

237

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE given this 4th day of March,
1981,

BY

RIVERCHASE OFFICE PLAZA COMPANY, an Alabama general partnership, having its principal offices at One Riverchase Office Plaza, Suite 200, Birmingham, Alabama, 35244 (hereinafter referred to as "Mortgagor"),

TO

CONTINENTAL AMERICAN LIFE INSURANCE COMPANY, a Delaware corporation, with its principal offices at 1100 King Street, P.O. Box 750, Wilmington, Delaware, 19899 (hereinafter called "Mortgagee").

W I T N E S S E T H T H A T

Mortgagor has executed and delivered to Mortgagee its note ("Mortgage Note") bearing even date herewith, wherein Mortgagor promises to pay to Mortgagee the principal sum of SEVEN HUNDRED AND FORTY THOUSAND DOLLARS (\$740,000.00), lawful money of the United States of America, with interest thereon at the rate and times, in the manner and according to the terms and conditions specified in the Mortgage Note, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the indebtedness, and as security for payment to Mortgagee of the principal with interest, and all other sums provided for in the Mortgage Note and in this Mortgage, including without limitation costs and counsel fees, according to their respective terms and conditions, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein, and therein, and in certain other agreements and instruments made and given by Mortgagor to Mortgagee in connection therewith, Mortgagor does hereby grant, bargain, sell, assign and convey, and set over unto Mortgagee, its successors and assigns forever, the following:

All that certain real property situate in the City of Hoover, Shelby County, Alabama, described in Exhibits "A" and "B" attached hereto and made a part hereof.

TOGETHER WITH, any and all buildings and improvements now or hereafter erected thereon, or on that certain real property situate in Shelby County, Alabama described in Exhibit "C" attached hereto and made a part hereof, including, but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles owned by Mortgagor and attached to said buildings and improvements (the "Improvements").

TOGETHER WITH all rents, issues, profits, royalties, income and other benefits derived from part or all of the aforementioned lands (described in Exhibits "A", "B" and "C") hereto, and hereinafter referred to as the

*Danforth Companies
One Riverchase Office Plaza
Suite 200
B'ham Al 35244*

BOOK 410 PAGE 427

"Property") and Improvements (collectively the "rents"), subject to the right, power and authority hereinafter given to Mortgagor to collect and apply such rents;

TOGETHER WITH, all leasehold estate, right, title and interest of Mortgagor in and to all leases or subleases covering the Property and/or Improvements, or any portion thereof now or hereafter existing or entered into, including without limitation all of Mortgagor's right, title and interest, as lessee, under that certain lease agreement for the land described in Exhibit "C" hereto, of even date herewith, between Mortgagee, as lessor, and Mortgagor (the "Land Lease") which Land Lease, or a memorandum thereof is intended to be recorded simultaneously with this Mortgage;

TOGETHER WITH, any and all right, title and interest of Mortgagor under any lease or sublease covering the Property and/or Improvements, or any portion thereof, including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature;

TOGETHER WITH, all right, title and interest of Mortgagor in and to all options to purchase the Property and Improvements or any portion thereof or interest therein, and any greater estate in the Improvements owned or hereafter acquired;

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

TOGETHER WITH, all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same;

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

TOGETHER WITH, all right, title and interest of Mortgagor in and to all fixtures, appliances, machinery, furniture and equipment of any nature whatsoever, and any articles of tangible personal property (all of the foregoing are hereinafter collectively referred to as the "Personal Property"), now or at any time hereafter owned by Mortgagor and attached to or situated in or upon the Property or Improvements or used in connection therewith, whether or not the Personal Property is or shall be affixed thereto, including, but not limited to: all goods, machinery, tools, insurance proceeds, equipment (including fire sprinklers and alarm systems, office air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, window or structural cleaning rigs, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage, and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets),

wall beds, wall safes, furnishings, appliances (including ice boxes, refrigerators, fans, heaters, stoves, water heaters and incinerator), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades and venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and office maintenance and other supplies; and

TOGETHER WITH, any and all proceeds of such Personal Property and any and all subsequently acquired Personal Property by way of replacement, substitution, addition or otherwise and the proceeds thereof.

TOGETHER WITH, all the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Mortgagor now has or may hereafter acquire in the Property and Improvements, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lien thereof, of the whole or by any part of the Property and Improvements, including without limitation, any awards resulting from a change or grade of streets and awards for severance damages. Any such awards payable to Mortgagee shall not exceed the amount due Mortgagee pursuant to the terms of this Mortgage or the Mortgage Note which it secures.

The entire estate, property and interest hereby bargained, sold, assigned, conveyed and set-over to Mortgagee may hereafter be referred to as the "Mortgaged Premises".

TO HAVE AND TO HOLD the Mortgaged Premises unto the Mortgagee, its successors and assigns, forever.

Mortgagor and Mortgagee intend that this Mortgage shall also secure, in addition to the aforesaid amount to be disbursed hereunder, any additional advances which the Mortgagee may hereafter make at any time while this Mortgage remains unreleased of record, provided that the total unpaid indebtedness hereby secured, exclusive of interest thereon, and any sums advanced under the provisions of paragraph (a) below, shall not exceed the sum of Seven Hundred and Forty Thousand Dollars (\$740,000.00).

Mortgagor and Mortgagee further intend that this Mortgage shall secure the following:

(a) Payment of all sums advanced by Mortgagee in addition to the original principal secured by this Mortgage to protect the Mortgaged Premises, with interest thereon at a rate of twenty percent (20%) per annum until paid.

(b) Performance of Mortgagor's obligations and agreements contained in the Land Lease, and any modification or amendment thereof.

This Mortgage, the Mortgage Note, and any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby may hereafter be referred to as the "Loan Instruments".

PROVIDED ALWAYS, nevertheless, and this instrument is upon the express condition that, if the Mortgagor shall and does well and truly pay, or cause to be paid, unto Mortgagee, its successors or assigns, the principal sum mentioned in the Mortgage Note, the interest thereon and all other sums payable by Mortgagor to Mortgagee as are secured hereby, in accordance with the provisions of the Mortgage Note, the Land Lease, and this Mortgage, at the times and in the manner specified, without deduction, fraud or delay, and Mortgagor shall perform and comply with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Mortgage Note, the Land Lease, and other Loan Instruments, then this Mortgage, and the estate hereby granted, shall cease, determine and become void and of no effect, anything hereinabove contained to the contrary thereof, in any wise notwithstanding.

The terms and conditions upon which this Mortgage is made by Mortgagor, and accepted by Mortgagee, are as follows:

ARTICLE I
COVENANTS AND AGREEMENTS OF MORTGAGOR

Mortgagor hereby covenants and agrees:

1.01 Warranty of Title. That, except for the easements and restrictions specifically listed as title objections in Commitment for Title Insurance No. 5855-A-E, of even date herewith, issued by Chicago Title Insurance Company to Mortgagee, it is lawfully seized of the Mortgaged Premises in fee simple and has full power to convey the same; and that it does warrant and will defend the title to the same against the claims of all persons whomsoever.

1.02 Payment of Secured Obligations. To pay when due the principal of, and the interest on, the indebtedness evidenced by the Mortgage Note, charges, fees and all other sums as provided in the Land Lease and Loan Instruments.

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

1.04 Required Insurance. To at all times, cause the Improvement, including without limitation the "Building" (as defined in the Land Lease) to be insured in amounts which, with respect to the coverages specified in clauses (i) and (ii) hereof, shall be not less than 80% of the full insurable value of such improvements exclusive of costs of excavation, foundation and footings, and in any event not less than an amount necessary to preclude the application of any requirement of co-insurance in the event of any casualty:

(i) against loss or damage by fire and against such other risks, of a similar or dissimilar nature, as such be insurable against under the New York Standard Fire Insurance Policy or future forms of fire and extended coverage policies which are standard for use in New York State; and

(ii) against risk of war damage whenever such insurance shall be written when a state of war or public emergency exists or is threatened; and

(iii) if, and so long as, the Building, or any other building contributing to part of the Improvements, shall be equipped with any boiler or boilers, against loss and liability resulting from property damage, personal injury or death, caused by explosion of boilers, heating apparatus or other pressure vessels on the Building or any such other building, such insurance to be carried in such amounts as Lessor may reasonably require; and

(iv) rent, or use and occupancy or rental value insurance in an amount at least sufficient to meet the payments for two years of the annual rent, the additional rent, Taxes, and other charges provided for in the Land Lease; and

(v) against such other risks and in such amounts as Mortgagee shall, from time to time, reasonably require.

The policies of insurance required to be carried in accordance with this section 1.04 shall contain a "Replacement Cost Endorsement".

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against Mortgagor.

1.05 Delivery of Policies, Payment of Premiums. That all policies of insurance shall be issued by companies and in amounts in each company satisfactory to Mortgagee.

All policies of insurance shall have attached thereto a lender's loss payable endorsement for the benefit of Mortgagee in form satisfactory to Mortgagee. Mortgagor shall furnish Mortgagee with an original copy of all policies of required insurance. If Mortgagee consents to Mortgagor providing any of the required insurance through blanket policies carried by Mortgagor and covering more than one location, then Mortgagor shall furnish the Mortgagee with a certificate of insurance for each such policy setting forth the coverage, the limits of liability, the name of the carrier, the policy number, and the expiration date. At least thirty (30) days prior to the expiration date of each such policy, Mortgagor shall furnish Mortgagee with evidence satisfactory to Mortgagee of the payment of premium and the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without at least fifteen (15) days prior written notice to Mortgagee. In the event Mortgagor fails to provide, maintain, keep in force or deliver and furnish to Mortgagee the policies of insurance required by this Section, Mortgagee may procure such insurance or single-interest insurance for such risks covering Mortgagee's interest, and Mortgagor will pay all premiums thereon promptly upon demand by Mortgagee, and until such payment is made by Mortgagor, the amount thereof shall bear interest at the rate of twenty percent (20%) per annum until paid, and such amount (including the aforesaid interest thereon) shall be secured by this Mortgage. At the request of Mortgagee, Mortgagor shall deposit with Mortgagee, in monthly installments, an amount equal to one-twelfth (1/12) of the estimated aggregate annual insurance premiums on all policies of insurance required by this Mortgage. Mortgagor further agrees, upon Mortgagee's request, to cause copies of all bills, statements or other documents relating to the foregoing insurance premiums to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.05, Mortgagee shall pay such amounts, provided Mortgagor has not already made the required payments, as may be due thereunder out of the funds so deposited with the Mortgagee. If at any time and for any reason the funds deposited with the Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify the Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with Mortgagee pursuant to this Section 1.05. Mortgagee may commingle said reserve with its own funds and Mortgagor shall be entitled to no interest thereof.

1.06 Insurance Proceeds. That after the happening of any casualty to the Mortgaged Premises or any part thereof, Mortgagor shall give prompt written notice thereof to Mortgagee.

(a) In the event of any damage or destruction of the Improvements and/or Personal Property, or any part thereof, and provided no event of default exists hereunder (as set forth in Section 4.01 below) Mortgagee shall apply the insurance proceeds, or so much thereof as is necessary, to the restoration or replacement of the Improvements and/or Personal Property; provided, however, if all or any part of such insurance proceeds relate to the Building, Mortgagee reserves the right, but not the obligation, to turn over such proceeds to the lessor under the Land Lease to be applied in accordance with the provisions thereof. Any insurance proceeds, in excess of that necessary for restoration or replacement, shall be applied by Mortgagee to any indebtedness received hereby, in such order as Mortgagee may determine.

If an event of default exists hereunder at the time of any damage or destruction of the Improvements and/or Personal Property, or any part thereof, Mortgagee shall have the option, in its sole and absolute discretion, of applying all or part of the insurance proceeds to (i) any indebtedness secured hereby and in such order as Mortgagee may determine, or (ii) to the restoration or replacement of the Improvements and/or Personal Property.

(b) In the event of such loss or damage, all proceeds of insurance shall be payable to Mortgagee and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Mortgagee. Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise any claims for loss, damage or destruction under any policy or policies of insurance.

(c) Except to the extent that insurance proceeds are received by Mortgagee and applied to the entire indebtedness secured hereby, nothing herein contained shall be deemed to excuse Mortgagor from repairing or maintaining the Mortgaged Premises as provided in Section 1.03 hereof, or restoring all damage or destruction to the Mortgaged Premises, regardless of whether or not there are insurance proceeds available or whether any such proceeds are sufficient in amount, and the application or release by Mortgagee of any insurance proceeds shall not cure or waive any default or notice of default under this Mortgage or invalidate any act done pursuant to such notice.

1.07 Assignment of Policies Upon Foreclosure.
In the event of foreclosure of this Mortgage or other transfer of title or assignment of the Mortgaged Premises in extinguishment, in whole or in part, of the debt secured hereby, all right, title and interest of Mortgagor in and to all policies of insurance required by this Section shall inure to the benefit of and pass to the successor in interest to Mortgagor or the purchaser or grantee of the Mortgaged Premises.

1.08 Indemnification; Subrogation; Waiver of Offset.

(a) If Mortgagee is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Premises or any part thereof or interest therein, or the occupancy thereof by Mortgagor, then Mortgagor shall indemnify,

defend and hold Mortgagee harmless from all liability by reason of said litigation, including reasonable attorneys' fees and expenses incurred by Mortgagee in any such litigation, whether or not such litigation, is prosecuted to judgment. If Mortgagee commences an action against the Mortgagor to enforce any of the terms hereof or because of the breach by Mortgagor of any of the terms hereof, or for the recovery of any sum secured hereby, Mortgagor shall pay to Mortgagee reasonable attorneys' fees and expenses, and the right to such attorneys' fees and expenses shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Mortgagor breaches any term of this Mortgage, Mortgagee may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following any breach by the Mortgagor, Mortgagor shall pay Mortgagee reasonable attorneys' fees and expenses incurred by Mortgagee, whether or not an action is actually commenced against the Mortgagor by reason of breach.

(b) To waive any and all right to claim or recover against Mortgagee, its officers, employees, agents and representatives for loss of or damage to Mortgagor, the Mortgaged Premises, Mortgagor's property or the property of others under Mortgagor's control, from any cause insured against or required to be insured against by the provisions of this Mortgage.

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

1.09 Taxes and Impositions.

(a) To pay, at least ten (10) days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation nongovernmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Property and the Mortgaged Premises, which are assessed or imposed upon the Property and/or the Mortgaged Premises or become due and payable, and which create, may create or appear to create a lien upon the Property and/or the Mortgaged Premises or any part thereof, or upon any Personal Property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to as "Impositions") provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid in installments, Mortgagor may pay the same, together with any accrued interest on the unpaid balance of such Imposition in installments, as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Property and/or the Mortgaged Premises in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) above, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) above, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby, together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee on the obligations secured hereby.

(c) Subject to the provisions of subparagraph (d) of this Section 1.09, to furnish to Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payments thereof.

(d) To have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.09, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively

operate to prevent the sale of the Property and/or the Mortgaged Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (iii) Mortgagor shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) At the request of Mortgagee, to pay to Mortgagee, on the day monthly installments of principal and interest are payable under the Mortgage Note, until the Mortgage Note is paid in full, an amount equal to one-twelfth (1/12) of the annual Impositions reasonably estimated by Mortgagee to pay the installment of taxes next due on the Property and the Mortgaged Premises. In such event Mortgagor further agrees to cause all bills, statements or other documents relating to Impositions to be sent or mailed directly to Mortgagee. Upon receipt of such bills, statements or other documents, and providing Mortgagor has deposited sufficient funds with Mortgagee pursuant to this Section 1.09, Mortgagee shall pay such amounts as may be due thereunder out of the funds so deposited with Mortgagee. If at any time and for any reason the funds deposited with Mortgagee are or will be insufficient to pay such amounts as may then or subsequently be due, Mortgagee shall notify Mortgagor and Mortgagor shall immediately deposit an amount equal to such deficiency with Mortgagee. Notwithstanding the foregoing, nothing contained herein shall cause Mortgagee to be deemed a trustee of said funds or to be obligated to pay any amounts in excess of the amount of funds deposited with the Mortgagee pending disbursement or application hereunder, and Mortgagee may impound or reserve for future payment of Impositions such portion of such payments as Mortgagee may reasonably deem proper, applying the balance on the principal of or interest on the obligations secured hereby. Any penalties imposed as a result of the failure by Mortgagee to make required tax payments in a timely fashion, provided that the required deposits have been made by Mortgagor, shall be borne by Mortgagee. Should Mortgagor fail to deposit with Mortgagee (exclusive of that portion of said payments which has been applied by Mortgagee on the principal of or interest on the indebtedness secured by the Loan Instruments) sums sufficient to fully pay such Impositions at least thirty (30) days before delinquency thereof, Mortgagee may, at Mortgagee's election, but without any obligation so to do, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to Mortgagee as herein elsewhere provided, or at the option of Mortgagee, the latter may, without making any advance whatever, apply any sums held by it upon any obligations of the Mortgagor secured hereby. Should any default occur or exist on the part of the Mortgagor in the payment or performance of any of Mortgagor's obligations under the terms of the Land Lease or the Loan Instruments, Mortgagee may, at any time at Mortgagee's option, apply any sums or amounts in its hands received pursuant hereto, or as rents or income of the Mortgaged Premises or otherwise, upon any indebtedness or obligation of the Mortgagor secured hereby in such manner and order as Mortgagee may elect. The receipt, use or application

BOOK 410 PAGE 436

of any such sums paid by Mortgagor to Mortgagee hereunder shall not be construed to affect the maturity of any indebtedness secured by this Mortgage or any of the rights or powers of Mortgagee under the terms of the Land Lease or Loan Instruments or any of the obligations of Mortgagor under this Mortgage, any other Loan Instrument, or the Land Lease.

(f) Not to suffer, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Premises as a single lien.

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

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

1.12 Actions by Mortgagee to Preserve Mortgaged Premises. That should Mortgagor fail to make any payment or to do any act as and in the manner provided in the Land Lease or in any of the Loan Instruments, Mortgagee, in its own discretion, without obligation to do so and without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation, may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof. In connection therewith (without limiting Mortgagee's general powers), Mortgagee shall have and is hereby given the right, but not the obligation (i) to enter upon and take possession of the Mortgaged Premises; (ii) to make additions, alterations, repairs and improvements to the Mortgaged Premises which it may consider necessary or proper to keep the Mortgaged Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Mortgagee; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which, in Mortgagee's judgment, may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. The Mortgagor shall, immediately upon demand therefor by Mortgagee, pay all costs and expenses incurred by Mortgagee in connection with the exercise by Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

BOOK 410 PAGE 437

1.13 Eminent Domain. That should the Mortgaged Premises or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner ("Condemnation"), or should Mortgagor receive any notice or other information regarding such proceeding, Mortgagor shall give prompt written notice thereof to the Mortgagee.

(a) Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, up to the amount of its debt (including interest thereon and all other sums payable hereunder or under the Loan Instruments), and shall be entitled at its option to commence, appear in, and prosecute in its own name any action or proceedings. Mortgagee shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of actions and proceeds awarded to Mortgagor (the "Proceeds") are hereby assigned to the Mortgagee and the Mortgagor agrees to execute such further assignments of the Proceeds as Mortgagee may require.

(b) In the event any portion of the Mortgaged Premises is so taken or damaged, all Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorneys' fees, incurred by Mortgagee in connection with such Proceeds, shall be applied or released by Mortgagee in the same manner as are insurance proceeds under Section 1.06(a) above. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

1.14 Additional Security. That in the event Mortgagee at any time holds additional security for any of the obligations incurred in connection with this transaction, it may enforce, in the event of default, the sale thereof or otherwise realize upon the same, as its option, either before or concurrently herewith, or after a sale is made hereunder.

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

1.16 Liens. To pay and promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Premises, or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided the Mortgagor shall first deposit with Mortgagee a bond or other surety satisfactory to Mortgagee in such amounts as Mortgagee shall reasonably require, but not more than one hundred fifty percent (150%) of the amount of the claim, and provided further that Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Mortgagor shall fail to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy

of Mortgagee hereunder, Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond or the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

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

ARTICLE II ASSIGNMENT OF RENTS, ISSUES AND PROFITS

2.01 Assignment of Rents. Mortgagor hereby assigns and transfers to Mortgagee all rents, issues and profits of the Mortgaged Premises, and hereby gives to and confers upon the Mortgagee the right, power and authority to collect such rents, issues and profits. Mortgagor irrevocably appoints Mortgagee its true and lawful attorney-in-fact, at the option of Mortgagee, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue, in the name of Mortgagor or Mortgagee, for all rents, issues and profits and apply the same to the indebtedness hereby secured; provided, however, the Mortgagor shall have the right to collect such rents, issues and profits (but not more than two (2) months in advance) prior to or at any time there is not an event of default under the Land Lease, this Mortgage or any of the Loan Instruments. The assignment of the rents, issues and profits of the Mortgaged Premises in this Article II is intended to be an absolute assignment from the Mortgagor to the Mortgagee and not merely the passing of a security interest. The rents, issues and profits are hereby assigned absolutely by Mortgagor to Mortgagee contingent only upon the occurrence of an event of default under any of the Loan Instruments.

2.02 Collection Upon Default. Upon any event of default under the Land Lease, this Mortgage or any of the Loan Instruments, Mortgagee may, at any time and without notice, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Mortgaged Premises, or any part thereof, in its own name and sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including attorneys' fees, upon any indebted-

ness secured hereby, and in such order as Mortgagee may determine. The collection of such rents, issues and profits, or the entering upon and taking possession of the Mortgaged Premises, or the application thereof as aforesaid, shall not cure or waive any default hereunder or invalidate any act done pursuant to such default or pursuant to such notice of default.

2.03 Assignment of Leases. Mortgagor agrees to assign and transfer to Mortgagee as additional security for the payment of the indebtedness secured hereby, all present and future leases upon all or any part of the Mortgaged Premises and to execute and deliver, at the request of Mortgagee, all such further assurances and assignments thereof as Mortgagee shall from time to time require. Mortgagor expressly covenants and agrees that if Mortgagor, as lessor under said lease or leases so assigned shall fail to perform and fulfill any term, covenant, condition or provision in said lease or leases, or any of them, on its part to be performed or fulfilled, at the times and in the manner in said lease or leases provided, or if Mortgagor shall suffer or permit to occur any breach or default under the provisions of any such assignment of any lease or leases and such default shall continue for ten (10) days, then and in any such event, such breach or default shall constitute an event of default hereunder as such term is defined in Section 4.01 hereof.

2.04 Mortgagee's Right of Possession in Case of Default. In any case in which under the provisions of this Mortgage Mortgagee has a right to institute foreclosure proceedings, whether before or after the whole principal sum secured hereby is declared to be immediately due, or whether before or after the institution of legal proceedings to foreclose the lien hereof or before or after sale thereunder, forthwith, upon demand of Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee shall be entitled to take actual possession of the Mortgaged Premises or any part thereof personally, or by its agent or attorneys, as for condition broken. In such event Mortgagee in its discretion may, with or without force and with or without process of law, enter upon and take and maintain possession of all or any part of said Mortgaged Premises, together with all documents, books, records, papers and accounts of Mortgagor or then owner of the Mortgaged Premises relating thereto, and may exclude Mortgagor, its agents or servants, wholly therefrom and may as attorney-in-fact or agent of Mortgagor, or in its own name as Mortgagee and under the powers herein granted, hold, operate, manage and control the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, and with full power to use such measures, legal or equitable, as in its discretion or in the discretion of its successors or assigns, may be deemed proper or necessary to enforce the payment or security of the avails, rents, issues, and profits of the Mortgaged Premises, including actions for the recovery of rent, actions in forcible detainer and actions in distress for rent, and with full power: (a) to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Mortgagor to cancel the same; (b) to elect to disaffirm any lease or sublease which is then subordinate to the lien hereof; (c) to extend or modify any then existing

BOOK 410 PAGE 440

leases and to make new leases, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness hereunder and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Mortgaged Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Mortgage indebtedness, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser; (d) to make all necessary or proper repairs, decorating, renewals, replacements, alterations, additions, betterments and improvements to the Mortgaged Premises as to it may seem judicious; (e) to insure and reinsure the same and all risks incidental to Mortgagee's possession, operation and management thereof; and (f) to receive all of such avails, rents, issues and profits; hereby granting full power and authority to exercise each and every of the rights, privileges and powers herein granted at any and all times hereunder, without notice to Mortgagor.

Mortgagee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases. Mortgagor shall and does hereby agree to indemnify and hold Mortgagee harmless of and from any and all liability, loss or damage which it may or might incur under said leases or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases. Should Mortgagee incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured hereby, and Mortgagor shall reimburse Mortgagee therefor immediately upon demand.

2.05 Application of Income Received by Mortgagee.
Prior to confirmation of any foreclosure sale on the Mortgaged Premises, Mortgagee, in the exercise of the rights and powers hereinabove conferred upon it by Section 2.01 and Section 2.04 hereof shall have full power and absolute discretion to use and apply the avails, rents, issues and profits of the Mortgaged Premises to the payment of or on account of the following, in such order as Mortgagee may determine:

(a) to the payment of the operating expenses of the Mortgaged Premises, including cost of management and leasing thereof (which shall include reasonable compensation to Mortgagee and its agent or agents, if management be delegated to an agent or agents, and shall also include lease commissions and other compensation and expenses of seeking and procuring tenants and entering into leases), established claims for damages, if any, and premiums on insurance hereinabove authorized;

(b) to the payment of any Imposition now due or which may hereafter become due on the Mortgaged Premises;

(c) to the payment of all repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Mortgaged Premises, and of placing the Mortgaged Premises in such condition as will, in the sole judgment of Mortgagee, which such judgment shall be absolute and final, make it readily rentable;

(d) to the payment of any sums now due or which may hereafter become due under the Land Lease; and/or

(e) to the payment of any indebtedness secured hereby or any deficiency which may result from any foreclosure sale.

ARTICLE III SECURITY AGREEMENT

3.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in the Personal Property located on or at the Property, including without limitation any and all property of similar type or kind hereafter located on or at the Property for the purpose of securing all obligations of Mortgagor contained in the Land Lease or any of the Loan Instruments. Such security interest shall extend to and include as well any and all proceeds (including insurance proceeds) of such Personal Property by way of replacement, substitution, addition or otherwise and the proceeds (including insurance proceeds) thereof.

3.02 Warranties, Representations and Covenants of Mortgagor. Mortgagor hereby warrants, represents and covenants as follows:

(a) Except for the security interest granted hereby, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever. Mortgagor will notify Mortgagee of, and will defend the Personal Property against, all claims and demands of all persons at any time claiming the same or any interest therein.

(b) Mortgagor will not lease, sell, convey or in any manner transfer the Personal Property without the prior written consent of Mortgagee.

(c) The Personal Property is not used or bought for personal, family or household purposes.

(d) The Personal Property will be kept on or at the Property and Mortgagor will not remove the Personal Property from the Property without the prior written consent of Mortgagee, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Mortgagor.

BOOK 410 PAGE 442

(e) The office at which Mortgagor maintains its records concerning accounts is in its place of business set forth in the beginning of this Mortgage.

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

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

ARTICLE IV REMEDIES UPON DEFAULT

4.01 Events of Default. Any of the following events shall be deemed an event of default hereunder.

(a) Default shall be made in the payment of any installment of principal or interest or any other sum secured hereby for more than ten (10) days after the same shall be due; or

(b) Mortgagor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file 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 shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Mortgagor or of any or any part of the Mortgaged Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

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

(d) A writ of execution or attachment or any similar process shall be issued or levied against all

or any part of or interest in the Mortgaged Premises, or any judgment involving monetary damages shall be entered against the Mortgagor which shall become a lien on the Mortgaged Premises or any portion thereof or interest therein and such execution attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy; or

(e) There has occurred a breach of or default under any terms, covenant, agreement, condition, provision, representation or warranty contained in the Mortgage Note, this Mortgage, any of the other Loan Instruments, the Land Lease, or any part thereof, which is not cured within thirty (30) days following the giving of notice to Mortgagor of any such default.

4.02 Acceleration Upon Default, Additional Remedies.

In the event of any event of default, Mortgagee may, by notice to Mortgagor, declare all indebtedness secured hereby to be due and payable and the same shall thereupon become due and payable without any presentment, demand or protest of any kind. Thereafter, Mortgagee shall have the right and is hereby authorized:

(a) to enter upon and take possession of the Mortgaged Property, and after or without taking possession, to sell the same before the main entrance of the courthouse at the county seat of the said county in which said property is located in the State of Alabama, at public outcry for cash, first giving notice of the time, place, and terms of said sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county and state in which said property is located; and upon the payment of the purchase money, the Mortgagee, or any person conducting said sale for it, is authorized to execute to the purchaser at said sale, a deed and/or other appropriate conveyancing or assignment document to the property so purchased, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. The Mortgagee may bid at the sale and purchase said property, if the highest bidder therefor. At said foreclosure sale, the premises 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 Mortgagee may elect. The presence of any of the above-described security at the place of sale is expressly waived.

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

(i) Either personally or by means of a court-appointed receiver, take possession of all or any part of the Personal Property and exclude therefrom Mortgagor and all others claiming under Mortgagor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Mortgagor in respect to the Personal Property

or any part thereof. In the event Mortgagee demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Instruments, the Mortgagor promises and agrees to promptly turn over and deliver complete possession thereof to the Mortgagee;

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

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

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

(v) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Mortgagee shall give Mortgagor at least ten (10) days prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to the Mortgagor at the address set forth at the beginning of this Mortgage.

4.03 Foreclosure; Expense of Litigation. When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of Mortgagee under this Mortgage or the Mortgage Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree reasonable attorney's fee for collection, and all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title

to or the value of the Mortgaged Premises. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the Mortgaged Premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Mortgage Note or the Mortgaged Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate of twenty percent (20%) per annum and shall be secured by this Mortgage.

4.04 Application of Proceeds of Foreclosure Sale.

The proceeds of any foreclosure sale of part or all of the Mortgaged Premises shall be distributed and applied in the following order of priority: First, on account of all costs and expenses incident to the foreclosure proceedings including advertising and selling and including all such items as are mentioned in Paragraph 4.03 above; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Mortgaged Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Mortgaged Note; fourth, any surplus to Mortgagor, its successors or assigns, as their rights may appear.

4.05 Appointment of a Receiver.

If an event of default described in Section 4.01 of this Mortgage shall have occurred and be continuing, the Mortgagee, as a matter of right and without notice to Mortgagor or anyone claiming under Mortgagor, and without regard to the then value of the Mortgaged Premises or the interest of Mortgagor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Premises, and Mortgagor hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of the Mortgagee in case of entry as provided in Section 4.02(a), and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Premises unless such receivership is sooner terminated.

4.06 Remedies Not Exclusive.

Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby, and to exercise all rights and powers under this Mortgage or under any Loan Instrument or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee; it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter

BOOK 410 PAGE 446

held by Mortgagee in such order and manner as it may, in its absolute discretion, determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Instruments to the Mortgagee or to which the Mortgagee may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies.

ARTICLE V
MISCELLANEOUS

5.01 Governing Law. This Mortgage shall be governed by the laws of the State of Alabama. In the event that any provision or clause of any of the Loan Instruments conflicts with applicable laws, such conflicts shall not affect other provisions of such Loan Instruments which can be given effect without the conflicting provision, and to this end the provisions of the Loan Instruments are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

It is the intent of the Mortgagor and the Mortgagee in the execution of this Mortgage and the Mortgage Note hereby secured and all other instruments securing the Mortgage Note to contract in strict compliance with the usury laws of the State of Alabama governing the loan evidenced by the Mortgage Note. In furtherance thereof, Mortgagee and Mortgagor stipulate and agree that none of the terms and provisions contained in the Loan Instruments ever shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of Alabama governing the loan evidenced by the Mortgage Note. The Mortgagor or any other party now or hereafter becoming liable for the payment of the Mortgage Note shall never be liable for unearned interest on the Mortgage Note and shall never be required to pay interest on the Mortgage Note at a rate in excess of the maximum interest that may be lawfully charged under the laws of the State of Alabama on loans of this type and in this original principal amount, and the provisions of this Section shall control over all other provisions of the Mortgage Note and any other instrument executed in connection therewith or herewith which may be in apparent conflict herewith. In the event any holder of the Mortgage Note shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on the Mortgage Note to a rate in excess of that permitted to be charged by the laws of the State of Alabama on loans of this type and in this original principal amount, all such sums deemed to constitute interest in excess of the legal rate shall be immediately returned to the Mortgagor upon such determination.

BOOK 410 PAGE 447

5.02. No Transfer; No Other Financing or Liens. Without the prior written consent of Mortgagee, which consent shall be entirely within Mortgagee's discretion to grant or not grant:

(a) Mortgagor will abstain from and will not cause or permit: (i) any transfer of title to the Mortgaged Premises or any part thereof or any interest therein, voluntarily or by operation of law (other than by death or by execution on the Mortgage Note or foreclosure under this Mortgage), (ii) any transfer to any party or parties, not presently a partner of Mortgagor, of more than twenty-five percent (25%) of the interest in Mortgagor, either singularly or in the aggregate, or (iii) the designation of any party other than JAMES D. DAVENPORT as manager or managing partner of Mortgagor;

(b) Mortgagor shall not voluntarily create or otherwise permit to be created or filed against the Mortgaged Premises, or any part thereof, any deed of trust or mortgage lien or other lien or liens, either superior or junior to this Mortgage, and further, Mortgagor agrees that it will keep and maintain the same free from the claim of all persons supplying labor or materials to or for the Mortgaged Premises.

5.03 Required Notices. In addition to any other notices required herein, in the Mortgage Note or in any of the other Loan Instruments, Mortgagor shall promptly notify Mortgagee of the occurrence of any of the following:

(a) Fire or other casualty causing damage to part or all of the Mortgaged Premises,

(b) Receipt of notice of Condemnation or a contemplated taking of part or all of the Mortgaged Premises,

(c) Receipt of notice from any governmental authority relating to the structure, use or occupancy of part or all the Mortgaged Premises,

(d) Receipt of any notice of default from any tenant of all or any portion of the Mortgaged Premises, or

(e) Commencement of any litigation affecting part or all of the Mortgaged Premises.

5.04 Covenant Running With The Land. Any act or agreement to be done or performed by Mortgagor shall be construed as a covenant running with the land and shall be binding upon Mortgagor and its successors, assigns, heirs, administrators and personal representatives as if they had personally made such agreement; provided, however, nothing contained in this Paragraph 5.04 shall in any way operate to relieve Mortgagor of the conditions contained in Paragraph 5.02 above.

5.05 Definitions. Whenever used in this Mortgage, unless the context clearly indicates a contrary intent:

(a) The word "Mortgagee" shall mean the person specifically named herein as "Mortgagee" or any subsequent holder of this Mortgage;

(b) The word "Mortgagor" shall mean the person who executes this Mortgage and any subsequent owner of the Mortgaged Premises and their respective heirs, executors, administrators, successors and assigns;

(c) The word "person" shall mean an individual, corporation, partnership or unincorporated association;

(d) The use of any gender shall include all genders.

5.06 Joint and Several Liability. If Mortgagor be more than one person, all obligations, agreements, conditions, covenants, provisions, stipulations, authorizations, waivers, releases, options, undertakings, rights and benefits made or given by Mortgagor shall be joint and several, and shall bind and affect all persons who are defined as "Mortgagor" as fully as though all of them were specifically named herein wherever the word "Mortgagor" is used.

5.07 Notices. Whenever Mortgagee or Mortgagor shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be effective only if the same is delivered by personal service or mailed by United States registered mail, postage prepaid, return receipt requested, addressed to Mortgagor at the address set forth at the beginning of this Mortgage, ATTN: James D. Davenport and addressed to Mortgagee at the address set forth at the beginning of this Mortgage, ATTN: Investment Department. Any party may at any time change its address for such notices by delivering or mailing to the other party, as aforesaid, a notice of such change, provided however that Mortgagee shall only be obligated to deliver such communication to Mortgagor at a singular address. All notices, demands, requests or other communications shall be deemed to have been given when deposited in the United States mail as aforesaid.

5.08 Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

5.09 Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Mortgaged Premises, 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 procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the debt which is not secured or fully secured by the lien of this Mortgage.

BUCK 410 PAGE 449

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

5.11 Limitation of Liability.

(a) Except as otherwise provided in subparagraph (b) below, the liability of Mortgagor hereunder and under any of the other Loan Instruments, or any general partner of Mortgagor shall be limited solely to the Mortgaged Premises and the docket in any judicial proceeding brought to enforce the provisions of this Mortgage or any of the Loan Instruments shall so note this limitation of liability. Mortgagee agrees to look solely to the Mortgaged Premises and not to any other assets of Mortgagor or any general partner of Mortgagor.

(b) Notwithstanding the provisions of subparagraph (a) above, James D. Davenport shall be jointly and severally liable with Mortgagor for all monthly sums of principal and interest becoming due under the Mortgage or any other Loan Instrument for a period of twelve (12) months from the date hereof, and the limitation of liability contained in subparagraph (a) above shall not apply to the liability of James D. Davenport during such period of time.

5.12 Release of Certain Portions of the Mortgaged Premises. Provided no event of default (as described in Section 4.01 above) exists, Mortgagor shall have the right to request the release from the lien of this Mortgage the lands described in Exhibits A and B hereto, together with any portion of the Mortgaged Premises relating thereto, and Mortgagee agrees to release the same, provided:

(i) Mortgagor has accepted a bona fide offer to purchase the property sought to be released from an unrelated third party.

(ii) Mortgagor gives Mortgagee at least fifteen (15) days prior written notice of such requested release or releases.

(iii) The office building located on the parcel of land described in Exhibit B hereto is at least ninety-five percent leased pursuant to leases approved under the provisions of the Land Lease.

(iv) Mortgagor shall prepare and forward to Mortgagee, along with the notice requesting release, all documents necessary to effectuate the requested release, which such documentation shall be subject to the review and approval of Mortgagee.

(v) The notice requesting release for each of said parcels shall be accompanied by a payment in the amount of Twenty-five Thousand Dollars (\$25,000.00) for each such parcel, which such sum or sums shall be applied to the principal last becoming due under the Mortgage Note.

IN WITNESS WHEREOF, RIVERCHASE OFFICE PLAZA COMPANY has caused this Mortgage to be executed and delivered by all of its partners.

Signed, Sealed and
Delivered in the
Presence of:

RIVERCHASE OFFICE PLAZA COMPANY,
an Alabama General Partnership

Eric Carlton

By James D. Davenport (SEAL)
James D. Davenport (General Partner)

Pryor A. Williams, Jr.

By: Pryor A. Williams, Jr. (SEAL)
Pryor A. Williams, Jr. (General Partner)

Eric Carlton

By: William M. Bishop (SEAL)
William M. Bishop (General Partner)

Robert L. Roebuck

By: Robert L. Roebuck (SEAL)
Robert L. Roebuck (General Partner)

JAMES D. DAVENPORT is also executing this Mortgage and Security Agreement, in his individual capacity, for the purpose of agreeing to the provisions of Section 5.11(b) hereof.

Signed, Sealed and
Delivered in the
Presence of:

Eric Carlton

James D. Davenport (SEAL)
James D. Davenport (Individually)

BUCK 410 PAGE 451

BOOK 410 PAGE 452

STATE OF ALABAMA)
COUNTY OF Shelby) SS

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that JAMES D. DAVENPORT, whose name as General Partner of RIVERCHASE OFFICE PLAZA COMPANY, an Alabama General Partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Mortgage and Security Agreement, he, as such General Partner, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4
day of March, 1981.

Terry P. Adams
Notary Public
My commission expires Sept 26, 1984

STATE OF ALABAMA)
COUNTY OF Shelby) SS

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that PRYOR A. WILLIAMS, JR., whose name as General Partner of RIVERCHASE OFFICE PLAZA COMPANY, an Alabama General Partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Mortgage and Security Agreement, he, as such General Partner, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4
day of March, 1981.

Terry P. Adams
Notary Public
My commission expires Sept 26, 1984

STATE OF ALABAMA)
COUNTY OF Shelby) SS

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that WILLIAM M. BISHOP, whose name as General Partner of RIVERCHASE OFFICE PLAZA COMPANY, an Alabama General Partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Mortgage and Security Agreement, he, as such General Partner, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4
day of March, 1981.

Terry P. Adams
Notary Public
My commission expires Sep 26, 1984

BOOK 410 PAGE 453

STATE OF ALABAMA)
COUNTY OF Shelby) SS

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that ROBERT L. ROEBUCK, whose name as General Partner of RIVERCHASE OFFICE PLAZA COMPANY, an Alabama General Partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing Mortgage and Security Agreement, he, as such General Partner, and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4
day of March, 1981.

Terry P. Adams
Notary Public
My commission expires Sept 26, 1984

STATE OF ALABAMA)
COUNTY OF Shelby) SS

I, Terry P. Adams, a Notary Public in and for said County and State, hereby certify that JAMES D. DAVENPORT, whose name is signed to the foregoing Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage and Security Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 4
day of March, 1981.

Terry P. Adams
Notary Public
My commission expires Sept 26, 1984

EXHIBIT A

The following is a description of a tract of land situated in the SW $\frac{1}{4}$ of Section 19, Township 19 South, Range 2 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southwest corner of Section 19, thence North along the West line of said section 1,631.08 feet; thence 90 degrees 00 minutes 00 seconds right, 1,003.63 feet to the point of beginning; said point also being on the West right of way of a proposed road; thence 74 degrees 32 minutes 08 seconds right to the tangent of a curve to the left, said curve having a central angle of 02 degrees 15 minutes 11 seconds and a radius of 770.00 feet; thence follow the arc of said curve and right of way 30.28 feet; thence tangent to said curve and along said right of way 60.07 feet to a curve to the right, said curve having a central angle of 16 degrees 15 minutes 02 seconds and a radius of 670.00 feet; thence follow the arc of said curve 190.03 feet; thence 91 degrees 27 minutes 43 seconds right and leaving said right of way 32.24 feet; thence 43 degrees 43 minutes 54 seconds left, 38.34 feet; thence 46 degrees 16 minutes 06 seconds left, 20.00 feet; thence 80 degrees 17 minutes 34 seconds right 267.39 feet; thence 91 degrees 15 minutes 50 seconds right 48.34 feet; thence 87 degrees 58 minutes 03 seconds right, 15.00 feet; thence 93 degrees 19 minutes 21 seconds left; 20.00 feet; thence 90 degrees 00 minutes 00 seconds right 14.00 feet; thence 90 degrees 00 minutes 00 seconds left, 65.00 feet; thence 90 degrees 00 minutes 00 seconds left, 14.00 feet; thence 90 degrees 00 minutes 00 seconds right; 18.00 feet; thence 90 degrees 00 minutes 00 seconds left, 30.00 feet; thence 82 degrees 01 minutes 19 seconds right; 64.19 feet to a point on the 422.00 foot contour line (M.S.L. Datum) of a lake; thence along said contour line 353 feet, more or less, said contour being more particularly described by the following traverse line, thence 64 degrees 28 minutes 55 seconds right 46.66 feet; thence 24 degrees 24 minutes 58 seconds right; 172.02 feet; thence 00 degrees 57 minutes 52 seconds left; 134.44 feet; thence leaving said contour 08 degrees 23 minutes 01 seconds right 22.63 feet to the point of beginning.

Together with a certain easement set forth in certain Easement Agreement dated February 26, 1981, and recorded in Volume 331, Page 512, in the Office of the Judge of Probate of Shelby County, Alabama.

BOOK 410 PAGE 454

EXHIBIT B

The following is a description of a tract of land situated in the West $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19, Township 19 South, Range 2 West, Shelby County, being more particularly described as follows:

Commence at the SW corner of Section 19; thence North along the West line of said section, 1,469.50 feet; thence 90 degrees 00 minutes 00 seconds right, 668.74 feet to the point of beginning, said point also being on the 422.00 foot contour line (M.S.L. Datum) of a lake; thence 68 degrees 13 minutes 06 seconds right 64.19 feet; thence 82 degrees 01 minutes 19 seconds left; 30.00 feet; thence 90 degrees 00 minutes 00 seconds right, 18.00 feet; thence 90 degrees 00 minutes 00 seconds left, 14.00 feet; thence 90 degrees 00 minutes 00 seconds right, 65.00 feet; thence 90 degrees 00 minutes 00 seconds right, 14.00 feet; thence 90 degrees 00 minutes 00 seconds left, 20.00 feet; thence 93 degrees 19 minutes 21 seconds right, 15.00 feet thence 87 degrees 58 minutes 03 seconds left, 48.34 feet; thence 22 degrees 53 minutes 36 seconds right, 184.83 feet; thence 69 degrees 20 minutes 00 seconds right, 13.00 feet; thence 49 degrees 14 minutes 51 seconds left, 59.40 feet; thence 40 degrees 45 minutes 09 seconds left, 20.00 feet; thence 90 degrees 00 minutes 00 seconds right, 186.22 feet to the 422.00 foot contour line (M.S.L. Datum) of a lake; thence along said contour line 667 feet more or less, said contour line being more particularly described by the following traverse line; thence from last stated course 88 degrees 26 minutes 39 seconds right, 70.15 feet; thence 08 degrees 38 minutes 28 seconds right, 81.95 feet; thence 117 degrees 48 minutes 59 seconds left, 52.42 feet; thence 110 degrees 16 minutes 51 seconds right, 62.37 feet; thence 23 degrees 22 minutes 36 seconds right, 68.36 feet; thence 39 degrees 46 minutes 14 seconds right, 59.05 feet; thence 05 degrees 18 minutes 48 seconds left, 143.40 feet; thence 08 degrees 27 minutes 41 seconds left, 128.93 feet to the point of beginning.

Together with a certain easement set forth in certain Easement Agreement dated February 26, 1981, and recorded in Volume 331, Page 512, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT C

The following is a description of a tract of land situated in the West 1/4 of the SW 1/4 of Section 19, Township 19 South, Range 2 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the SW corner of Section 19; thence North along the West line of said Section, 1,266.48 feet; thence 90 degrees 00 minutes 00 seconds right, 738.62 feet to the point of beginning; thence 09 degrees 42 minutes 33 seconds left, 267.39 feet; thence 80 degrees 17 minutes 46 seconds left, 20.00 feet; thence 46 degrees 16 minutes 06 seconds right, 38.34 feet; thence 43 degrees 43 minutes 54 seconds right, 32.24 feet to the Westerly right of way of Parkway Lake Drive and a curve to the right, said curve having a central angle of 22 degrees 31 minutes 43 seconds and a radius of 670.00 feet; thence 88 degrees 32 minutes 17 seconds right to tangent of said curve and along said right of way and the arc of said curve 263.44 feet; thence tangent to said curve and along said right of way 47.65 feet; thence 62 degrees 43 minutes 00 seconds right, leaving said right of way 354.46 feet; thence 90 degrees 00 minutes 00 seconds right, 20.00 feet; thence 40 degrees 45 minutes 09 seconds right, 59.40 feet; thence 49 degrees 14 minutes 51 seconds right, 13.00 feet; thence 69 degrees 20 minutes 00 seconds left, 184.83 feet to the point of beginning.

Together with a certain easement set forth in certain Easement Agreement dated February 26, 1981, and recorded in Volume 331, Page 512, in the Office of the Judge of Probate of Shelby County, Alabama.

SEAL OF ALA. SHELBY CO.
I CERTIFY THIS
DOCUMENT WAS FILED

1981 MAR -5 AM 11:00

Thomas F. Shouder, Jr.
JUDGE OF PROBATE

Orig.	1110.00
Recd.	45.00
Ind.	1.00
	<hr/>
	1156.00

BOOK 410 PAGE 456