

250
(For Use in Alabama)

ALABAMA

SHELBY

County

CONSTRUCTION LOAN
MORTGAGE, ASSIGNMENT OF
RENTS AND SECURITY AGREEMENT
COLLATERAL MAY INCLUDE FIXTURES;
SECURES FUTURE ADVANCES WHICH
MAY BE MADE ON A REVOLVING,
EQUITY LINE OF CREDIT BASIS

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (hereinafter referred to as this "Mortgage"), made as of the 10th day of MARCH, 1989, by and among Ken Lokey Homes, Inc., a Texas corporation, having a mailing address of 1800 Bering Drive, Suite 220, Houston, Texas 77057 (hereinafter referred to collectively as "Mortgagor") and General Electric Capital Corporation, a New York corporation, having an office located at Two Galleria Tower, Suite 1750, 13455 Noel Road, L.B. 24, Dallas, Texas 75240 (hereinafter referred to as "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagee is obligated to lend, and has loaned, to the Mortgagor the sum of SEVENTY-SIX THOUSAND, EIGHT HUNDRED & NO/100 DOLLARS (\$ 76,800.00), and Mortgagor is thereby indebted to Mortgagee in the said sum of SEVENTY-SIX THOUSAND, EIGHT HUNDRED AND NO/100 DOLLARS (\$ 76,800.00), as evidenced by a note from Mortgagor to Mortgagee in said amount and of even date (the "Note"), with interest thereon and payable as described therein; and

WHEREAS, Mortgagor desires to secure the payment of the Note with interest and any renewals or extensions thereof, in whole or in part, and of the additional payments hereinafter agreed to be made, by a conveyance of the lands and a grant of the security interests hereinafter described.

NOW, THEREFORE, to secure the repayment of the indebtedness evidenced by such Note and any extensions or renewals thereof, the performance of such other obligations of Mortgagor as set forth herein and the payment of all other sums herein covenanted to be paid, Mortgagor hereby irrevocably grants, transfers, conveys and assigns to Mortgagee, its successors and assigns, under and subject to the terms and conditions hereinafter set forth, all its right, title and interest in and to those certain tracts of real property located in the County of SHELBY, State of Alabama, described in Exhibit A attached hereto and incorporated herein by reference (collectively, the "Property").

TOGETHER WITH, all rents, issues, profits, royalties, income, accounts, general intangibles and other benefits derived from the Property (collectively, the "Rents"), subject to the right, power and authority herein given to Mortgagor to collect and apply such Rents. The Rents have also been assigned to Mortgagee pursuant to that certain Assignment of Rents and Leases of even date herewith (the "Assignment").

TOGETHER WITH, all leasehold estate, right, title and interest of the Mortgagor in and to all leases or subleases covering the Property or any portion thereof now or hereafter existing or entered into, and all right, title and interest of Mortgagor thereunder, including, without limitation, all cash or security

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deposits, advance rentals and deposits of payments of similar nature.

TOGETHER WITH, all interests, estate or other claims, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Property.

TOGETHER WITH, all of the interest of Mortgagor in all easements, rights-of-way, licenses, operating agreements, strips and acres of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, oil and gas and other minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Property or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversion and reversions, remainder and remainders, whatsoever, in any way belonging, relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, including, without limitation, all such interests located on or appurtenant to the Property more particularly described in Exhibit A attached hereto and incorporated herein by reference.

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TOGETHER WITH, all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips of land adjacent to or used in connection with the Property.

TOGETHER WITH, any and all buildings, structures and improvements of every nature whatsoever now or hereafter erected or situated on the Property, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements, which items are necessary for the operation and maintenance of the Property (collectively, the "Improvements").

TOGETHER WITH, all right, title and interest of Mortgagor in and to all tangible personal property (the "Personal Property") owned by Mortgagor and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to, all goods, building supplies and materials, books and records, chattels, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, air conditioning, heating, plumbing, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, equipment for exclusion of vermin or insects and removal of dust, equipment for handling refuse or garbage, equipment for the purpose of supplying or distributing electricity, gas, water, air and light, and all other equipment of every kind), elevators and related equipment, all indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including ice makers, refrigerators, disposals, compactors, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies.

TOGETHER WITH, all the estate, interest, right, title, other claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may

hereafter acquire in the Mortgaged Estate (as hereinafter defined), and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Estate (as hereinafter defined).

TOGETHER WITH, all extensions, additions, improvements, betterments, after-acquired property, renewals, replacements and substitutions, or proceeds from a permitted sale of any of the foregoing, and all the right, title and interest of Mortgagor in any such fixtures, machinery, equipment, appliances, vehicles and personal property subject to or covered by any prior Mortgage, security agreement, conditional sales contract, chattel mortgage or similar lien or claim, together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on behalf of Mortgagor, all right, title or interest of Mortgagor in any tradenames, trademarks, servicemarks, logos and goodwill related thereto which in any way now or hereafter belong, relate or appertain to the Mortgaged Estate or any improvements thereon or any part thereof whether now or hereafter acquired by Mortgagor; any letter of credit securing any obligation of Mortgagor under the Loan Documents; and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the Mortgaged Estate assets described herein.

The entire estate, Property, Improvements, Personal Property, Rents, and other interests hereby conveyed to Mortgagee may be referred to herein as the "Mortgaged Estate".

TO HAVE AND TO HOLD the Mortgaged Estate unto and to the use of the Mortgagee, its successors and assigns, absolutely and in fee simple.

Mortgagor covenants with Mortgagee that it is seized of the Property in fee simple and has the right to convey the same; that it will warrant and defend the same against the claims of all persons whomsoever and that the Property is free and clear of all encumbrances except those, if any, set forth in Exhibit B attached hereto and incorporated herein by reference.

THE MORTGAGED ESTATE IS GRANTED TO THE MORTGAGEE
FOR THE PURPOSE OF SECURING:

A. Payment of the indebtedness in the total principal amount of SEVENTY-SIX THOUSAND, EIGHT HUNDRED AND NO/100 DOLLARS (\$ 76,800.00), with interest thereon, evidenced by the Note of even date herewith in the amount of SEVENTY-SIX THOUSAND, EIGHT HUNDRED AND NO/100 DOLLARS (\$ 76,800.00) payable to Mortgagee and executed by Mortgagor, which has been delivered to and is payable to the order of Mortgagee, and which by this reference is hereby made a part hereof, and any and all modifications, extensions and renewals thereof. The interest and principal shall be due and payable in monthly installments as provided in the Note.

B. Payment of all sums advanced by Mortgagee to protect the Mortgaged Estate, with interest thereon at the rate then effective under the Note or the highest contract rate permitted by applicable law, whichever is less.

C. Payment of all other sums, with interest thereon, which are presently or may hereafter be loaned to Mortgagor, or its successors or assigns, by Mortgagee, when evidenced by a

All indebtedness, obligations and other matters described above (in subsections A through C immediately preceding) as secured by this Mortgage are hereinafter collectively referred to as the "Secured Obligations." This Mortgage, the Note, the Assignment of Rents and Leases, the representations and warranties of Mortgagor contained in the commitment letter between Mortgagor and Mortgagee dated September 8, 1988 (the "Commitment (Warranties)") and any other instrument given in evidence or to secure the payment and performance of any of the Secured Obligations are hereinafter collectively referred to as the "Loan Documents."

Mortgagor hereby covenants and agrees as follows:

1.02 Maintenance, Repair, Alterations. To keep the Mortgaged Estate in good condition and repair, not to remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or regulations) any of the improvements; to complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and to promptly restore in like manner any of the improvements which may be damaged or destroyed thereon, and to pay when due or, alternatively, to procure a bond adequately covering all claims for labor performed and materials furnished therefor, to comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Estate or any part thereof or requiring any alterations or improvements; not to commit or permit any waste or destruction of the Mortgaged Estate; to keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; not to commit, suffer or permit any act to be done in or upon the Mortgaged Estate in violation of any law, ordinance or regulation, now existing or hereinafter enacted, or the provision of any lease the violation of which could result in the termination of such leasehold.

(a) That at all times Mortgagor will maintain and keep in force in such amounts and for such periods of time as Mortgagee may require and with an insurance company or companies approved by said Mortgagee; (1) "All Risk" replacement cost insurance in the initial sum of the greater of the amount of the Note or one hundred percent (100%) of the replacement cost of the improvements and Personal Property, insuring against loss by fire, lightning, windstorm, hail, explosion, sprinkler leakage, vandalism, malicious mischief and such other casualties and hazards as

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Mortgagee further agrees to keep in force and effect such other insurance coverages as may be reasonably required by Mortgagee to protect its interest in the Property. Mortgagee shall also be entitled to require Mortgagee to increase coverage amounts under existing insurance policies from time to time to protect Mortgagee's interest in the Property. Each insurance policy shall provide that the policy may not be cancelled, modified or amended by any party except after Mortgagee has received fifteen (15) days' prior written notice from the insurer of the proposed cancellation, modification or amendment; and each insurance company issuing any of the required policies must have a "Best's" rating of A IX (or equivalent if such rating system is discontinued or revised). The originals of all policies required hereinabove (or duplicate originals) shall be deposited and remain at all times on deposit with Mortgagee, or Mortgagee's agent, at the following address:

Dallas, Texas 75202

All insurance policies required under this Section 1.03(a) shall name Mortgagee as an additional insured and shall provide that in the event of loss the proceeds therefrom shall be first payable to Mortgagee. Each policy shall contain such terms, provisions and endorsements as shall be approved or required by Mortgagee and shall contain a "noncontributing mortgagee loss payable clause" in favor of Mortgagee and in form and substance satisfactory to Mortgagee. Renewals of such policies (or appropriate certificates evidencing renewals), together with satisfactory evidence of payment of all premiums, shall be delivered to Mortgagee at least fifteen (15) days before any such insurance shall expire.

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below.

1.04 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Estate or any part thereof, Mortgagor shall give prompt written notice thereof to the insurance carrier and to Mortgagee.

Mortgagor hereby assigns to Mortgagee all monies recoverable under each such insurance policy and authorizes each insurance company to make payment for all such losses directly to Mortgagee instead of to Mortgages and Mortgagee jointly. In the event any insurance company fails to disburse insurance proceeds directly and solely to Mortgagee but disburses instead either to Mortgagee alone or to Mortgagee and Mortgagee jointly, Mortgagee agrees immediately to transfer and endorse such proceeds to Mortgagee, and upon any failure of Mortgagee to do so, Mortgagee may execute and upon any transfers and endorsements for and in the name of Mortgagee, such transfers and endorsements appoints Mortgagee as Mortgagee's agent and attorney-in-fact for such purposes. Mortgagee shall cooperate with Mortgagee in obtaining for Mortgagee the benefits of any insurance or other proceeds lawfully or equitably payable to Mortgagee in connection with the transaction contemplated by the Loan Documents and the collection of any indebtedness or obligation of Mortgagee to Mortgagee incurred thereunder. At Mortgagee's option, Mortgagee shall be entitled and Mortgagee hereby authorizes Mortgagee at Mortgagee's expense, to take all necessary and proper steps (including, without limitation, the engaging, at Mortgagee's expense, of appraisers to conduct independent appraisals on behalf of Mortgagee and the engaging, at Mortgagee's expense, of attorneys and other professionals and consultants) to obtain any insurance or other proceeds, and Mortgagee is hereby authorized and entitled to compromise or adjust any loss under any such insurance policy.

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2. 1.05 Assignment of Policies upon Foreclosure. In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Estate in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of Mortgagor in and to all policies of insurance required by Section 1.03 above shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Estate.

(a) Mortgagor indemnifies Mortgagee against: (i) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the loan secured hereby or the Mortgaged Estate and (ii) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses (including its reasonable attorneys' fees) of whatever kind or nature which may be imposed on, incurred by, or at any time asserted against Mortgagee in any way relating to or arising out of the offer, sale or lease of the Mortgaged Estate and/or the use and occupation of any of the Mortgaged Estate encumbered by this Mortgage; provided, however, that such indemnity shall not apply to Mortgagee's own acts or omissions or those of its agents or employees acting in the scope of their agency or employment.

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(c) Provided that a waiver of subrogation can be obtained by Mortgagee from its insurance carrier at commercially reasonable rates (and Mortgagee promises to use its best efforts to secure such waiver of subrogation), Mortgagee waives any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives for loss of or damage to Mortgagee, the Mortgaged Estate, Mortgagee's property that is not part of the Mortgaged Estate or the property of others under Mortgagee's control from any cause insured against or required to be insured against by the provisions of this Mortgagee.

(d) All sums payable by Mortgagee hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagee hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in such proceeding; (v) any claim that Mortgagee has, or might have, against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagee; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagee shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagee waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of any sum secured hereby and payable by Mortgagee.

1.07 Taxes and Impositions.

(a) Mortgagee agrees to pay, at least twenty (20) days prior to delinquency, all applicable real property taxes and assessments, general and special, water and sewer charges, all applicable payments in lieu of taxes, and all other applicable taxes and assessments of any kind or nature whatsoever, including, without limitation, non governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Estate, which are assessed or imposed upon the Mortgaged Estate or any part thereof or Mortgagee's interest in the Mortgaged Estate, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Estate, or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereunder referred to as "impositions"); provided, however that if, by law, any such imposition is payable, or may at

such bills, statements or other documents, and providing Mortgagee has deposited sufficient funds with Mortgagee pursuant to this Section 1.07, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagee and Mortgagee shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of such funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.07. Mortgagee shall not be obliged to pay or allow any interest on any sums held by Mortgagee pending any disbursement or application hereunder, and Mortgagee may impose or reserve for future payment of impositions such portion of such payments as Mortgagee may, in its reasonable discretion, deem proper, applying the balance on the principal of or interest on the Secured Obligations. Should Mortgagee fail to deposit with Mortgagee (exclusive of that portion of said payments which has been applied by Mortgagee on the principal of or interest on the Secured Obligations) sums sufficient to fully pay such impositions at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation to do so, advance any amounts required to make up the deficiency, which advance, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided; or at the option of Mortgagee, the latter may, without making any advance whatever, apply any sums held by it upon any obligation of the Mortgagee secured hereby. Should any default occur or exist on the part of Mortgagee in the payment or performance of any of Mortgagee's obligations under the terms of the Loan Documents, Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts in its hands received pursuant hereto, or as Rents of the Mortgaged Estate or otherwise, upon any Secured Obligations in such manner and order as Mortgagee may elect. The receipt, use or application of any such sums paid by Mortgagee to Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of Mortgagee under the terms of the Loan Documents or any of the obligations of Mortgagee.

(f) Mortgagee shall reimburse Mortgagee, promptly upon demand by Mortgagee therefor, for all mortgage filing privilege taxes that Mortgagee may be required to pay with respect to this Mortgage; and, if Mortgagee fails so to reimburse Mortgagee, at the option of Mortgagee, all Secured Obligations, together with all accrued interest thereon, shall immediately become due and payable.

1.08 Utilities. To pay when due all utility charges incurred by Mortgagee for the benefit of the Mortgaged Estate or which may become a charge or lien against the Mortgaged Estate for gas, electricity, water or sewer services furnished to the Mortgaged Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

1.09 Performance of Lease Obligations by Mortgagee. To pay when due all rents and other payments and perform all covenants

the option of the taxpayer be paid, in installments, Mortgagee may pay the same, together with any accrued interest on the unpaid balance of such impositions, in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Estate in lieu of or in addition to the impositions payable by Mortgagee pursuant to subsection (a) hereof, or (ii) a license, fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part on the amount of the Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "impositions" as defined in subsection (a) hereof, and Mortgagee shall pay and discharge the same as herein provided with respect to the payment of impositions; and if Mortgagee fails to so pay such charges, at the option of Mortgagee, all Secured Obligations, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagee shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee or on the Secured Obligations.

(c) Subject to the provisions of subsections (d) and (e) of this Section 1.07, Mortgagee covenants to furnish Mortgagee, after specific request to Mortgagee, not later than twenty (20) days prior to the date upon which the payment of such imposition would be delinquent, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.

(d) Mortgagee shall have the right before any delinquency occurs to contest or object to the amount or validity of any such imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagee's covenant to pay any such imposition at the time and in the manner provided in this Section 1.07, unless: (i) Mortgagee has given prior written notice to Mortgagee of Mortgagee's intent to so contest or object to an imposition, and unless to Mortgagee's satisfaction the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Estate or any part thereof to satisfy such imposition prior to final determination of such proceedings; or (ii) Mortgagee shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (iii) subject to Mortgagee's prior written consent, Mortgagee shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) Notwithstanding the provisions of subsection (a) above, Mortgagee shall pay to Mortgagee (upon the request of Mortgagee) on the day monthly installments of principal and/or interest are payable under the Note, until the Note is paid in full, an amount equal to one-twelfth (1/12) of the annual impositions estimated by Mortgagee to pay at least thirty (30) days prior to their delinquency the installment of taxes or payment due in lieu of taxes, next due on the Mortgaged Estate. Mortgagee further agrees to cause all bills, statements, or other documents relating to impositions to be sent or mailed directly to Mortgagee. Upon receipt of

and agreements contained in any lease, sublease or ground lease under which Mortgagee is tenant which may constitute a portion of or an interest in the Mortgaged Estate; not to surrender, assign or sublease any such lease, sublease or ground lease, nor take any other action which would affect or permit the termination of any such lease, sublease, or ground lease. Mortgagee covenants to furnish to Mortgagee within ten (10) days after the date when such rents or other payments are due and payable by Mortgagee receipts or other evidence satisfactory to Mortgagee evidencing the payment thereof.

1.10 Actions Affecting Mortgaged Estate. To appear in and contest any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee and to pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee may appear.

1.11 Actions by Mortgagee to Preserve Mortgaged Estate. That should Mortgagee fail to make any payment or to do any act as and in the manner provided in any of the Loan Documents, Mortgagee in its own discretion, without obligation to do so and without notice to or demand upon Mortgagee and without releasing Mortgagee from any obligation, may make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Mortgagee shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Estate; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Estate that it considers necessary or proper to keep the Mortgaged Estate in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankrupt or decedent; (iv) to pay, purchase, contest, or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect or appear to affect the security of this Mortgage or be prior or superior hereto, except as otherwise specifically provided herein; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Any amounts disbursed by Mortgagee pursuant to this Section 1.11, with interest thereon, shall become a portion of the Secured Obligations. Unless Mortgagee and Mortgagee agree to other terms of payment, such amounts shall be payable upon notice from Mortgagee to Mortgagee requesting payment thereof and shall bear interest from the date of disbursement at the "Default Interest" rate stated in the Note. Mortgagee shall have the right to repay such amounts disbursed by Mortgagee pursuant to this Section 1.11 in whole or in part at any time. Nothing contained in this Section 1.11 shall require Mortgagee to incur any expense or to do any act.

1.12 Survival of Warranties. To fully and faithfully satisfy and perform the obligations of Mortgagee contained in Mortgagee's loan application, the Commitment Warranties, any such application and commitment between Mortgagee and any assignee of Mortgagee, each agreement of Mortgagee incorporated by reference therein or herein, and any modification or amendment thereof. All representations, warranties and covenants of Mortgagee contained therein or incorporated herein or therein by reference shall survive the closing and funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and

representations of Mortgagor for as long as any portion of the obligations secured by this Mortgage remains outstanding. If and to the extent that there are any discrepancies and inconsistencies between the terms of the Loan Documents and the Commitment Warranties, the terms of the Loan Documents shall control.

1.13 Eminent Domain. Mortgagor shall promptly notify Mortgagee of any action or proceeding relating to any condemnation or other taking of the property or improvements or any part thereof, and Mortgagor shall appear in and prosecute any such action or proceeding unless otherwise directed or consented to by Mortgagee in writing. At Mortgagee's option, Mortgagee shall be entitled, and Mortgagor hereby authorizes Mortgagee at Mortgagee's expense, to take all necessary and proper steps (including, without limitation, engaging, at Mortgagee's expense, appraisers to conduct independent appraisals on behalf of Mortgagee and engaging attorneys and other professionals and consultants) to appear in, prosecute, compromise and discharge any such action or proceeding. As further security for the payment of the indebtedness and performance of the obligations, covenants and agreements secured hereby, Mortgagor hereby assigns to Mortgagee all judgments, awards, or damages or settlements hereafter made resulting from condemnation proceedings or in lieu of any taking of the property or improvements or any part thereof under the power of eminent domain, or for any damage, whether caused by such taking or otherwise, to the property or improvements thereon or any part thereof or of any streets appurtenant thereto, including any award for change of grade of streets. Mortgagee shall have the right to apply any such sum or any part thereof so received either (i) after payment of all of its expenses, including costs and reasonable attorneys' fees, to the secured obligations in such order as Mortgagee may determine or (ii) to the restoration or repair of the property and improvements, in such manner as it elects.

1.14 Additional Security. That in the event Mortgagee at any time holds additional security for any of the Secured Obligations, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently herewith or after a sale is made hereunder.

1.15 Successors and Assigns. The covenants, conditions, obligations, and agreements herein contained shall run with the land until this Mortgage is released of record, and they shall bind, and the benefits and advantages hereof shall inure to the benefit of the parties hereto and their respective successors in title, and other assigns or future owners of the Mortgaged Estate or this Mortgage, as the same may be. The terms "Mortgagee" and "Mortgagor" shall mean and include all of the same respectively.

1.16 Inspections. That Mortgagee, or its agents, representatives or workers are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

1.17 Lien. To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Estate, except as is specifically permitted hereunder, or any part thereof or interest therein, provided that the existence of any mechanic's, laborer's, materialman's, supplier's or vendor's lien or right thereto shall not constitute a violation of this Section 1.17 if payment is not yet due under the contract which is the foundation thereof and if such contract does not

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postpone payment for more than thirty (30) days after the performance thereof. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit with Mortgagee a bond or other security satisfactory to Mortgagee in such amount as Mortgagee shall require or shall cause said lien, encumbrance or charge to be cancelled of record by depositing into court the amount thereof, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Mortgagee, Mortgagor may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.18 Mortgagee's Power. That without affecting the lien or charge of this Mortgage upon any portion of the Mortgaged Estate not then or theretofore released as security for the full amount of all unpaid obligations, Mortgagee may, from time to time and without notice, (i) release any person liable hereunder, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) release or reconvey, or cause to be released or reconveyed at any time at Mortgagee's option, any parcel, portion or all of the Mortgaged Estate, (v) take or release any other or additional security for any obligation herein mentioned, or (vi) make compositions or other arrangements with debtors in relation thereto.

1.19 Books and Records.

(a) That Mortgagor shall keep and maintain at all times at Mortgagor's address stated in this Mortgage or at such other place as Mortgagee may approve in writing, complete and accurate books of accounts and records adequate to reflect correctly the results of the operation of the Mortgaged Estate and copies of all written contracts, leases and other instruments which affect the Mortgaged Estate. Mortgagor agrees that copies of such records shall be kept at Mortgagor's address in Houston, Texas. Such books, records, contracts, leases and other instruments shall be subject to examination and inspection at any reasonable time by Mortgagee.

(b) That within ninety (90) days after the end of each calendar year Mortgagor shall furnish to Mortgagee operating statements for the Mortgaged Estate and for Mortgagor certified as a true, complete and accurate statement of the operations of the Mortgaged Estate and Mortgagor by an independent certified public accountant. The form of and the detail of said operating statements shall be acceptable to Mortgagee. If the form of and the detail of such statements are not acceptable to Mortgagee, or if Mortgagor fails to furnish said statements, Mortgagee shall have the right to audit the books and records of the property on the premises thereof, all at Mortgagor's expense.

(c) That within ninety (90) days after the end of each calendar year, Mortgagor shall furnish to Mortgagee a rent schedule for the Mortgaged Estate, certified by Mortgagor, showing for each tenant, the tenant's name, the space

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occupied, the lease expiration date, the rent payable and the rent paid.

(d) That upon request of Mortgagee in writing and within not more than thirty (30) days from the date notice is mailed to Mortgagor, Mortgagor shall provide Mortgagee with copies of all documents requested by Mortgagee prepared in the form and the manner called for in such request and as may reasonably relate to the Mortgaged Estate or the construction, use, maintenance, operation or condition thereof, or the financial condition of Mortgagor or any party obligated on the Note, including, without limitation, all leases or leasehold interests granted to or by Mortgagor, rent rolls and tenant lists, rent and damage deposit ledgers, operating statements, profit and loss statements and balance sheets, financial statements of Mortgagor or income tax returns (including quarterly returns), any or all of which documents shall be certified as true and accurate by Mortgagor, and for the period or periods specified by Mortgagee.

1.20 Filing and Recording. That Mortgagor shall promptly cause this Mortgage and the Assignment and any supplements, amendments, or modifications thereto and financing statements and continuation statements under the Uniform Commercial Code and other instruments with respect thereto to be filed, registered and recorded (and when and if necessary to be refiled, re-registered or re-recorded) in such place or places as may be required by any law in order to create, perfect or protect the lien of and security interest created by this Mortgage and the Assignment, and to protect the validity thereof and to publish notice thereof and to protect and maintain the estate, right, interest, claim and demand of Mortgagee in, to and under the Mortgaged Estate, the Note and leases described in the Assignment.

1.21 Trade Names. That at the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Mortgaged Estate, and representing and warranting that Mortgagor does business under no other trade names with respect to the Mortgaged Estate. Mortgagor shall immediately notify Mortgagee in writing of any change in said trade names, and will, upon request of Mortgagee, execute any additional financing statements and other certificates revised to reflect the change in trade name.

1.22 Mortgagee's Right to Approve Certain Leases. Notwithstanding anything to the contrary, except with the prior written approval of Mortgagee, Mortgagor shall enter into no lease relative to the Mortgaged Estate or any portion thereof.

1.23 Relationship. That neither this Mortgage, the other Loan Documents, nor any agreements, instruments, documents or transactions contemplated hereby or thereby, nor any statements or representations made by Mortgagor pursuant to any of the foregoing or otherwise, shall in any respect be interpreted, deemed or construed as making Mortgagor and Mortgagee partners or joint venturers with one another, or as creating or constituting any partnership, joint venture, association or other such relationship between Mortgagor and Mortgagee, and Mortgagor shall not make any contrary assertion, contention, claim or counterclaim in any action, suit or other legal proceeding involving either Mortgagor or Mortgagee or the Mortgaged Estate or otherwise, nor shall Mortgagor make any such contrary representation to any person

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whatsoever. Mortgagor hereby expressly (i) recognizes that Mortgagee, as the holder of the Note and as the Mortgagee of this Mortgage, holds an interest in the Mortgaged Estate antagonistic to Mortgagor; (ii) waives any right to a judicial or other accounting prior to the acceleration or foreclosure of or exercise of any other remedies concerning the Note, the Commitment Letter, this Mortgage or the other Loan Documents; and (iii) agrees to indemnify, defend and hold Mortgagee harmless from and against all claims, actions, suits, judgments and demands (including, without limitation, attorneys' fees, court costs and brokers' commissions) brought by any person or entity on account of or in connection with anything done or suffered to be done, or any representation made or suffered to be made, by Mortgagee in connection with the acquisition, ownership, construction or operation of the Mortgaged Estate.

1.24 Use of Property. That unless required by applicable law or unless Mortgagee has otherwise agreed in writing, Mortgagor shall not allow changes in the nature of the occupancy or use for which the Mortgaged Estate was intended at the time this Mortgage was executed. Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Estate or subject the Mortgaged Estate to restrictive covenants without Mortgagee's written consent.

Mortgagor will at all times comply with all laws, ordinances, orders, rules, regulations and requirements of all governmental authorities now or hereafter affecting or pertaining in any way to the Mortgaged Estate or any part thereof or the use and operation thereof. Without limiting the foregoing in any way, Mortgagor shall, so long as any indebtedness secured hereby remains unpaid, be in full compliance with all provisions of laws prohibiting discrimination in housing on the basis of race, color, creed or national origin, including, but not limited to, the requirements of Title VIII of the 1968 Civil Rights Act.

Mortgagor further will at all times keep in full force and effect such federal, state, municipal and other governmental approvals, licenses and certificates as may be necessary from time to time to comply with all environmental, ecological and other governmental requirements (whether now existing or hereinafter enacted or adapted) relating to the Mortgaged Estate or Mortgagor's use and occupancy thereof, and on request shall furnish Mortgagee proof of such compliance.

1.25 Mortgagor's Hazardous Substance Covenants, Warranties and Representations. To the best of its knowledge and belief, Mortgagor, its successors and assigns, covenants, warrants and represents that after conducting an appropriate inquiry consistent with good commercial and customary practice:

(a) No pollutants or other toxic or hazardous substances, including any solid, liquid, gaseous, or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively "substances") have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape (collectively referred to as the "incident") on or in the property or improvements, except these substances, if any, that have been identified (by substance location and date of incident) on Exhibit C attached to this Agreement.

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(b) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on or in the Property or Improvements.

(c) No polychlorinated biphenyls ("PCBs") are located on or in the Property or Improvements, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(d) No underground storage tanks are located on or in the Property or were located on the Property and subsequently removed or filled, except those tanks that have been identified (by size, location, age, substance contained therein, and whether in existence, removed or filled) on Exhibit C attached to this Agreement.

(e) No investigation, administrative order, consent order and agreement, litigation, or settlement (collectively referred to as the "action") with respect to substances is proposed, threatened, anticipated or in existence with respect to the Property or Improvements, except the action(s) identified on Exhibit C attached to this Agreement.

(f) The Property and the Improvements and Mortgagor's operations thereon are in compliance with all applicable federal, state and local statutes, laws and regulations. No notice has been served on Mortgagor, from any entity, governmental body, or individual claiming any violation of any law, regulation, ordinance or code, or demanding payment or contribution for environmental damage or injury to natural resources, except those notices identified on Exhibit C attached to this Agreement. Copies of any such notices received after settlement shall be forwarded to Mortgagee within three (3) days of their receipt.

Failure to comply with any provision in this paragraph 1.25, including failure to fully and accurately complete any Exhibit or attachment described, shall be deemed to be an Event of Default under this Mortgage.

Mortgagor, its successors and assigns, agree to defend, indemnify and hold harmless Mortgagee and its directors, officers, employees, agents, contractors, sub-contractors, licensees, invitees, successors and assigns from and against any and all claims, demands, judgments, damages, actions, causes of action, injuries, administrative orders, consent agreement and orders, liabilities, penalties, costs and expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of Mortgagor, its predecessors in interest, third parties who have trespassed on the Property, or parties in a contractual relationship with Mortgagor, or any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Mortgagor, which:

(i) arises out of the actual, alleged or threatened discharge, dispersal, release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances, including any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (including materials to be recycled, reconditioned or reclaimed); or

(ii) actually or allegedly arises out of the use, specification, or inclusion of any product, material or process containing chemicals, the failure to detect the existence or proportion of chemicals in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement of any pollution source or the replacement or removal of any soil, water, surface water, or groundwater containing chemicals.

Mortgagor, its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against Mortgagee described in this paragraph 1.25, shall hold Mortgagee harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth herein. The provisions of this Section shall survive repayment of the Secured Obligations.

1.26 Mortgagor and Lien Not Released. That from time to time, without affecting the obligation of Mortgagor to pay and perform the Secured Obligations and to observe the covenants of Mortgagor contained in this Mortgage and the other Loan Documents and without affecting the guaranty of any person, corporation, partnership or other entity for payment or performance of the Secured Obligations and without affecting the lien or lien priority of this Mortgage on the Mortgaged Estate, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor or of any junior lienholder or guarantor and without liability on Mortgagee's part, extend the time for payment of the Secured Obligations or any part thereof, reduce the payments thereon, release anyone liable on any of the Secured Obligations, accept a renewal note or notes therefor, modify the terms and time for payment of the Secured Obligations, release from this Mortgage any part of the Mortgaged Estate, take or release other or additional security, reconvey any part of the Mortgaged Estate, consent to any map or plat of the Mortgaged Estate, consent to the granting of any easement, join in any extension or subordination agreement and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Provided, however, Mortgagor shall pay Mortgagee a reasonable service charge, together with such title insurance premiums and attorneys' fees as may be incurred at Mortgagee's option, for any such action if taken at Mortgagor's request.

1.27 Forbearance Not Waiver. That any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the Secured Obligations. Mortgagee's receipt of any awards, insurance proceeds, condemnation proceeds or damages under Sections 1.03, 1.04, 1.05, 1.11 and 1.12 hereof shall not operate to cure or waive Mortgagor's default in payment of the Secured Obligations.

1.28 Estoppel Certificate. That Mortgagor shall within ten (10) days of a written request from Mortgagee furnish Mortgagee with a written statement, duly acknowledged, setting forth the amount of the Secured Obligations and any right of set-off,

counterclaim or other defense which may exist or be claimed by Mortgagor against the Secured Obligations and the obligations of Mortgagor under this Mortgage and other Loan Documents.

1.29 Taxation of Deeds of Trust. That in the event of the enactment of any law deducting from the value of the Mortgaged Estate any mortgage lien thereon or imposing upon Mortgagee the payment of all or part of the taxes, charges or assessments previously paid by Mortgagor pursuant to this Mortgage or changing the law relating to the taxation of mortgages or deeds of trust, debts secured by mortgages or deeds of trust or Mortgagee's interest in the Mortgaged Estate so as to impose new incidents of tax on Mortgagee, then Mortgagor shall pay such taxes or assessments or shall reimburse Mortgagee therefor; provided, however, if in the opinion of counsel to Mortgagee such payment cannot lawfully be made by Mortgagor, then Mortgagee may, at Mortgagee's option, declare the Secured Obligations to be immediately due and payable and invoke any remedies permitted by Article IV of this Mortgage, all without prior notice to Mortgagor.

1.30 Advances. This Mortgage secures all present and future loan disbursements made by Mortgagee to Mortgagor. The amount of the present disbursement secured hereby is SEVENTY-SIX THOUSAND, EIGHT HUNDRED AND NO/100***** DOLLARS. (\$ 76,800.00); however, said amount may be increased by such additional sums and amounts as may be advanced by Mortgagee pursuant to the provisions of this Mortgage, and all such additional sums and amounts shall be deemed necessary expenditures for the protection of the Mortgaged Estate.

1.30 Use of Loan Proceeds. Mortgagor warrants and represents to Mortgagee that the loan evidenced by the Note and secured by this Mortgage is a business loan obtained solely for the purposes of carrying on the business of Mortgagor.

ARTICLE II ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all the Rents, issues and profits of the Mortgaged Estate, and hereby gives to and confers upon Mortgagee the right, power and authority to collect such Rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all such Rents, issues and profits, and apply the same to the indebtedness secured hereby; provided, however, that Mortgagor shall have the right to collect such Rents, issues and profits (but not more than one [1] month in advance) prior to or at any time there is not an Event of Default under this Mortgage or any of the other Loan Documents. The assignment of the Rents, issues and profits of the Mortgaged Estate in this Article II is intended to be an absolute, present assignment from Mortgagor to Mortgagee and not merely the passing of a security interest. The Rents, issues and profits are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an Event of Default under this Mortgage or any of the other Loan Documents.

2.02 Assignment of Security Deposits. Mortgagor hereby assigns to Mortgagee all security deposits received by Mortgagor or any agent of Mortgagor. Prior to default hereunder and demand

by Mortgagee for delivery of such security deposits to it or its designee. Mortgagee shall maintain the security deposits in a separate, identifiable account in a bank acceptable to Mortgagee. Upon delivery of such security deposits to Mortgagee, Mortgagee shall hold such deposits pursuant to the terms of the lease in respect of which such deposits were obtained by Mortgagee and in accordance with applicable law. Provided, however, in no event shall Mortgagee be liable to any lessee of any part of the Mortgaged Estate for the return of any security deposit in any amount in excess of the amount delivered to Mortgagee by Mortgagee. Mortgagee shall not be obligated to place any security deposits held by it in an interest bearing account unless required by applicable law.

3.03 Conflict With Separate Assignment. In the event (a) of a conflict between the separate Assignment of Rents and Leases of even date herewith executed by Mortgagee and delivered to Mortgagee and the Assignment of Rents in this Article II or (b) the Lender elects to exercise rights and remedies under the separate Assignment of Rents and Leases without then necessarily exercising rights and remedies under this Mortgage, the terms of the separate Assignment of Rents and Leases will control over and be exercisable independent of the remedies in Article II hereof.

3.04 Collection Upon Default. Upon any Event of Default under any of the Loan Documents, Mortgagee may, at any time without notice, either in person, by agent or by a receiver appointed by a court and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Estate, or any part thereof, in its own name sue for or otherwise collect such Rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebtedness secured hereby, and in such order as Mortgagee may determine. The collection of such Rents, issues and profits or the entering upon and taking possession of the Mortgaged Estate, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default.

ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Mortgagee hereby grants to Mortgagee a security interest in all the Personal Property that constitutes part of the Mortgaged Estate, including, without limitation, any and all property of similar type or kind and any replacement or renewal thereof hereafter located on or at the Property for the purpose of securing all obligations of Mortgagee in any of the Loan Documents.

3.02 Warranties, Representations and Covenants of Mortgagee Regarding the Personal Property. Mortgagee hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagee is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except as specifically permitted hereunder. Mortgagee will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all

in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Mortgagee or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, Rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors or shall fail, or shall admit in writing its inability, to pay its debts generally as they become due; or

(c) A court of competent jurisdiction shall enter an order (including, but not limited to, an order for relief), judgment, or decree approving a petition filed against Mortgagee seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and (where applicable) such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Mortgagee or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, Rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Mortgagee and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(d) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Mortgagee which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; provided, however, that so long as Mortgagee contests such execution, attachment or process in good faith, the Mortgagee's lien is not impaired or affected, and the Mortgaged Estate or the relevant part thereof is not sold pursuant to such process or lien, default shall not be deemed to exist; or

(e) There has occurred a breach of or default under any term, covenant, agreement, condition, provision, representation or warranty contained in this Mortgage, the Note, the Commitment Warranties or any of the other Loan Documents or any part thereof, whether or not referred to in this Section 4.01; or

(f) Except for leases approved by Mortgagee as provided herein, Mortgagee shall sell, convey, assign, mortgage, encumber, pledge, grant any security interest in, or transfer possessory rights in, or contract to sell, convey, assign, mortgage, pledge, encumber, grant any security interest in, or transfer possessory rights in the Mortgaged Estate or any portion thereof, or any interest in the Mortgaged Estate, without Mortgagee's prior written consent, whether voluntarily, involuntarily or by operation of law, or in the event any equity interest in and to any entity or person constituting an owner of all or any portion of the Mortgaged Estate should be conveyed, assigned or otherwise transferred,

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persons at any time claiming the same or any interest therein.

(b) Mortgagee will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee, except where replaced with Personal Property of equal or greater value.

(c) The Personal Property is not bought for and shall not be used for personal, family or household purposes, but is bought for and shall be bought and used solely for the purpose of carrying on Mortgagee's business.

(d) The Personal Property will be kept on or at the Property, and Mortgagee will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except those items or portions of Personal Property that are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagee with other Personal Property of equal or greater value than the replaced Personal Property had when new, and except Personal Property temporarily stored elsewhere to facilitate refurbishing or repair of same.

(e) Mortgagee maintains a place of business in the State of Alabama, and Mortgagee will immediately notify Mortgagee in writing of any change in its current place of business as set forth in the beginning of this Mortgage.

(f) At the request of Mortgagee, Mortgagee will execute one or more financing statements and renewals and amendments thereof pursuant to the Uniform Commercial Code of Alabama in form satisfactory to Mortgagee and will pay the cost of filing the same in all public offices where filing is deemed by Mortgagee to be necessary or desirable.

(g) All covenants and obligations of Mortgagee contained herein relating to the Mortgaged Estate shall be deemed to apply to the Personal Property, whether or not expressly referred to herein.

(h) This Mortgage constitutes a "Security Agreement," as that term is used in the Uniform Commercial Code of Alabama.

ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Any of the following events shall be deemed an Event of Default hereunder:

(a) A failure to pay when and as the same shall become due and payable, any regularly scheduled payment of interest or principal; or a failure to pay for more than ten (10) days after Lender's written notice other amounts required to be paid hereunder or on any Note or under any of the Security Instruments other than regularly scheduled payments of principal and interest;

(b) Mortgagee, or any owner of all or any portion of the Mortgaged Estate, shall file a voluntary petition in bankruptcy or shall give notice to any governmental body of insolvency or pending insolvency or suspension of operations, or shall file any petition or answer seeking or acquiescing

without the prior written consent of Mortgagee, whether voluntarily, involuntarily or by operation of law, any such unapproved conveyance, assignment, mortgage, pledge, encumbrance, sale, transfer or grant of any security interest in the Mortgaged Estate or in the Mortgagee shall constitute a default under the terms of this Mortgage, and Mortgagee may then, or at any time thereafter, declare the Secured Obligations immediately due and payable. Subject to exceptions and limitations set forth below, this provision shall apply to each and every such sale, transfer, conveyance or encumbrance, regardless of whether or not Mortgagee has consented or waived its rights (which it shall not be deemed to have done unless in writing), whether by action or non-action, in connection with any previous sale, transfer, conveyance or encumbrance, whether one or more; or

(g) Failure of Mortgagee to satisfy any condition contained in any letter of credit securing any obligations of Mortgagee under the Loan Documents.

4.02 Acceleration Upon Default, Additional Remedies. Upon the occurrence of any Event of Default which remains uncured at the end of any applicable cure period after required notice, if any, provided hereunder for cure, Mortgagee may declare all indebtedness secured hereby to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter, Mortgagee may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate, or any part thereof, in its own name or in the name of Mortgagee, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof, and, with or without taking possession of the Mortgaged Estate, sue for or otherwise collect the Rents, issues and profits thereof, including those Rents, issues and profits past due and unpaid, and apply the same, less costs and expenses of operation and collection including attorneys' fees, upon the Secured Obligations, all in such order as Mortgagee may determine. Entering upon and taking possession of the Mortgaged Estate, collecting such Rents, issues and profits and applying them as aforesaid shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default, and notwithstanding the continuance in possession of the Mortgaged Estate or the collection, receipt and application of Rents, issues and profits, Mortgagee shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof or cause the Mortgagee to foreclose this Mortgage by power of sale;

(c) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code of Alabama, including but not limited to:

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other persons might take advantage despite this Section 5.02, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section 5.02. Mortgagor expressly waives and relinquishes any and all rights and remedies which Mortgagor may have or be able to assert by reason of the laws of the State of Alabama pertaining to the rights and remedies of sureties.

5.03 Limitation of Interest. It is the intent of Mortgagor and Mortgagee in the execution of this Mortgage, the Note, other Loan Documents and all other instruments securing the Note to contract in strict compliance with the usury laws of the State of North Carolina and the applicable laws of any other state governing the loan evidenced by the Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of North Carolina and the applicable laws of any other state governing the loan evidenced by the Note. Mortgagor or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the existing interest that may be lawfully charged under the laws of the State of North Carolina and the applicable laws of any other state, and the provisions of this Section 5.03 shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws of the State of North Carolina and the applicable laws of any other state, all such sums deemed to constitute interest in excess of the legal rate shall be immediately applied to reduce the outstanding principal balance of the Note or, at Mortgagee's option, returned to Mortgagor upon such determination.

5.04 Notices. Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, such notice, demand, request or other communication shall be in writing and shall be effective if the same is delivered by personal service, overnight delivery service (e.g., Federal Express) or mailed by registered or certified United States mail, postage prepaid, return receipt requested, addressed to the address set forth at the beginning of this Mortgage. Two (2) business days after the date of depositing any such notice in the United States mail shall be deemed the date of receipt, and failure or refusal of the addressee to accept such mail shall not affect the validity of such notice. Either party may at any time change its address for such notices by delivering or mailing to the other parties hereto, as aforesaid, a notice of such change.

5.05 Captions. The cover page, table of contents and captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.06 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Mortgaged Estate, the unsecured or partially secured portion of the

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debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the debt; and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

5.07 Subrogation. To the extent that proceeds of the Note are used to pay any outstanding lien, charge or prior encumbrance against the Mortgaged Estate, such proceeds have been or will be advanced by Mortgagee at Mortgagor's request and Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

5.08 No Merger. If both the lessor's and lessee's estates under any lease or any portion thereof which constitutes a part of the Mortgaged Estate shall at any time become vested in one owner, this Mortgage and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Mortgagee shall continue to have and enjoy all of the rights and privileges of Mortgagee as to the separate estates.

5.09 Subordination, Non-Disturbance, and Afterpayment. All Leases with respect to the Mortgaged Estate shall be subordinate to Mortgagee's security interest in and lien upon the Mortgaged Estate, provided that Mortgagee agrees that should it foreclose on the Note secured hereby it shall allow each lessee to continue quiet enjoyment of the leased premises provided that said lessee is not then in default under the lease and such lessee has executed such subordination, non-disturbance and afterpayment agreement as Mortgagee should require, under which said lessee shall promise to recognize Mortgagee as landlord and shall accord Mortgagee all of the landlord's rights under the lease should Mortgagee assert its rights under this Mortgage or the Assignment.

5.10. Future Advances. This Mortgage shall secure a maximum aggregate principal amount of advances that may be outstanding hereunder of Five Million Dollars (\$5,000,000.00) at any one. As long as Mortgagor is not in default under the terms of the Secured Indebtedness or Loan Documents, or any one of them, Mortgagee is obligated and otherwise contractually bound to provide advances to Mortgagor in amounts up to Five Million Dollars (\$5,000,000.00) as provided in the Secured Indebtedness or Loan Documents or related documents, provided such advances shall be made on or before ten (10) years from the date hereof. Any repayments of principal will reduce the amount of advances counted against the limit of Five Million Dollars (\$5,000,000.00). Without limiting any other provision hereof, debts, obligations and other Secured Indebtedness or Loan Documents secured hereby shall include: (a) all existing indebtedness of Mortgagor to Mortgagee evidenced by any of the documents described above; (b) all future advances that may be subsequently made by Mortgagee as provided in any of the documents referenced above; and (c) all other indebtedness, if any, of Mortgagor to Mortgagee now due or to become due or hereafter contracted pursuant to any of said documents. This Mortgage is given to secure future obligations which may be incurred hereunder including, without limitation, periodic advances and payments on a revolving basis which will be made from time to time, it being understood by Mortgagor and Mortgagee that all future advances and repayments on a revolving basis will be secured to the same extent as the original

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(1) Either personally or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property or any part thereof. In the event Mortgages demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to Mortgages;

(2) Without notice to or demand upon Mortgagor, make such payments and do such acts as Mortgages may deem necessary to protect its security interest in the Personal Property, including without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority to pay all expenses incurred in connection therewith;

(3) Require Mortgagor to assemble the Personal Property, or any portion thereof, at a place designated by Mortgages and reasonably convenient to both parties, and promptly to deliver such Personal Property to Mortgages or to an agent or representative designated by it. Mortgages and its agents and representatives shall have the right to enter upon any or all of Mortgagor's premises and Property to exercise Mortgages's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Mortgages may determine. Mortgages may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgages shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof.

4.03 Cure Periods. Provisions herein to the contrary notwithstanding, Mortgagor shall not be deemed to be in default and Mortgages agrees not to accelerate the balance of the Secured Obligations for failure of Mortgagor to perform any nonmonetary obligation due Mortgages under any of the Loan Documents, provided that Mortgagor cures said default within thirty (30) days after receipt of written notice from Mortgages except in the event of an emergency which by its nature would require a shorter cure period; provided, however, Mortgagor shall not have the right to cure any such nonmonetary obligation due Mortgages under the Loan Documents, and Mortgages may elect to immediately accelerate the balance of the Secured Obligations, in the event Mortgages determines that (i) the failure of Mortgagor to perform such nonmonetary obligations involves fraud or misrepresentation on the part of Mortgagor, or waste or the threat of waste to the Mortgaged Estate or (ii) the Mortgaged Estate, or any part or the value

thereof, is being substantially or materially impaired; and provided further, however, in no event shall any cure rights set forth above preclude or delay Mortgages in the exercise of any rights or remedies or from incurring any expenses as Mortgages shall deem necessary in order to prevent a substantial or material impairment of the Mortgaged Estate or the value thereof.

4.04 Foreclosure by Power of Sale. Should Mortgages elect to foreclose by exercise of the power of sale herein contained, Mortgages shall be authorized, at its option, whether or not possession of the Mortgaged Estate is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Estate (or any portion thereof to be sold) is located, to sell the Mortgaged Estate (or such portion thereof as Mortgages may from time to time elect to sell) in front of the courthouse door of any county in which the Mortgaged Estate (or any portion thereof to be sold) is located, at public outcry, to the highest bidder for cash. Mortgages, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Estate, or any portion thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any portion or all of the Mortgaged Estate, real, personal or mixed, may be offered for sale in parcels or on a mass for one total price, the proceeds of any such sale on a mass to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds. Mortgages hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgages, in the exercise of the power of sale herein given, elects to sell the Mortgaged Estate in portions or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all the Mortgaged Estate not previously sold shall have been sold or all the Secured Obligations shall have been paid in full.

Provided, however, if Mortgagor shall pay and perform all of its obligations under the Loan Documents (including, without limitation, paying the full amount due under the Note in accordance with its terms, together with interest thereon, and any renewals or extensions thereof in whole or in part, as well as any advances made by Mortgages for the protection of the Mortgaged Estate, and paying all the other Secured Obligations in full), and shall comply with all its covenants, terms and conditions contained in this Mortgage, then this conveyance shall be null and void and shall be cancelled of record at the request and at the cost of Mortgagor.

4.05 Appointment of Receiver. If an event of default described in Section 4.01 of this Mortgage shall have occurred and be continuing, Mortgages as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Estate or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate, and Mortgages hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Mortgages in case of entry, as provided in Section 4.03(a), and shall continue as such and exercise all such powers

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until the date of confirmation of sale of the Mortgaged Estate, unless such receivership is sooner terminated.

4.06 Remedies Not Exclusive. Mortgages shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any Loan Document or other agreement or any laws now or hereafter in force, notwithstanding that some of the indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, mortgage, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Mortgages's right to realize upon or enforce any other security now or hereafter held by Mortgages, it being agreed that Mortgages shall be entitled to enforce this Mortgage and any other security now or hereafter held by Mortgages in such order and manner as Mortgages may in its absolute discretion determine. No remedy herein conferred upon or reserved to Mortgages is intended to be exclusive of any other remedy herein or by law provided or to preclude or to limit any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Mortgages which Mortgages may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgages and Mortgages may pursue inconsistent remedies.

ARTICLE V MISCELLANEOUS

5.01 GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ALABAMA. IN THE EVENT THAT ANY PROVISION OR CLAUSE OF ANY OF THE LOAN DOCUMENTS CONFLICTS WITH APPLICABLE LAWS, SUCH CONFLICTS SHALL NOT AFFECT OTHER PROVISIONS OF SUCH LOAN DOCUMENTS WHICH CAN BE GIVEN EFFECT WITHOUT THE CONFLICTING PROVISION, AND TO THIS END THE PROVISIONS OF THE LOAN DOCUMENTS ARE DECLARED TO BE SEVERABLE. THIS MORTGAGE CANNOT BE WAIVED, CHANGED, DISCHARGED OR TERMINATED ORALLY, BUT ONLY BY AN INSTRUMENT IN WRITING SIGNED BY THE PARTY AGAINST WHOM ENFORCEMENT OF ANY WAIVER, CHANGE, DISCHARGE OR TERMINATION IS SOUGHT.

5.02 Mortgagor's Waiver of Rights. Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Estate and (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or creating or extending a period of redemption from any sale made in collecting said debt. To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension or redemption, and Mortgagor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Estate, to the extent permitted by law, hereby waives and releases all rights of homestead, redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the whole of the Secured Obligations and marshalling in the event of foreclosure of the liens hereby created. If any law referred to in this Section 5.02 and now in force, of which Mortgagor, Mortgagor's successors and assigns or

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obligations hereunder. Five Million Dollars (\$5,000,000.00), the maximum amount to be advanced hereunder, including present as well as future advances, shall not exceed the principal amount of Five Million Dollars (\$5,000,000.00) (excluding such advances as may be made by the Mortgagee under the terms of the documents referenced above for the protection of collateral, payment of taxes and impositions, attorneys' fees and costs and other sums which Mortgagor is required by the terms of the said documents to repay to Mortgagee). Furthermore, the amount of any readvance under the documents described above on a revolving basis shall not be included in such computation; provided, however, that at no time shall the total indebtedness secured hereby at any one time exceed the maximum principal sum of Five Million Dollars and No/100 Dollars (\$5,000,000.00), together with interest thereon, attorneys' fees and costs and other sums for the protection of collateral, payment of impositions and taxes and similar sums advanced by Mortgagee which Mortgagor is required to reimburse under the provisions of this Mortgage. All such advances shall be made prior to a date constituting the tenth (10th) anniversary hereof and shall be considered "obligatory" under applicable law.

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has caused this Mortgage to be executed by all of its duly authorized _____, under seal, as of the day and year first above written.

KEN LOKEY HOMES, INC.

ATTEST:

Kathy Leir
Not Secretary

by: Kent Fitzgerald President

[CORPORATE SEAL]

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STATE OF ~~ALABAMA~~ TEXAS

COUNTY OF ~~SHELBY~~ HARRIS

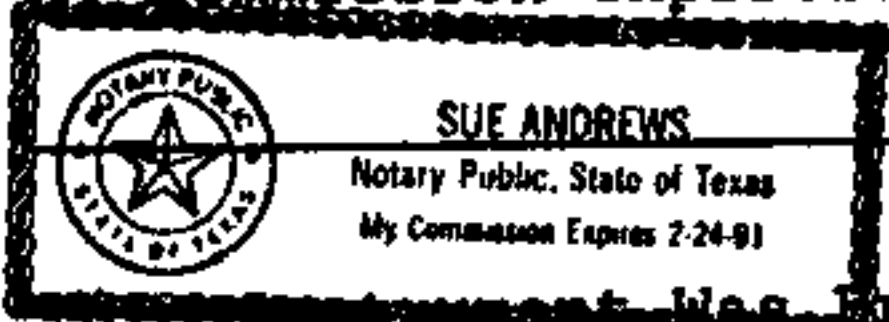
I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Burt Witzels, whose name as President of KEN LOKEY HOMES, INC., a Texas corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed 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 7th day of MARCH, 1989.

Sue Andrews
NOTARY PUBLIC

[NOTARIAL SEAL]

My Commission expires:



~~This instrument was prepared by:~~

George F. Maynard
Maynard, Cooper, Fierson & Gale, P.C.
Twelfth Floor Watts Building
Birmingham, Alabama 35203

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EXHIBIT A

Lot 90, according to the map and survey of Stratford Place, Phase II, Final Plat, as recorded in Map Book 12 page 91, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Mineral and mining rights excepted.

1. Dead Tax	\$	<u> </u>
2. Mtg. Tax		<u>115.20</u>
3. Recording Fee		<u>35.00</u>
4. Indexing Fee		<u>10.00</u>
TOTAL		<u>151.20</u>

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

89 MAR 13 PM 3:54

Thomas A. Swann, Jr.
JUDGE OF PROBATE

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