinguishment of the indebtedness secured hereby. In the event of loss covered by any of the policies of insurance herein referred to, each individual insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, after deducting all costs of collection, including reasonable attorneys' fees, may, in the event of a substantial and material loss be applied by the Mortgagee at its option, either as a payment on account of the indebtedness; secured hereby, whether or not then due or payable, or toward the restoration, reconstruction, repair, or alteration of the real estate, either to the portion thereof by which said loss was sustained or any other portion thereof; provided, however, that the proceeds for property damage (and not including loss of rental income insurance) shall be used by the Mortgagee to

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restore the real estate if the loss giving rise to the payment of proceeds does not occur in the last Loan Year, the proceeds are adequate to restore the property to its condition prior to the loss, the Mortgagee receives assurances satisfactory to it (in its own reasonable discretion) that after restoration there will be adequate rental income from the tenants for the Mortgagor to operate the property and to pay its obligations and if Mortgagor continues to fulfill all its obligations hereunder (and under the note secured hereby) and this Mortgage shall not be in default.

(ii) That together with and in addition to the monthly payment of principal and interest, and on the same date on which the principal and interest are payable under the terms of the note secured hereby, Mortgagor, if required by Mortgagee (and with respect to insurance, if Mortgagee has not received proof that such sums have been prepaid under the terms of the policy with respect to insurance proceeds), shall deposit with the Mortgagee, in a non-interest bearing account, a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may be levied against the real estate and which may attain priority over this mortgage, and ground rents, if any, plus one-twelfth (1/12) of the yearly premiums for insurance that will become due and payable to renew the insurance on the real estate for coverage against loss by fire or such other hazard as may reasonably be required by the Mortgagee. The amount of such taxes, assessments, ground rents, and premiums when unknown, shall be estimated by the Mortgagee. If the amount of funds held shall exceed at any time the amount deemed necessary by the Mortgagee to provide for the payment of taxes, assessments, ground rents and insurance premiums as they fall due, such excess shall be repaid to Mortgagor or credited to Mortgagor as Mortgagee may determine. If the amount of the funds held shall not be sufficient at any time to pay taxes, assessments, ground rents, and insurance premiums as they fall due, Mortgagor

shall pay to Mortgagee any amount necessary to make up the deficiency upon notice from Mortgagee to Mortgagor requesting payment thereof. Upon payment in full of all sums secured by this mortgage, Mortgagee shall promptly refund to Mortgagor any funds held.

BOOK 198 PAGE 752 (iii) That Mortgagor shall pay and discharge as the same become due all taxes and assessments that may accrue, be levied, or assessed upon the real estate or any part thereof, which may be or become a lien prior to this mortgage or have priority in payment to the indebtedness secured hereby, or upon Mortgagee's interest therein or upon this mortgage or the indebtedness or evidence of indebtedness secured hereby, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee; upon the passage of any law imposing the payment of the whole or any part thereof upon Mortgage or upon the rendering by an appellate court of competent jurisdiction that the undertaking by Mortgagor to pay such taxes is legally inoperative, then the indebtedness secured hereby without deduction shall, at the option of Mortgagee, immediately due and payable, notwithstanding anything contained in this mortgage or any law heretofore enacted; and Mortgagor shall not suffer or permit any such taxes on the said real estate to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments; and further shall furnish annually to Mortgagee, prior to the date when they become delinquent certificates or receipts of the proper officers showing full payment of all such taxes and assessments.

3. NO WASTE. That the real estate and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon.

4. ALTERATION OF PREMISES. That no building or other improvement on the real estate 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 real estate 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 the indebtedness secured hereby immediately due and payable.

5. MECHANICS' AND MATERIALMEN'S LIENS. That Mortgagor agrees that the indebtedness hereby secured shall at once become due and payable and this mortgage subject to foreclosure as provided for herein, at the option of holder hereof, when and if any lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen and such lien is not fully paid or bonded within forty-five (45) days of such filing, without regard to form and contents of such statement, and without regard to the existence or nonexistence of the debt, or an part thereof, or of the lien, on which such filing is based.

6. COMPLIANCE WITH AUTHORITIES. That Mortgagor shall comply with all statutes, ordinances, regulations and laws promulgated by any governmental entity asserting jurisdiction over the real estate or operation of the business conducted thereon.

7. MORTGAGEE MAY MAKE PAYMENTS. That if Mortgagor fails to insure the real estate as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against the real estate or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge or fully bind within forty-five (45) days of the filing of such lien, any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure the real estate and/or pay said taxes, assessments, debts, liens and/or charges, and any money which

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Mortgagee shall have so paid shall constitute a debt to Mortgagee additional to the indebtedness secured hereby; shall be secured by this mortgage; shall bear the interest set out in the note hereinabove referred to from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable.

8. NO WAIVER. That Mortgagor agrees that no delay or failure of Mortgagee to exercise any option to declare the maturity of any indebtedness secured by this mortgage, shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this mortgage can be waived, altered or changed except as evidenced in writing, signed by the Mortgagor and by the holder hereof; 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 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.

9. TITLE DISPUTE. That if Mortgagee shall be made a party to any suit involving the title to the real estate 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 real estate hereby conveyed that purports to be superior to the lien of this mortgage in any respect or otherwise threatens Mortgagee's secured position in the Property. Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be permitted by law and 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 secured hereby, and shall bear interest from the date it is paid or



incurred at the rate set out in the note hereinabove referred to and shall be at once due and payable.

10. LIEN CLAIMS. That all expenses incurred by Mortgagee, including but not limited to, attorney's fees, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the real estate hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the indebtedness hereby secured.

11. COLLECTION OF INDEBTEDNESS. That Mortgagor agrees to pay all costs incurred by Mortgagee, including, but not limited to, a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect the indebtedness secured by this mortgage or to enforce any provisions herein contained.

12. CONDEMNATION PROCEEDS. That notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self executing, 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 principal sums secured by 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 sums are then due or not by the terms of said note or of this mortgage.

13. ASSIGNMENT OF RENTS, PROFITS. That 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 any other document or agreement executed by Mortgagee in connecting with the loan described herein,

Mortgagee may proceed to collect the rent, income and profits from the real estate, 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 the 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 debt hereby secured. Application of rents shall not operate to cure a default or prevent foreclosure or enforcement of any other remedy.

14. FORECLOSURE. That 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 of the note described above in the original principal amount of \$1,600,000 or any installment of interest thereon, or any other indebtedness the payment of which is hereby secured, including, but not limited to the debt of John R. Saunders and Doris Saunders to Mortgagee in the original principal amount of \$1,000,000, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien within the time frame set forth above, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on, the real estate, or should default be made in any of the covenants, conditions and agreements herein contained or in any of the covenants, conditions, and agreements contained in this mortgage or in that certain Note, Security Agreement, Collateral Assignment of Rents and Leases executed by Mortgagor in favor of Mortgagee on even date herewith, or any other instrument given as additional security for the indebtedness, or should default be made in the payment or performance of the obligation of John R. Saunders or Doris Saunders to Mortgagee described above, or any documents given

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as security therefor and after the notice to Mortgagee set forth in paragraph 25 below if applicable, the whole of said principal sum, with interest thereon, and all other indebtedness 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 indebtedness hereby secured shall have the right to enter upon and take possession of the real estate and after, or without, taking such possession of the same, sell the mortgaged real estate at public outcry, in front of the courthouse door of the county wherein the real estate 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 real estate 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 real estate, 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 such sale and become the purchaser of the real estate 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, as permitted by law 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 limitation to, the defense of any proceedings instituted by the Mortgagor or anyone liable for said indebtedness or interested in the mortgaged real estate 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 indebtedness and interest thereon specifically referred to hereinabove to the day of sale and any other indebtedness secured by this mortgage; 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.

15. INSOLVENCY, BANKRUPTCY, AND OTHER CONDITIONS OF DEFAULT. That 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 the real estate 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 the real estate or any part thereof adverse to this mortgage and if the said Mortgagor shall fail for forty-five (45) 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 (except as may be required by paragraph 25 below), 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.

16. FUTURE INDEBTEDNESS. That it is the intent of the Mortgagor and Mortgagee to secure any and all indebtedness, now or hereafter arising, of said Mortgagor to Mortgagee arising under the note described above or under documents given to secure such note, and any and all indebtedness of John R. Saunders and Doris Saunders to Mortgagee arising under the note described above or documents given to secure such note, , due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is intended and does secure, all debts, obligations and liabilities of said Mortgagor to said Mortgagee arising under the note executed by Mortgagor to Mortgagee of even date herewith, and the note executed by John R. Saunders and Doris Saunders of even date herewith described above, or documents given to secure either of such notes, whether now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, at any time before actual satisfaction and cancellation of this mortgage in the Probate Office where recorded, and whether the same be evidenced by promissory note, open account, endorsement, guaranty agreement, pledge agreement, or otherwise; that 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 mortgage; and the lien priority of this mortgage shall continue on all of

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the real estate 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 mortgage; 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 mortgage; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

17. HOLDOVERS. That, subject to the terms of leases in effect on even date herewith, 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 real estate or any part thereof subsequent to foreclosure hereunder, 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 the real estate, 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 being hereby expressly waived.

18. LEASES. That Mortgagor agrees to faithfully perform all the covenants of the lessor or landlord under present and future leases affecting the mortgaged real estate, and neither do nor neglect, nor permit to be done, anything which may diminish or impair their value, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. Mortgagor warrants and represents that there is no litigation pending or threatened

with respect to the leases, and Mortgagor is not in default under such leases and further, no event has occurred which, with the passage of time, would constitute a default. Mortgagor grants to Mortgagee the right to take possession of the real estate upon the declaration of a default hereunder or any document given as security therefor, subject to the notice provisions of paragraph 28 below.

19. FINANCIAL RECORDS. That Mortgagor shall furnish to Mortgagee within sixty (60) days after the close of each fiscal year of Mortgagor, such financial records as the holder of this mortgage may require including, but not limited to, an annual statement of the operation of the real estate which shall include annual statements itemizing the income and expenses, an itemized rent roll, together with a complete financial statement of Mortgagor's assets and liabilities and its profit and loss statement. Such statement shall be prepared by a certified public accountant acceptable to Mortgagee. Upon Mortgagee's reasonable request, Mortgagor shall at any time furnish to Mortgagee the current status of leases covering the real estate, together with rentals and related information, and allow Mortgagee to enter on and inspect the real estate.

20. HAZARDOUS WASTE AND INDEMNIFICATION. The Mortgagor shall indemnify, protect, defend and hold the Mortgagee harmless from and against any and all claims, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties or costs (including attorney's fees), of whatsoever character, nature and kind, whether groundless or not, whether to property or to person, and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent (collectively, "Losses and Liabilities"), related directly or indirectly to, or arising out of or in connection with (a) any breach or default of Mortgagor hereunder, (b) any of Mortgagor's activities on the Premises (or the activities of



Mortgagor's agents, employees, representatives, independent contractors, licensees, guests, or invitees on the Premises) including without limitation the use of the equipment or machinery on the Premises, (c) Mortgagor's actual or alleged breach of any brokerage or finder's contract or agreement, actual or alleged, connected in any way with the purchase, construction or financing of the Project or any portion thereof, and (d) any other fact, circumstance or event related to Mortgagor's performance hereunder or the operation of the real estate described herein or the operation of Mortgagor's business or any other cause whatsoever, regardless of whether any such Losses and Liabilities arise from tort or contract or any other action of whatever nature. The Mortgagor shall indemnify, protect and hold harmless Mortgagee, its directors, officers, employees, and agents, and any successors to Mortgagee's interest in the chain of title to the Premises, their directors, officers, employees and agents, from and against any and all losses and liabilities including, without limitation, all foreseeable and all unforeseeable consequential damages, attorneys' fees, court costs, or damages or claims arising directly or indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials by Mortgagor or any prior owner or operator of the Premises, and including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the Premises, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials by any person on the Premises prior to or following transfer of title to the Premises to the Mortgagor. Any transferee of the real property taking title to the real estate subject to the terms of this mortgage shall be deemed

to have made the representations and warranties set forth in this paragraph (and in every other paragraph of this mortgage), but nothing in this paragraph shall impose liability on Mortgagor for the presence or use, generation, storage, release or threatened release of Hazardous Materials by an individual or entity taking title subsequent to Mortgagor if none of the above described events occurred prior to or during Mortgagor's ownership of the premises. For the purposes of this paragraph, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response. Compensation and Liability Act of 1980, Transportation Act, 49 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; and the regulations adopted and publications promulgated pursuant to said laws. This provision shall survive satisfaction of this Mortgage.

21. NO CONVEYANCE. That no right, title or interest in or to the mortgaged real estate, or any part thereof, shall be sold, transferred, assigned, conveyed, mortgaged or encumbered by a lien (including grant of easement for any purpose whatsoever) nor shall the ownership or controlling interest or any equitable interest in the shares of the Mortgagor, become vested by operation of law or otherwise in any other person or entity at any time prior to the payment in full of the indebtedness secured hereby without first obtaining the prior written consent and approval of Mortgagee which consent and approval shall be within Mortgagee's sole discretion; that in the event of any violation of this provision, the entire unpaid balance of the indebtedness secured hereby, together with all interest thereon, shall become due and payable immediately at the option of Mortgagee without notice to Mortgagor, and shall be recoverable by

Mortgagee forthwith or at any time thereafter without stay of execution or other process and failure of Mortgagor to pay all monies to Mortgagee secured by this mortgage shall be an act of default entitling Mortgagee to foreclose this mortgage in accordance with the terms hereof. Mortgagor agrees to reimburse to Mortgagee all reasonable legal fees and other costs incurred by Mortgagee in connection with any transfer to which Mortgagee gives such consent and Mortgagor also agrees and acknowledges that Mortgagee may require documentation as it deems necessary prior to approving any transfer.

22. PAYMENT IN FULL. That provided always that if Mortgagor pays the indebtedness secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amount 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.

23. WAIVER OF RIGHTS OF EXEMPTION. That any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to the debt hereby secured and the property given as security therefor the Mortgagor waives, to the full extent permitted by law, all rights of exemption under the laws and Constitution of the State of Alabama and agrees to pay as permitted by law a reasonable attorney's fee for the collection thereof.

24. NO ESTOPPEL, WAIVER. That no delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any other option at any time, and the payment, or contracting to pay, by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of default of Mortgagor in failing to make

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said payments and shall not estop Mortgagee from foreclosing this mortgage on account of such failure of Mortgagor.

25. NOTICES. That 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 be deemed to have been received three (3) days after being forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: TWIN PINES, INC.  
c/o John R. Saunders  
521 Noriego Drive  
Destin, FL 32541

with a copy to Flora Anderson at the following address:

250 Office Park Circle  
Suite 115  
Birmingham, AL 35223

and with a copy to John R. Saunders, Jr. at the following address:

John R. Saunders, Jr.  
c/o Saunders Hardware  
4647-P  
Highway 280 East  
Birmingham, Alabama 35243

To Mortgagee:

THE COLONIAL BANK  
NORTHERN REGION  
P.O. Box 1887  
Birmingham, Alabama 35201-1888

Attn: Mark Brinton

Notwithstanding any provision herein to the contrary, upon any default hereunder for which Mortgagee exercises its right to foreclose or to take possession of the premises, Mortgagee shall send written notice of such default to Mortgagor at the address set forth above and Mortgagor shall have ten (10) days from the receipt (as defined above) of such notice to cure such default; provided, however, that Mortgagee shall only be required to send one such notice during any consecutive twelve (12) month period regardless of whether the event of default described in such notice is the same event of default described in any previous notice. The intent of this provision is to provide that the Mortgagee shall not be

required to provide a notice of default each time that Pledgor is in default or prior to foreclosure if there has been any notice of default during the preceding twelve (12) months for any reason.

26. SUCCESSORS AND ASSIGNS. That singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker of this mortgage, 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.

27. SEVERABILITY. That 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.

28. CAPTIONS. The captions of each paragraph are intended for reference purposes only and shall not be used to interpret the meaning of any paragraph.

IN WITNESS WHEREOF, the undersigned has executed this instrument, as of the day and year first above written.

Twin Pines, Inc.

By

*John R. Anderson*  
its President

ATTEST:

*Flora M. Anderson*  
Secretary - Treasurer

BOOK 198 PAGE 766

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John R. Saunders whose name as President of TWIN PINES, INC., a corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 10<sup>th</sup> day of August, 1988.

Carla M. Hansen  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES MAY 26, 1992

Ref: RMH/8748624B

BOOK 198 PAGE 767

EXHIBIT "A"

The NW 1/4 of Section 26, Township 18, Range 1 East situated in Shelby County, Alabama and the SW 1/4 of the SW 1/4 of Section 23, Township 18, Range 1 East. Situated in Shelby County, Alabama.

BOOK 198 PAGE 768

STATE OF ALA. SHELBY  
I CERTIFY THIS  
INSTRUMENT WAS FILED

88 AUG 10 PM 12:39

*Thomas A. Snowden, Jr.*  
JUDGE OF PROBATE

1. Dead Tax 2  
2. Mtg. Tax 2,400.00  
3. Recording Fee 55.00  
4. Indexing Fee 1.00

TOTAL 2456.00