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STATE OF ALABAMA)
COUNTIES OF JEFFERSON AND SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 17th day of October, 1988, between COLONIAL PROPERTIES, INC., an Alabama corporation (hereinafter called the "Borrower"), Mortgagor, whose address is P. O. Box 43468, Birmingham, Alabama 35243, Attention: Mr. Thomas H. Lowder, President, and THE COLONIAL BANK -NORTHERN REGION, an Alabama banking corporation (hereinafter called the "Lender"), Mortgagee, whose address is P.O. Box 1887, Birmingham, Alabama 35201, Attention: Mr. Jack L. Naramore, Vice President.

W I T N E S S E T H:

WHEREAS, Borrower has established a revolving line of credit with Lender pursuant to which Borrower may borrow, repay and reborrow up to the principal sum outstanding at any time and from time to time of Six Million and No/100 Dollars (\$6,000,000.00); and

WHEREAS, as a condition to establishing such revolving line of credit and making advances thereunder Lender requires that it receive a mortgage upon the land hereinafter described and that Borrower execute and deliver to Lender this Mortgage and Security Agreement to secure a part of the principal balance under the revolving line of credit outstanding from time to time not exceeding Three Million Eighty-Two Thousand Seventy-Five and No/100 Dollars (\$3,082,075.00); and

WHEREAS, the obligation of Borrower to repay all advances outstanding from time to time under the foregoing revolving line of credit, with interest, is evidenced by a certain promissory note of even date herewith in the principal amount of Six Million and No/100 Dollars (\$6,000,000.00), payable to the order of Lender and finally due and payable on or before October 31, 1989 (said promis-

Colonial Bank
1989

sory note, as the same may hereafter be renewed, extended or modified, being herein called the "Note").

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NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, including FUTURE ADVANCES up to the principal sum of \$6,000,000.00 outstanding at any time and from time to time, and to secure the prompt payment of same (provided that this mortgage shall secure only \$3,082,075.00 of the principal amount outstanding from time to time, which secured portion shall be the part of the total outstanding principal amount selected by Lender), with the interest thereon, and any extensions and renewals of the same, and to secure the Note and that part of the principal amount of the Note set forth above, plus interest and other charges and expenses from time to time owing thereunder, and further to secure the performance of the covenants, conditions, and agreements herein, in the Note and in any separate loan or security agreement from time to time in effect between Colonial and Borrower with respect to the revolving line of credit described herein (collectively referred to as the "Separate Agreements"), have bargained and sold and do hereby grant, bargain, sell, alien, mortgage and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All that tract or parcel of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

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

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

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

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the indebtedness secured hereby, including future advances so long as the principal indebted-

ness outstanding does not at any time exceed \$6,000,000.00 and including principal, interest and other sums payable herein and with respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform, and observe all and singular the covenants and promises in the Note, in any Separate Agreement and in this mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.

AND this mortgage is made subject to the following covenants and agreements:

ARTICLE I

1.01. Performance of Note and Mortgage. This mortgage shall secure payment of the Note. The Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay or cause to be paid to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this mortgage or any Separate Agreement, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02. Warranty of Title. The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit A hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the

Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03. **Monthly Tax Deposits.** If required by the Lender after an Event of Default, the Borrower will pay to the Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. Upon an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph 1.03 of Article I remaining to the Borrower's credit.

1.04. **Other Taxes, Utilities and Liens.**

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this mortgage for any amounts secured hereby or would have priority or equality with this mortgage in distribution of the proceeds of any

foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Borrower shall pay promptly and will not suffer any mechanic's, laborer's, statutory, or other lien which might or could be prior to or equal to the lien of this mortgage to be created or to remain outstanding upon any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, and Borrower refuses to reimburse Lender within ten days of Lender's written request for payment for the increased costs incurred by Lender, the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

(e) The Borrower hereby indemnifies and holds Lender harmless from any sales or use tax that may be imposed on the Lender by virtue of Lender's loan to Borrower as evidenced by the Note.

1.05. Insurance. Borrower will maintain liability insurance for losses to person or property occurring on or about the Mortgaged Property in such amounts and with such companies as shall be reasonably satisfactory to Lender and will maintain copies of current policies evidencing such insurance on file with Lender.

1.06. Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, all compensation, awards, and other payments or relief therefor shall be paid to Lender, and

Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.07. Care of the Property.

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

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

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

1.08. Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of the

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Borrower under the Note and this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09. Expenses. The Borrower will pay or reimburse the Lender for all recording fees and taxes from time to time due with respect to the Note and advances made thereunder, and for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to two percent (2%) in excess of the interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this mortgage.

1.10. Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium or in the procurement of insurance coverage and the delivery of the insurance policies required hereunder, if any; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Note. The Lender shall be the sole judge

of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.11. Books and Records. The Borrower will furnish to the Lender within one hundred twenty (120) days after the end of each calendar year, a financial statement in reasonable detail and form satisfactory to Lender and certified by the Borrower, and, if requested by Borrower, by a certified public accountant acceptable to Lender, and will cause each guarantor of the Note to furnish to Lender any separate financial statement required by any guaranty executed with respect to the Note.

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

ARTICLE II

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

(a) Failure by the Borrower to pay as and when due and payable under the Note (after the giving of any required notice and expiration of any applicable grace period) any installments of principal or interest; or

(b) Failure by the Borrower duly to observe or perform or make any other payment with respect to any other covenant, condition, or agreement of the Note, this mortgage, or any Separate Agreement for thirty (30) days or more after written notice from Lender, or the occurrence of an Event of Default under any such document or instrument; or

(c) The filing by the Borrower of a voluntary petition in bankruptcy or the Borrower's adjudication as a bankrupt or insolvent, or the filing by the Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for himself under any present or future federal, state, or other statute, law, or regulation relating to bankruptcy, insolvency, or other relief for debtors, or the Borrowers' seeking or consenting to or acquiescence in the appointment of any trustee, receiver, or liquidator of the Borrower or of all or any substantial part of its property or of any or all of the rents, revenues, issues, earnings, profits, or income thereof, or the making of any general assignment for the benefit of creditors, or the admission in writing of its inability to pay its debts generally as they become due; or

(d) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment, or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver, or liquidator of the Borrower or of all or any substantial part of its property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(e) Except as otherwise provided herein, the sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(f) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the encumbrances set forth on Exhibit A, if any, the lien of this mortgage and the lien for ad valorem

taxes not then delinquent, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(g) Any fact set forth in any representation or warranty herein or made by Borrower in connection with the loan transaction secured hereby proves to be untrue or materially misleading, whether or not the falsity or misleading nature of such fact was within Borrower's knowledge.

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

2.03. **Right of Lender to Enter and Take Possession.**

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

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured to the extent any part thereof is capable of damage by fire or other insurable casualty and to insure against liability for loss occurring on or about the Mortgaged Property; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers

herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agent of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

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

2.04. Receiver.

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

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

2.05. **Lender's Power of Enforcement.** If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.06. **Power of Sale.** If an Event of Default shall have occurred, Lender may 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, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender 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 maybe 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 Lender may elect.

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

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

(b) Second, to the repayment of any money, with interest thereon at a rate equal to two percent (2%) in excess of the rate borne by the Note, which Lender may have paid, or become liable to pay, or which it may then be

necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

Borrower will be liable to Lender for any deficiency to the extent permitted by the laws of the State of Alabama.

2.08. Lender's Option on Foreclosure. At the option of Lender, 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 proceeds of sale. In the event Lender exercises its option to foreclose the mortgage, Lender may, at its option, foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

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

2.10. Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or 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 com-

pliance 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 the Lender.

2.11. Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender. Upon an Event of Default under the Note or mortgage, then, upon demand of the Lender, the Borrower will pay or cause to be paid to the Lender the whole amount due and payable under the Note; and in case the Borrower shall fail to pay or cause to be paid the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Lender's agents and attorneys.

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

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Note, any Separate Agreement or this mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the

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original liability under the Note, this mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

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

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

2.16. **No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take

action to foreclose on this mortgage or otherwise enforce any provisions of this mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

2.17. Release of Collateral, Effect on Subordinate Liens. Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of the Borrower under the Note and/or this mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this mortgage or its priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this Section.

2.18. Other Collateral. For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender, in such order and manner as Lender may elect without affecting its remedies under this mortgage, to the maximum extent permitted by the laws of the State of Alabama.

ARTICLE III

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

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

3.03. Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this mortgage or in the Note shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and

provisions contained herein and in the Note shall in no way be affected, prejudiced, or disturbed thereby.

3.04. **Lien on Personal Property.** This mortgage creates a lien on and grants a security interest in, the personal property and fixtures constituting a part of the Mortgaged Property which are located on or relate to the real estate constituting a part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as "debtor" and Lender as "secured party." If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

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3.05 **Environmental Matters.** Borrower represents and warrants to Lender that neither the Mortgaged Property nor Borrower is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and Borrower further represents and warrants that there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Borrower represents and warrants that it is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any part of the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Borrower represents and warrants that it has no knowledge that any oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Borrower agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous

substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Borrower shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the Borrower or the Mortgaged Property (whether or not due to any fault of Borrower) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure, but only as to any state of facts existing as of or prior to the date of foreclosure or taking by Lender of a deed in lieu of foreclosure. If requested by Lender, within thirty (30) days of the date of such request but in no event earlier than one hundred twenty (120) days from the date hereof, Borrower will deliver to Lender a report of a qualified environmental engineer. Such report shall be in form satisfactory to Lender and shall describe the investigations and tests made by such engineer to determine the possible presence of oil, toxic or hazardous substances or solid wastes at the Mortgaged Property. In the event such a satisfactory report is not timely furnished or such report contains materially adverse information, Lender may, at its option, declare all indebtedness secured hereby to be immediately due and payable.

3.06 Representations and Warranties. Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as an incentive to make the loan secured hereby to Borrower, that:

(a) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any guarantor of the Note or which might impair the value of any collateral taken or to be taken by Lender in connection with the loan transaction secured by this mortgage. Neither Borrower nor any guarantor of the Note is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or any such guarantor's business or assets, and neither Borrower nor any guarantor of the Note is in violation of any order, judgment, or decree of any

court, or any statute or governmental regulation to which Borrower or any guarantor of the Note is subject. The execution and performance of this mortgage, the Note, or any other document executed in connection herewith by Borrower or the guaranty of payment and performance executed by any such guarantor (including the present guarantors - Robert E. Lowder, Thomas H. Lowder and James K. Lowder) will not result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any such guarantor.

(b) All financial statements of Borrower and each guarantor of the Note and other business enterprises in which Borrower or any guarantor of the Note has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of its respective dates and all have been and will be prepared in accordance with generally accepted accounting principles consistently applied, and does and will fairly represent the financial conditions of the business or person to which they pertain, and no materially adverse change has occurred in the financial conditions reflected in statements previously provided since the respective dates thereof.

(c) Access to the real estate constituting a part of the Mortgaged Property is available pursuant to permanent private or public easements which, if private, are subject to this mortgage but are not subject to the rights of any other persons which could interfere with Borrower's use thereof.

(d) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent any use of any of the real estate which constitutes a part of the Mortgaged Property.

(e) All documents furnished to Lender by or on behalf of Borrower as part of or in support of Borrower's loan application are true, correct, complete and accurately represent the matters to which they pertain.

(f) Borrower is an Alabama corporation duly organized, validly existing and in good standing and the officers signing this instrument have been duly elected and are authorized by all necessary corporate proceedings to execute and deliver this mortgage and the Note.

3.07 Notices. Any notice required herein, by the Note or by the application of any law, shall be given for each of the parties personally or by mail, addressed to the appropriate party at the address designated for such party in the heading of this mortgage, or at such other address as the party who is to receive such notice may hereafter designate in writing by notice given in the manner set forth herein. Notice by mail shall be registered or certified mail, addressed to the party with the proper amount of postage affixed thereto, and shall be deemed received at the time deposited when sent in the manner aforesaid. Actual receipt of notice shall not be required to effect notice.

3.08 Recording; Title Insurance. Borrower agrees to promptly reimburse Lender for all taxes, fees and expenses of recording this mortgage and all premiums and expenses incurred by Lender in thereafter causing the issuance of a policy of title insurance with respect to this mortgage.

3.09 Permitted Transfers. Notwithstanding anything to the contrary herein, Borrower may without the consent of Lender transfer the Mortgaged Property in its entirety, or any separate parcel designated in Exhibit A, or any separate lot within such parcel, to James K. Lowder, Robert E. Lowder, or Thomas H. Lowder, or any one or more of them, provided that Borrower will give prior notice of such transfer to Lender and provided further that no such transfer shall relieve Borrower from its obligations under this mortgage.

3.10 Release of Property. Provided no Event of Default then exists and provided that following any proposed release Lender shall have a first-priority mortgage upon other real estate which secures only the \$6,000,000.00 revolving line of credit and which has a value not less than one hundred thirty percent (130%) of the stated maximum principal amount of the Note (initially \$6,000,000.00, but also as the same may hereafter be modified), Lender will release all or a part of the Mortgaged Property upon receipt of the sum of

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per acre to be released as set forth in Exhibit B hereto. Lender shall determine the value of the remaining real estate upon which it has a first-priority mortgage based upon comparable sales, purchase contracts or loan officer estimates, as Lender shall select. Borrower, as a further condition to such release, shall provide a survey acceptable to Lender of the property to be released and shall provide evidence acceptable to Lender that use of, access to, and availability of utilities to the remaining part of the Mortgaged Property are not impaired.

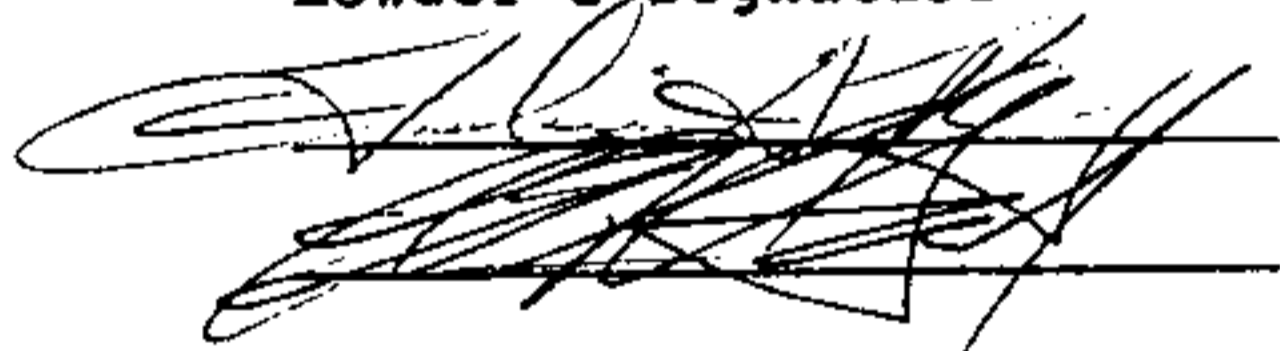
3.11 Counterparts. This mortgage may be executed in two or more counterparts, each of which shall constitute an original and which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Borrower has caused this mortgage to be executed by its duly authorized officer as of the day and year first above written.


BORROWER:

COLONIAL PROPERTIES, INC.,
an Alabama corporation

Witnesses to Thomas H.
Lowder's Signature



By:


Thomas H. Lowder
Its President

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STATE OF Alabama)
COUNTY OF Jefferson)

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., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 14th day of October, 1988.

Cynthia C. Franks
Notary Public
My Commission Expires: MY COMMISSION ENDS APRIL 30, 1991

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EXHIBIT A

Parcel A

Lots 1, 3, and 4 in Heatherbrooke Office Park as recorded in Map Book 12, Page 2, in the Probate Office of Shelby County, Alabama, and Lot 2-B in Heatherbrooke Office Park as recorded in Map Book 12, Page 36, in the Probate Office of Shelby County, Alabama. The above property is situated in the Southwest 1/4 of the Northeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama.

Parcel B

A parcel of land situated in the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 18, Township 18 South, Range 2 West, Jefferson County, Alabama, and being particularly described as follows:

Begin at the Northeast corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$; thence South along the East line of said SE $\frac{1}{4}$ of the SE $\frac{1}{4}$, a distance of 93.25 feet, more or less, to a point on the northwesterly right-of-way line of Projects No. M-7012 (6) and ST 542 (21) as recorded in the Office of the Judge of Probate, Jefferson County, Alabama; thence Southwesterly along said line a distance of 61.43 feet, more or less, to said point that is 255 feet Northwesterly of and at right angles to the centerline of said project at Station 84+50; thence Southwesterly, a distance of 50.25 feet, more or less, to a point that is 260 feet Northwesterly of and at right angle to the centerline of said project at Station 85+00; thence Southwesterly, a distance of 205.00 feet more or less to a point that is 215 feet Northwesterly of and at right angles to the centerline of said project at Station 87+00; thence Southwesterly, a distance of 103.08 feet, more or less, to a point that is 240 feet Northwesterly of and at right angles to the centerline of said project at Station 88+00; thence Southwesterly, a distance of 74.33 feet, more or less to a point that is 295 feet Northwesterly of and at right angles to the centerline of said project at Station 88+50; thence Southwesterly parallel with the centerline of said project, a distance of 100 feet; thence Southwesterly, a distance of 203.04 feet, more or less, to a point that is 260 feet Northwesterly of and at right angles to the centerline of said project at Station 91+50; thence Southerly, a distance of 262.14 feet, more or less to a point on the present Northwest Right-of-Way line of U. S. Highway #31 that is 150 feet Northwesterly of and at right angles to the centerline of said project at Station 94+00; thence Southwesterly along the Northwest Right-of-Way line of U. S. Highway #31, a distance of 276.00 feet, more or less, to a point on the South line of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 18; thence West along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 689.61 feet, more or less, to a point on the Southeasterly Right-of-Way line of the Old Montgomery Highway; thence 122° 03' 46" to the right (angle measured to tangent) in a Northeasterly direction along said Right-of-Way line and the arc of a curve to the right having a radius of 537.82 feet and a central angle of 12° 24' 46" a distance of 116.51 feet to the P.T. (point of tangent) of said curve; thence Northeasterly tangent to said curve and along said Right-of-way line a distance of 31.75 feet to the P.C. (point of curve) of a curve to the left having a radius of 315.0 feet and a central angle of 34°

EXHIBIT A
Cont'd

03'; thence Northeasterly along the arc of said curve and along said Right-of-Way line a distance of 187.20 feet to the P.T. (point of tangent) of said curve; thence Northeasterly tangent to said curve and along said Right-of-Way line a distance of 137.50 feet to the P.C. (point of curve) of a curve to the right having a radius of 158.0 feet and a central angle of $41^{\circ} 58'$; thence Northeasterly along the arc of said curve and along said Right-of-Way line a distance of 115.73 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 163.21 feet and a central angle of $55^{\circ} 49'$; thence Northeasterly, Easterly and Southeasterly along the arc of said curve and along said Right-of-Way line a distance of 159.00 feet to the P.T. (point of tangent) of said curve; thence Southeasterly tangent to said curve and along said right-of-way line a distance of 32.88 feet to the P.C. (point of curve) of a curve to the left having a radius of 83.0 feet and a central angle of $110^{\circ} 08'$; thence Southeasterly, Easterly, Northeasterly and Northerly along the arc of said curve and along said Right-of-Way line a distance of 159.54 feet to the P.T. (point of tangent) of said curve; thence Northerly tangent to said curve and along said Right-of-Way line a distance of 173.07 feet to the P.C. (point of curve) of a curve to the right having a radius of 305.0 feet and a central angle of $29^{\circ} 55' 30''$; thence Northerly and Northeasterly along the arc of said curve and along said Right-of-Way line a distance of 159.30 feet to the P.T. (point of tangent) of said curve; thence Northeasterly tangent to said curve and along said Right-of-Way line a distance of 60.16 feet to the P.C. (point of curve) of a curve to the right having a radius of 217.88 feet and a central angle of $43^{\circ} 43'$; thence Northeasterly along the arc of said curve, and along said Right-of-Way line a distance of 166.24 feet to the P.T. (point of tangent) of said curve; thence Northeasterly tangent to said curve and along said Right-of-Way line a distance of 61.66 feet to the P.C. (point of curve) of a curve to the left having a radius of 64.10 feet and a central angle of $163^{\circ} 33'$; thence Northeasterly, Northerly, Northwesterly and Westerly along the arc of said curve and along said Right-of-Way line a distance of 182.97 feet to the P.C.C. (point of compound curve) of a curve to the left having a radius of 350.0 feet and a central angle of $26^{\circ} 50'$; thence Westerly and Southwesterly along the arc of said curve and along said Right-of-Way line a distance of 158.93 feet to the P.T. (point of tangent) of said curve; thence Southwesterly tangent to said curve and along said Right-of-Way line a distance of 201.30 feet to the P.C. (point of curve) of a curve to the right having a radius of 51.0 feet and a central angle of $104^{\circ} 34'$; thence Southwesterly, Westerly and Northwesterly along the arc of said curve and along said Right-of-Way line a distance of 93.08 feet to the P.T. (point of tangent) of said curve; thence Northwesterly tangent to said curve and along said Right-of-Way line a distance of 15.92', more or less, to a point on the Old Southeast Right-of-Way line of South Lakeshore Drive that is now the South line of that certain parcel of land described in Real Volume 2219, pages 4 and 5 in the Office of the Judge of Probate Jefferson County, Alabama; thence turn an angle to the right and run in a northeasterly direction along said South line of said parcel as described in Real Volume 2219, pages 4 and 5, for a distance of 402.12 feet, more or less, to an existing iron pin on the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence turn an angle to the right and run in an easterly direction along said north line of said $\frac{1}{4}$ - $\frac{1}{4}$ section for a distance of 473.48 feet, more or less, to the point of beginning.

EXHIBIT A
Cont'd

Parcels C-One and C-Two

Two parcels of land in the Southeast Quarter of the Southwest Quarter of Section 27, Township 18 South, Range 2 West, Huntsville Meridian, Jefferson County, Alabama, being more particularly described as follows:

Parcel C-One

Commence at the Southeast Corner of the Southeast Quarter of the Southwest Quarter of Section 27; thence due west along the south line of said quarter-quarter section 769.20 feet to a point; thence North 33°15'00" East, 192.00 feet to the POINT OF BEGINNING; thence continue North 33°15'00" East, 403.36 feet to its intersection with the southwesterly right-of-way line of Old U. S. Highway 280; thence along said right-of-way line North 54°47'00" West, 517.66 feet to its intersection with the southeasterly right-of-way line of Acton Road; thence along said southeasterly right-of-way line South 24°41'00" West, 345.92 feet; thence leaving said right-of-way line South 47°07'00" East, 472.49 feet to the POINT OF BEGINNING.

94 Containing 4.178 acres, more or less.

PAGE Parcel C-Two

BOOK 210 Commence at the Southeast Corner of the Southeast Quarter of the Southwest Quarter of Section 27; thence due west along the south line said quarter-quarter section 200.00 feet to the POINT OF BEGINNING; thence North 02°15'00" East, 317.97 feet to its intersection with the southwesterly right-of-way line of Old U. S. Highway 280; thence along said southwesterly right-of-way line, North 54°47'00" West, 312.43 feet to a point; thence leaving said right-of-way line, South 33°15'00" West 595.36 feet to a point on the south line of said quarter-quarter section; thence along said south line of quarter-quarter section 569.20 feet to the POINT OF BEGINNING.

Containing 4.210 acres, more or less.

EXHIBIT A
Cont'd

The foregoing properties are subject to the following:

1. Current year's taxes not yet overdue.
2. Fire dues and municipal assessments not yet overdue.
3. As to Parcel A only, easements shown by the recorded map and those easements and rights of way pursuant to instruments recorded in Vol. 97, Pg. 566; Vol. 109, Pg. 289; Vol. 182, Pg. 51; and Vol. 270, Pg. 819; Probate Office of Shelby County, Alabama.
4. As to Parcel B only, easements and rights of way pursuant to instruments recorded in Vol. 796, Pg. 640; Vol. 5774, Pg. 251; and Real 309, Pg. 615; Probate Office of Jefferson County, Alabama.
5. As to Parcels C-One and C-Two only, easements and rights of way pursuant to instruments recorded in Vol. 4262, Pg. 32 and Vol. 3139, Pg. 142; mineral and mining rights pursuant to instrument recorded in Vol. 46, Pg. 445; and Release of Damages pursuant to instrument recorded in Vol. 46 Page 445; Probate Office of Jefferson County, Alabama.

EXHIBIT B

<u>Parcel</u>	<u>Release Price Per Acre</u>
A	\$149,288
B	\$ 23,322
C-One	\$147,702
C-Two	\$114,006

STATE OF ALA. JEFFERSON CO.
I CERTIFY THIS INSTRUMENT
WAS FILED ON

1988 OCT 18 AM 9:54

RECORDED & INDEXED
4623 15
FEE HAS BEEN
PD. ON THIS INSTRUMENT.

O. H. L. L. L.
JUDGE OF PROBATE

BOOK 210 PAGE 97

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

88 OCT 21 AM 9:13

Thomas A. Swanson Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		<i>St. Alb. in Jeff. Co.</i>
3. Recording Fee		<i>7.00</i>
4. Indexing Fee		<i>1.00</i>
TOTAL		<i>73.50</i>

