

STATE OF ALABAMA

COUNTY OF SHELBY

MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS THAT:

Southlake Village, Ltd., an Alabama limited partnership (the "Mortgagor") (a) to secure the performance and observance by Mortgagor of all covenants and conditions contained in the \$4,100,000 Note and the Loan Agreement (as hereinafter defined), in any renewal, replacement, extension or modification thereof, in this mortgage and security agreement (the "Mortgage") and in all other instruments securing the Note; and (b) also to secure: (i) all future advances and readvances that may subsequently be made to Mortgagor by Mortgagee (as hereinafter defined), evidenced by the aforesaid Note and all renewals, modifications, extensions or replacements thereof; provided, however, that nothing contained herein shall create an obligation on the part of Mortgagee (as hereinafter defined) to make future advances or readvances to Mortgagor and (ii) all other indebtedness of Mortgagor to Mortgagee, now or hereafter existing, whether direct or indirect, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) also in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and No/100 (\$1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, hereby grants, bargains, sells, conveys, transfers and assigns to FLEET NATIONAL BANK, a national banking association organized under the laws of the United States (the "Mortgagee"), its successors and assigns forever, WITH MORTGAGE COVENANTS, in fee simple, with right of entry and possession as provided below, that certain tract or parcel of land, with any Buildings (as hereinafter defined) and improvements now or hereafter erected thereon, located in the County of Shelby, State of Alabama, and more particularly described in Exhibit A which is attached hereto and hereby made a part hereof, which tract or parcel of land, with any Buildings and improvements now or hereafter erected thereon, is warranted free from all encumbrances (other than encumbrances permitted hereunder) and against any adverse claims other than the lien of ad valorem taxes for the current year and is hereinafter referred to and included in the definition of the "Mortgaged Property" together with all and singular the tenements, hereditaments, easements, rights of way, Fixtures (as hereinafter defined), Personalty (as hereinafter defined) and appurtenances thereunto appertaining.

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Land Title

TO HAVE AND TO HOLD the Mortgaged Property, and such tenements, hereditaments, easements, rights of way, Fixtures, Personalty and appurtenances and the use thereof unto the Mortgagee, its successors and assigns forever.

PROVIDED, NEVERTHELESS, and this conveyance is made upon the express condition that, if the Mortgagor shall pay unto the Mortgagee, the Indebtedness (as hereinafter defined) in the manner and at the time or times specified in the Note (as hereinafter defined) and this Mortgage, and shall pay, perform and observe all of the other covenants, agreements and conditions set forth in this Mortgage, the Loan Agreement, any Security Document and/or in the Note on the part of Mortgagor to be paid, performed or observed, then this Mortgage and also the Note, shall become and be absolutely void to all intents and purposes whatsoever and cancelled and surrendered by Mortgagee.

And, in consideration of the loan evidenced by the Note and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Mortgagor covenants and agrees with the Mortgagee as follows:

#### ARTICLE I

##### Definitions

As used herein, the following terms shall have the following meanings:

(a) Buildings: All buildings, improvements, alterations or appurtenances now standing or at any time hereafter constructed upon or constituting any part of the Mortgaged Property.

(b) Event of Default: Any happening or occurrence described in Article V hereof.

(c) Fixtures: The items of property belonging to Mortgagor now or at any time hereafter affixed or attached to or placed upon the Buildings and/or used in conjunction therewith including plumbing, heating and lighting apparatus, mantels, floor coverings, furniture, furnishings, draperies, screens, storm windows and doors, awnings, shrubbery, plants, boilers, tanks, machinery, stoves, gas and electric ranges, wall cabinets, appliances, furnaces, dynamos, motors, elevators and elevator machinery, radiators, blinds and all laundry, refrigerating, gas, electric, ventilating, air-refrigerating, air-conditioning, incinerating and sprinkling and other fire prevention or extinguishing equipment of whatsoever kind and nature and any replacements, accessions and additions thereto, proceeds thereof and substitutions therefor.

(d) Impositions: All (i) real estate and personal property taxes and other taxes and assessments, water and sewer rates and charges, and all other governmental charges and any interest or costs or penalties with respect thereto, and charges for any easement or agreement maintained for the benefit of the Mortgaged Property, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time prior to or after the execution hereof may be assessed, levied or income received therefrom, or any use or occupancy thereof, and (ii) other taxes, assessments, fees and governmental charges levied, imposed or assessed upon or against Mortgagor or any of Mortgagor's properties which shall constitute a lien on the Mortgaged Property.

(e) Indebtedness: The principal of and interest on and all other amounts, payments and premiums due or to become due hereafter under the Note or any guarantee or endorsement of the Note and all other obligations of the Mortgagor under this Mortgage, the Loan Agreement and/or any Security Document.

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(f) Mortgaged Property: The property described in Exhibit A (including, where the context permits, the Buildings, Personalty and Fixtures), together with all of Mortgagor's right, title and interest in and to any award or awards heretofore made or hereafter to be made by any municipal, state or federal authorities or boards to the extent that the same are payable to or receivable by Mortgagor or any prior or subsequent owners of the Mortgaged Property, including any award or awards for any change or changes of grade of streets affecting the Buildings; and all estate, right, title, interest, claim or demand whatsoever of the Mortgagor, either at law or in equity, in possession or expectancy of, in and to the property described in Exhibit A hereof, including all rents, royalties, issues, profits, revenue and income therefrom.

(g) Mortgagee: Fleet National Bank and the holders, from time to time, of the Note and any Security Document.

(h) Mortgagor: Southlake Village, Ltd., or its permitted successors and assigns in whom the ownership of the Mortgaged Property, or any part thereof, is then vested.

(i) Note: The promissory note dated as of the date of this Mortgage made by Mortgagor to the order of Mortgagee in the amount of \$4,100,000 with interest thereon as provided therein, including any renewal, replacement, extension or modification thereof and any future advance thereunder.

(j) Permitted Encumbrance: Shall mean any mortgage, lien, restriction or encumbrance described on Exhibit B which is attached hereto.

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(k) Personalty: All furniture, furnishings, equipment, machinery and all other tangible personal property now or hereafter owned by Mortgagor and located in, upon or about the Mortgaged Property and the Buildings or used in any way in connection with the use, operation or occupancy of the Mortgaged Property (excluding any toxic waste or substances deemed hazardous waste under federal, state or local laws), together with all accessions, replacements and substitutions thereto or therefor and the proceeds thereof (except the Fixtures and except for motor vehicles) and all General Intangibles, Contract Rights and Accounts (as defined in the applicable Uniform Commercial Code) pertaining in any way to the Mortgaged Property and any such tangible personal property including any franchises, permits or licenses for the use, operation or occupancy of the Mortgaged Property and any books and records relating to such use, operation or occupancy and all money, instruments and other property of the Mortgagor from time to time in the possession of Mortgagee.

(l) Security Agreement: The security agreement, contained in this Mortgage, wherein and whereby Mortgagor grants a security interest in the Personalty and the Fixtures to Mortgagee.

(m) Security Document: This Mortgage, and every other agreement or guarantee or other instrument or document whatsoever by which the Mortgagor shall be bound to pay or provide collateral security for the payment of the Indebtedness and other documents and agreements within the definition of "Security Documents" contained in the Loan Agreement, all of which are by this reference fully incorporated herein.

(n) Loan Agreement: That certain Loan Agreement of even date herewith by and between the Mortgagor and the Mortgagee pursuant to which the Mortgagee has agreed, subject to the terms hereof, to advance funds from time to time to the Mortgagor up to the amount of the Note, by this reference fully incorporated herein.

## ARTICLE II

### Representations and Warranties

Mortgagor represents and warrants to Mortgagee as follows:

2.1. Organization, Power, etc. Mortgagor (a) is a limited partnership duly organized, validly existing under the laws of the State of its creation, (b) has the power and authority to own its properties and to carry on its business as now being conducted, and (c) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable and known to it.

2.2. Validity of Loan Instruments. (a) The execution, delivery and performance by Mortgagor of the Loan Agreement, Note and/or any Security Document, and the borrowing evidenced by the Note (i) are within the powers of Mortgagor, (ii) have been duly authorized by all requisite action, (iii) have received all necessary governmental approval, and (iv) will not violate any provision of law or any order of any court or agency of government, the instrument, agreement or document pursuant to which Mortgagor was created, or any indenture, agreement or other instrument to which Mortgagor is a party or by which it or any of its property is bound, except previously executed agreements between the Mortgagor and the Mortgagee, or conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrances of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of any Security Document; and (b) the Loan Agreement, Note and any Security Document, when executed and delivered by Mortgagor, will constitute the legal, valid and binding obligations of Mortgagor in accordance with their respective terms, except as limited by bankruptcy and other laws affecting creditors rights generally.

2.3. Mortgaged Property and Other Property. Mortgagor has good and marketable fee simple title in and to the Mortgaged Property, free and clear of any liens, charges, encumbrances, security interests and adverse claims whatsoever except the Permitted Encumbrances, and the Mortgagor shall warrant and defend the same to the Mortgagee forever against the lawful claims and demands of all persons.

2.4. Taxes. Mortgagor has filed all federal, state, county and municipal tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by it, and Mortgagor does not know of any basis for additional assessment in respect of such taxes.

2.5. Litigation. There is not now pending against or affecting Mortgagor or the Mortgaged Property nor, to the knowledge of Mortgagor, is there threatened, any action, suit or proceeding at law or in equity or by or before any administrative agency which if adversely determined would impair or affect the Mortgaged Property or Mortgagor's financial condition or operations.



### ARTICLE III

#### Affirmative Covenants

Until the Indebtedness shall have been paid in full, Mortgagor hereby covenants and agrees as follows:

3.1. Legal Existence. Mortgagor will preserve and keep in full force and effect its legal existence, rights, franchises and trade names.

3.2. Compliance with Laws. Mortgagor will promptly and faithfully comply with, conform to and obey all present and future laws, ordinances, rules, regulations and requirements of every duly constituted governmental authority or agency and of every board of fire underwriters having jurisdiction, or similar body exercising similar functions, which may be applicable to it or to the Mortgaged Property, or any part thereof, or to the use or manner of use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction of the Mortgaged Property, or any part thereof, whether or not such law, ordinance, rule, order, regulation or requirement shall necessitate structural changes or improvements or interfere with the use or enjoyment of the Mortgaged Property.

3.3. Payment of Impositions. Mortgagor will duly pay and discharge, or cause to be paid and discharged, the Impositions, such Impositions or installments thereof, to be paid not later than the day any fine, penalty, interest or cost may be added thereto or imposed by law for the non-payment thereof; provided, however, that if, by law, any Imposition may at the option of the taxpayer or other person obligated to pay it be paid in installments without interest or penalties accruing on the unpaid balance of such Imposition, Mortgagor may exercise the option to pay the same in such installments.

3.4. Repairs. Mortgagor will keep the Mortgaged Property in good order and condition and make all necessary or appropriate repairs, replacements and renewals thereof and additions and betterments and improvements thereof, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and use its best efforts to prevent any act or thing which might impair the value or usefulness of the Mortgaged Property or any part thereof.

3.5. Insurance. Mortgagor will at all times keep the Mortgaged Property insured for the benefit of Mortgagee in accordance with the Loan Agreement and, including without limitation, against loss by fire and such other hazards, casualties and contingencies as are normally and usually covered by extended coverage policies in effect in the locality where the Mortgaged Property is situated and such other risks for which

coverage may become available as may be customarily required by Mortgagee, from time to time with respect to similar properties, in amounts and with insurers of recognized responsibility, and which are acceptable to Mortgagee; cause each insurance policy issued in connection therewith to specifically name Mortgagee in the policy, to contain a New York standard form of mortgagee clause and to provide (and the insurer issuing such policy to certify to Mortgagee) that (i) loss payments will be payable to Mortgagee, (ii) the interest of Mortgagee shall be insured regardless of any breach or violation by Mortgagor of any warranties, declarations or conditions in such policy; (iii) if any such insurance policy be subject to cancellation or be endorsed or sought to be endorsed to effect a change in coverage for any reason whatsoever, such insurer will promptly notify Mortgagee and such cancellation or change shall not be effective as to Mortgagee for ten (10) days after receipt by Mortgagee of such notice; and (iv) Mortgagee may, but shall not be obligated to, make premium payments to prevent such cancellation if for non-payment of premiums, and that such payments shall be accepted by the insurer. At Mortgagee's option, Mortgagor shall furnish to Mortgagee the original policies of insurance or duplicate executed copies of each then existing policy and each renewal policy not less than thirty (30) days prior to the expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums thereon have been paid. Mortgagee may (but shall not be required to) act as attorney for the Mortgagor with full power of substitution, in its own name or in the name of the Mortgagor, to obtain any insurance to be maintained pursuant to this section, adjust or settle any loss with respect thereto or endorse any draft or other instrument issued by any insurer in payment of any loss or any dividend or return of premium thereon or to assign any policy of insurance maintained pursuant to this section to any successor or assign of the Mortgagee.

3.6. Disposition of Proceeds. In the event that the Mortgagee shall realize any amount on account of insurance maintained pursuant to the preceding section, the Mortgagee may, at its election, pay or apply such amount in any one or more of the following ways and in such order and manner as Mortgagee may determine: (a) apply such amount on account of the Note, whether such Note shall then be matured or unmatured (without assessment of any prepayment charge or premium), (b) apply such amounts to the costs of collection thereof, (c) apply such amount on account of any obligation of the Mortgagor pursuant to this Mortgage, any Security Document and/or the Loan Agreement, (d) apply such amount toward payment of obligations incurred by the Mortgagor or the Mortgagee in the repair or replacement of damage to the Mortgaged Property or (e) pay such amount to the Mortgagor as advances in accordance with the Loan Agreement; provided, however, that if and so long as all of the following conditions are and remain satisfied: (i) no other Event of Default exists;

(ii) the Mortgagor elects to repair same in accordance herewith and with the Loan Agreement; and (iii) the insurance proceeds are sufficient to cover the costs of repair or replacement (or Mortgagor otherwise deposits with Mortgagee the balance of the funds needed); and (iv) no credit tenant leases are cancelled as a result of the damage or destruction then the Mortgagee shall apply such proceeds first as stated in clause (b) of this section until paid in full, then as stated in clause (d) of this section until exhausted or paid in full and finally as stated in clause (e) of this section.

3.7. Performance of Other Agreements. Mortgagor will duly and punctually perform all covenants and agreements expressed as binding upon it under any Permitted Encumbrance.

3.8. Inspection. Mortgagor will permit Mortgagee or any duly authorized agent of the Mortgagee, at any reasonable times, to inspect the Mortgaged Property.

3.9. Hold Harmless. Mortgagor will defend at its own cost and hold Mortgagee harmless from any action, proceeding or claim affecting the Mortgaged Property, or the value of the Note or any Security Document.

3.10. Books and Records. Mortgagor will maintain full and complete books of account and other records reflecting the results of its construction and/or operation of the Mortgaged Property, in accordance with the accounting method followed by Mortgagor for federal income tax purposes and furnish, or cause to be furnished to Mortgagee, on reasonable request by Mortgagee true copies thereof.

3.11. Contest of Tax Assessments, etc. After prior written notice to Mortgagee, in the case of any material item, Mortgagor, at its own expense, may contest by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of (a) any of the requirements referred to in Subsection 3.2, or (b) any Imposition; provided that (i) in the case of any unpaid Imposition, such proceedings shall suspend the collection therefrom from Mortgagor and from the Mortgaged Property, (ii) neither the Mortgaged Property nor any part thereof or interest thereunder will be in danger of being sold, forfeited, terminated, cancelled or lost, and (iii) Mortgagor shall have furnished such security as may be required in the proceedings or as may be reasonably requested by Mortgagee.

3.12. Payment of Indebtedness. Mortgagor will pay the Indebtedness, as hereinbefore or hereinafter provided, and keep and perform promptly each and every term, covenant and condition of the Note, any Security Document and the Loan Agreement on the part of Mortgagor to be kept and performed.



3.13. Use. Mortgagor will construct and/or operate the Mortgaged Property as a first class retail shopping center in accordance with the Loan Agreement and each Security Document.

3.14. Estoppel Certificate. Within ten (10) days upon request in person or within fifteen (15) days upon request by mail, Mortgagor will furnish a written statement duly executed and acknowledged by Mortgagor stating the amount due on the Note and whether any offsets or defenses exist against the Indebtedness, which statement shall be in form suitable for recording and shall be binding upon Mortgagor for the benefit of subsequent owners of the Note and this Mortgage.

3.15. Recorded Instruments. Mortgagor will promptly perform and observe, or cause to be performed or observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property on the part of Mortgagor to be performed or observed, noncompliance with which shall affect the security of this Mortgage or impose any duty or obligation upon Mortgagor, and Mortgagor shall do or cause to be done all things necessary to preserve intact and unimpaired any and all easements, appurtenances and other interests and rights in favor of or constituting any portion of the Mortgaged Property.

#### ARTICLE IV

##### Negative Covenants

Until the Indebtedness shall have been paid in full, Mortgagor covenants and agrees as follows:

4.1. Use, Violation, etc. Mortgagor will not use the Mortgaged Property or any part thereof or allow the same to be used or occupied for any purpose other than as set forth in Subsection 3.13. of this Mortgage and directly related purposes or for any unlawful purpose or in violation of any certificate of occupancy or other permit or certificate, or any law, ordinance or regulation, or suffer any act to be done or any condition to exist on the Mortgaged Property or any part thereof, or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private, or which may make void or voidable any insurance then in force with respect thereto.

4.2. Alterations, Demolition, Waste, etc. Mortgagor will not commit or knowingly permit any waste of the Mortgaged Property or any part thereof or make or permit to be made any alterations or additions to the Mortgaged Property which would have the effect of materially diminishing the value thereof or make or permit to be made any other alteration or addition to the Mortgaged Property, of a material nature, without the prior

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written consent of Mortgagee; provided, however, Mortgagor may allow the installation of storefronts and tenant finish work in the ordinary course of business without Mortgagee's written consent. Mortgagor will not cause or permit any Fixtures to be removed at any time from the Mortgaged Property and/or Buildings, without the prior written consent of Mortgagee, unless actually replaced by an article of equal value and suitability, owned by it, free and clear of any lien or security interest except such liens as may be approved in writing by Mortgagee.

4.3. Transfer of Property. Mortgagor shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee; provided, however, Mortgagee shall allow Mortgagor to place a second mortgage on the Mortgaged Property in an amount not to exceed Two Hundred Thousand and no/100 Dollars (\$200,000) so long as 1) said second lien is made specifically junior and subordinate, with regard to both payment and priority to the mortgage of the Mortgagee, 2) that the second loan not mature beyond the maturity date of the loan of Mortgagee, and 3) that the second lien is not placed on the Mortgaged Property until at least sixty (60) days following the date hereof. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

#### ARTICLE V

##### Events of Default

The Mortgagor shall be in default under this Mortgage and an "Event of Default", shall be deemed to have occurred under this Mortgage upon the occurrence or happening, from time to time, of any one or more of the Events of Default described in the Note, any Security Document and/or in the Loan Agreement.

#### ARTICLE VI

##### Remedies

If any Event of Default shall occur and be continuing, Mortgagee may, at its option, exercise any one or more or all of the following remedies:

6.1(a). Acceleration. Declare the unpaid portion of the Indebtedness to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Mortgagor), whereupon the same shall become immediately due and payable.

6.1(b). Entry on Mortgaged Property. Subject to the right of tenants, if any, enter upon all or any part of the Mortgaged Property and take possession thereof.

6.1(c). Operation of Mortgaged Property. Hold, lease, operate or otherwise use or permit the use of the Mortgaged Property, or any portion thereof, in such manner for such time and upon such terms as Mortgagee may deem to be in its best interest (making such repairs, alterations, additions and improvements thereto, from time to time, as Mortgagee shall deem necessary or desirable).

6.1(d). Foreclosure of Mortgaged Property. Sell the Mortgaged Property, in whole or in part, under the judgment or decree of a court of competent jurisdiction. At the option of the 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 the Mortgagee exercises its option to foreclose the Mortgage in equity, the Mortgagee may, at its option, foreclose this Mortgage subject to the rights (if any) 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 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.

6.1(d)(1). Sale of Mortgaged Property. If said Indebtedness be not paid when due, whether by acceleration or otherwise; or in the event of default hereunder, Mortgagee may, after expiration of any applicable cure period, enter upon the Mortgaged Property, take possession, and collect the rents and profits thereof; and may with or without taking possession sell the same as a whole, or any parcel thereof separately, at public sale or sales, before the Court House door in the County in which the Mortgaged Property is situated, at public outcry to the highest bidder for cash, first giving notice of the time, place and terms of such sale or sales together with description of property to be sold, by advertisement once a week for three consecutive weeks in some newspaper in County in which Mortgaged Property or part thereof is situated. The power shall not be exhausted until the Indebtedness and all obligations hereunder have been satisfied, and one or more sales may be held hereunder.

Mortgagee may bid and/or purchase at any sale; and may execute and deliver to the purchaser or purchasers at any sale a sufficient conveyance of the Mortgaged Property sold with full warranties of title. Mortgagor hereby constitutes and appoints Mortgagee its agent and attorney-in-fact to make such sale and conveyance, thereby divesting Mortgagor of all right, title or equity that it may have in the Mortgaged Property and vesting the same in the purchaser or purchasers at such sale or sales, and all of the acts and doings of said attorney-in-fact are hereby ratified and confirmed, and any recitals shall be binding on Mortgagor. The aforesaid powers of sale and agency hereby granted are coupled with an interest, are irrevocable by death or otherwise, and are granted as cumulative of the other remedies provided hereby or by law for collection of the Indebtedness secured hereby and shall not be exhausted by one exercise thereof but may be exercised until full payment of all indebtedness and compliance with all obligations secured hereby.

Mortgagee shall be entitled to receive from the proceeds of the sale, on account of the Indebtedness, all sums hereby secured, whether then payable or to become payable thereafter, or the part thereof then remaining unpaid, and also interest then due on the same, together with all expenses incident to such sale or sales and the distribution of the proceeds thereof, and all counsel fees and other expenses incurred, or in any way connected with the exercise of these powers, and all taxes and assessments, and all premiums for insurance and all other sums either theretofore paid by Mortgagee, or then remaining unpaid. Any sale pursuant hereto or pursuant to a judgment or decree of a court of competent jurisdiction shall forever be a perpetual bar both in law and in equity against Mortgagor and all persons claiming the Mortgaged Property so sold by, from or under Mortgagor.

6.1(d)(2). Sale of Personalty. Sell the Personalty and/or the Fixtures, in whole or in part, at one or more public or private sales, in such manner, at such time or times and upon such terms as Mortgagee may determine or as provided by law. The requirement of reasonable notice shall be met if notice is mailed, proper postage prepaid, to Mortgagor or any other person entitled thereto at least ten (10) days before the time of sale or disposition of the Personalty and/or Fixtures; provided however that Mortgagee may, at its option, dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the Uniform Commercial Code for Alabama.

6.1(e). Appointment of Receiver. Upon, or at any time after, the commencement of proceedings to sell the Mortgaged Property at public auction or the commencement of any judicial proceedings to enforce its rights, Mortgagee, to the extent

permitted by law, may, without notice or demand and without regard to the adequacy of any security for the Indebtedness or the solvency or insolvency of any person liable for the payment thereof, have appointed a receiver or receivers of the Mortgaged Property, with such powers as the court making such appointment shall confer.

6.1(f). Other Remedies. Exercise any other remedy now or hereafter existing in equity, at law, by virtue of statute or otherwise.

6.2. Strict Performance. Any failure by Mortgagee to insist upon strict performance by Mortgagor of any of the terms and provisions of any Security Document or of the Note or the Loan Agreement shall not be deemed to be a waiver of any of the terms or provisions thereof, and Mortgagee may thereafter insist upon strict performance by Mortgagor of any and all of them.

6.3. No Conditions Precedent to Exercise of Remedies. Neither Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose under this Mortgage or otherwise enforce any provisions of any Security Document, the Loan Agreement or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of any Security Document, the Loan Agreement or Note 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 to be liable to make payment according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee.

6.4. Release of Collateral. Mortgagee may release, regardless of consideration, any part of the security held for the payment of the Indebtedness without, as to the remainder of the security, in any way impairing or affecting the lien or liens of any Security Document or their priority over any subordinate lien.

6.5. Other Collateral. For payment of the Indebtedness, Mortgagee may resort to any other security therefor held by Mortgagee in such order and manner as Mortgagee may elect.

6.6. Waiver of Redemption, Notice, Marshalling, etc. Mortgagor hereby waives and releases:



(a) all benefit that might accrue to Mortgagor by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisement, valuation, stay of execution, exemption from civil process, redemption (to the extent allowed by Alabama law) or extension of time for payment, and

(b) except as specifically required herein or therein, all notices of Mortgagor's default or of Mortgagee's election to exercise, or Mortgagee's actual exercise of, any option or remedy under the Note, the Loan Agreement or any Security Document, and

(c) any right to have any Mortgaged Property marshalled.

6.7. Discontinuance of Proceedings. In case Mortgagee shall have proceeded to enforce any right under the Note or any Security Document and such proceedings shall have been discontinued or abandoned for any reason, then in every such case Mortgagor and Mortgagee shall be restored to their former positions and the rights, remedies and powers of Mortgagee shall continue as if no such proceedings had been taken.

6.8. Application of Proceeds. The proceeds of any sale of all or any portion of the Mortgaged Property and the earnings of any holding, leasing, operation or other use of the Mortgaged Property shall be applied by Mortgagee in the following order:

(a) first, to the expense of advertising, selling and conveying, including a reasonable attorney's fee;

(b) second, to the payment of any amounts that may have been expended or that may then be necessary to expend, in paying insurance, taxes, assessments, or other incumbrances, with interest thereon;

(c) third, to the payment of said Note in full whether the same shall or shall not have fully matured at the date of said sale; and

(d) fourth, the balance, if any, to be turned over to the Mortgagor.

6.9 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the Mortgaged Property prior to the foreclosure or exercise of said remedies against other portions of the Mortgaged Property.

## ARTICLE VII

### Condemnation

7.1 Right Upon Condemnation Mortgagor hereby assigns, transfers and sets over to Mortgagee all rights of Mortgagor to any award or payment in respect of (i) any taking of all or a portion of the Mortgaged Property as a result of, or by agreement in anticipation of, the exercise of the right of condemnation or eminent domain; (ii) any such taking of any appurtenances to the Mortgaged Property or of vaults, areas or projections outside the boundaries of the Mortgaged Property, or rights in, under or above the alleys, streets or avenues adjoining the Mortgaged Property, or rights in the Mortgaged Property, or rights and benefits of light, air, view or access to said alleys, streets, or avenues, or for the taking of space or rights therein, below the level of, or above the Mortgaged Property; and (iii) any damage to the Mortgaged Property due to governmental action, but not resulting in a taking of any portion of the Mortgaged Property such as, without limitation, the changing of the grade of any street adjacent to the Mortgaged Property. Mortgagor hereby agrees to file and prosecute its claim or claims for any such award or payment in good faith and with due diligence and cause the same to be collected and paid over to Mortgagee, and hereby irrevocably authorizes and empowers Mortgagee at Mortgagee's option, in the name of Mortgagor or otherwise, to collect and receipt for any such award or payment and to file and prosecute such claims. All proceeds received by Mortgagee with respect to the Mortgaged Property from governmental action not resulting in a taking of the Mortgaged Property, shall be applied as follows, in the order of priority indicated:

(a) to reimburse Mortgagee for all costs and expenses, including reasonable attorney's fees, incurred in connection with collecting the said proceeds;

(b) to the payment of all accrued and unpaid interest on the Note;

(c) to the payment of the balance of the Indebtedness whether such Indebtedness shall then be matured or unmatured (without assessment of any prepayment charge or premium) and/or, if Mortgagor so requests, in Mortgagee's complete discretion, pursuant to the Loan Agreement, as if such proceeds were advances thereunder, to the restoration, replacement and rebuilding of the Mortgaged Property; and thereafter

(d) to the Mortgagor or to such other person as may be entitled to receive the same.

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## ARTICLE VIII

### Security Agreement

8.1. Security Interest. This Mortgage shall be construed as a mortgage of and as granting an interest in both real property and personal property and it shall also constitute and serve as a "Security Agreement" within the meaning of and shall create a security interest under the Alabama Uniform Commercial Code with respect to the Personalty and the Fixtures, such security interest in the Personalty being in addition to Mortgagee's rights of set-off.

8.2. Financing Statements. Mortgagor shall execute and deliver to Mortgagee, in form satisfactory to Mortgagee, such "Financing Statements" and such further assurances as Mortgagee may, from time to time, consider reasonably necessary to create, perfect and preserve Mortgagee's liens upon the Personalty and Fixtures, and Mortgagee, at the expense of Mortgagor, may or shall cause such statements and assurances to be recorded and re-recorded, filed and re-filed, at such times and places as may be required or permitted by law to so create, perfect and preserve such liens.

8.3. Uniform Commercial Code. Mortgagee shall have all the rights with respect to the Personalty and the Fixtures afforded to it by the Alabama Uniform Commercial Code, in addition to, but not in limitation of, the other rights afforded Mortgagee by any Security Document and/or the Loan Agreement.

## ARTICLE IX

### Miscellaneous

9.1. Survival of Warranties and Covenants. The warranties, representations, covenants and agreements set forth in any Security Document and/or Loan Agreement shall survive the making of the loan and the execution and delivery of the Note and this Mortgage, and shall continue in full force and effect until the Indebtedness shall have been paid in full.

9.2. Further Assurances. Mortgagor, upon the request of Mortgagee, will execute, acknowledge and deliver such further instruments (including, without limitation, a declaration of no set-off and an estoppel certificate) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of any Security Document, the Loan Agreement and/or the Note and to subject to the liens thereof any property intended by the terms thereof, to be covered thereby and any renewals, additions, substitutions, replacements or betterments thereto.

9.3. Recording and Filing. Mortgagor, at its expense, will cause any Security Document and all supplements thereto at all times to be recorded and filed and re-recorded and re-filed in such manner and in such places as Mortgagee shall reasonably request, and will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges.

9.4. No Representations by Mortgagee. By accepting or approving anything required to be observed, performed or fulfilled, or to be given to Mortgagee, pursuant to any Security Document, the Note and/or the Loan Agreement, including (but not limited to) any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Mortgagee shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or representation with respect thereto by Mortgagee.

9.5. Notice. All notices, demands, requests and other communications required under any Security Document, the Loan Agreement and/or the Note shall be in writing and shall be deemed to have been properly given when mailed if sent by U.S., certified or registered mail, proper postage prepaid, addressed to the party for whom it is intended at its address as follows:

To Mortgagor:	c/o Cooper & Grelier Companies 2204 Lakeshore Drive, Suite 200 Birmingham, Alabama 35209
With a copy to:	Chervis Isom, Esquire Berkowitz, Leftkovitz, Isom & Kushner 1100 Financial Center Birmingham, Alabama 35203
To Mortgagee:	Fleet National Bank Suite 800 111 Westminster Street Providence, Rhode Island 02903 Attention: Frances S. Guthrie
with a copy to:	Fleet Real Estate Funding Corp. Post Office Box 11988 Columbia, South Carolina 29211 Attention: Gary L. McGlaughlin

Any party may designate a change of address by written notice to the other, given at least ten (10) days before such change of address is to become effective. Notwithstanding the foregoing routine mailings such as timely payments under the Note or any Security Document may be mailed by first class United States mail proper postage prepaid.

9.6. Covenants Running with the Land. All covenants contained in any Security Document shall run with the Mortgaged Property.

9.7. Successors and Assigns. All of the terms of any Security Document shall apply to and be binding upon, and inure to the benefit of, the successors and assigns of Mortgagor and Mortgagee, respectively, and all persons claiming under or through them.

9.8. Severability. In case any one or more of the provisions of this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions shall be in no way affected, prejudiced or disturbed thereby.

9.9. Tax on Indebtedness or Mortgage. In the event of the passage, after the date of this Mortgage, of any law, or if any court of competent jurisdiction renders a final decision, deducting from the value of land for the purposes of taxation, any lien thereon, or imposing upon Mortgagee the obligation to pay the whole, or any part, of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts so as to affect this Mortgage or the Indebtedness, the entire unpaid balance of the Indebtedness shall, at the option of Mortgagee, after thirty (30) days' written notice to Mortgagor, become due and payable; provided, however, that if, in the opinion of Mortgagee's counsel, it shall be lawful for Mortgagor to pay such taxes, assessments or charges, or to reimburse Mortgagee therefor, then there shall be no such acceleration of the time for payment of the unpaid balance of the Indebtedness if a mutually satisfactory agreement for reimbursement, in writing, is executed by Mortgagor and delivered to Mortgagee within the aforesaid period.

9.10. Remedies Cumulative and Concurrent. The rights and remedies of Mortgagee as provided in the Note, the Loan Agreement and in each Security Document shall be cumulative and concurrent and may be pursued separately, successively or together against Mortgagor or against other obligors or against the Mortgaged Property, or any one or more of them at the sole discretion of Mortgagee, and may be exercised as often as occasion therefor shall arise. The failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.



9.11. Covenants of Guarantors. As a part of the inducement to Mortgagee to make the loan evidenced by the Note, Mortgagor may have caused certain other persons, firms or corporations to enter into certain guaranty agreements with Mortgagee pertaining to the financing and payment for construction of improvements on the Land. In such event, Mortgagor covenants and agrees that such persons, firms or corporations shall fully perform, comply with and abide by such agreements. It is further understood and agreed by Mortgagor that such representation and agreements by the other persons shall constitute, for the purpose of its obligations hereunder, covenants on behalf of Mortgagor.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed (in one or more counterparts) as a sealed instrument and Mortgagee has caused this Mortgage and Security Agreement to be signed on its behalf as secured party, both as of the 29th day of February, 1988.

Signed, sealed and delivered  
in the presence of:

SOUTHLAKE VILLAGE, LTD., an  
Alabama limited partnership

Katherine E. Mims  
Witness

By: CHAR-TER INVESTMENTS, an  
Alabama general partnership,  
as General Partner

Kathleen A. Haragan  
Witness

By: [Signature]  
Its: General Partner

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Fleet National Bank hereby joins in the execution this Mortgage and Security Agreement with the intention that it shall serve as a financing statement pursuant to { 7-9-402 of the Code of Alabama, as amended.

FLEET NATIONAL BANK

By: M. Ned Norwood  
Its: VICE PRESIDENT

THIS DOCUMENT PREPARED BY

Katherine E. Mims  
McNAIR LAW FIRM, P.A.  
P. O. BOX 11390  
COLUMBIA, SOUTH CAROLINA 29211

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Carter L. Cooper, whose name as general partner of Char-Ter Investments, an Alabama general partnership, general partner of Southlake Village, Ltd., an Alabama limited partnership, 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 general partner and with full authority, executed the same voluntarily for and as the act of said general partnership.

Given under my hand and official seal this 29<sup>th</sup> day of February, 1988.

Kathleen A. Haragan  
Notary Public South Carolina

My Commission Expires: 7-7-93

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EXHIBIT A

All that piece, parcel, tract of land with improvements thereon lying and being situate in the City of Hoover, County of Shelby, State of Alabama designated as Lot 3 according to Survey of Village on Valleydale at Southlake as recorded in Map Book 11, page 84 in the Probate Office of Shelby County, Alabama and as shown on an "Asbuilt Survey" prepared by Jimmy A. Gay Registered Surveyor dated January 21, 1988, updated February 22, 1988 and being more fully described as:

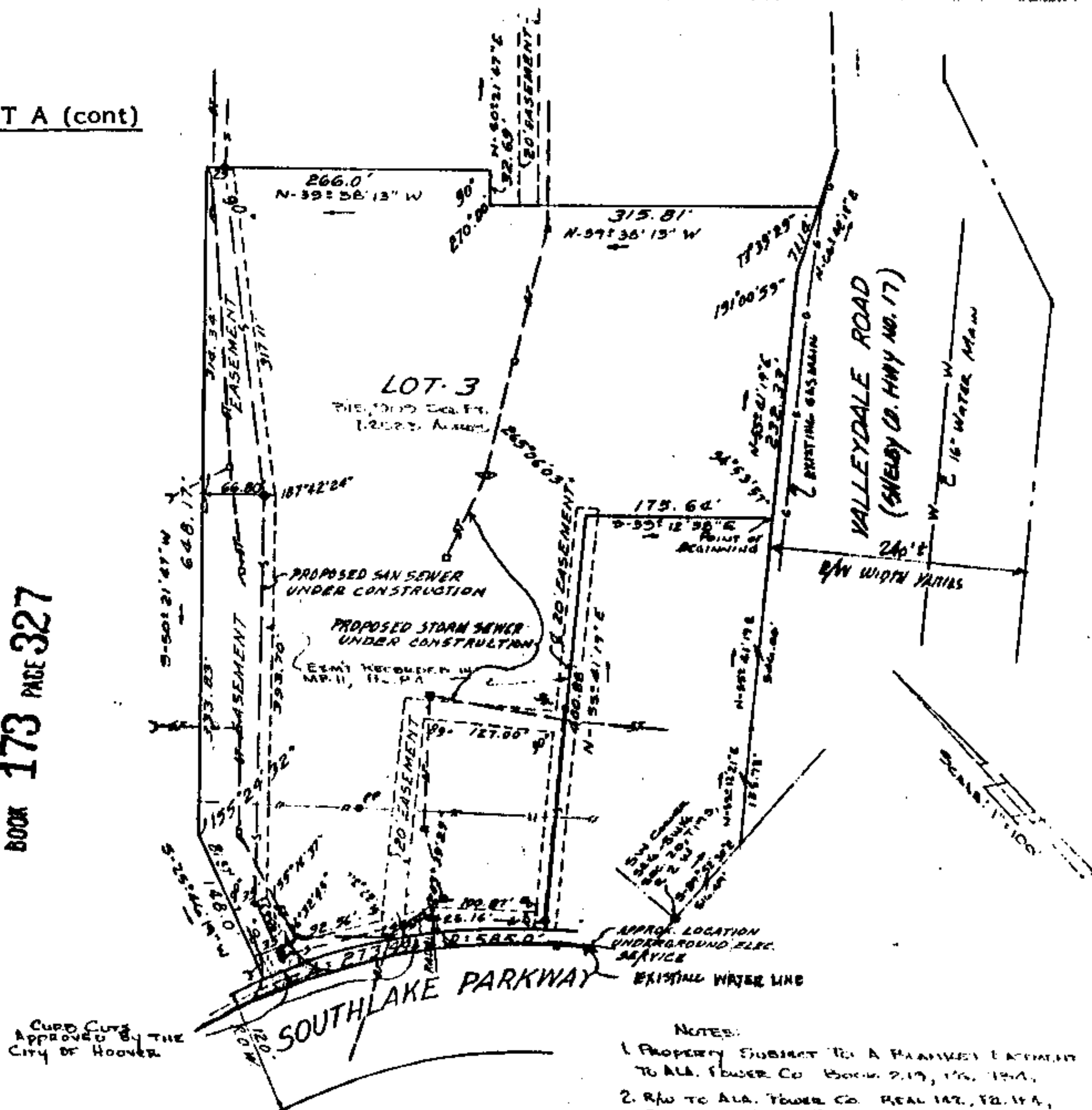
BOOK 173 PAGE 326  
Commence at the Southwest corner of the SE 1/4 of the SW 1/4, Section 20, Township 19 South, Range 2 West, thence run south 89 degrees 52 minutes 30 second east for a distance of 516.49 feet to a point on the northwest right of way of Valleydale Road; thence run north 55 degrees 12 minutes 21 second east along the northwest right of way of Valleydale road for a distance of 135.73 feet; thence run north 55 degrees 41 minutes 19 seconds east along the northwest right of way of Valleydale Road for a distance of 546.00 feet to the point of beginning; thence continue north 55 degrees 41 minutes 19 seconds east along the northwest right of way of Valleydale Road for a distance of 232.33 feet; thence run north 66 degrees 42 minutes 18 seconds east along the northwest right of way of Valleydale Road for a distance of 71.14 feet; thence run north 39 degrees 38 minutes 13 seconds west for a distance of 315.81 feet; thence run north 50 degrees 21 minutes 47 seconds east for a distance of 32.69 feet; thence run north 39 degrees 38 minutes 13 seconds west for a distance of 266.00 feet; thence run south 50 degrees 21 minutes 47 seconds west for a distance of 648.17 feet; thence run south 25 degrees 46 minutes 19 seconds west for a distance of 148.00 feet to a point on the northeast right of way of Southlake Parkway; thence turn an angle to the left to the tangent of a curve to the right, said curve having a central angle of 26 degrees 46 minutes 52 seconds and a radius of 585.00 feet; thence run along the arc of said curve in a southeasterly direction for a distance of 273.44 feet; thence run north 55 degrees 41 minutes 19 seconds east for a distance of 400.88 feet; thence run south 39 degrees 12 minutes 38 seconds east for a distance of 175.64 feet to the point of beginning.

Together with all easements and rights as contained in that certain Declaration of Restrictions and Grant of Easements between Mortgagor and the owners of Lot 4 of Village on Valleydale to be recorded on or about the date hereof in the Probate Office of Shelby County; and

Together with all Mortgagor's rights to that certain sanitary sewer treatment capacity allocated to Mortgagor by Riverchase Wastewater Treatment Plant by permit dated on or about the date hereof.

EXHIBIT A (cont)

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STATE OF ALABAMA  
SHELBY COUNTY

**ASBUILT SURVEY**

I, Jimmy A. Gay, a Registered Surveyor, do hereby certify that this is a true and correct plat or map of Lot 3, Village on Valleydale at Southlake, as recorded in Map Book 11, Page 24, in the Office of the Judge of Probate in Shelby County, Alabama.

I, hereby certify to Fleet National Bank that the survey prepared by me entitled "Asbuilt Survey" was actually made upon the ground and that it and the information, courses and distances shown thereon are correct, that the title lines and lines of actual possession are the same, that the size, location and type of buildings and improvements are as shown and all are within the boundary lines of the property, and that there are no easements, encroachments or uses affecting this property appearing from a careful physical inspection of the same, other than those shown and depicted thereon. This survey is made in accordance with the "Minimum Standard Detail Requirements for Land Title Surveys" jointly established and adopted by ALTA and ACSM in 1962.

*Jimmy A. Gay*  
Jimmy A. Gay, Reg. No. 8759, PRESIDENT  
COULTER, GAY, SALMON & MARTIN ENG. CO., INC.  
121 West Valley Avenue  
Birmingham, AL 35209

Dated: JAN. 21, 1988  
Updated: Feb. 22, 1988



EXHIBIT B

Permitted Encumbrances

1. Right of way to Alabama Power Company as recorded Volume 219, page 734 in the Probate Office of Shelby County, Alabama.
2. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights conveyed in Deed Book 121, page 294; Deed Book 127, page 140; Deed Book 111, page 625; and Deed Book 4, page 542 in the Probate Office of Shelby County, Alabama.
3. Utility easements as shown by the Survey prepared by Coulter, Gay, Salmon and Martin Engineering Company, Inc. entitled "Village on Valley Dale at SouthLake" recorded in Map Book 11, at page 84 in the Probate Office of Shelby County, Alabama and as shown on a survey dated January 21, 1988.

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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

88 MAR -1 PM 4:00

*Thomas C. J. J. J.*  
JUDGE OF PROBATE

1. Deed Tax \$  
2. Mig. Tax 6,150.00  
3. Recording Fee 57.50  
4. Indexing Fee 1.00  
TOTAL 6,208.50



