

THIS INSTRUMENT PREPARED BY:
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STATE OF ALABAMA
COUNTY OF SHELBY

MORTGAGE AND SECURITY AGREEMENT (ALABAMA)

(THIS MORTGAGE IS ALSO INTENDED AS A FIXTURE FILING)

THIS INDENTURE made this 9 day of November, 2001, between Gannaway Properties, LLC (hereinafter called the "Borrower" or the "Mortgagor"), as mortgagor, and Southern Development Council, Inc., a corporation (hereinafter the said mortgagee and any subsequent holder of the Mortgage are referred to as the "Lender" or "Mortgagee" whether one or more), as mortgagee.

WITNESSETH:

WHEREAS, Borrower and Pro Golf of Birmingham, Inc., are justly indebted to Lender on a loan in the principal sum of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00), (hereinafter called the "Loan"), as evidenced by a promissory note of even date herewith, payable to Lender with interest thereon (hereinafter called the "Note") as provided in the Note; and

WHEREAS, the parties desire to secure the principal amount of the Note with interest, and all renewals, extensions and modifications thereof, and all refinancing of any part of the Note.

NOW, THEREFORE, the Borrower, in consideration of making the Loan above-mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancing of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (together with the Note and this Mortgage, the "Loan Documents"), has bargained and sold and does hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, the following described land, real estate, estates, leasehold estates, buildings, improvements and machinery, equipment, furniture and fixtures, (which together with any additional such property in the possession of the Lender or hereafter acquired by the Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Mortgaged Property") to wit:

(a) All that tract or parcel or parcels of land and estates particularly described as follows:

Lot 1D, according to the Brook Highland Plaza Resurvey, as recorded in Map Book 18, Page 99, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in (a) above and all machinery, equipment, furniture and fixtures, (including, without limitation, property and collateral described in any Financing Statements executed in connection herewith which are incorporated herein by reference as if set forth fully and at length) now or hereafter owned by the Borrower and located on, or used or intended to be used in connection with, or in the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to any of foregoing.

(c) All machinery, equipment, furniture and fixtures, now owned or hereafter acquired by the Borrower, located or to be located on the property described in (a) above, including, but without limitation, all roofing material,

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doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, dishwashers, disposals, and in general all machinery, equipment, furniture and fixtures of every kind and character used or useful in connection with said improvements.

(d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property herein above described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by the Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, including but not limited to:

(i) All rents, royalties, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and

(ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or the improvements thereon or any part thereof, or to any rights or appurtenances thereto, including any award for change of grade or streets. Lender is hereby authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees on any of the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

(e) All proceeds, cash or non-cash (including, but not limited to, all inventory, accounts, chattel paper, documents, instruments, tort and insurance proceeds, equipment, fixtures, goods and general intangibles acquired with cash proceeds of any of the property described above) of any of the foregoing types or items of property described in subparagraphs (a), (b), (c) or (d) above.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorney's fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, and in the other Loan Documents, without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, terminate, and be void, but shall otherwise remain in full force and effect.

AND the Borrower further represents, warrants, covenants and agrees with the Lender as follows:

ARTICLE I

1.01 Performance of Mortgage, Note and Loan Documents. The Borrower will perform, observe and comply with all provisions hereof, and of the Note, and of the other Loan Documents, and will duly and punctually pay to the Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, and of the other Loan Documents, all without any deductions

or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. Borrower hereby warrants that, subject to any exceptions shown on the title policy ordered by Lender, it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is shown herein, and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and machinery, equipment, furniture and fixtures, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Future Advances. The proceeds of the Loan may, at the Lender's option, be advanced to the Borrower from time to time, and this Mortgage shall secure all amounts so advanced, whether or not the full amount of the Loan shall be advanced. It is specifically understood and agreed that this Mortgage and Security Agreement secures all sums due under the Loan Documents between Mortgagor and Mortgagee executed in connection with the Loan.

1.04 Environmental Matters. Borrower represents, warrants, and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.) the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq) the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect.

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property, and none will be located in, on or under any part of the Mortgaged Property, except those which have been inspected and approved by Alabama Department of Environmental Management, and all other governmental and other agencies required to conduct said investigations, inspections, and approvals.

(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property; and

(e) Borrower shall give immediate oral and written notice to Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Paragraph 1.04, or of any notice of other claim relating to the environmental condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties, and/or covenants herein to be inaccurate or misleading in any respect.

Borrower hereby agrees to indemnify and hold Lender harmless from all loss, cost, damage, claim and expense incurred by Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Paragraph 1.04, (ii) Borrower's failure to perform any obligations of this Paragraph 1.04, (iii) Borrower's or the Mortgaged

Property's failure 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 on, under or affecting the Mortgaged Property. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Mortgaged Property, and all similar and related events.

1.05 Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower promptly shall pay and will not suffer any mechanic's, laborer's statutory or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, or in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

(d) If required or requested by Lender at any time prior to the payment in full of the indebtedness secured hereby, Borrower shall pay on the first day of each month one-twelfth (1/12) of yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, or any of the Loan Documents, but, unless otherwise agreed by the Lender in writing, no application of tax deposits to the Note, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, or any such other obligations.

1.06 Insurance.

(a) The Borrower will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage insurance policies in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available, and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any transfer of title to the Mortgaged Property in partial or full extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under

any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by Lender in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements on the Mortgaged Property, or as a credit on any portion of the Borrower's indebtedness selected by Lender, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such improvements, or to build new improvements in their place or for any other purpose satisfactory to the Lender, all without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(c) If required or requested by the Lender at any time prior to the satisfaction of the indebtedness secured hereby, the Borrower shall pay on the first day of each month, in addition to any regular installment of principal and interest and other charges with respect to indebtedness secured hereby, and the monthly tax deposit provided for in Paragraph 1.05 hereof, one-twelfth (1/12) of the yearly premiums for insurance maintained pursuant to the provisions of this Paragraph 1.06. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make any deficiencies in the amounts deposited by Borrower with Lender pursuant to this Paragraph 1.06 to enable the Lender to pay such insurance premiums when due. In the event of an Event of Default hereunder or of a default by Borrower under the Note, or any other Loan Documents, the Lender may apply such sums to the reduction of the indebtedness secured hereby in any manner selected by Lender, but, unless otherwise agreed by the Lender in writing, no application of insurance proceeds to the Note, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Note, or any such other obligations.

1.07 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or private authority, and any transfer by private sale in lieu thereof) either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceeding relating to a condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereto assigned by the Borrower to the Lender, which after deducting therefrom all its expenses, including attorney's fees may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the indebtedness secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.08 Care of the Property.

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

(b) Except as otherwise provided herein, no buildings, fixtures, personal property or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenance subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in or operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, free and clear of all liens and security interest except those created by the Loan Documents, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value and costing not less than the amount realized from the

property sold or otherwise disposed of which shall forthwith become, without further action, subject to the provisions of this Mortgage.

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

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

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

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefore; provided however, that if there are insurance proceeds, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds from the casualty in question and held by Lender, as allowed under Paragraph 1.06, toward restoring the damaged improvements. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender; provided, however, that if there are condemnation proceeds or awards, the Borrower shall not be required to restore the Mortgaged Property as aforesaid unless the Lender shall apply any net proceeds or awards from the condemnation and held by Lender, as provided in Paragraph 1.07 toward restoring the damaged improvements.

1.09 Further Assurances; After Acquired Property. At any time, and from time to time upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the Borrower under the Note and this Mortgage, and the priority of this Mortgage as a valid lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property (except consumer goods, other the accessions, not acquired within ten (10) days after the Lender has given value under the Note) attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.10 Additional Security. The Lender shall also have and is hereby granted a security interest in all other property of the Borrower, now or hereafter assigned, or coming into the possession, control, or custody of the Lender by or for the account of the Borrower (including indebtedness due from the Lender to the Borrower) whether expressly as collateral security or for any other purpose, including any dividends declared, or interest accruing thereon, and proceeds thereof. The Lender may, but shall not be obligated to, apply to the payment of the Note or other indebtedness secured hereby on or after an Event of Default, any funds or credit held by the Lender on deposit, in trust or otherwise, for the account of the Borrower.

1.11 Leases Affecting Mortgaged Property. The Borrower will comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower will furnish Lender with executed copies of all leases now or hereafter created on the Mortgaged Property; and all leases now or hereafter entered into will in form and substance be subject to the approval of Lender. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower will execute and deliver to Lender, as additional security such other documents as may be requested by Lender to further evidence the assignment to Lender hereunder and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing, and will not cancel, surrender or modify any lease so assigned

without the written consent of the Lender. Borrower shall furnish Lender with a subordination, attornment and non-disturbance agreement in form and substance acceptable to Lender from such existing and future lessees as Lender may require.

1.12 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs and expenses incurred by the Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in the Mortgage, or in any of the Loan Documents, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party or appears as party plaintiff or defendant, affecting this Mortgage, the Note, the Loan Documents, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and any such amounts paid by the Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

1.13 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, or of the other Loan Documents, then the Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by the Lender in connection therewith shall be secured hereby and shall be without demand, immediately repaid by the Borrower to the Lender with interest thereon at the greater of the rate of eight percent (8%) per annum or the rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claims and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower for trespass or otherwise.

1.14 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property and will exhibit the same to Lender upon request. Upon request of Lender, the Borrower will furnish to the Lender within thirty (30) days after the end of Borrower's fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by a Certified Public Accountant. In addition Borrower agrees to furnish to Lender, within 10 days after the date of any request by Lender, such other information (financial or otherwise, including without limitation income tax returns) concerning the Borrower, any guarantor of the indebtedness secured hereby, and/or the Mortgaged Property as the Lender may request at any time or from time to time.

1.15 Estoppel Affidavits. The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Note and whether or not any offsets or defenses exist against any principal and interest.

1.16 Alienation or Sale of Mortgaged Property. The Borrower shall not sell, assign, mortgage, encumber, or otherwise convey the Mortgaged Property, or any interest therein, without obtaining the express written consent of the Lender prior to such conveyance. If Borrower should sell, assign, mortgage, encumber or convey all, or any part of, the Mortgaged Property, or any interest therein, without such consent by Lender, then, in such event, the entire balance of the indebtedness secured by this Mortgage and all interest accrued thereon (or such parts as Lender may elect) shall without notice become due and payable forthwith at the option of the Lender.

1.17 Offset. The Lender may, but shall not be obligated to, apply to the payment of the Note or other indebtedness secured hereby on or after an Event of Default, any funds or credit held by the Lender on deposit, in trust or otherwise, for the account of the Borrower.

ARTICLE II

2.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure by the Borrower to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under the Note, this Mortgage or under any other Loan Document; or

(b) Failure by the Borrower to duly observe any other covenant, condition or agreement of this Mortgage, of the Note, of any of the other Loan Documents; or

(c) The filing by the Borrower or any guarantor of any indebtedness secured hereby of a voluntary petition in bankruptcy or the Borrower's or any guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or any guarantor of any petition or answer seeking or acquiescing 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 the Borrower's or any guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits, or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction of any order, judgment, or decree approving a petition filed against the Borrower or any guarantor of any of the indebtedness secured hereby seeking any reorganization, arrangement, composition, readjustment, liquidation, 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, which order, judgement or decree remains unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of ten (10) days (whether or not consecutive); or

(e) The enforcement of any prior or junior lien or encumbrance on the Mortgaged Property or any part thereof or the failure to pay when due any amount owed under any note or other instrument secured by any prior or junior lien on the Mortgaged Property or any part thereof; or

(f) The death or dissolution of the borrower or any guarantor of the Note or any other indebtedness secured hereby; or

(g) Any other event of default set forth in any of the Loan Documents or any of the documents.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire balance of the indebtedness secured hereby with interest accrued thereon (or such parts as Lender may elect) shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such rights.

2.03 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender may enter and take possession of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged

Property insured (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property, including those past due as well as those accruing thereafter, and after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other charges prior to this Mortgage as the Lender may determine to pay; (ee) other proper charges upon the Mortgaged Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits; third to the payment of any other sums required to be paid by Borrower under the Note, this Mortgage or under the Loan Documents; fourth to the payment of overdue installments of principal; fifth the balance, if any to the Borrower, or the party appearing of record to be the owner of the Mortgaged Property, or as otherwise required by law.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, or Borrower's heirs, successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Receiver.

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

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorneys' fees, cost and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 2.04; and all such expenses shall be secured by this Mortgage.

2.05 Lender's Power of Enforcement. If an Event of Default shall have occurred the Lender may, either with or without entry or taking possession as herein above provided, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any other Loan Documents; and (d) to pursue any other remedy available to Lender, all as the Lender may elect.

2.06 Power of Sale. If an Event of Default shall have occurred Lender may sell Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 3.05 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.

2.07 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Paragraph 2.06 of Article II shall be applied as follows:

(a) First, to the expenses of making the sale, including, a reasonable attorney's fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as herein above provided, and as may be provided in the Loan Documents;

(c) Third, to the payment and satisfaction of the indebtedness (including but not limited to the Loan, and the other indebtedness) secured hereby with interest to date of sale, whether or not all of such indebtedness be then due;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of sale, after deducting any expense of ascertaining who is such owner, or as may otherwise be provided by law.

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

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

2.10 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents, and profits arising therefrom; and (c) to restrain the enforcement of compliance with any legislation, other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

2.11 Borrower to Pay the Note on any Default in Payment; Application of Moneys By Lender. If default shall be made in the payment of any amount due under this Mortgage, the Note, or the other Loan Documents, then, at the option of Lender, the Borrower will pay to the Lender the whole amount due and payable under the Note and under the other Loan Documents and under any documents evidencing other indebtedness secured hereby; and in case the Borrower shall fail to pay the same forthwith the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements, of the Lender's agents and attorney.

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

2.13 No Waiver of One Default to Affect Another. No waiver of any default hereunder under the Loan Documents shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any indebtedness secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Note, or in the other Loan Documents; (d) releases any part of the Mortgaged Property from this Mortgage or otherwise changes any of the terms of this Mortgage, the Note, or the other Loan Documents; (e) consents to the filing

of any map, plat, or re-plat of or consents to the granting of any easement on, all or any part of the Mortgaged Property; or (f) makes or consents to any agreement subordinating the priority of this Mortgage, any such act or omission shall not release, discharge, modify, change, or affect the original liability under this Mortgage, the Note, or the other Loan Documents of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender shall the provisions of this Mortgage be altered thereby. In the event of the sale or transfer by the operation of law or otherwise of all or any part of the Mortgaged Property, the Lender without notice to any person, corporation or other entity (except notice shall be given to Borrower so long as Borrower remains liable under the Note, this Mortgage and the Loan Documents) is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, or of the Loan Documents, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

ARTICLE III

3.01 Heirs. Successors and Assigns Included in Parties. Wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.02 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03 Gender. Whenever the content so requires, the masculine includes the feminine neuter, and the singular includes the plural.

3.04 Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, or in the other Loan Documents shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, the Mortgage, or the other Loan Documents shall be in no way affected, prejudiced or disturbed thereby.

3.05 Grant of Security Interest.

(a) Borrower (the "debtor" for purposes of the Uniform Commercial Code), in consideration of the Lender's (the "secured party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with interest thereon, and any extensions, renewals, modifications, and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including, but limited to attorneys' fees, and further to secure the performance of the covenants, conditions, and

agreements herein set forth and in the Note and the other Loan Documents, does hereby grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral"), including, without limitation, the property described in the Financing Statements executed in connection herewith which are incorporated herein by reference as if set forth fully and at length.

(b) **Definitions.** All terms used herein which are defined in the Alabama Uniform Commercial Code (the "Uniform Commercial Code") shall have the same meaning here as in the Uniform Commercial Code unless otherwise indicated herein.

(c) **Financing Statements.** No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements specifically set forth on an addendum attached hereto, if any, and except for the financing statements executed by Borrower and Lender. At the Lender's request, the Borrower will join with Lender in executing one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to the Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by the Lender to be necessary or desirable. The Borrower authorizes the Lender to prepare and to file financing statements covering the Collateral signed only by the Lender and to sign the Borrower's signature to such financing statements in jurisdictions where Borrower's signature is required. The Borrower promises to pay to the Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fee shall become part of the indebtedness secured hereby.

(d) **Rights of a Secured Party.** Upon the occurrence of an Event of Default, the Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, the other Loan Documents, or under applicable law, may immediately and without demand, exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include without limitation:

- (i) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities, or other sums;
- (ii) The right to sell, lease, or otherwise dispose of any or all of Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the collateral;
- (iii) The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and
- (iv) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Borrower does here irrevocably appoint Lender attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do and to sell assign, and transfer any Collateral to Lender or any other party.

3.06 Conflict in Loan Documents. In the event of conflict in the terms of any provision in this Mortgage, the Note, or the other Loan Documents, the terms of the provision most favorable to the Lender shall apply.

3.07 Instrument Under Seal. This Mortgage is given under the seal of all parties hereto and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

3.08 Addresses and Other Information. The following information is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

- | | | |
|------------|---|---|
| (a) | Name of Borrower (Debtor):
Address of Borrower: | Gannaway Properties, LLC
5235 Highway 280 South
Birmingham, AL 35242 |
| (b) | Name of Lender (Secured Party):
Address of Lender: | Southern Development Council, Inc.
8132 Old Federal Road
Montgomery, AL 36117 |

3.09 Provision applicable to SBA Guaranteed Loan. The Loan secured by this mortgage was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

(a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

(b) Lender or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

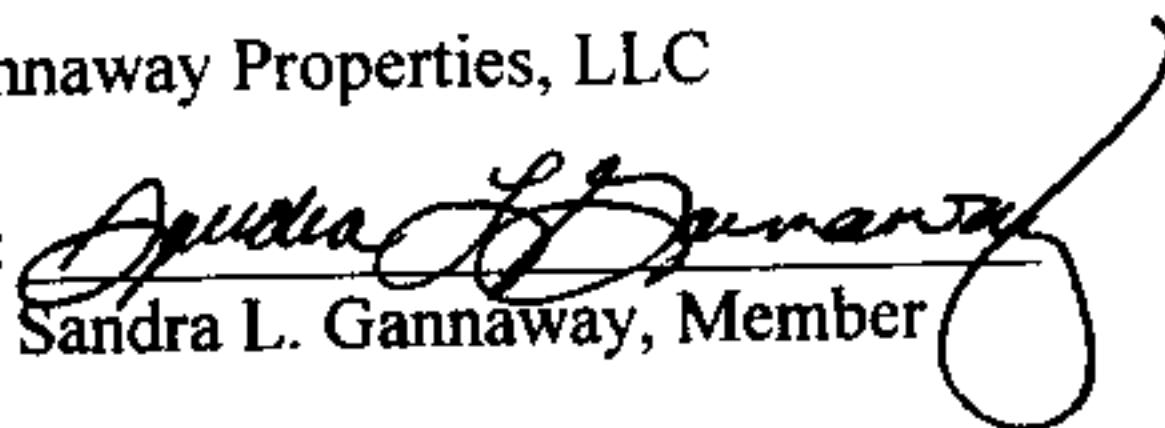
IN WITNESS WHEREOF, Borrower has caused this instrument to be executed as of the day and year first above written.

**CAUTION: IT IS IMPORTANT THAT YOU READ THIS DOCUMENT
THOROUGHLY BEFORE SIGNING IT.**

BORROWER (Mortgagor, Debtor):

Gannaway Properties, LLC

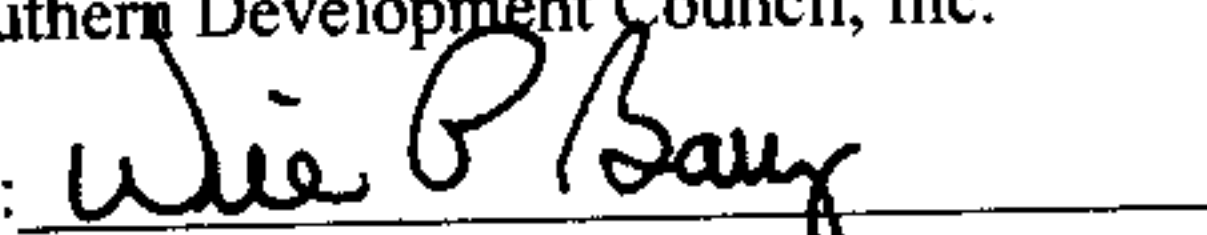
By:


Sandra L. Gannaway, Member

LENDER (Mortgagee, Secured Party):

Southern Development Council, Inc.

By:

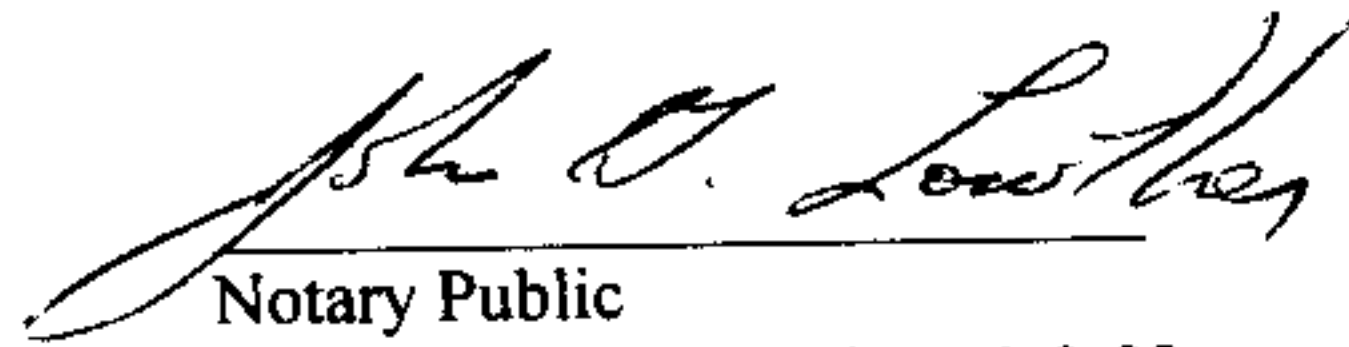

Name: William P. Barry
Its: Vice President

**STATE OF ALABAMA
COUNTY OF JEFFERSON**

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Sandra L.

Gannaway, whose name as Sole Member of Gannaway Properties, LLC, 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 the instrument, she, as such Member, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

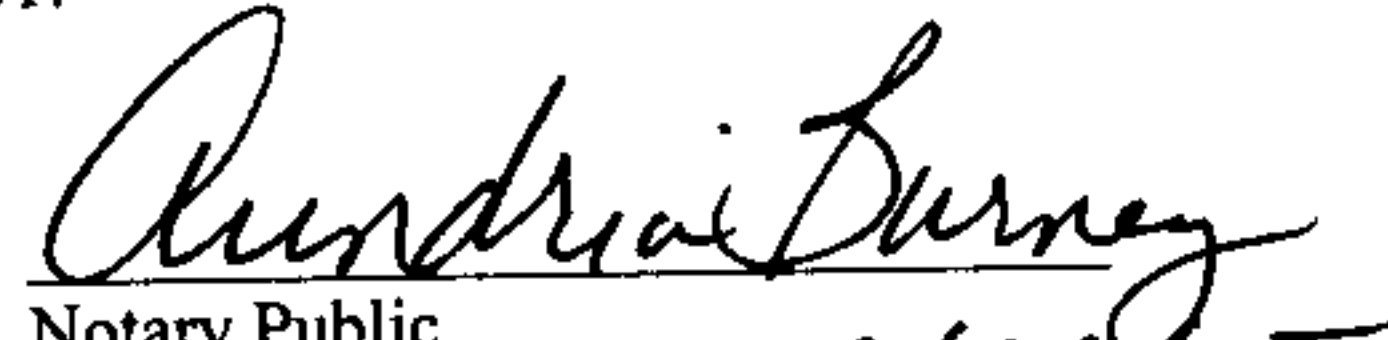
Given under my hand this 9 day of November, 2001.


Notary Public
My Commission Expires: 1-3-03

STATE OF ALABAMA
COUNTY OF MONTGOMERY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William P. Barry, whose name as Vice President of Southern Development Council, Inc., a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 6th day of November, 2001.


Notary Public
My Commission Expires: 9/26/05

Inst # 2001-48792

CDC 3939464004 BIR

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Page 1 of 1
03:08 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
014 CH 1175.00