

Heatherbrooke

1689

ASSIGNMENT OF LEASES AND RENTS

STATE OF ALABAMA )  
SHELBY COUNTY )

THIS ASSIGNMENT OF LEASES AND RENTS, dated the 26<sup>th</sup> day of February, 1988, by and between EQUITY PARTNERS JOINT VENTURE, a joint venture formed pursuant to the Alabama Partnership Act (herein referred to as "Borrower") with a mailing address at c/o Colonial Properties, Inc., No. 2 Perimeter Park South, Suite 450, Birmingham, Alabama 35243 and SMA LIFE ASSURANCE COMPANY, a Delaware corporation duly organized and existing according to law, with its principal office (and mailing address) at 440 Lincoln Street, Worcester, Massachusetts 01605 ("Lender").

I.

Recitals

1.1 Description of Note. Borrower has contemporaneously herewith executed and delivered to Lender a note (the "Note") in the principal sum of Three Million Four Hundred Thousand Dollars (\$3,400,000) payable as provided in the Note and with a final payment of all outstanding indebtedness after a period of approximately six (6) years. The Note contains certain prohibitions with respect to prepayment and requires a prepayment premium in amounts stated in the Note on certain prepayments (including prepayments as a result of foreclosure and otherwise).

1.2 Description of Loan Instruments. The payment of the Note is secured by this Assignment of Leases and Rents (this "Assignment"), by a Mortgage and Security Agreement (the "Mortgage"), which encumbers certain property (the "mortgaged premises"), more particularly described therein and in Exhibit A which is attached hereto, by a Guaranty Agreement executed by Robert E. Lowder, James K. Lowder, and Thomas H. Lowder, (the "Guaranty Agreement") and certain other security instruments executed of even date herewith. The Note, the Mortgage, the Assignment, the Guaranty Agreement, together with any amendments, modifications and replacements thereof, and all other instruments now or hereafter evidencing or securing the Loan, and all other certificates, documents, and instruments now or hereafter executed by Borrower in favor of Lender, are collectively referred to herein as the "Loan Instruments."

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*Land Title*

## II.

### Granting Clauses

To secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Note and other Loan Instruments, Borrower hereby assigns to Lender, Borrower's right, title and interest in:

(a) All tenant leases of tenants occupying the apartments known as the Heatherbrooke Apartments, Phase II, and other oral and written leases and other agreements for use or occupancy made or agreed to by, any person or entity (including, without limitation of the foregoing, Borrower and Lender under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to all or any part of the mortgaged premises, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the mortgaged premises;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the mortgaged premises;

(d) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases;

(vi) the right to exercise any option required or permitted; and

(vii) any and all guaranties (the "Guaranties") of any of the Leases, and the rights, powers, privileges and other benefits of the Borrower under the Guaranties;

and Borrower authorizes Lender:

(viii) to manage the mortgaged premises and let and relet the mortgaged premises, or any part thereof according to Lender's own discretion;

(ix) to prosecute or defend any suits in connection with the mortgaged premises in the name of any or all of Lender or Borrower as it may consider desirable;

(x) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;

(xi) to make such repairs to the mortgaged premises as Lender may deem advisable; and

(xii) to do anything in or about the mortgaged premises that Lender may deem reasonably advisable or that the Borrower has the right or power to do.

Although this instrument constitutes a present assignment of the foregoing leases, rights, interests and privileges, Borrower shall have the right to collect all rentals due thereunder, and, subject to the covenants and restrictions on Borrower contained in Section 3 and the other paragraphs of this instrument, to exercise the rights and privileges herein, until a default or (as herein defined) occurs.

### III

#### Covenants

3.1 Power Coupled With Interest. This Assignment confers upon Lender a power coupled with an interest and cannot be revoked by the Borrower.

3.2 No Other Assignment. Borrower warrants, represents and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous and, without Lender's prior written consent as to form and substance, Borrower will permit no future assignment (as collateral or otherwise) of the lessor's right, title and interest in any of the Leases (other than pursuant to the other Loan Instruments), that the Leases are in full force and effect in accordance with their terms and have not been altered, modified or amended in any manner whatsoever, except as otherwise disclosed to Lender, that the lessees are not in default under the Leases and have no defenses, set-offs or counterclaims against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Lender by Borrower.

3.3 Management. At all times until this Assignment is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the mortgaged premises, Borrower shall cause the mortgaged premises to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Except as permitted in Section 1.14 of the Mortgage, Borrower shall not permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be

collected for each current month in advance. Borrower shall not terminate, alter, modify, amend, change or default under the terms of any of the Leases or the Guaranties, or give any consent, concession or waiver under any of the Leases, other than concessions given in the ordinary course of business at the beginning of the term of a Lease in order to induce such tenants to locate on the mortgaged premises, or exercise any option available to the lessor under the Leases in the event of casualty damage or condemnation affecting the mortgaged premises, or accept the surrender thereof or consent to any assignment or subletting under any of the Leases, or convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any and all of the Leases or of any interest therein so as to effect directly or indirectly, promptly or remotely, a merger of the estates and rights, of, or a termination or elimination of, the obligations of lessees thereunder, without the prior written consent of the Lender. Borrower shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the mortgaged premises, or subordinate any of the Leases to any mortgage or other encumbrance, or permit, consent or agree to such subordination without the prior written consent of the Lender. Borrower shall cause prompt action, including legal proceedings, for enforcement of any of the Leases and all other remedies available to lessor thereunder to be commenced against any delinquent or defaulting lessee as soon as reasonably necessary to protect such lessor's interest or immediately upon written request from Lender, and in the event Lender requests that a specific action be taken, to cause such action to be promptly taken. Borrower shall, but only at the discretion of Lender, give any consent of lessor under any of the Leases, or exercise any option available to lessor under any of the Leases in the event of casualty or condemnation affecting the mortgaged premises. Borrower shall not relocate any tenant to a location outside the mortgaged premises, other than (i) tenants whose leases have expired and who have requested to be relocated, or (ii) where such relocated tenant is replaced with another tenant under a lease with financial terms at least equal to those of the relocated tenant's lease. Borrower shall not enter into any Lease which would create a tenancy that is or may become subordinate in any respect to any mortgage other than the Mortgage unless, concurrently with the execution of such Lease, a non-disturbance and attornment agreement is entered into between the lessee under such Lease and the mortgagee under such mortgage. Borrower shall execute and deliver, at the reasonable written request of Lender, all such further assurances and assignments as Lender from time to time shall require.



3.4 Execution of Leases. Borrower shall not permit any Leases to be made of all or any portion of the mortgaged premises except as provided in the Mortgage.

3.5 Notice of Lessor's Default. Borrower shall cause notice to be given to Lender of any default by the lessor under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the occurrence of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.6 Lender to be Creditor of Lessee. Lender shall be deemed to be the creditor of each lessee in the Leases in respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings or claims in such proceedings or otherwise to pursue creditor's rights therein). Borrower hereby assigns to Lender any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Mortgage next falling due. Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

#### IV

##### Defaults and Remedies

4.1 Defaults. Each of the following shall constitute a Default under this Assignment of Leases and Rents:

4.1(a) Subject to any applicable grace period contained therein, the failure of Borrower to make any payment required under the Note or any of the other Loan Instruments as the same shall become due and payable;

4.1(b) Subject to any applicable grace period contained therein, the breach of any of Borrower's warranties or the

untruth of any of Borrower's representations made herein or in any of the other Loan Instruments or in the Note or in the Submissions referred to in the loan commitment or in any other document executed in connection with the loan secured hereby or the failure by Borrower to perform in a full and timely manner, any of Borrower's obligations under this Assignment or the Note or the breach of any of Borrower's covenants contained in this Assignment;

4.1(c) The occurrence of any Default under the Note or any of the other Loan Instruments;

4.1(d) The default by Borrower, with respect to five (5) or more Leases within any twelve month period, in its performance of the Landlord's obligations under the outstanding Leases relating to the mortgaged premises which default is of a nature which would permit such lessee to terminate lessee's Lease.

#### 4.2 Exercise of This Assignment of Leases and Rents.

4.2(a) Lender may exercise the assignment hereby granted, in the event of any default and pursue its rights to collect the Rents or manage the mortgaged premises, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such default or Event of Default.

4.2(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Borrower such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender shall, from time to time upon the occurrence of any default or Event of Default under this Assignment, have all the rights granted hereby.

4.3 Nature of Remedies. No delay or omission on the part of Lender in the exercise of any remedy for a default or Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment of Leases and Rents shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Instruments. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Borrower or the mortgaged premises, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

4.4 Application of Rents. Lender shall have the power to apply the Rents and Damages, in such order as Lender may determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note or any and all renewals, extensions, modifications or replacements thereof, to the payment of the Loan Instruments, including without limitation the payment of all advances and expenses incurred by Lender under the Mortgage and all expenses for the care and management of the mortgaged premises, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to the Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment following a default or Event of Default and the exercise of any remedies provided for in the Note or the other Loan Instruments shall not cure such default or Event of Default or affect or prejudice the exercise of such remedies.

4.5 Limitation of Lender's Obligations. Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Lender shall not be liable for uncollected rents or for any claim for damages or setoffs arising out of Lender's management of the mortgaged premises other than for damages arising from Lender's gross negligence. Lender shall not be liable to any lessee for the return of any security deposit made under any lease of any portion of the mortgaged premises unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the Lessor under any of the Leases, nor shall Lender be responsible for any act committed by the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the mortgaged premises or any part thereof.

4.6 Reimbursement. Subject to the provisions of Section 5.4 hereof, Borrower shall reimburse, indemnify, and hold harmless Lender for and from any and all expenses, losses, damages and liabilities which Lender may incur by reason of this Assignment, except for any such caused by Lender's gross negligence or willful misconduct after Lender takes possession, any of the Leases, or expenses, losses, damages and liabilities incurred in exercising any of the rights



granted in this Assignment other than for Lender's gross negligence or willful misconduct. Any and all amounts due to Lender under this Section 4.6 shall be immediately due and payable, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Instruments.

4.7 Authorization to Lessees. Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that a default or Event of Default has occurred under this Assignment without inquiry as to whether any such default or Event of Default has occurred or whether Lender is rightfully entitled to such rent.

## V.

### Miscellaneous

5.1 Modification of Loan Terms. If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, if the Note be renewed, modified or replaced, or if any security for the Note be released, Borrower and any other parties now or hereafter liable therefor or interested in the mortgaged premises shall be held to consent to such extensions, renewals, modifications, replacements and releases, and their liability and the lien hereof and of the other Loan Instruments not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender, subject only to the provisions of Section 5.4 hereof.

5.2 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Borrower and Lender and all persons and entities (including owners and lessees) which may hereafter obtain any interest in the mortgaged premises.

5.3 No Merger. Notwithstanding the conveyance or transfer of title to any or all of the mortgaged premises to any lessee under any of the Leases, the lessee's leasehold estate under such Lease shall not merge into the fee estate and the lessee shall remain obligated under such lease as assigned by this Assignment.

5.4 Limitation of Recourse. Except as otherwise provided in this § 5.4 and in any other substantially identical provision in any of the other Loan Instruments,

and except for the obligations of the Guarantors pursuant to the terms of the Guaranty Agreement, Lender, except as otherwise provided herein or in any of the other Loan Instruments, waives any right to any money judgment against Borrower whether by an action brought upon the note as secured hereby or by an action brought for a deficiency judgment against Borrower or any partner thereof, or any successor of Borrower entitled to the mortgaged premises, and the extent of liability on the part of said Borrower or its successor in title is limited to the mortgaged premises and other security granted to Lender under the Loan Instruments, including without limitation, policies of hazard insurance maintained on the mortgaged premises and any proceeds thereof and any award of damages on account of any condemnation for public use of or injury to the mortgaged premises and security, policies, proceeds and awards in satisfaction of the indebtedness evidenced by the Note in the case of a default or an Event of Default herein or therein, or in any of the other Loan Instruments, except that Borrower or its successor in title shall be subject to personal liability (i) to the extent that the rents, issues and profits of the mortgaged premises are received by such party after a breach of condition or covenant in this mortgage or the other Loan Instruments and are not applied to the indebtedness evidenced by the Note or the normal operating expenses of the mortgaged premises; (ii) to the extent that the rents, issues and profits of the mortgaged premises are received by such party after acceleration of the maturity of the indebtedness evidenced by the Note pursuant to a right on the part of Lender so to accelerate the same, and are not applied to the indebtedness evidenced by the Note or to the normal operating expenses of the mortgaged premises; (iii) to the extent that rents from the mortgaged premises are collected for more than each current month in advance or to the extent payments in the nature of security for the performance of any lessee's obligations under any lease of all or a part of the mortgaged premises are held, at the time of the occurrence of a breach of condition or covenant referred to in clause (i) above or acceleration referred to in clause (ii) above; (iv) to the extent that Lender may suffer any damages as a result of any material misrepresentation made herein or in any of the Loan Instruments or any other document executed in connection with the Loan secured hereby; (v) to the extent that any condemnation or casualty insurance proceeds shall be misapplied; and (vi) to the extent that any judgments, fines, charges, fees, expenses, damages, losses, liabilities or response costs are incurred by Borrower or Lender arising from or pertaining to the application or claim of application of any Applicable Environmental Laws (as herein

defined), to either of them, or to the mortgaged premises. The term "Applicable Environmental Law" shall be defined as any statutory or case law pertaining to health or the environment, or oil, or petroleum products, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. § 9601 et. seq. (1982) and the Hazardous Wastes Management Act of 1978 as codified at Ala. Code §§ 22-30-1 et. seq. (1984 and Supp. 1986); the term "hazardous substance" shall have the meaning specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" which is broader than that specified in CERCLA such broader meaning shall apply.

Borrower's liabilities under this § 5.4 shall survive repayment of the loan secured hereby or discharge of the Mortgage by foreclosure or otherwise but only as to any state of facts existing prior to or as of the date of such repayment or discharge by foreclosure or otherwise. In addition, nothing contained in this paragraph shall in any manner or way constitute or be deemed to be a release or impairment or affect the obligations and personal liability of Robert E. Lowder, James K. Lowder, or Thomas H. Lowder under the Guaranty Agreement.

5.5 Notices. Whenever notice may appropriately be given under this Assignment, such notice: (i) shall be in writing; (ii) shall be posted by express mail or by registered or certified mail, postage prepaid, return receipt requested; (iii) when posted by express mail, shall be considered received on the business day following posting or when posted by registered or certified mail shall be considered received three business days following posting; and (iv) such notice shall always be treated as having adequately been given:

(a) When intended for the Borrower, upon deposit in the mail, addressed to the Borrower at the address given in this Assignment as the Borrower's address (or to such other address of which it shall have sent the Lender, by express mail, or by registered or certified mail, notice of the desire of the Borrower to have notices so sent);

(b) When intended for the Lender, upon deposit in the mail of written notice sent to the mailing address

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of which it shall have sent the Borrower by express mail or by registered or certified mail except that the Borrower agrees that the notice address of Lender is that set out at the beginning of this Assignment. Attention: Real Estate Investments.

5.6 Governing Law. This Assignment of Leases and Rents shall be governed by and construed in accordance with the laws of the State of Alabama.

5.7 Severability. If any term, restriction or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by Law.

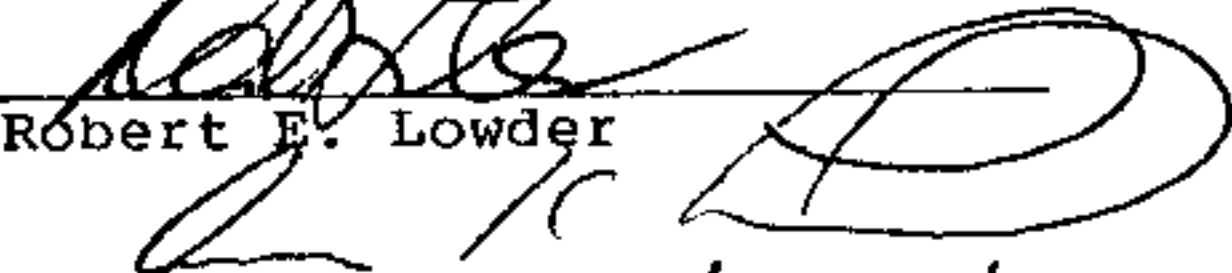
5.8 Termination: The recording of a satisfaction of the Mortgage by Lender shall terminate this Assignment.

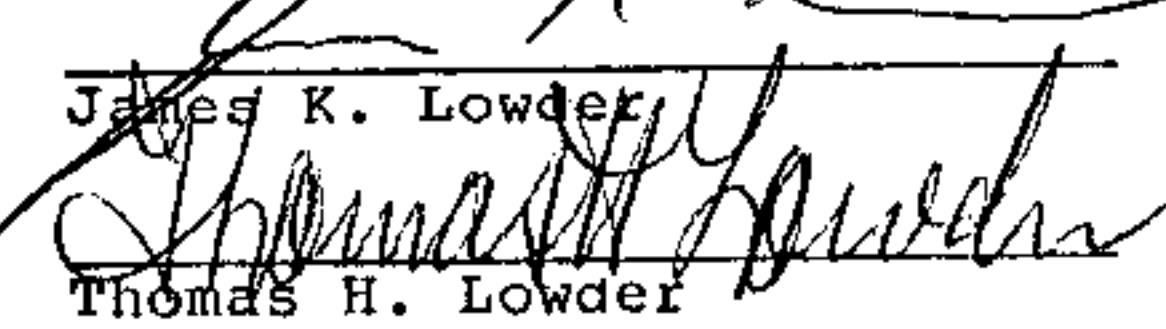
IN WITNESS WHEREOF, Borrower has caused this instrument to be executed for and in its name by its duly authorized general partners on this 26th day of FEBRUARY, 1988.

EQUITY PARTNERS JOINT VENTURE,  
a joint venture formed pursuant to  
the Alabama Partnership Act

By: COLONIAL PROPERTIES MANAGEMENT  
ASSOCIATION

By:   
Robert E. Lowder

  
James K. Lowder

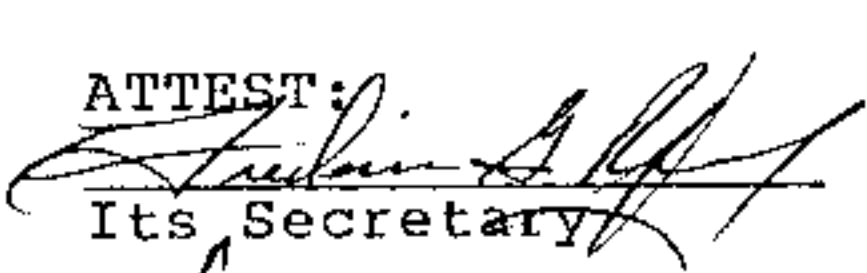
  
Thomas H. Lowder  
(Its General Partners)

By: COLONIAL PROPERTIES, INC.

By:   
Its President

(Constituting all its general partners)

ATTEST:

  
Its Secretary

Asst.

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Robert E. Lowder, James K. Lowder, and Thomas H. Lowder, whose names as general partners of Colonial Properties Management Association, an Alabama general partnership, as general partner of Equity Partners Joint Venture, an Alabama general partnership, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they as such general partners of said General Partnership and with full authority, executed the same voluntarily for and as the act of said general partnership, acting in its capacity as General Partner of said general partnership, and for and as the act of said general partnership.

Given under my hand and official seal this 24<sup>th</sup> day of February, 1988.

Cynthia L. Franks  
Notary Public

My Commission Expires MY COMMISSION EXPIRES APRIL 30, 1991.

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STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Thomas H. Lowder, whose name as President of Colonial Properties, Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as President of said corporation and for and as the act of said corporation.

Given under my hand and official seal this 24<sup>th</sup> day of February, 1988.

Cynthia L. Franks  
Notary Public

My Commission Expires MY COMMISSION EXPIRES APRIL 30, 1991.

This instrument prepared by: J. Fred Powell, attorney at law, 3000 SouthTrust Tower, Birmingham, Alabama 35203



EXHIBIT "A"

HEATHERBROOKE, PHASE II

MORTGAGED PREMISES

A parcel of land situated in the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southeast corner of the Northwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and from the East line of said 1/4-1/4 section turn an angle to the left of 68 degrees, 16' 22" and run in a Northwesterly direction a distance of 104.15 feet to a point; thence turn an interior angle of 203 degrees, 16' 04" and run to the left in a Westerly direction a distance of 66.00 feet to a point; thence turn an interior angle of 90 degrees, 00' 00" and run to the right in a Northerly direction a distance of 70.00 feet to a point; thence turn an interior angle of 270 degrees, 00' 00" and run to the left in a Westerly direction a distance of 7.5 feet to a point; thence turn an interior angle of 90 degrees, 00' 00" and run to the right in a Northerly direction a distance of 6.0 feet to a point; thence turn an interior angle of 90 degrees, 00' 00" and run to the right in a Easterly direction a distance of 7.5 feet to a point; thence turn an interior angle of 270 degrees, 00' 00" and run to the left in a Northerly direction a distance of 58.00 feet to a point; thence turn an interior angle of 270 degrees, 00' 00" and run to the left in a Westerly direction a distance of 10.0 feet to a point; thence turn an interior angle of 270 degrees, 00' 00" and run to the right in a Northerly direction a distance of 10.70 feet to a point; thence turn an interior angle of 253 degrees, 37' 30" and run to the left in a Westerly direction a distance of 327.05 feet to a point; thence turn an interior angle of 103 degrees, 30' 15" and run to the right in a Northerly direction a distance of 230.00 feet to a point; thence turn an interior angle of 226 degrees, 21' 56" and run to the left in a Northwesterly direction a distance of 251.21 feet to a point; thence turn an interior angle of 94 degrees, 29' 04" and run to the right in a Northeasterly direction a distance of 142.56 feet to a point; thence turn an interior angle of 186 degrees, 55' 00" and run to the left in a Northeasterly direction a distance of 230.34 feet to a point; thence turn an interior angle of 198 degrees, 31' 00" and run to the right in a Northeasterly direction a distance of 132.54 feet to a point; thence turn an interior angle of 223 degrees, 56' 00" and run to the left in a Northwesterly direction a distance of 94.44 feet to a point; thence turn an interior angle of 231 degrees, 03' 00" and run to the left in a Northwesterly direction a distance of 65.07 feet to a point; thence turn an interior angle of 185 degrees 11' 00" and run to the left in a Westerly direction a distance of 77.06 feet to a point; thence turn an interior angle of 162 degrees 35' 00" and run to the right in a Northwesterly direction a distance of 107.00 feet to a point; thence turn an interior angle of 70 degrees 49' 13" and run to the right in a Northeasterly direction a distance of 164.21 feet to a point; thence turn an interior angle of 101 degrees 45' 33" and run to the right in a Southeasterly direction a distance of 676.55 feet to a point on the East line of the Northwest 1/4 of the Northeast 1/4 of Section 36; thence turn an interior angle of 119 degrees 43' 03" and run to the right in a Southerly direction along the East line of said 1/4-1/4 section a distance of 1029.58 feet to the point of beginning.

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Rec 35.00  
Jud 1.00  
36.00

Together with all rights, title and interest of Borrower in and to those certain rights contained in those certain Easements recorded in:

Real Volume 140, page 380, and amended by Real Volume \_\_\_\_\_, page \_\_\_\_\_,  
Real Volume 164, page 433,  
Real Volume 140, page 401 and amended by Real Volume \_\_\_\_\_, page \_\_\_\_\_,  
Real Volume 164, page 382 and amended by Real Volume \_\_\_\_\_, page \_\_\_\_\_,  
Real Volume 164, page 375, and amended by Real Volume \_\_\_\_\_, page \_\_\_\_\_,  
Real Volume 164, page 408, and amended by Real Volume \_\_\_\_\_, page \_\_\_\_\_.

STATE OF ALABAMA  
COUNTY OF SHELBY  
INSTRUMENT NO. 172-877  
88 FEB 26 AM 9:49  
RECORDED