

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE (hereinafter referred to as this "Mortgage") is made this 29th day of April, 1982, by and between KOVACH EDDLEMAN PROPERTIES, an Alabama general partnership with its principal place of business at 200 Century Park South, Suite 126, Birmingham, Alabama 35226 (hereinafter referred to as "Mortgagor") and BALCOR INSTITUTIONAL INVESTORS, an Illinois limited partnership with its principal place of business at 10024 Skokie Boulevard, Skokie, Illinois 60076 (hereinafter referred to as "Mortgagee").

WITNESSETH:1. DEFINITIONS

1.1 Wherever used in this Mortgage, "Mortgagor's Liabilities" means any and all of the following: (i) the payment of any and all monies, including, but not limited to, the payment, when due or declared due, of the principal sum thereof and interest (including all additional interest) thereon, now and/or hereafter owed or to become owing by Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of that certain Secured Promissory Note (hereinafter referred to as the "Note") of even date herewith executed and delivered by Mortgagor to Mortgagee and payable to Mortgagee in the principal sum of Three Million Two-Hundred Fifty Thousand and No/100ths Dollars (\$3,275,000.00) and which matures on May 1, 1997; (ii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtednesses (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee under and/or pursuant to the terms and provisions of this Mortgage, and (iii) the payment of any and all other debts, claims, obligations, demands, monies, liabilities and/or indebtedness (of any and every kind or nature) now and/or hereafter owing, arising, due or payable from Mortgagor to Mortgagee, howsoever evidenced, created, incurred, acquired or owing, whether primary, secondary, direct, contingent, fixed or otherwise, and arising under and/or pursuant to the terms and provisions of any other agreements, security agreements, assignments of leases and rents, pledge and collateral agreements, instruments and/or documents now and/or hereafter executed and delivered by or for Mortgagor to Mortgagee (hereinafter referred to as the "Other Agreements"), including, without limitation, the indebtedness to be created upon the funding of the loan to be made by Mortgagee to Mortgagor pursuant to that certain mortgage loan Commitment (Loan B) dated February 28, 1982, up to a maximum principal amount of \$1,900,000.00.

1.2 Wherever used in this Mortgage, "Mortgagor's Obligations" means the prompt, full and faithful performance, discharge, compliance and observance by Mortgagor of each and every term, condition, warranty, representation, agreement, undertaking, covenant and provision to be performed, discharged, observed or complied with by Mortgagor contained in this Mortgage, the Note and/or in the Other Agreements.

1.3 Wherever used in this Mortgage, "Mortgaged Property" means any and all of the following: (i) all of the following described two (2) parcels of real estate, and all of Mortgagor's

See release Mice BL 55 pg. 753 (3-23-84)
Kovach & Associates, 200 Century Park South, Suite 126 - Bham 35226

estate, right, title and interest therein, situated, lying and being in the County of Shelby, State of Alabama, and legally described on Exhibit "A" as "Parcel A" and "Parcel B" attached hereto and made a part hereof and commonly known as Building 400 (as to Parcel A) and 500 (as to Parcel B), together with all buildings, improvements, tenements, easements, gores of land, hereditaments, waters, water courses, water rights and powers and appurtenances now and/or at any time or times hereafter upon, belonging or otherwise appertaining to or situated on said real estate and all heretofore or hereafter acquired roads, alleys, streets and other publicways abutting said real estate, whether before or after vacation thereof (hereinafter referred to as the "Premises"); (ii) all present and future rents, issues, avails, profits and proceeds under present or future leases (as opposed to the profits and proceeds resulting from any voluntary sale of the Premises which is permitted hereunder), (hereinafter referred to as the "Rents") of or from the Premises, the "Leases" and/or and the "Equipment" (both of which terms are hereinafter defined), howsoever occurring, existing, created or arising; (iii) all present and future leases, agreements, tenancies, licenses and franchises (hereinafter referred to as the "Leases") of or from the Premises and/or the Equipment or in any way, manner or respect required, existing, used or useable in connection with the Premises and/or the Equipment or the management, maintenance, operation or business thereof, and all deposits of money as advance rent or for security under any or all of the Leases and all guaranties of lessees' performances thereunder; (iv) all present and future judgments, awards of damages and settlements made as a result or in lieu of any taking of the Premises, the Equipment and/or the Leases, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) thereto; (v) all present and future apparatus, machinery, equipment, fixtures and articles of personal property of any and every kind and nature whatsoever now owned or hereafter acquired by the Mortgagor, and used, attached to, installed or located in or on the Premises, or required for use in or on or in connection with the Premises or the management, maintenance, operation or business thereof and all replacements thereof and accessions thereto (hereinafter referred to as the "Equipment"), including, but not limited to, any such item of Equipment now or at any time or times hereafter situated on the Premises and used to supply or otherwise deliver heat, gas, air conditioning, water, light, electricity, power, plumbing, refrigeration, sprinkling, ventilation, mobility, communication, incineration, recreation and all other related or other such services (all of the immediately above mentioned items of Equipment being deemed to be a part of the Premises, whether physically attached thereto or not); (vi) all present and future insurance policies in force or effect insuring the Premises, the Rents, the Leases or the Equipment; and (vii) all proceeds of each and every of the foregoing.

1.4 Wherever used in this Mortgage, the term "and/or" means one or the other or both, or any one or all, of the things, events or persons or parties in connection with which the term is used.

2. CONVEYANCE

2.1 NOW THEREFORE, in consideration of the indebtedness above mentioned and to secure the payment by Mortgagor of Mortgagor's

Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor has bargained and sold and hereby does warrant, grant, give, bargain, confirm, assign, pledge, set over, transfer, sell, remise, release and otherwise mortgage and convey to Mortgagee to have and to hold the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, forever, the Mortgaged Property for the purposes and uses set forth in this Mortgage; provided, nevertheless, that if Mortgagor, its successors or assigns, shall satisfy, discharge and otherwise pay to Mortgagee, its successors or assigns, in full, Mortgagor's Liabilities and keep and perform all of Mortgagor's Obligations, then this Mortgage shall become null and void and shall be released at Mortgagor's expense.

2.2 This Mortgage shall operate as and constitute a Security Agreement with respect to that portion of the Mortgaged Property constituting property or interests in property, whether real or personal, tangible or intangible, which are subject to the priority and perfection of security interest provisions of the Uniform Commercial Code or any similar and applicable law, statute, code or other governing body of law. Therefore, to secure the payment by Mortgagor of Mortgagor's Liabilities and the performance by Mortgagor of Mortgagor's Obligations, Mortgagor hereby grants to Mortgagee a security interest in the Mortgaged Property and Mortgagor does hereby set over, assign, and transfer to Mortgagee all of the Leases and Rents subject to the terms and conditions of this Mortgage.

2.3 Mortgagor, within ten (10) days after request by Mortgagee therefor, will certify, in writing, to Mortgagee, or to any proposed assignee of this Mortgage, the amount of principal and interest then owing and unpaid under the Note and whether Mortgagor has or asserts any offsets or defenses thereto.

2.4 Mortgagor, immediately upon request by Mortgagee, at Mortgagor's sole expense, will or will cause to be made, executed and delivered to Mortgagee, in form and substance acceptable to Mortgagee, all "Documents" (as hereinafter defined) that Mortgagee is advised are and/or deems necessary or appropriate to evidence, document or conclude the transactions described in and/or contemplated by this Mortgage, the Note or the Other Agreements or required to perfect or continue perfected, as valid encumbrances, the encumbrances granted herein or in the Other Agreements by Mortgagor to Mortgagee upon the Mortgaged Property. As used in this Paragraph, "Documents" means any mortgage, deed of trust or similar instrument, assignment of leases, assignment of rents, note, security agreement, financing statement, assignment of insurance, loss payable clause, mortgage title insurance policy, letters of opinion, waiver letter, estoppel letter, consent letter, non-offset letter, insurance certificate, appraisal, survey and any other similar such agreements, instruments or documents.

2.5 This Mortgage may become a second encumbrance as to Parcel B only and is subject and subordinate to the following described mortgage which may encumber Parcel B but only to the amounts from time to time remaining unpaid thereon up to a maximum principal amount of \$1,900,000.00, to wit:

Mortgage to be made by Mortgagor to The Birmingham Trust National Bank, (the "Construction Lender"), as Mortgagee, to be recorded in the office of the Judge of Probate, Shelby County, Alabama, book _____, page _____, given to secure payment of a Construction Note to be made in the original principal amount of \$1,900,000.00, the proposed construction loan being hereinafter referred to as the "Parcel B Construction Loan").

3. COVENANTS, WARRANTIES AND REPRESENTATIONS

3.1 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(i) Subject to the exculpatory clause contained in Paragraph 7.6 hereof, Mortgagor promptly will pay, or cause to be paid, when due or declared due, Mortgagor's Liabilities and promptly, fully and faithfully will perform, discharge, observe and comply with each and every of Mortgagor's Obligations.

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(ii) Mortgagor now has and hereafter shall maintain the standing, right, power and lawful authority to own the Mortgaged Property, to carry on the business of and operate the Mortgaged Property, to enter into, execute and deliver this Mortgage, the Note and the Other Agreements to Mortgagee, to encumber the Mortgaged Property to Mortgagee as provided herein or in the Other Agreements and to perform all of Mortgagor's Obligations and to consummate all of the transactions described in or contemplated by this Mortgage, the Note and the Other Agreements.

(iii) The execution, delivery and performance by Mortgagor of and under this Mortgage, the Note and the Other Agreements does not and will not constitute a violation of any applicable law and does not and will not conflict with or result in a default or breach of or under or an acceleration of any obligation arising, existing or created by or under any agreement, instrument, document, mortgage, deed, trust deed, note, judgment, order, award, decree or other restriction to which Mortgagor or any of the Mortgaged Property is or hereafter shall become a party or by which Mortgagor or any of the Mortgaged Property is or hereafter shall become bound or any law or regulatory provision now or hereafter affecting Mortgagor or any of the Mortgaged Property.

(iv) The various financial and operating statements relating to the Mortgaged Property and the operation and business thereof heretofore delivered by or for Mortgagor to Mortgagee are correct, complete and accurate in all respects, fairly present the financial conditions represented as of the dates and for the periods indicated and have been and shall be prepared in accordance with proper accounting standards, consistently applied unless otherwise specifically indicated. The various financial and operating statements relating to the Mortgaged Property and the operation and business thereof from time to time hereafter delivered by or for Mortgagor to Mortgagee are complete and accurate in all material respects, fairly present the financial conditions represented as of

the dates and for the periods indicated and shall be prepared in accordance with proper accounting standards, consistently applied unless otherwise specifically indicated.

(v) The various other data and information relating to the Mortgaged Property and the operation and business thereof heretofore and from time to time hereafter delivered by or for Mortgagor to Mortgagee are and shall be correct, complete and accurate in all material respects.

(vi) Mortgagor has duly filed and shall continue timely to file all federal, state and other governmental tax and similar returns which Mortgagor is required by law to file with respect to the Mortgaged Property and the operation and business thereof. All taxes and other sums which are shown to be payable under such returns have been and shall be timely and fully paid and Mortgagor shall maintain adequate reserves in amount to fully pay all such liabilities which hereafter may accrue.

(vii) (a) all of the Leases are genuine, in all respects what they purport to be, free of set-offs, counterclaims or disputes and valid and enforceable in accordance with their terms; (b) except for security deposits provided for under the Leases, and revealed by Mortgagor to Mortgagee in writing, no advance payments have been or shall be made thereunder; and (c) at Mortgagee's request, Mortgagor shall deliver all security deposits to Mortgagee.

(viii) There is no litigation, action, claim or proceeding pending or threatened which might, in any way, manner or respect, materially or adversely affect the Mortgaged Property, the operation or the business thereof, Mortgagee's encumbrances thereon, the collectibility of the Note, the ability of Mortgagor to repay the Note or the financial condition of the Mortgaged Property or the operation or business thereof.

(ix) The Mortgaged Property now consists of and is in the same condition, ordinary wear and tear excepted, as it was when Mortgagee last inspected it on February 1, 1982.

(x) Mortgagor and the Mortgaged Property possess and hold and shall maintain adequate properties, interests in properties, leases, licenses, franchises, rights and governmental and other permits, certificates, consents and approvals to conduct and operate the business of the Mortgaged Property. None of the foregoing contain or shall contain any term or condition that is materially burdensome to said business or different than those of the foregoing possessed or held by other parties conducting or operating a similar business.

(xi) There does not exist and hereafter there shall not arise any default or breach of or under any agreement, instrument or document for borrowed money by which Mortgagor or the Mortgaged Property is bound or obligated.

(xii) The location, existence and use of the Premises and the Equipment are, shall be when fully improved and shall remain in compliance with all applicable laws, rules, ordinances and regulations, including, but not limited to, building and zoning laws, and all covenants and restrictions of record.

(xiii) Mortgagor is and shall remain in peaceful possession of and will forever warrant and defend the Mortgaged Property from and against any and all claims thereon or thereto of any and all parties.

(xiv) Mortgagor will save and hold Mortgagee harmless of and from any and all damage, loss, cost and expense, including, but not limited to, reasonable attorneys' fees, costs and expenses, incurred by reason of or arising from or on account of or in connection with any suit or proceeding, threatened, filed and/or pending, in or to which Mortgagee is or may become or may have to become a party by reason of or arising from or on account of or in connection with Mortgagor's Liabilities, this Mortgage, the Note or the Other Agreements.

3.2 Mortgagor covenants with and warrants and represents to Mortgagee that Mortgagor is lawfully seized, possessed and the owner of and has good and indefeasible, marketable fee-simple title to the Mortgaged Property, free and clear of all liabilities, claims, debts, exceptions, security interests, assessments, charges, impositions, levys, taxes, liens and all other types of encumbrances (hereinafter referred to as the "Encumbrances") except (I) the Encumbrances of Mortgagee, (II) those Encumbrances described on Exhibit "B" attached hereto and made a part hereof, (III) Encumbrances of Parcel B relating to and arising under the Parcel B Construction Loan in the amount of \$1,900,000.00 and (IV) existing Leases to tenants in possession of portions of the Premises.

3.3 Mortgagor covenants with and warrants and represents to Mortgagee as follows:

(i) Mortgagor will not change the present or contemplated use or character of or abandon the Mortgaged Property and at all times hereafter shall keep the Mortgaged Property in good condition and repair and will not commit or suffer waste and will make all necessary repairs, replacements and renewals (including the replacement of any items of the Equipment) to the Mortgaged Property so that the value and operating efficiency thereof shall at all times hereafter be maintained and preserved. Mortgagor shall not remove any fixture or demolish any building or improvement located in or on the Premises. Mortgagor shall pay for and complete, within a reasonable time, any building or improvement at any time in the process of erection upon the Premises, shall refrain from impairing or diminishing the value of the Mortgaged Property and shall make no material alterations to the Mortgaged Property which in the opinion of Mortgagee diminishes its value, and promptly shall repair, restore or rebuild any building or improvement now or hereafter on the Premises which may become damaged or destroyed. Mortgagor shall comply with all requirements of law and all municipal ordinances governing the Mortgaged Property and the use thereof Mortgagor shall permit Mortgagee, and its agents, upon demand, access to and to inspect the Mortgaged Property at all reasonable times.

(ii) Mortgagor promptly shall pay and discharge, as and when due and payable, before any penalty attaches, all charges, impositions, levies, assessments and taxes (whether general, special or otherwise), water charges, sewer service charges and

all other municipal or governmental charges impositions, levys, assessments and taxes of any kind or nature that may be at any time levied, assessed or imposed upon or against the Mortgaged Property, or any part thereof, and shall deliver to Mortgagee duplicate receipts evidencing payment thereof at least thirty (30) days before delinquency. To prevent default hereunder, Mortgagor may pay in full, under protest, and in the manner provided by statute, any charge, imposition, levy, tax or assessment which Mortgagor may desire to contest. If Mortgagee is required by legislative enactment or judicial decision to pay the United States of America, the State of Alabama or any political subdivision thereof, any charge, imposition, assessment, levy or tax on the Mortgaged Property (or on any interest therein), this Mortgage, the Other Agreements or Mortgagor's Liabilities, all of Mortgagor's Liabilities shall become and be due and payable, at the election of Mortgagee, thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, said election and right to elect will be unavailing and this Mortgage, the Note and the Other Agreements will be and remain in full force and effect as though said law had not been enacted or said decision had not been rendered if, notwithstanding such law or decision, Mortgagor lawfully may pay such charge, imposition, assessment, levy or tax to or for Mortgagee and does, in fact, pay, when payable, so much thereof as, taken with interest as aforesaid, does not exceed the maximum amount of interest permitted by applicable law. Notwithstanding the foregoing, Mortgagor shall have no obligation to pay any income or profit tax that is or may be imposed upon Mortgagee as a consequence of its general business activities, including the receipt of interest or other charges under the Note, this Mortgage and the Other Agreements. If at any time the United States of America shall require internal revenue stamps to be affixed to this Mortgage, the Note or the Other Agreements, Mortgagor will pay for the same, together with any interest or penalties imposed in connection therewith.

(iii) Mortgagor shall keep the Mortgaged Property free and clear of all Encumbrances (including, but not limited to, mechanics liens and other similar liens or claims for liens) of any and every kind and nature except those described in Paragraph 3.2 above, shall promptly pay or cause to be paid, as and when due and payable or when declared due and payable, any indebtedness which may become or be secured by such an Encumbrance and, immediately upon request by Mortgagee, shall deliver to Mortgagee evidence satisfactory to Mortgagee of the payment and discharge thereof. To prevent default hereunder, Mortgagor may indemnify Mortgagee; by suitable performance bond or title insurance endorsement (which must be approved in advance and in writing by Mortgagee), or by another means determined solely by and acceptable to Mortgagee, against loss by reason of such an Encumbrance which Mortgagor may desire, in good faith, to contest. If, in accordance with the terms of this Mortgage, Mortgagee makes payment of any such Encumbrance, Mortgagee shall be subrogated to the rights of such claimant, notwithstanding that the Encumbrance may be released of record.

(iv) Mortgagor shall not, at any time or times hereafter, pledge, hypothecate or otherwise encumber all or any portion of the Mortgaged Property or Mortgagor's interest therein, nor shall any partner or partners of Mortgagor pledge, hypothecate or

otherwise encumber all or any portion of its, his or their partnership interest in Mortgagor. Mortgagor shall not (without the prior written consent of Mortgagee) sell or otherwise transfer all or any portion of the Mortgaged Property or Mortgagor's interest therein, nor shall any partner or partners of Mortgagor sell or otherwise transfer all or any portion of its, his or their partnership interest in Mortgagor. From and after the fifth (5th) anniversary of the date hereof, Mortgagee shall give its consent to a sale or other transfer of all (but not a part) of the Mortgaged Property or Mortgagor's interest therein (or to the sale or other transfer by any partner of Mortgagor of his interest in Mortgagor); provided Mortgagee determines, in his sole discretion that the proposed purchaser, transferee or assignee is reputable, credit-worthy, experienced in real estate operations and has the wherewithal to fully and timely satisfy all of Mortgagor's Liabilities and Mortgagor's Obligations. Notwithstanding anything to the contrary contained herein, testate or intestate transfers of partnership interests in Mortgagor shall not be subject to Mortgagee's prior written consent. fhe

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(v) All present and future items of fixtures, equipment, furnishings or other tangible personal property owned by Mortgagor (whether or not constituting a part of the Mortgaged Property) related or necessary to or used or useable in connection with any present or future building or improvement on the Premises, or the operation or business thereof, are and will be owned free and clear of all Encumbrances except those described in Paragraph 3.2 above and Mortgagor will not acquire any such property subject to any Encumbrance except those Encumbrances described in Paragraph 3.2 above. Within five (5) days after request by Mortgagee, Mortgagor will execute and deliver to Mortgagee a security agreement and financing statement, in form and substance acceptable to Mortgagee, covering all such property.

(vi) With respect to the Mortgaged Property and the operation and business thereof, Mortgagor will keep or cause to be kept proper books and records, prepared in accordance with generally accepted accounting principles consistently applied. Mortgagee shall have the right to examine said books and records at any time or times hereafter upon demand, but only during customary business hours. Within sixty (60) days after the end of each fiscal year hereafter of the operation and business of the Mortgaged Property, Mortgagor shall deliver to Mortgagee an annual detailed operating statement of income and expenses and an annual balance sheet of assets and liabilities of said operation and business for the fiscal year just ended together with a certified rent roll, lease summary, statement of expenses reimbursed by tenants and any other information required by Mortgagee (prepared in accordance with generally accepted accounting principles consistently applied), all of which must be signed and certified as true, correct and accurate by a firm of independent certified public accountants of recognized regional or national standing, reasonably acceptable to Mortgagee. Within thirty (30) days after the end of each calendar quarter hereafter of the operation and business of the Mortgaged Property, Mortgagor shall deliver to Mortgagee a quarterly non-audited detailed operating statement of income and expenses and a quarterly balance sheet of assets and liabilities of said operation and business for the quarter just ended together with any other information or reports

requested by Mortgagee, which statements must be signed and certified as true, correct and accurate by the managing general partner of Mortgagor.

3.4 If Mortgagor, immediately after written demand from Mortgagee, shall neglect or refuse to keep the Mortgaged Property in good operating condition and repair or to replace or maintain the same as herein agreed, to pay the premiums for the insurance which is required to be maintained hereunder, to pay and discharge all Encumbrances as herein agreed or otherwise defaults in the performance of Mortgagor's Obligations, Mortgagee, at its sole election, may cause such repairs or replacements to be made, obtain such insurance, pay such Encumbrances or perform such Obligations. Any amounts paid by Mortgagee in taking such action, together with interest thereon at the rate provided in the Note (upon monies due after a default thereunder) from the date of Mortgagee's payment thereof until repaid by Mortgagor to Mortgagee, shall be due and payable by Mortgagor to Mortgagee upon demand, and, until paid, shall constitute a part of Mortgagor's Liabilities secured by this Mortgage. Notwithstanding the foregoing, such advances by Mortgagee shall not be deemed to relieve Mortgagor from any default hereunder or impair any right or remedy consequent thereon. The exercise of the right to take such action shall be optional with Mortgagee and not obligatory upon Mortgagee and Mortgagee shall not in any case be liable to Mortgagor for failure or refusal to exercise any such right. In making any payments pursuant to the exercise of any such right, Mortgagee may rely upon any bills delivered to it by Mortgagor or any such payee and shall not be liable for any failure to make payments in any amounts other than as set forth in any such bills.

3.5 Mortgagor hereby covenants and agrees promptly and fully to perform and observe all of the covenants, agreements and obligations on its part to be performed under the Parcel B Construction Loan including payment of principal and interest due thereunder and all Security Agreements and Chattel Mortgages now or hereafter given to the holder of the Parcel B Construction Loan as additional security for payment of the Note secured thereby (hereinafter referred to as "Collateral Instruments") and will do any and all things necessary to keep the Parcel B Construction Loan and the Collateral Instruments free of default. In the event Mortgagor shall fail to perform the covenants, agreements and obligations required on its part to be performed and observed under either the Parcel B Construction Loan or the Collateral Instruments so as to constitute a default on its part thereunder and provided that Mortgagee has purchased from the Construction Lender and then owns the Parcel B Construction Loan and/or the Collateral Instruments, such failure shall constitute an Event of Default under this Mortgage and the Other Agreements and shall entitle Mortgagee to exercise any and all rights or remedies given to Mortgagee hereunder on the occurrence of an Event of Default hereunder and under the Other Agreements.

3.6 Mortgagor covenants and agrees forthwith to deliver to Mortgagee copies of any and all notices of default, summons, legal process or other legal documents relating in any way to the Parcel B Construction Loan or to the performance or enforcement thereof, which the holder of the Parcel B Construction Loan shall give to Mortgagor.

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3.7 Mortgagor covenants and agrees that in the event Mortgagor, or its successors or assigns, shall fail to pay any installment of principal or interest or any other amount required under the Parcel B Construction Loan when due, or if Mortgagor shall fail to perform and observe the covenants, agreements and obligations of Mortgagor's part to be performed under the Parcel B Construction Loan, the Mortgagee or the then holder of the Note shall have the right, but shall be under no obligation, to pay any such installment, imposition or other payment required under the Parcel B Construction Loan and may perform any other act necessary or required on Mortgagor's part to be performed under the Parcel B Construction Loan. No payment or action on the part of Mortgagee or the then holder of the Note pursuant to the provisions of this paragraph shall be deemed a waiver of Mortgagee's or said holder's rights and remedies hereunder in the event of Mortgagor's default under the Parcel B Construction Loan. All sums or payments made by Mortgagee or the then holder of the Note on Mortgagor's behalf pursuant to this paragraph (including, but not by limitation, all legal expenses, disbursements, court costs and reasonable attorneys' fees) shall be paid by Mortgagor to Mortgagee immediately upon demand therefor and all sums so expended by the Mortgagor shall be secured by this Mortgage and Mortgagee shall become subrogated to the rights of the holder of the Parcel B Construction Loan to the extent of any and all payments made to such holder.

4. TAXES, INSURANCE AND CONDEMNATION

4.1 (A) Mortgagor, at all times, shall keep and maintain the Mortgaged Property fully insured (without co-insurance) against loss or damage by, or abatement of rental income resulting from, fire and such other hazards, casualties and contingencies as Mortgagee, from time to time, may require in companies, form, amounts and for such periods as is satisfactory to Mortgagee, but, in any event, for not less than the full insurable value of the Mortgaged Property. All such policies and renewals thereof (hereinafter referred to as the "policies") shall contain, in form and substance acceptable to Mortgagee, standard mortgagee loss payable clauses naming Mortgagee as "First Mortgagee", as well as a standard waiver or subrogation endorsement and shall be delivered, as issued, to Mortgagee, with premiums therefor paid in full by Mortgagor. All policies shall provide that they are non-cancellable by the insurer without first giving at least thirty (30) days prior written notice to Mortgagee of any intended cancellation. Mortgagor will give immediate written notice to Mortgagee of any loss or damage to the Mortgaged Property caused by any casualty. In case of policies about to expire, Mortgagor will deliver to and deposit with Mortgagee renewal policies not less than forty-five (45) days prior to the respective dates of expiration. Mortgagor will deliver and deposit with Mortgagee receipts for the payment of the current annual premiums on all policies. In the event of foreclosure of this Mortgage or assignment hereof by Mortgagee or transfer of title to the Mortgaged Property in extinguishment of Mortgagor's Liabilities, all right, title and interest of Mortgagor in and to any policies then in force shall pass to the purchaser, grantee or

assignee. Mortgagor will also, at all times and at its sole expense, maintain policies of rent insurance in favor of Mortgagee in an amount equal to not less than one year's aggregate gross rent earned by the Mortgaged Property.

(B) (a) Full power is hereby conferred on Mortgagee:

- (i) to settle and compromise all claims under all policies;
- (ii) to demand, receive and receipt for all monies becoming due and/or payable under all policies;
- (iii) to execute, in the name of Mortgagor or in the name of Mortgagee, any proofs of loss, notices or other instruments in connection with all claims under all policies; and
- (iv) to assign all policies to any holder of Mortgagor's Liabilities or to the grantee of the Mortgaged Property in the event of the foreclosure of this Mortgage or other transfer of title to the Mortgaged Property.

(b) In the event of payment under any of the policies, the proceeds of the policies shall be paid by the insurer to Mortgagee and Mortgagee shall apply such proceeds, wholly or partially, after deducting all costs of collection, including reasonable attorneys' fees,

- (i) toward the alteration, reconstruction, repair or restoration of the Mortgaged Property or any portion thereof, provided no Event of Default exists hereunder; or at Mortgagee's option, and in its sole discretion, if an Event of Default then exists hereunder,
- (ii) as a payment on account of Mortgagor's Liabilities (without affecting the amount or time of subsequent installment payments required to be made by Mortgagor to Mortgagee under the Note), whether or not then due or payable;

4.2 (A) Mortgagor shall deposit with Mortgagee on the first (1st) day of each month hereafter until Mortgagor's Liabilities are fully paid, a sum equal to one-twelfth (1/12) of (i) one hundred percent (100%) of the total annual impositions, levies, taxes and assessments arising with respect to the Mortgaged Property for the most recent ascertainable tax year and (ii) the total amount of annual premiums for all policies required to be obtained and maintained by Mortgagor pursuant to this Mortgage with respect to the Mortgaged Property. Subject to the provisions of this Paragraph and provided that Mortgagor is not then in default in the timely payment of any installment of principal, interest or other monies due or declared due under the Note and an Event of Default does not

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exist under this Mortgage, or the Other Agreements, Mortgagee shall pay, when and to whom due and payable under applicable contracts or law, to and including the date upon which the final installment payment of principal and interest on the Note is due and payable, all of the aforesaid impositions, levies, taxes, assessments and premiums. Notwithstanding the foregoing, Mortgagee does not hereby assume any of Mortgagor's obligations under said contracts or laws to make such payments and nothing contained herein, in the Note or the Other Agreements shall require Mortgagee to perform any such obligations of Mortgagor except for the making of the aforesaid payments in accordance with and subject to the above specified terms. Upon occurrence of a default under the Note, this Mortgage, or the Other Agreements, Mortgagee shall not be obligated to make such payments, but, at its sole election and in its sole discretion, may make any or all of such payments.

(B) If the deposits required by Sub-Paragraph (A) above and, if applicable, Sub-Paragraph (C) and (D) below, are insufficient to pay the impositions, levies, taxes and/or assessments and/or premiums for which they are provided, on or before thirty (30) days before the same shall become due and payable Mortgagor shall deposit with Mortgagee such additional monies as are necessary to pay, in full, such obligations.

(C) Mortgagor, concurrently with the disbursement of the loan evidenced by the Note, shall deposit with Mortgagee an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to Sub-Paragraph (A) (i) above, shall be sufficient to pay, in full, the total annual impositions, levies, taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Property for the current tax year not yet due and payable. Mortgagee shall hold such deposit without interest and shall use the same to pay, when due, any installments of such obligations (general, special or otherwise) next coming due.

(D) Mortgagor, concurrently with the disbursement of the loan evidenced by the Note, shall deposit with Mortgagee an amount of money, which together with the aggregate of the monthly deposits to be made pursuant to Sub-Paragraph (A)(ii) above becoming due prior to the date on which the next annual insurance premium payments become due and payable, shall equal one hundred percent (100%) of the most recent total annual insurance premium payments.

(E) Upon the occurrence of an Event of Default hereunder, Mortgagee, at its option and in its sole discretion, may apply any monies held pursuant to Sub-Paragraph (A) and (C) above on account of any of Mortgagor's Liabilities, in such order or priority as Mortgagee may elect.

(F) Upon payment, in full, of Mortgagor's Liabilities, Mortgagee shall deliver any remaining of the aforesaid deposits to Mortgagor or the then owner of the Mortgaged Property.

(G) All of the aforesaid deposits hereby are pledged, as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein), to be applied by Mortgagee for the

purposes hereinabove set forth and shall not be subject to the control of Mortgagor; provided, however, that Mortgagee shall not be liable for failure to pay, when due, any such impositions, levies, taxes or assessments or premiums unless Mortgagor, prior to the occurrence of an Event of Default, shall have requested Mortgagee, in writing, to pay the same and delivered to Mortgagee appropriate evidence of bills therefor.

4.3 (i) All awards now or hereafter made by any public or quasi-public authority to or for the benefit of Mortgagor in any way, manner or respect affecting, arising from or relating to the Mortgaged Property, or any portion thereof, by virtue of an exercise of the right of eminent domain by such authority (including, but not limited to, any award for taking of title, possession or right of access to a public way, or for any change of grade of streets affecting the Mortgaged Property) hereby are assigned to the Mortgagee as additional security for the payment of Mortgagor's Liabilities (and for such purpose, Mortgagor hereby grants to Mortgagee a security interest therein);

(ii) Mortgagee shall and hereby is authorized, directed and empowered to collect and receive the proceeds of any such awards from the authorities making the same and to give proper receipts therefor (in Mortgagor's name, in Mortgagee's name or in both names), and may, in its sole and absolute discretion, use such proceeds for any one or more of the following purposes:

(a) to apply the same, or any part thereof, to Mortgagor's Liabilities, whether or not then matured and without affecting the amount or time of subsequent installment payments required to be made by Mortgagor to Mortgagee under the Note;

(b) to use the same, or any part thereof, to satisfy, perform or discharge any of Mortgagor's Obligations;

(c) to use the same, or any part thereof, to replace, repair or restore any or all of the Mortgaged Property to a condition satisfactory to Mortgagee; or

(d) to release the same to Mortgagor.

(iii) Mortgagor, immediately upon request by Mortgagee, shall make, execute and deliver and/or cause to be made, executed and delivered to and/or for the benefit of Mortgagee any and all assignments and other instruments sufficient to assign, and cause the payment directly to Mortgagee of, all such awards, free and clear of all Encumbrances except those Encumbrances described in Paragraph 3.2 above. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged

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Property by any public or quasi-public authority or corporation, Mortgagor shall continue to pay all of Mortgagor's Liabilities, as and when due and payable, until any such award or payment shall have been actually received by Mortgagee, and any reduction in Mortgagor's Liabilities resulting from the application by Mortgagee of such award or payment as herein set forth shall be deemed to take effect only on the date of such receipt. If, prior to the receipt by Mortgagee of such award or payment, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, Mortgagee shall have the right to receive such award or payment to the extent of any deficiency found to be due upon such sale, with legal interest thereon, and of the reasonable attorneys' fees, costs, expenses and disbursements incurred by Mortgagee in connection with the collection of such award or payment.

5. LEASES AND RENTS

5.1 So long as there shall not have occurred an Event of Default under this Mortgage, Mortgagor shall have the right to collect all of the Rents arising from the Leases, or renewals thereof, and shall hold the same, to be applied first to the payment of all impositions, levies, taxes, assessments and other charges upon the Mortgaged Property, secondly to the cost of the maintenance of insurance policies upon the Mortgaged Property required hereby, thirdly to the maintenance and repairs required hereby and lastly to the payment of Mortgagor's Liabilities then due and payable, before using any part of the Rents for any other purposes.

5.2 At all times, any of Mortgagee's agents shall have the right to verify the validity, amount or any other matter relating to any or all of the Leases, by mail, telephone, telegraph or otherwise, in the name of Mortgagor, Mortgagee, a nominee of Mortgagee or in any or all of said names.

5.3 Unless Mortgagee notifies Mortgagor thereof in writing that it dispenses with any one or more of the following requirements, Mortgagor shall: (i) promptly upon Mortgagor's receipt or learning thereof, inform Mortgagee, in writing, of any assertion of any claims, offsets or counterclaims by any of the obligors of the Leases; (ii) not permit or agree to any material extension, compromise or settlement or make any material change or modification of any kind or nature of or with respect to the Leases or the terms thereof except as provided under subparagraph (iv) of this Paragraph; (iii) promptly upon Mortgagor's receipt or learning thereof, furnish to and inform Mortgagee of all material adverse information relating to or affecting the financial condition of any obligor of the Leases; (iv) not to enter into or execute any Leases of the Mortgaged Property or execute any material amendments, modifications or extensions or renewals thereof except by utilizing a lease form acceptable to Mortgagee in its sole and absolute discretion; and (v) except for Leases (new, renewal or amended) which are gross leases and which provide for an annual gross rental in an amount not less than the annual per square foot rental set forth on Exhibit C

hereto, containing annual increases in gross rent of not less than (i) the annual percentage increase in the Consumer Price Index of Mortgagee's choice (published by the Bureau of Labor Statistics) or (ii) 8% per annum compounded, whichever is less, and which are for a term not in excess of five (5) years and demise not more than 5,000 square feet of net rentable space, not enter into any Leases of the Mortgaged Property or any extensions, renewals, modifications or amendments thereof, without in each instance securing Mortgagee's prior written consent, which consent Mortgagee may withhold in its sole and absolute discretion. Mortgagor further warrants and represents to Mortgagee that it shall not, in any event, lease all or any portion of the Mortgaged Property for less than the then current market rates for identical and similar office space in the Birmingham, Alabama area.

5.4 Within fifteen (15) days after demand therefor by Mortgagee, Mortgagor shall deliver to Mortgagee, in form and substance acceptable to Mortgagee, a summary of all the Leases and such other matters and information relating thereto as Mortgagee may request.

5.5 Upon the occurrence of an Event of Default under this Mortgage:

(i) Immediately upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee the originals of the Leases, with appropriate endorsement and/or other specific evidence of assignment thereto to Mortgagee - which endorsement and/or assignment shall be in form and substance acceptable to Mortgagee.

(ii) Mortgagee, then or at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, may notify any or all of the obligors of the Leases that the Leases have been assigned to Mortgagee and Mortgagee (in its name, in the name of Mortgagor or in both names) may direct said obligors thereafter to make all payments due from them under the Leases directly to Mortgagee.

(iii) Mortgagor, immediately upon demand by Mortgagee, irrevocably shall direct all obligors of the Leases then and thereafter to make all payments then and thereafter due from them under the Leases directly to Mortgagee.

(iv) Mortgagee shall have the right at any time or times thereafter, at its sole election, without notice thereof to Mortgagor, to enforce the terms of the Leases and obtain payment of and collect the Rents, by legal proceedings or otherwise, in the name of Mortgagor, Mortgagee or in both names.

(v) Mortgagor, irrevocably, hereby designates, makes, constitutes and appoints Mortgagee (and all persons designated by Mortgagee) as Mortgagor's true and lawful attorney and agent-in-fact, with power, without notice to Mortgagor and at such time or times thereafter as Mortgagee, at its sole election, may determine, in the name of Mortgagor, Mortgagee or in both names: (a) to demand payment of the Rents and performance of the Leases; (b) to

enforce payment of the Rents and performance of the Leases, by legal proceedings or otherwise; (c) to exercise all of Mortgagor's rights, interests and remedies in and under the Leases and to collect the Rents; (d) to settle, adjust, compromise, extend or renew the Leases and/or the Rents; (e) to settle, adjust or compromise any legal proceeding brought to collect the Rents or obtain performance of the Leases; (f) to take control, in any manner, of the Rents; (g) to prepare, file and sign Mortgagor's name on any Proof of Claim in bankruptcy, or similar document in a similar proceeding, against obligors of the Leases; (h) to endorse the name of Mortgagor upon any payments or proceeds of the Rents and to deposit the same to the account of Mortgagee; and (i) to do all acts and things necessary, in Mortgagee's sole discretion, to carry out any or all of the foregoing.

(vi) All of the foregoing payments and proceeds received by Mortgagee shall be utilized by Mortgagee, at its sole election and in its sole discretion, for any one or more of the following purposes: (a) to be held by Mortgagee as additional collateral for the payment of Mortgagor's Liabilities; (b) to be applied to Mortgagor's Liabilities, in such manner and fashion and to such portions thereof as Mortgagee, at its sole election, shall determine; (c) to be applied to such obligations of Mortgagor or the Mortgaged Property or the operation or business thereof as Mortgagee, at its sole election, shall determine appropriate or warranted under the then existing circumstances; or (d) to be remitted to Mortgagor.

6. DEFAULT

6.1 The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

(i) Failure of Mortgagor to pay, when due or declared due, any of Mortgagor's Liabilities or failure of Mortgagor to deliver to Mortgagee, when due, the various financial and operating statements referred to in Paragraph 3.3(vi) above.

(ii) Failure of Mortgagor, within thirty (30) days after notice and demand, promptly, fully and faithfully to satisfy, perform, discharge, observe and comply with each and every of Mortgagor's Obligations, other than those set forth in Sub-Paragraph (i) above.

(iii) A petition in bankruptcy is filed by or against Mortgagor, or any partner or partners of Mortgagor (and in the case of an involuntary petition in bankruptcy, such petition is not discharged within 30 days of its filing), or a custodian, receiver or trustee for any of the Mortgaged Property is appointed, or if Mortgagor or any general partner of Mortgagor makes an assignment for the benefit of creditors, or if it is or any of them are adjudged insolvent by any state or federal court of competent jurisdiction, or an attachment or execution is levied against any of the Mortgaged Property.

(iv) A default by Mortgagor or the occurrence or existence of an Event of Default under any term, provision, covenant or agreement of or contained in the Parcel B Construction Loan or the Collateral Instruments after Mortgagee has purchased and owns the Parcel B Construction Loan and/or the Collateral Instruments.

(v) The receipt by Mortgagor, either directly to Mortgagor or indirectly by means of payment to any construction escrowee or to any contractor(s), architect, engineer, surveyor, subcontractor, subsubcontractor or materialmen in connection with the construction of any improvements upon Parcel B or delivery of materials to Parcel B, of any advances under the Parcel B Construction Loan in excess of the aggregate sum of \$1,900,000.00.

6.2 Upon the occurrence of an Event of Default, Mortgagee, after notice and demand insofar as required hereby, in its sole discretion and at its sole election, without notice of such election, and without further demand, may do any one or more of the following:

(i) Declare all of Mortgagor's Liabilities immediately due and payable and collect the same at once by foreclosure or otherwise, without notice of broken covenant or condition (and in case of such default and the exercise of such option, Mortgagor's Liabilities shall bear interest, from the date of such default, at the rate of 18% per annum).

(ii) Either with or without process of law, forcibly or otherwise, enter upon and take immediate possession of the Mortgaged Property, expel and remove any persons, goods or chattels occupying or upon the same, receive all Rents, and issue receipts therefor, manage, control and operate the Mortgaged Property as fully as Mortgagor might do if in possession thereof, including without limitation, the making of all repairs and replacements deemed necessary by Mortgagee and the leasing of the same, or any part thereof, from time to time, and, after deducting all reasonable attorneys' fees and all costs and expenses incurred in the protection, care, maintenance, management and operation of the Mortgaged Property, apply the remaining net income, if any, to Mortgagor's Liabilities. At the option of Mortgagee, such entry and taking of possession shall be accomplished either by actual entry and possession or by written notice served personally upon or sent by registered mail to the Mortgagor at the address of Mortgagor last appearing on the records of Mortgagee. Mortgagor agrees to surrender possession of the Mortgaged Property to Mortgagee immediately upon the occurrence of an Event of Default. If Mortgagor shall remain in physical possession of the Mortgaged Property, or any part thereof, after any such default, such possession shall be as a tenant of Mortgagee, and Mortgagor agrees to pay to Mortgagee, or to any receiver appointed as provided below, after such default, a reasonable monthly rental for the Mortgaged Property, or the part thereof so occupied by the

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Mortgagor, to be applied as provided above in the first sentence of this Sub-Paragraph, and to be paid in advance on the first day of each calendar month, and, in default of so doing, Mortgagor may be dispossessed by the usual summary proceedings. In the event Mortgagor shall so remain in possession of all, or any part of, the Mortgaged Property, said reasonable monthly rental shall be in amounts established by Mortgagee in its sole discretion. This covenant shall be effective irrespective of whether any foreclosure proceeding shall have been instituted and irrespective of any application for, or appointment of, a receiver.

(iii) File one or more suits at law or in equity for the foreclosure of this Mortgage or to collect Mortgagor's Liabilities. In the event of the commencement of any such suit by Mortgagee, Mortgagee shall have the right, either before or after sale, without notice and without requiring bond (notice and bond being hereby waived), without regard to the solvency or insolvency of Mortgagor at the time of application and without regard to the then value of the Mortgaged Property or whether the same is then occupied, to make application for and obtain the appointment of a receiver for the Mortgaged Property. Such receiver shall have the power to collect the Rents during the pendency of such suit and, in case of a sale and a deficiency, during the full statutory period of redemption, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect the Rents, and shall have all other powers which may be necessary or usual in such cases for the protection, possession, control, management and operation of the Mortgaged Property. The court before which such suit is pending may from time to time authorize the receiver to apply the net income in his hands in payment, in whole or in part, of Mortgagor's Liabilities. In case of a sale pursuant to foreclosure, the Premises may be sold as one parcel.

(iv) Exercise any other remedies or rights permitted or provided under or by the laws or decisions of the State in which the Mortgaged Property is located (including all rights of a secured party under the Uniform Commercial Code of the State of Alabama), accruing to a mortgagee and/or secured party upon a default by a mortgagor and/or debtor.

(v) Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Mortgagee or any person conducting the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, 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 Mortgagee may elect.

(vi) At the option of Mortgagee, this Mortgage may be foreclosed as provided by law or in Equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee 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 Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

(vii) Additional remedies of the applicable State.

6.3 Mortgagee 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 any 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 or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Mortgagee.

6.4 In the Event of Default under this Mortgage, there will be added to and included as part of Mortgagor's Liabilities (and allowed in any decree for sale of the Mortgaged Property or in any judgment rendered upon this Mortgage or the Note) the following: the costs, charges, expenses and attorneys' fees specified in Paragraph 6.5 below; any and all expenditures which may be paid or incurred by or on behalf of Mortgagee for appraisers' fees, documentary and expert evidence, stenographers' charges, publication costs, fees and expenses for examination of title, title searches, guaranty policies, Torrens certificates and similar data and assurances with respect to the title to the Mortgaged Property; all prepayment or like premiums, if any, provided for in the Note; and all other fees, costs and expenses which Mortgagee deems necessary to prosecute any remedy it has under this Mortgage, or to inform bidders at any sale which may be had pursuant to its rights hereunder, of the true condition of title or of the value of the Mortgaged Property. All such costs, charges, expenses, fees and other expenditures shall be a part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the highest rate set forth in the Note (upon monies due after a default thereunder) from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.5 If foreclosure proceedings are instituted upon this Mortgage, or if Mortgagee shall be a party to, shall intervene, or file any petition, answer, motion or other pleading in any suit or proceeding relating to this Mortgage, the Note, the Other Agreements, or Mortgagor's Liabilities, or if Mortgagee shall incur or pay any expenses, costs, charges or attorneys' fees by reason of the employment of counsel for advice with respect to this Mortgage, the Note, the Other Agreements, or Mortgagor's Liabilities, and whether in court proceedings or otherwise, such expenses and all of Mortgagee's reasonable attorneys' fees shall be part of Mortgagor's Liabilities, secured by this Mortgage, payable on demand and shall bear interest at the rate provided for in the Note (upon monies due after a default thereunder) from the date of Mortgagee's payment thereof until repaid to Mortgagee.

6.6 The proceeds of any foreclosure sale of the Mortgaged Property shall be applied and distributed, first, on account of the fees, charges, costs and expenses described in Paragraph 6.4 above, secondly, to the balance of Mortgagor's Liabilities, and thirdly, the surplus, if any, to Mortgagor.

6.7 In the event of the commencement of judicial proceedings to foreclose this Mortgage, Mortgagor, on behalf of itself, its successors and assigns, and each and every person it may legally bind acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage; (i) does hereby expressly waive any and all rights of appraisement, valuation, stay, extension and (to the extent permitted by law) redemption from sale under any order or decree of foreclosure of this Mortgage; and (ii) does hereby agree that when sale is had under any decree of foreclosure of this Mortgage, upon confirmation of such sale, the master in chancery or other officer making such sale, or his successor in office, shall be and is authorized immediately to execute and deliver to purchaser at such sale a deed conveying the Mortgaged Property, showing the amount paid therefor, or if purchased by the person in whose favor the order or decree is entered, the amount of his bid therefor.

6.8 Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any other sums required to be paid by or for the account of Mortgagor under the terms of this Mortgage or the Note, as the same become due under the Note, or any other of Mortgagor's Liabilities which shall be due and without prejudice to the right of the Mortgagee thereafter to bring an action of foreclosure, or any other action, for a default or defaults by the Mortgagor existing at the time such earlier action was commenced.

6.9 No right or remedy of Mortgagee hereunder is exclusive of any other right or remedy hereunder or now or hereafter existing at law or in equity, but is cumulative and in addition thereto and the holder of the Note may recover judgment thereon, issue execution therefor, and resort to every other right or remedy available at law or in equity, without first exhausting or affecting or impairing the security or any right or remedy afforded by this Mortgage. No delay

in exercising, or omission to exercise, any such right or remedy will impair any such right or remedy or will be construed to be a waiver of any default by Mortgagor hereunder, or acquiescence therein, nor will it affect any subsequent default hereunder by Mortgagor of the same or different nature. Every such right or remedy may be exercised independently or concurrently, and when and so often as may be deemed expedient by Mortgagee. No terms or conditions contained in this Mortgage or the Note may be waived, altered or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

6.10 Mortgagee shall release this Mortgage by proper instrument upon payment and discharge of all of Mortgagor's Liabilities, including all prepayment or like premiums, if any, provided for in the Note and payment of all costs, expenses and fees, including reasonable attorneys' fees, incurred by Mortgagee for the preparation, execution and/or recording of such release.

6.11 Upon occurrence of an Event of Default and following acceleration by Mortgagee of the maturity of Mortgagor's Liabilities as provided herein, a tender of payment thereof by Mortgagor, or any other party, or a payment thereof received upon or on account of a foreclosure of this Mortgage or Mortgagee's exercise of any of its other rights or remedies under this Mortgage, the Note, the Other Agreements or under any applicable law or in equity shall be deemed to be a voluntary prepayment made by Mortgagor of the Note and, therefore, such payment must, to the extent permitted by law, include all accrued interest and additional interest payments required under the Note.

6.12 (A) Any agreements between Mortgagor and Mortgagee are expressly limited so that, in no event whatsoever, whether by reason of disbursement of the proceeds of the loan evidenced by the Note or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, detention or forbearance of the loan proceeds to be disbursed exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable thereto.

(B) If fulfillment of any provision herein or in the Note, at the time performance of such provision becomes due, involves exceeding such highest lawful contract rate, then ipso facto, the obligation to fulfill the same shall be reduced to such highest lawful rate. If by any circumstance Mortgagee shall ever receive as interest an amount which would exceed such highest lawful rate, the amount which may be deemed excessive interest shall be applied to the principal of Mortgagor's Liabilities and not to interest.

6.13 Any failure of Mortgagee to insist upon the strict performance by Mortgagor of any of the terms and provisions of this Mortgage, the Other Agreements or the Note shall not be deemed to be a waiver of any of the terms and provisions thereof, and Mortgagee, notwithstanding any such failure, shall have the right at any time or times thereafter to insist upon the strict performance by Mortgagor of any and all of the terms and provisions thereof to be performed by Mortgagor. Neither Mortgagor, nor any other person now or hereafter obligated for the payment of the whole or any part of Mortgagor's Liabilities, shall be relieved of such obligation by

reason of the sale, conveyance or other transfer of the Mortgaged Property or the failure of Mortgagee to comply with any request of Mortgagor, or of any other person, to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage, the Other Agreements or the Note, or by reason of the release, regardless of consideration, of the whole or any part of the security held for Mortgagor's Liabilities, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Note, the Other Agreements or this Mortgage without first having obtained the consent of Mortgagor or such other person, and, in the latter event, Mortgagor, and all such other persons, shall continue liable on account of Mortgagor's Liabilities and to make such payments according to the terms of any such agreement, extension or modification unless expressly released and discharged in writing by Mortgagee. Mortgagee, without notice, may release, regardless of consideration, any part of the security held for Mortgagor's Liabilities, without, as to the remainder of the security therefor, in any way impairing or affecting the lien of this Mortgage or the priority of such lien over any subordinate lien. Mortgagee may resort for the payment of Mortgagor's Liabilities to any other security therefor held by the Mortgagee in such order and manner as Mortgagee may elect.

6.15. In case Mortgagee 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 Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

7. MISCELLANEOUS

7.1 Every provision for notice, demand or request required in this Mortgage, the Note or the Other Agreements or by applicable law shall be deemed fulfilled by written notice, demand or request personally served on (with proof of service endorsed thereon, or mailed to, as hereinafter provided) the party entitled thereto or on its successors or assigns. If mailed, such notice, demand or request shall be made certified or registered mail, return receipt requested, and deposited in any post office station or letter-box, enclosed in a postage paid envelope addressed to such party at its address set forth below or to such other address as either party hereto shall direct by like written notice and shall be deemed to have been made on the fifth (5th) day following posting as aforesaid. For the purposes herein, notices shall be sent to Mortgagor and Mortgagee as follows:

To Mortgagor:

Kovach Eddleman Properties
200 Century Park South, Suite 126
Birmingham, Alabama 35226
Attention: Frank Kovach, Jr.

with a copy to:

Thomas, Taliaferro, Forman, Burr
& Murray
1600 Bank For Savings Building
Birmingham, Alabama 35203
Attention: J. Fred Powell, Esq.

To Mortgagee:

Balcor Institutional Investors II
c/o Balcor Institutional Mortgage Advisors
P.O. Box C1036
Skokie, Illinois 60076
Attention: Barry Jackson
Thomas Meador

with a copy to:

Katten, Muchin, Zavis
Pearl & Galler
55 East Monroe Street Suite 4100
Chicago, Illinois 60603
Attention: Vincent A. F. Sergi

7.2 All the covenants contained in this Mortgage will run with the land. Time is of the essence of this Mortgage and all provisions herein relating thereto shall be strictly construed.

7.3 This Mortgage, and all the provisions hereof, will be binding upon and inure to the benefit of the successors and assigns of the Mortgagor and Mortgagee.

7.4 This Mortgage was executed and delivered in, and shall be governed as to the validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Illinois except to the extent that it is mandatory that the laws of the State of Alabama apply to the creation, priority, perfection and maintenance of the lien and security interest hereof or to proceedings taken for the enforcement of the rights of the Mortgagee.

7.5 Any provision of this Mortgage which is unenforceable in any state in which this Mortgage may be filed or recorded or is invalid or contrary to the law of such state, or the inclusion of which would affect the validity, legality or enforcement of this Mortgage, shall be of no effect, and in such case all the remaining terms and provisions of this Mortgage shall subsist and be fully effective according to the tenor of this Mortgage, the same as though no such invalid portion had ever been included herein.

7.6 Notwithstanding any other provision of this Mortgage, or of any other agreement, the undersigned Mortgagor and its general partners shall not be personally liable by reason of any default hereunder and the Mortgagee agrees to look solely to the Mortgaged Property (including the Premises) and any other collateral now or hereafter assigned or pledged to secure Mortgagor's Liabilities and/or Mortgagor's Obligations for the payment of any amount

secured by this Mortgage; provided, however, that nothing contained in this paragraph shall limit or be construed to limit or impair the enforcement of this Mortgage, the Note or any of the Other Agreements.

7.7 Mortgagee and Mortgagor intend that the relationship created hereunder and evidenced hereby be solely that of creditor and debtor. Nothing herein is intended to be construed as creating a joint venture, partnership, tenancy in common, or joint tenancy relationship between the parties hereto. This instrument is intended to secure the obligation of the Mortgagor to repay Mortgagor's Liabilities and Mortgagor's Obligations in accordance with the terms of the Note, this Mortgage and the Other Agreements and nothing herein is intended to be construed as creating for the Mortgage any interest in the Mortgaged Property other than that as of a mortgagee.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the day and year first above set forth.

WITNESS:

KOVACH EDDLEMAN PROPERTIES, an Alabama general partnership

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[Signature]
(Type Name)
Vincent A. F. Sergi
(Type Name)

By: [Signature]
Frank Kovach, Jr., General Partner

By: [Signature]
Billy D. Eddleman, General Partner

Being all of the Partners of Kovach Eddleman Properties

STATE OF ILLINOIS)
COUNTY OF COOK) ss

I, TERESE M. GARVEN, a Notary Public in and for said County, in said State, hereby certify that Frank Kovach, Jr., whose name as a general partner of Kovach-Eddleman Properties, 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 conveyance, he as such general partner, and with full authority executed the same voluntarily for and as the act of said ~~general~~ partnership.

GIVEN under my hand and seal of office this 29th day of April, 1982 A.D.

[Signature]
Notary Public

Commission expires: 9/26/84

STATE OF ILLINOIS)

53

COUNTY OF COOK)

I, TERESE M. CARVEN, a Notary Public in and for said County, in said State, hereby certify that Billy D. Eddleman, whose name as a general partner of Kovach-Eddleman Properties, 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 conveyance, he as such general partner, and with full authority executed the same voluntarily for and as the act of said ~~limited~~ ^{general} partnership.

GIVEN under my hand and seal of office this 29th day of April,
1982 A.D.

Notary Public

Commission expires: 9/26/84

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THIS INSTRUMENT WAS PREPARED BY AND SHALL BE RETURNED TO: Vincent A. F. Sergi, Esq., Suite 4100, 55 E. Monroe Street, Chicago, Illinois 60603.

EXHIBIT "A" TO MORTGAGE AND SECURITY AGREEMENT
DATED APRIL 29, 1982 between
KOVACH-EDDLEMAN PROPERTIES, as MORTGAGOR,
and BALCOR INSTITUTIONAL INVESTORS, as MORTGAGEE

LEGAL DESCRIPTION OF THE PREMISES:

Parcel A

Lot 2, according to the survey of Chase Park South as recorded in Map Book 8, page 61 in the Probate Office of Shelby County, Alabama.

Parcel B

A tract of land situated in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ and in the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 19, Township 19 South, Range 2 West, Jefferson and Shelby Counties, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the NE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 19, Township 19 South, Range 2 West; thence West along the North 1/4-1/4 line of said 1/4-1/4 4,622.16 feet; thence 90 deg. 00' 00" left, 88.78 feet to the point of beginning; thence 120 deg. 42' 25" left, 514.92 feet to the Southwest right of way of Parkway River Road; thence 84 deg. 25' 59" right, along said right of way 160.90 feet to a curve to the right, said curve having a central angle of 92 deg. 49' 00" and a radius of 170.00 feet; thence along the arc of said curve and said right of way, 275.39 feet; thence tangent to said curve and along said right of way, 116.87 feet to a curve to the left, said curve having a central angle of 31 deg. 00' 00" and a radius of 280.00 feet; thence along the arc of said curve and said right of way 151.50 feet; thence 108 deg. 15' 00" right, from tangent of said curve, leaving said right of way, 413.96 feet to the point of beginning. According to survey of John E. Norton, Ala. Reg. P.E. and L.S. No. 10287.

EXHIBIT "B" TO MORTGAGE AND SECURITY AGREEMENT
DATED APRIL 29, 1982 between
KOVACH-EDDLEMAN PROPERTIES, as MORTGAGOR,
and BALCOR INSTITUTIONAL INVESTORS, as MORTGAGEE

DESCRIPTION OF THE OTHER ENCUMBRANCES:

As To Parcel A

1. Taxes due in the year 1982 which are a lien but not due and payable until October 1st, 1982.
2. 20 foot sanitary sewer easement thru lot, 10 foot easement on northwest side and east side and 20 foot drainage easement across southern part of lot as shown by recorded map, Map Book 8, Page 61.
3. Right of way to Alabama Power Company recorded in Volume 310, page 595 and Volume 332, page 542 in the Probate Office of Shelby County, Alabama.
4. Agreement with Blue Cross Blue Shield recorded in Misc. Volume 19, page 690 in said Probate Office.
5. Drainage easements, sanitary sewer easements and utility easements as shown by survey of John E. Norton, dated August 24, 1979.
6. Restrictions recorded in Item #6 of deed recorded in Deed Book 322, page 376 in said Probate Office.

As To Parcel B

1. Taxes due in the year 1982 which are a lien but not due and payable until October 1st, 1982.
2. 15 foot easement referred to in instrument recorded in Volume 333, page 764, in the Probate Office of Shelby County, Alabama.
3. Restrictions recorded in Misc. Volume 13, page 50, amended by Misc. Volume 15, page 189 and Misc. Volume 19, page 633, in said Probate Office.
4. Restrictions referred to in Item 6 of instrument recorded in Volume 333, page 764, in said Probate Office.
5. Right of way to Alabama Power Company recorded in Volume 252, page 182, and Volume 252, page 184, in said Probate Office.
6. Mortgage from Kovach Eddleman Properties, an Alabama general partnership, to the Birmingham First National Bank filed for record on August 3, 1981 and recorded in Volume 414, page 533, in said Probate Office securing a note the principal balance of which shall not exceed \$170,000.00, which obligation shall be discharged by payment of the proceeds initially disbursed under the Parcel B Construction Loan.

EXHIBIT "C" TO MORTGAGE AND SECURITY AGREEMENT
DATED APRIL 29, 1982 between
KOVACH-EDDLEMAN PROPERTIES, as MORTGAGOR,
and BALCOR INSTITUTIONAL INVESTORS, as MORTGAGEE

MINIMUM ANNUAL PER SQUARE FOOT RENTAL (EXCLUSIVE OF EXPENSE
REIMBURSEMENTS) FOR NEW, RENEWED AND AMENDED LEASES EXECUTED
IN ANY OF THE FOLLOWING YEARS:

1982	\$11.00	1990	\$20.36
1983	\$11.88	1991	\$21.99
1984	\$12.83	1992	\$23.75
1985	\$13.86	1993	\$25.65
1986	\$14.97	1994	\$27.70
1987	\$16.16	1995	\$29.92
1988	\$17.46	1996	\$32.31
1989	\$18.85	1997	\$34.90

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1982 APR 30 AM 11:34

Thomas A. Lawrence
JUDGE OF PROBATE

ALT TAX 4,912.50

Rec 42.00

Ind 1.00

4,955.50