AMSOUTH

STATE OF ALABAMA)

Shelby COUNTY)

CORRECTIVE

Mortgage Construction Loans

FUTURE ADVANCE MORTGAGE

01/31/2000-03014
10:39 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 MMS 19.50

This mortgage hereinafter called the "mortgage") is made and entered into this 27th day of October, 1999 by and between Second Union Investors, L.L.C. (hereinafter called the "Mortgagor," whether one or more), whose address is 2024 Woodsorrel Drive, Birmingham, Alabama 35244 and AmSouth Bank (hereinafter called the "Mortgagee"), whose address is 1900 5th Avenue North, Birmingham, Alabama 35203 Attention: Residential Construction Lending

Whereas, the Mortgagor is or hereinafter shall be justly indebted to the Mortgagee in the principal sum of One Hundred Sixty-Four Thousand and No/100ths dollars ($ 164,000.00) as evidenced by a promissory note (the "Note") of even date herewith, which note bears interest as provided therein and is payable as set forth therein, and

WHEREAS, this is a FUTURE ADVANCE MORTGAGE and the Note evidences a construction loan (the "Loan"), the proceeds of which are to be advanced by the Mortgagee to the Mortgagor pursuant to a construction loan agreement of even date herewith (the "Construction Loan Agreement"), and, in addition to the indebtedness evidenced by the Note, this mortgage shall also secure all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee, whether now existing or hereafter arising, and

WHEREAS, the Mortgagor, in order to secure the Note, and in order to induce the Mortgagee to extend credit to the Mortgagor under the Construction Loan Agreement on the strength of the security provided by this mortgage and in order to convey the property described herein to the Mortgagee as hereinafter set forth, has agreed to execute and deliver this mortgage to the Mortgagee.

NOW, THEREFORE, in consideration of the premises, the Mortgagor hereby agrees with the Mortgagee as follows

I. DEBT AND GRANTING CLAUSES

SECTION 1.01. Debt. This Mortgage is given to secure and shall secure the payment of the following (hereinafter collectively referred to as the "Debt")

(a) the payment of the indebtedness evidenced by the Note, and interest thereon and any and every extension, renewal and modification thereof,

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

(c) the compliance with all the stipulations, covenants, agreements, representations, warranties and conditions contained in this mortgage.

SECTION 1.02. Granting Clauses. As security for the payment of the Debt the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses (a) through (e), both inclusive, and does grant to the Mortgagee a security interest in said property and interests in property

(a) The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements")

(b) All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements

(c) (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate, the improvements or any of the Personal Property described below with respect to which the Mortgagor is the lessor, including any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate or the Improvements, all such leases, subleases, agreements and tenancies heretofore mentioned being hereinafter collectively referred to as the "Leases"

(ii) any and all guaranties of the Lessee's and any sublessee's performance under any of the Leases

(iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, (revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate or any of the Improvements, or any part thereof, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate or any of the Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents", and

(iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and or to collect any such award, dividend or other payment

(d) All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the mortgagor for the purpose of, or used or useful in connection with, the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.

(e) Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to mortgagee, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

(All of the property and interests in property described in the foregoing Granting Clauses (a) through (e), both inclusive, of this Section 1.02 are herein sometimes collectively called the "Property". The personal property described in Granting Clause (d) of this Section 1.02 and all other personal property covered by this mortgage is herein sometimes collectively called the "Personal Property")

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other encumbrances described on **Exhibit B** hereto ("Permitted Encumbrances")

To have and to hold the Property unto the Mortgagee, its successors and assigns forever

II. REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Mortgagee that:

SECTION 2.01. Warranties of Title. (a) The Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Personal Property, Improvements and other Property and has a good right to sell and convey the Property as aforesaid; (b) the Property is free of all taxes, assessments, liens, charges, security interests, assignments and encumbrances, [illegible] liens (other than permitted encumbrances), and (c) the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons

SECTION 2.02. Rents and Leases. (a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein, (b) the Leases are not in default (on the part of the Mortgagor or the lessee), (c) the Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, (d) no Rents or deposits have been collected in advance or waived, released, set-off, discharged or compromised, and (e) no lease is in existence on the date of this mortgage except as heretofore disclosed in writing to the Mortgagee.

III. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Mortgagor covenants and agrees with the Mortgagee as follows

SECTION 3.01. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in and assignments of the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of the mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

SECTION 3.02. Liens and Insurance. For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (a) pay all taxes, assessments, and other liens taking priority over this mortgage, and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same. (b) keep the Property continuously insured in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by flood (if the Property is located in flood prone area), fire, windstorm, vandalism and malicious mischief and [illegible] [illegible] fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to the Mortgagee) to the Mortgagee, as its interest may appear, subject to the rights of the holders of any prior mortgages. Such insurance shall be in an amount at least equal to the full insurable value of the Personal Property and improvements unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefore, shall be delivered to, and held by the Mortgagee until the Debt is paid in full. The original insurance policy and all replacements therefor must provide that they may not be canceled without the insurer's giving at least fifteen days prior written notice [illegible] to the Mortgagee

SECTION 3.03. Assignment of Insurance Policies, etc. The Mortgagor hereby assigns and pledges to the Mortgagee, as further security for the payment of the Debt, [illegible] insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation [illegible] Property and improvements [illegible]) together with all right, title and interest of the Mortgagor in and to each and every such policy, including, but not limited to, all the Mortgagor's right, title and interest in and to any premium paid on each such policy, [illegible] If the Mortgagor fails to keep the Property insured as specified above, then, at the election of the Mortgagee and without notice to any person, the Mortgagee may [illegible] Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit. The proceeds from such insurance [illegible] if collected, shall be credited against the Debt, or, at the election of the Mortgagee, such proceeds may be used to purchase additional Personal Property [illegible] damaged or destroyed and to repair or reconstruct the Improvements. All amounts spent by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand upon, or notice to, the Mortgagor, and shall be secured by this mortgage and shall bear interest at the rate of interest set forth [illegible] interest as shall then be the maximum amount permitted by law, from the date of payment by the Mortgagee until paid by the Mortgagor.

SECTION 3.04. Assignment of Condemnation Proceeds, etc. As further security for the Debt and the full and complete performance of each and every of the covenants, agreements [illegible] Mortgagor contained herein, and to the extent of the full amount of the Debt secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee [illegible] any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, [illegible] Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in the value of the Property, [illegible] subject to the rights of the holders of any prior mortgages, all such damages, condemnation proceeds and consideration shall be paid directly to the Mortgagee [illegible] payment of all costs and expenses (including reasonable attorneys fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Debt [illegible] amount and whether or not then due, or hold such balance as a cash collateral reserve against the Debt, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor [illegible] such application, holding in reserve or release shall cure or waive any default of the Mortgagor

SECTION 3.05. Waste, Inspection. The Mortgagor agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted. The Mortgagee may, at the Mortgagee's discretion, inspect the Property or have the Property inspected by Mortgagee's servants, employees, agents or independent contractors, at any time, and the Mortgagor shall pay all costs incurred by the Mortgagee in [illegible]

SECTION 3.06. Rents and Leases. The Mortgagor [illegible] and agrees that the Mortgagor shall: (a) comply with all of its obligations under the terms of the Leases and give prompt notice to the Mortgagee of any default of the Mortgagor or any lessee [illegible] enforce the performance of the obligations to be performed by any lessee under the terms of the Leases; (c) appear in and defend any action or proceeding related to the Leases (upon request by the Mortgagee, in the name and on behalf of the Mortgagee but at the expense of the Mortgagor) and pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the Mortgagee may appear; (d) not receive or collect any Rents for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents; (e) not waive, compromise or in any manner release or discharge any lessee of any obligations under any Lease; (f) not cancel, terminate or amend any Lease, without the prior written consent of the Mortgagee; (g) not renew or otherwise extend the term of any Lease; (h) promptly upon the execution by the Mortgagor of any Lease, furnish the Mortgagee with a copy of such Lease, and execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require, and (i) not enter into any Lease without the prior written consent of the Mortgagee, which consent may be withheld for any reason whatsoever in the sole discretion of the Mortgagee; and nothing contained in this mortgage shall be construed as consent by the mortgagee for the Mortgagor to enter into or execute any Lease.

SECTION 3.07. Sale, Lease or Transfer, etc. Notwithstanding any other provisions of this mortgage or the Note, if the Real estate or the Improvements, or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagee's prior written consent, or if the Real Estate or the Improvements, or any part thereof, or any interest therein, becomes subject to any additional lien, mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagee's prior written consent, the mortgagee may, at its sole option, (a) declare the Debt immediately due and payable in full, or (b) require the payment, after the date of such sale, lease conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Debt or to protect the security of this mortgage.

SECTION 3.08. Hazardous Materials. (a) As used in this mortgage, the term "Hazardous Substances" shall mean and include, without limitation, any asbestos, urea formaldehyde foam insulation, flammable materials, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in any local, state or federal law, rule or regulation, whether now or hereafter in effect and as may be amended from time to time, pertaining to environmental regulations, contamination, clean-up or disclosures, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, and the rules and regulations of the Occupational Safety and Health Administration pertaining to occupational exposure to asbestos. The Mortgagor represents, warrants and represents and shall be deemed to continually covenant, warrant and represent during the term of this mortgage that, except as has been heretofore disclosed in writing to the Mortgagee with specific reference to this paragraph: (a) there are not now and shall not in the future be any Hazardous Substances on or under the Property and no Hazardous Substances have been or will be stored upon or utilized in operations on the Real Estate or utilized in the construction of the Improvements; (b) there are not underground storage tanks, whether in use or not in use, located in, on or under any part of the Real Estate; (c) there are no pending claims or threats of claims by private or governmental or administrative authorities relating to Hazardous Substances, environmental impairment, conditions, or regulatory requirements with respect to the Property; (d) the Property and its use fully complies with all applicable building and zoning codes and other land use regulations, any applicable environmental laws or regulations, and any other applicable laws or regulations; (e) no part of the Real Estate has been previously filled; and (f) the Mortgagor shall give immediate oral and written notice to the Mortgagee of its receipt of any notice of a violation of any law, rule or regulation covered by this paragraph, or of any notice of any other claim relating to Hazardous Substances or the environmental condition of the Property, or of the Mortgagor's discovery of any matter which would make the representations, warranties and/or covenants herein inaccurate or misleading in any respect.

(b) The Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from all loss, cost, damage, claim and expense incurred by the Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in the preceding paragraph (a), (ii) the Mortgagor's failure to perform any obligations of the preceding paragraph (a), (iii) the Mortgagor's failure, or the failure of the Property, to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions or Hazardous Substances on, under or affecting the Property. The indemnification shall survive the closing of the Loan, payment of the Debt, the exercise of any right or remedy under this Mortgage or [illegible] document evidencing or securing the Loan, any subsequent sale or transfer of all or any part of the Property, and all similar or related events or occurrences.

SECTION 3.09. Compliance with Laws. The Mortgagor shall comply with and shall cause the Property (including, without limitation, the improvements) to comply with any and all applicable federal, state or local laws, rules and regulations, including, without limitation, the federal Americans With Disabilities Act. If the Mortgagor or the Property fails to so comply, then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, take such action as the Mortgagee may deem necessary or desirable to effect such compliance. All amounts paid by the Mortgagee to effect such compliance shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand upon or notice to the Mortgagor, and shall be secured by this mortgage, and shall bear interest at the rate of interest set forth in the Note, or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by the Mortgagee until paid by the Mortgagor.

IV. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 4.01. Defeasance and Default. This mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this Mortgage, [illegible] without limitation, the debt evidenced by the Note, and interest thereon, and all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, due or to become due, now existing or hereafter incurred, contracted or arising, and reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of liens or insurance premiums, [illegible] and fulfills all of its other obligations under this mortgage, this conveyance shall be null and void. But the Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) the Mortgagor shall fail to pay to the Mortgagee when due the principal or interest on the Debt evidenced by the Note or any other sum due under the Construction Loan Agreement or any of the other Security Documents (as defined in the Construction Loan Agreement), or any other Debt secured hereby, or (b) if in the judgment of the Mortgagee any of the proceeds of the Loan are being, or at any time have been, diverted to a purpose other than the payment or discharge of expenses related to the Project as defined in the Construction Loan Agreement, which expenses have been approved by the Mortgagee, or (c) if the Mortgagor fails to comply with any of the provisions of this mortgage or of the Note, the Construction Loan Agreement or the other Security Documents, or (d) if any representation or warranty contained in this mortgage, the Construction Loan Agreement or any of the other Security Documents or any report, certificate or other statement delivered to Mortgagee in connection with any of the same shall be untrue in any material respect as of the time made, or (e) if the Mortgagor conveys or further encumbers all or any part of the Collateral (as defined in the Construction Loan Agreement) or (f) if any lien, statement of lien or suit to enforce a lien is filed against any of the Collateral and the Mortgagor fails to have such lien satisfied or suit dismissed or [illegible] of the amount claimed thereby by a bond, letter of credit or other security satisfactory to the Mortgagee within ten days after the filing thereof, (g) if the Mortgagor at any time prior to completion of the Project abandons the Project, or ceases to work thereon for a period of more than ten consecutive calendar days, or fails diligently to prosecute the work on the Project [illegible] construction and development of the Project and the Improvements occurs, whether as the result of energy shortages, any governmental law, order, rule or regulation relating to environmental [illegible] sewage treatment, zoning, energy conservation or other matter, lack of utilities (including but not limited to gas, electricity, water and sewage treatment), or other cause [illegible] to the Mortgagee that, upon completion of the Project, energy and utilities will not be available in sufficient quantities to permit the operation of the Project, or (i) if the Mortgagor or any [illegible] surety or guarantor of the Note or any of the other Debt (hereinafter collectively called the "Obligors" and singularly an "Obligor") fails to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement or [illegible] plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors, or (j) if any Obligor dies, if an individual, or dissolves, if a corporation or partnership, [illegible] withdraws, or if a corporation, any principal officer thereof becomes insolvent, dies or ceases to be employed by such Obligor, or (k) the passage of any law [illegible] by reason of the enforcement of any prior lien thereon, or (l) any law is passed imposing, or authorizing the imposition of, any specific tax upon this mortgage or the Debt, or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this mortgage, or (m) any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction, or (n) if any other event of default occurs under the Construction Loan Agreement, the Note or any of the other Security Documents, or (o) if the Mortgagee at any time in good faith deems itself insecure for any reason with respect to the Loan or the Collateral.

SECTION 4.02. Rights and Remedies of Mortgagee Upon Default.

(a) **Acceleration of Debt.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may, at its option, declare all [illegible] or any part of the Debt immediately due and payable, whereupon all such Debt shall forthwith become due and payable, without presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under [illegible] from any of the other Security Documents and applicable law. The Mortgagee may also exercise any and all rights the mortgagee may have to collect [illegible] Mortgagee of any of its rights under this mortgage, the Note, any of the other Security Documents and applicable law.

(b) **Operation of Property by Mortgagee.** Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights [illegible] Mortgagee [illegible] corporation designated by the Mortgagee [illegible] enter upon and take possession of any [illegible] thereof, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor [illegible] collect, receive and receipt of all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power [illegible] Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, in lieu of or in addition to exercising the [illegible] hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property; to sue the Mortgagor for damages on account of or arising [illegible] breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, [illegible] bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of any Event of Default, or at any time thereafter, this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one 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 Property is located (or in each county in which any portion thereof is located if the Property is located in more than one county), to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of the courthouse door of the county in which the Property to be sold (or any portion thereof if the Property to be sold is located in more than one county) is located, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this mortgage and may purchase the Property, or any part 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 part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine or marshaling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts 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 of the Property not previously sold shall have been sold or all the Debt secured hereby shall have been paid in full.

(e) **Personal Property and Fixtures.** On the happening of any Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "PP&F Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the PP&F Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the PP&F Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the PP&F Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the PP&F Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby, and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the PP&F Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the mortgagor shall assemble any other disposition of the PP&F Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the PP&F Collateral or to the exercise of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Section 5.14 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Debt in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Rents and Leases.** Upon the occurrence of an Event of Default or at any time thereafter

(i) The Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate the license granted to the Mortgagor in Granting Clause (c) (iii) hereof to collect the Rents and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy the rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Debt in such order and amounts as the Mortgagee may choose (or hold the same in a reserve as security for the Debt);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by a court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and payment of the Debt in such order and amounts as the Mortgagee may choose (or hold the same in reserve as security for the Debt).

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(d) Application of Proceeds. All payments received by the Mortgagee as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this mortgage, including reasonable attorneys' fees as provided herein and in the Note, the Construction Loan Agreement and the other Security Documents, (ii) to the payment in full of any of the Debt that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the note, the Construction Loan Agreement and the other Security Documents, (iii) to a cash collateral reserve fund to be held by the mortgagee in an amount equal to, and as security for, any of the Debt that is not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law after deducting therefrom the cost of ascertaining their identity.

(e) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt secured by this mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Debt secured by this mortgage, but as to such unmatured part of the Debt this mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Debt whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting any power of [illegible] to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

(f) Waiver of Appraisement Laws. The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement [illegible] of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption [illegible] made in collecting the Debt (commonly known as stay laws and redemption laws).

(g) [illegible]. In case of any sale of the Property as authorized by the Section 4.02, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale or as to any other fact or thing shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

V. MISCELLANEOUS

SECTION 5.01. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Debt, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any Lien on the Property, unless this mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction (including without limitation any costs of title examination, notice of foreclosure and appraisals). The full amount of such costs incurred by the Mortgagee shall be a part of the Debt and shall be secured by this mortgage.

SECTION 5.02. No Obligations with Respect to Leases. The Mortgagee shall not by virtue of this mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases, the Improvements, the Personal Property, the Real Estate or any of the other Property (unless expressly assumed by the Mortgagee under a separate agreement in writing), and the mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Real Estate, the Improvements, the Personal Property, or any of the other Property.

SECTION 5.03. Construction of Mortgage. This mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

SECTION 5.04. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and their heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of the Mortgagee's successors and assigns.

SECTION 5.05. Waiver and Election. The exercise by the Mortgagee of any option given under the terms of this mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this mortgage, either on any matured portion of the Debt or for the whole of the Debt, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this mortgage and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this mortgage or any of the Security Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 5.06. Landlord-Tenant Relationship. Any sale of the Property under this mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser the Mortgagor.

SECTION 5.07. Enforceability. If any provision of this mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

SECTION 5.08. Application of Payments. If the lien, assignment or security interest created by this mortgage is invalid or unenforceable as to any part of the Debt or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the 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 procedures, 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 not fully secured by said lien, assignment or security interest created hereby.

SECTION 5.09. Other Mortgages Encumbering the Real Estate. The Mortgagor hereby authorizes the holder of any other mortgage encumbering the Real Estate or the Improvements to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of Debt secured by such mortgage, (b) the amount of such Debt that is unpaid, (c) whether such Debt is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the Debt secured thereby; and (e) any other information regarding such mortgage or the Debt secured thereby that the Mortgagee may request from time to time.

The Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Real Estate or the Improvements, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default without notice to the Mortgagor. The Mortgagor agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Debt secured by the Mortgage.

SECTION 5.10. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

SECTION 5.11. Advances by the Mortgagee. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair, the performance of the mortgagor's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, the Mortgagee may (but shall not be required to) make advances to perform the same, and [illegible] enter the Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Debt and shall be secured hereby. The making of any such advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid.

SECTION 5.12. Release or Extension by the Mortgagee. The Mortgagee, without notice to the mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Debt and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Debt or to waive the prompt and full performance of any term, condition or covenant of the Note, the Construction Loan Agreement, any of the Security Documents, this mortgage or any other instrument evidencing or securing the Debt.

SECTION 5.13. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Debt shall be deemed acceptance on account only, and the failure of the mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Debt has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this mortgage in case of the occurrence of an Event of Default.

SECTION 5.14. Addresses for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and shall be effective when mailed, sent or delivered to the applicable party at its address indicated on the first page of this mortgage or at such other address as shall be designated by such part in a written notice to the other parties thereto.

SECTION 5.15. Titles. All section, paragraph, subparagraph or other titles contained in this mortgage are for reference purposes only, and this mortgage shall be construed without reference to said titles.

SECTION 5.16. Satisfaction of Mortgage. The Mortgagor agrees to pay all costs and expenses associated with the release or satisfaction of this mortgage.

IN WITNESS WHEREOF, the undersigned Ben L. Chenualt

has executed this instrument (has caused this instrument) to be executed by its duly authorized managing member on the date first written above.

[Corporate or Partnership Signature]

Second Union Investors, L.L.C.

By [signature]
Ben L. Chenault

Its Managing Member

ATTEST:

By: ______________________

Its ______________________

[Individual Signature]

____

____

____

____

STATE OF ALABAMA)

______________ COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that ______________ whose name 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/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this ______ day of ______________, ______

____
Notary Public

AFFIX SEAL

My Commission Expires: ______________

(Corporate)

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ben L. Chenault, whose name as managing member of Second Union Investors, L.L.C., a limited liability company [illegible] 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said ~~corporation~~ limited liability company.

Given under my hand and official seal this 6th day of December, 1999.

Dawn Lesso
Notary Public

AFFIX SEAL

My Commission Expires: 3/21/02

(Partnership)

STATE OF ALABAMA)

Jefferson COUNTY)

I, Joanne Blake, a Notary Public in and for said County in said State, hereby certify that Ben Chenault, whose name as general partner of Second Union Inv., a ______________ (general) (limited) partnership, 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/she, as such general partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 9 day of Dec 1999.

Joanne Blake
Notary Public

AFFIX SEAL

My Commission Expires: 11-18-00

This instrument prepared by:

COURTNEY MASON & ASSOCIATES
1904 INDIAN LAKE DRIVE
SUITE 100
BIRMINGHAM, ALABAMA 35244

Exhibit "A"

Lot 158, according to the Survey of Oaklyn Hills, Phase 1, as recorded in Map Book 24 page 50 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

This instrument is executed as required by the Articles of Organization and Operating Agreement of Second Union Investors, L.L.C., and these articles of organization and operating agreement have not been modified or amended.

This mortgage is being given to correct the mortgage form of that certain mortgage recorded in Instrument 1999-44769 in the Probate Office of Shelby County, Alabama.