

REAL ESTATE MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

Mortgagors (last name first):		Mortgagee:		
SUMMER PROPERTIES LLC		Oliver Harris Rogers and Ruth K. Rogers, as Trustees of the		
c/o William Bew White, III		Oliver Harris Rogers and Ruth K. Rogers Revocable Trust		
111 Hinds Street		46 Oliver Court		
Pelham, Alabama 35124		Mailing Address Signal Mountain, Tennessee 37377	Į.	
City State	Zip	City State	Zip C	
		This instrument was prepared by:	n •	
THE STATE OF ALABAMA		John E. Hagefstration, Jr.	· ·	
		Bradley Arant Rose & White LLP	į	
		2001 Park Place, Suite 1400		
SHELBY County		Birmingham, Alabama 35203-2736		

02/05/2001-03857

O8:18 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
004 MMB 221.00

KNOW ALL MEN BY THESE PRESENTS: That whereas

SUMMER PROPERTIES LLC, an Alabama limited liability company

has__ become justly indebted to OLIVER HARRIS ROGERS and RUTH K. ROGERS, as Trustees of the Oliver Harris Rogers and Ruth K. Rogers Revocable Trust dated September 4, 1998 with offices in Birmingham,

(together with its successors and assigns, hereinafter called "Mortgagee") in the sum of ONE HUNDRED THIRTY-TWO THOUSAND and No/100

Dollars (\$ 132,000.00) together with interest thereon, as evidenced by a promissory note or notes of even date herewith.

NOW, THEREFORE, in consideration of the indebtedness described above and other valuable consideration to the undersigned, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment and performance of the indebtedness described above, any extensions, renewals, modifications and increases thereof and substitutions therefor and all interest thereon, all sums advanced by Mortgagee pursuant to the terms of this mortgage, and all other indebtedness (including future loans and advances) now or hereafter owed to Mortgagee by any of the above-named or by any of the undersigned, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not (all of the foregoing being sometimes referred to collectively in this mortgage as the "secured indebtedness"), and to secure compliance with all the covenants and stipulations hereinafter contained, the undersigned

SUMMER PROPERTIES LLC

(whether one or more, hereinafter called "Mortgagors") do hereby grant, bargain, sell, convey, assign, grant a security interest in, transfer and warrant unto Mortgagee the following described real property situated in Shelby County, State of Alabama, viz:

All that parcel or tract of land lying and being or near the Town of Columbiana, in Shelby County, Alabama.

Commence at the NE corner of the SE ¼ of the NE ¼ of Section 26, Township 21 South, Range 1 West, and run South along the East line of said ¼ - ¼ Section a distance of 264.00 feet; thence turn an angle of 61 degrees 30 minutes to the right and run a distance of 269.00 feet; thence turn an angle of 25 degrees 00 minutes to the right and run a distance of 525.71 feet; thence turn an angle of 86 degrees 13 minutes 59 seconds to the left and run a distance of 21.35 feet to the point of beginning; thence continue in the same direction a distance of 152.98 feet; thence turn an angle of 1 degree 53 minutes 16 seconds to the left and run a distance of 519.60 feet; thence turn an angle of 88 degrees 41 minutes to the right and run a distance of 87.00 feet; thence turn an angle of 88 degrees 41 minutes to the Northeast right of way of the L & N Railroad; thence turn an angle of 69 degrees 23 minutes 25 seconds to the right and run a distance of 242.40 feet; thence turn an angle of 81 degrees 43 minutes 30 seconds to the left and run a distance of 186.36 feet; thence turn an angle of 109 degrees 59 minutes 00 seconds to the right and run a distance of 84.78 feet; thence turn an angle of 23 degrees 30 minutes to the left and run a distance of 106.18 feet to the point of beginning. Situated in the SE ¼ of the NE ¼ of Section 26, Township 21 South, Range 1 West, Shelby County, Alabama; being situated in Shelby County, Alabama.

This Mortgage is junior and subordinate to that certain first mortgage to First Commercial Bank recorded as Instrument #2001-03854, in said Probate Office (the "Prior Mortgage"). It is specifically agreed that in the event default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of the Prior Mortgage, Mortgagee shall have the right without notice to anyone, but shall not be obligated, to make good such default by paying whatever amounts may be due under the terms of the Prior Mortgage so as to put the same in good standing, and any and all payments so made shall be added to the obligations secured by this Mortgage and the obligations (including all such payments) shall be immediately due and payable, at the option of Mortgagee, and this Mortgage shall be subject to foreclosure in all respects as provided by law and by the provisions hereof.

together with all present and future leases and subleases thereof and of any part thereof, all rents, profits, royalties, and other income and revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in anywise appertaining thereto, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinklers, smoke, fire and intrusion detection devices, trees, shrubs and flowers, and other equipment and fixtures now or hereafter attached or appertaining to said premises, all of which shall be deemed to be real property and conveyed by this mortgage (all of the foregoing real property, equipment, and fixtures being sometimes hereinafter called the "mortgaged property");

And together with all building materials, household appliances, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagors, or any of them, located, whether permanently or temporarily, on the mortgaged property or on any other real property, which are or shall be purchased by Mortgagors, or any of them, for the purpose, or with the intention, of making improvements on the mortgaged property or to the premises located on said property. The personal property herein transferred includes, without limitation, all lumber, bricks, building stones, building blocks, sand, cement, steel, roofing materials, paint, doors, windows, storm doors, storm windows, glass, nails, wires and wiring, hardware, plumbing and plumbing fixtures, heating, ventilating and air conditioning equipment and

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appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, trees, shrubs and flowers, and in general all building materials, equipment, appliances and plants of every kind and character used or useful in connection with improvements to real property, provided, that to the extent the personal property described above consists of "household goods", as that term is defined in 12 C.F.R. Section 227.12(d), Mortgagee's security interest in those household goods is limited to a purchase money security interest; and provided further, that if the mortgaged property includes the principal dwelling of any Mortgagor who is an individual, and if the securing by this mortgage of any particular other or future indebtedness would give rise to a right of rescission under 15 U.S.C. Section 1635 or the regulations promulgated thereunder, such other or future indebtedness will be secured by this mortgage only if all required notices of the right of rescission were timely and properly given.

TO HAVE AND TO HOLD the same and every part thereof unto Mortgagee, its successors and assigns forever.

For the purpose of further securing the payment of all of the secured indebtedness Mortgagors represent, warrant, covenant and agree with Mortgagee, its successors and assigns, as follows:

- 1. That they are lawfully seized in fee and possessed of the mortgaged property except as otherwise expressly stated herein, they have a good right to convey the same as aforesaid, they will warrant and forever defend the title of Mortgagee to the mortgaged premises against the lawful claims of all persons whomsoever, and the mortgaged property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.
- 2. That they will pay when due all taxes, assessments, and other liens or mortgages, taking priority over this mortgage. If Mortgagors' interest in the mortgaged property or any part thereof is other than freehold estate, Mortgagors agree to pay all rents and perform all covenants due to be paid and performed under the lease or other agreement whereby such interest is created exactly when due, to maintain such lease or agreement in full force and effect in accordance with its terms, and not to attempt to amend or terminate the lease or agreement without Mortgagee's prior written consent. If the mortgaged property or any part thereof is a unit in a condominium or a planned unit development, Mortgagors shall pay and perform all of Mortgagors' obligations under the declaration or covenants creating or covering the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and all constituent documents.
- 3. That they will keep the buildings and other improvements now or hereafter located on the mortgaged property and all building materials, appliances, equipment, fixtures and fittings now or hereafter located on the mortgaged property and the other personal property described above continuously insured against loss or damage, including loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagee may specify from time to time, and including builder's risk coverage if this is a construction mortgage, with loss, if any, payable to Mortgagee under a standard mortgagee's clause providing at least 30 days notice to Mortgagee before cancellation or lapse of such insurance, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay the premiums therefor as the same become due. Mortgagors may provide such insurance through an existing policy or a policy or policies independently obtained and paid for by Mortgagors. Mortgagee may, for reasonable cause, refuse to accept any policy of insurance offered or obtained by Mortgagors. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damage to the mortgaged property from any cause whatever. If Mortgagors fail to keep said property insured as above specified, Mortgagee may insure said property for its insurable value or the unpaid balance of the secured indebtedness against loss by fire, wind and other hazards for the benefit of Mortgagors and Mortgagee or for the benefit of Mortgagee alone, at Mortgagee's election. The proceeds of all insurance on the mortgaged property and the other personal property described above shall be paid by the insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Mortgagors any check or draft representing the proceeds of any such insurance, and to demand, receive and give receipt for all sums becoming due thereunder. Insurance proceeds collected by or paid to Mortgagee may be credited on the indebtedness secured by this mortgage, less costs of collection, or may be used in repairing or reconstructing the improvements on the mortgaged property, at Mortgagee's election. No crediting of insurance proceeds to the secured indebtedness and no application of insurance proceeds to repairing or reconstructing improvements on the mortgaged property shall extend or postpone the due date of any scheduled payments of the secured indebtedness or reduce the amount of such payments. In the event of a dispute with any insurer regarding coverage, the amount of any loss, or the like, Mortgagee may bring an action or join in any action against the insurer, at Mortgagee's election. If Mortgagee elects not to bring an action or to join in any action and Mortgagors elect to pursue any claim or action against the insurer, Mortgagors agree to do so solely at their expense, and Mortgagors waive any right to require Mortgagee to join in the claim or action or to charge Mortgagee with any part of the expenses of the claim or action even if Mortgagee benefits from it.
- 4. That commencing upon written request by Mortgagee and continuing until the secured indebtedness is paid in full, Mortgagors will pay to Mortgagee concurrently with, and on the due dates of, payments on the secured indebtedness a sum equal to the ground rents, if any, next due on the mortgaged property, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus water rents, fire district charges, taxes and assessments next due on the mortgaged property (all as estimated by Mortgagee), less any sums already paid to Mortgagee therefor, divided by the number of months or other payment periods to elapse before one month or payment period prior to the date when such ground rents, premiums, water rents, fire district charges, taxes and assessments will become due, such sums to be held by Mortgagee to pay said ground rents premiums, water rents, fire district charges, taxes and assessments will be paid by Mortgagors each month or other payment period in a single payment to be applied by Mortgagee to the following items in the order set forth: (a) ground rents, taxes, water rents, fire district charges, assessments, fire and other hazard insurance premiums; (b) interest on the secured indebtedness; and (c) the balance, if any, shall be applied toward the payment of the principal sum of the secured indebtedness. Any excess funds accumulated under this paragraph after payment of the items herein mentioned shall be credited in calculating the monthly or other periodic payments of the same nature required hereunder in the subsequent year, but if the actual amount of any such item shall exceed the estimate therefor, Mortgagors shall forthwith pay the deficiency upon demand. If the mortgaged property is sold under foreclosure or is otherwise acquired by Mortgagee after default, any remaining balance of the accumulations under this paragraph shall be credited to the principal of the secured indebtedness as of the date of the foreclosure sale o
- 5. That they will take good care of the mortgaged property and the personal property described above and will not commit or permit any waste thereon or thereof, and they will keep the same repaired and at all times will maintain the same in as good condition as it now is, reasonable wear and tear alone excepted. If Mortgagors fail to make repairs to the mortgaged property, Mortgagee may make such repairs at Mortgagors' expense. Mortgagee, its agents and employees, may enter the mortgaged property and any improvements thereon at any reasonable time for the purpose of inspecting or repairing such improvements.
- 6. That upon failure of Mortgagors to perform any covenant herein made, Mortgagee shall have the right and power, at its election, to perform such act on behalf of Mortgagors, but Mortgagee shall have no duty to perform such act or to give notice of its intention not to perform, whether or not it has performed or given notice of its intention not to perform on one or more previous occasions. All amounts expended by Mortgagee for insurance or for the payment of taxes or assessments or to discharge liens or mortgages on the mortgaged property or other obligations of Mortgagors or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagee, shall be payable at once without demand upon or notice to any person, shall bear interest at the rate of interest payable on the principal sum of the note described above, or if no such rate of interest is specified in the note, or if the rate specified would be unlawful, at the rate of 8% per annum from the date of payment by Mortgagee until date paid by Mortgagors, and such debt and the interest thereon shall be secured by this mortgage. Upon failure of Mortgagors to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire secured indebtedness to be due and payable and may foreclose this mortgage as hereinafter provided or as provided by law.
- 7. That no delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be deemed a waiver of the right to exercise such option or to declare such forfeiture either as to past, present or future defaults on the part of Mortgagors, and that the procurement of insurance or payment of taxes or other liens or assessments or performance of other obligations of Mortgagors by Mortgagee shall not constitute or be deemed to be a waiver of the right to accelerate the maturity of the secured indebtedness by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, liens, or assessments or perform such other obligations, it being agreed by Mortgagors that no terms or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagee.
- 8. That those Mortgagors who are obligated to pay the secured indebtedness will well and truly pay and discharge such indebtedness as it shall become due and payable, including the note or notes described above, and any extensions, renewals or increase thereof, and any other notes or obligations of such Mortgagors to Mortgagee, whether now or hereafter incurred, provided that, notwithstanding any provision of this mortgage to the contrary, those Mortgagors who are not obligors on any of the secured indebtedness make the conveyances, grants, representations and warranties herein made by Mortgagors, but are not personally obligated to pay any sum of money or perform any affirmative act under this mortgage.
- 9. That whether or not default has been made in the payment of any of the secured indebtedness or in the performance of any of the terms or conditions of this mortgage, Mortgagee may give notice of the assignment of rents, royalties, income and profits herein made and may proceed to collect the rents, royalties, income and profits from the mortgaged property, either with or without the appointment of a receiver, at Mortgagee's election (to which appointment Mortgagors hereby consent). Prior to any such notification by Mortgagee, Mortgagors shall have a limited license, terminable at will by Mortgagee, to collect such rents and other payments and to apply the same in whole or in part to the payment of the secured indebtedness as and when due. Any rents, royalties, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate or property management commissions and attorney's fees incurred, shall be credited first to advances made by Mortgagee pursuant to the terms of this mortgage and the interest thereon, then to interest due on the secured indebtedness, at Mortgagee's election.
- 10. That unless Mortgagee's written consent has been obtained in advance, (a) they will not cause or allow possession of the mortgaged property to be in any other person or entity to the exclusion of Mortgagors, (b) they will not cut, remove, sell or contract to sell any standing timber from the mortgaged property, and (c) they will not sell, assign, transfer, convey, lease, or sublet all or any part of the mortgaged property or any oil, gas or mineral rights or other interest therein, excluding only (i) the creation of a lien or encumbrance expressly subordinate to this mortgage, (ii) the creation of a purchase money security interest for household appliances, or (iii) a transfer by devise, descent or by operation of law upon the death of a joint tenant. Mortgagee may condition its consent to any such transfer of possession of, or an interest in, the mortgaged property upon the obligors' or transferee's agreeing to pay a greater rate of interest on all or any part of the secured indebtedness or to adjust the payment schedule of all or any part of the secured indebtedness, and upon Mortgagee's approval of the creditworthiness of the transferee and the transferee's payment to Mortgagee of a reasonable transfer or assumption fee.

11. That all of the covenants and agreements of Mortgagors herein contained shall extend to and bind their respective heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to Mortgagee shall inure to the benefit of Mortgagee and its successors and assigns. As used in this mortgage, the term "Mortgagors" also means "Mortgagors, or any of them;" the singular includes the plural, and vice versa; and the use of one gender includes all other genders. The obligations of Mortgagors hereunder are joint and several. The provisions of this mortgage and of the note or notes secured hereby are severable, and the invalidity or unenforceability of any provision of this mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this mortgage or of such note or notes. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee under any other agreement, at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. Time is of the essence with respect to every covenant contained in this mortgage. This mortgage also constitutes a financing statement, and a carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office.

UPON CONDITION, HOWEVER, that if Mortgagors shall well and truly pay and discharge all the secured indebtedness (including, without limitation, all extensions, renewals and increases of the original indebtedness and all future advances) as the same shall become due and payable and shall in all things do and perform all acts and covenants by them herein agreed to be done or performed in strict accordance with the tenor and effect thereof; but should default be made in the payment when due (whether as originally scheduled or upon acceleration of maturity) of the secured indebtedness or any part thereof or any renewals, extensions or increases thereof or any interest thereon or should default be made in the repayment of any sum expended by Mortgagee under the authority of any provision of this mortgage, or should the interest of Mortgagee in the mortgaged property or any of the personal property described above become endangered by reason of the enforcement of any lien or encumbrance thereon, or should Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the secured indebtedness, or any portion or part thereof which may at said date not have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived by Mortgagors, and Mortgagee shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same (or such part or parts thereof as Mortgagee may from time to time elect to sell) at the front or main door to the courthouse of the County (or the division thereof) where said property, or any substantial and material part of said property, is located, at public outcry for cash, after first giving notice of the description of the property to be sold and the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in the county or counties in which the property to be sold is located (or if no newspaper is published in any such county, then in a newspaper published in an adjoining county); and upon the payment of the purchase price, Mortgagee or the auctioneer at said sale is authorized to execute to the purchaser for and in the name of Mortgagors a good and sufficient deed to the property sold. Mortgagee shall apply the proceeds of any sale or sales under this mortgage as follows: First, to the expenses of advertising, selling, preparing the property for sale, and conveying, including reasonable attorneys' fees (including attorneys' fees incurred by Mortgagee in connection with any proceeding seeking to enjoin the foreclosure of this mortgage or otherwise challenging the right of Mortgagee to foreclose this mortgage or sell any of the mortgaged property under this mortgage and attorneys' fees incurred in connection with any appeal); second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes, assessments, and other liens and mortgages, and in making repairs, with interest thereon; third, to the payment of the secured indebtedness and interest thereon in such order as Mortgagee may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagors or to whomsoever then appears of record to be the owner of Mortgagors' interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property. at any sale hereunder. Mortgagors hereby waive any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagee may, at its election, sellsaid property en masse regardless of the number of parcels hereby conveyed. The power of sale granted herein is a continuing power and shall not be fully exercised until all of the mortgaged property not previously sold shall have been sold or all of the indebtedness and other obligations secured hereby have been satisfied in full. And upon the occurrence of any such event described above, with respect to all of the mortgaged property which is personal property, Mortgagee shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, and shall have, without limitation, the right to take possession of any of the property herein transferred which is personal property in accordance with Mortgagee's rights and remedies in respect of the real property, at the election of Mortgagee. At Mortgagee's request, Mortgagors agree to assemble such property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagors hereby waive, to the extent permitted by law, any requirement of a judicial hearing and notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of said property, or of any part thereof, will be held and agree that any required notice which cannot be waived shall be sufficient if delivered to Mortgagors or mailed to Mortgagors at the address set forth above, or such other address as Mortgagors shall have furnished to Mortgagee in writing for that purpose, not less than five days before the date of such sale or other intended disposition of said property.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed hereto) by its officer(s) or partner(s) thereunto duly authorized, the	set his or her signature and seal or has caused this instrument to be executed (and its seal to be nis, 20 <u>01</u>
ATTEST	SUMMER PROPERTIES LLC
Its(Corporate Seal)	By William Bew White III
(Corporate Seat)	Its Manager

THE STATE OF ALABAMA,			
COUNTY		IN	NDIVIDUAL ACKNOWLEDGMENT
I, the undersigned, a Notary Publi	c in and for said County, in said State, here	certify that	
foregoing conveyance and who executed the same voluntarily or	known to me, acknowledged before mention the day the same bears date.	on this day that, being informed of the co	whose name signed to the ntents of the conveyance, he
Given under my hand and official	seal this, 19		
(Notarial Seal)		Notary Public	
THE STATE OF ALABAMA,	······································		<u></u>
COUNTY		IN	DIVIDUAL ACKNOWLEDGMENT
I the undersioned a Notary Publi	c in and for said County, in said State, herel	certify that	
signed to the foregoing conveyar	<u> </u>	knowledged before me on this day that	whose name , being informed of the contents of the
——————————————————————————————————————	ne voluntarily on the day the same bears dat		
(Notarial Seal)	seal this day of	, 19	
		Notary Public	
THE STATE OF ALABAMA,			
JEFFERSON COUNTY		CC	ORPORATE ACKNOWLEDGMENT
Given under my hand and official (Notarial Seal) THE STATE OF ALABAMA, COUNTY I, the undersigned, a Notary Publiwhose is signed to the foregoing conveyance he, as such general partner and w	seal this day of Ahvauy	PAR certify that efore me on this day that, being informative for and as the act of said partnership.	TNERSHIP ACKNOWLEDGMENT
(Notarial Seal)	day or		
		Notary Public	· ·- ·- · · · · · · · · · · · · · · · ·
AFTER RECORDING PLEASE RETURN TO	REAL ESTATE MORTGAGE SECURITY AGREEMENT AND FINANCING STATEMENT	THE STATE OF ALABAMA, COUNTY. Office of the Judge of Probate. I hereby certify that the within mortgage was filed in this office for record on the day of, and o'clock M., and duly record in Volume of Mortgages, at page.	Judge of Prol

Inst # 2001-03857

02/05/2001-03857
08:18 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

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