

Loan Number: 00-53-002149

728

FIRST MORTGAGE AND SECURITY AGREEMENT

BETWEEN

VERONICA A. ZEIGLER

AND

JEFFERSON FEDERAL SAVINGS and LOAN
ASSOCIATION OF BIRMINGHAM

BOOK 217 PAGE 384

TABLE OF CONTENTS

2000 217 PAGE 385

THIS DOCUMENT PREPARED BY:

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THE STATE OF ALABAMA)
SHELBY COUNTY)

FIRST MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the undersigned VERONICA A. ZEIGLER, an unmarried woman having as a mailing address 1200 Beacon Parkway East, No. 600, Birmingham, Alabama 35209 (hereinafter called "Mortgagor"), has become justly indebted to JEFFERSON FEDERAL SAVINGS and LOAN ASSOCIATION OF BIRMINGHAM, a federally chartered savings and loan association, having as a mailing address 215 North 21st Street, Birmingham, Alabama 35203 (hereinafter called "Mortgagee"), in the sum of SIX HUNDRED FIFTY THOUSAND and NO/100 DOLLARS (\$650,000.00) evidenced by one promissory note (the "Note" or "said note") of even date herewith payable to the order of Mortgagee, with interest thereon from date hereof according to the terms of the Note, said principal and interest sums being due and payable according to the terms of said note as follows:

(a) During the first (1st) Loan Year, interest shall be at the rate of nine and three-quarters percent (9-3/4%) per annum. Commencing on the first (1st) day of February, 1989 and on the first (1st) day of each successive calendar month thereafter to and including the first (1st) day of January, 1990, Mortgagor shall pay to Mortgagee principal and interest in equal monthly installments of Five Thousand Seven Hundred Ninety-two and 38/100 Dollars (\$5,792.38). Said principal and interest payments are based on a twenty-five (25) year amortization with a ten (10) year maturity ("Balloon"). Each such installment shall be applied first to interest on the then unpaid balance of principal and the remainder thereof to principal.

(b) Commencing on the first (1st) day of the second (2nd) Loan Year and on the first (1st) day of each Loan Year thereafter, the interest rate may change. Each day on which the interest rate could change is called the "CHANGE DATE". Commencing with the first (1st) Change Date the interest rate will be based on an Index. The Index is three and one-quarter percent (3 1/4%) above the average annual yield of United States Treasury securities adjusted to a constant maturity as made available by the Federal Reserve Board and rounded upward to the

BOOK 217 PAGE 387

nearest one-eighth of one percent ($1/8\%$). The interest rate and the monthly installments of principal and interest shall be adjusted forty-five (45) days prior to the anniversary date of the loan in each Loan Year of the Loan Term. The above stated principal shall be paid monthly on the first (1st) day of each month beginning on the first (1st) day of February, 1990, based on a twenty-five (25) year amortization with a ten (10) year maturity ("Balloon"). Accrued interest shall be paid monthly on the principal sum.

The maximum annual increase in interest shall be two percent (2%). The maximum increase in the interest rate over the entire ten (10) year loan term shall be five (5%) percent over the initial interest rate of nine and three-quarters percent ($9 \frac{3}{4}\%$). The interest rate during the entire ten (10) year term of the loan shall not exceed fourteen and three-quarters percent ($14 \frac{3}{4}\%$) and shall not be less than nine percent (9%) per annum.

(c) Anything to the contrary notwithstanding contained in this Note and First Mortgage and Security Agreement securing same and all other Loan Documents, the unpaid principal balance due hereon together with all accrued and unpaid interest shall be due and payable on the maturity date, the first (1st) day of January, 1990.

WHEREAS, Mortgagor, as hereinafter defined, is desirous of securing the prompt payment of said note and the several installments of principal and interest and the monthly payments provided for in said note and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the ultimate disbursement of a sum not to exceed Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00) to Mortgagor, in hand paid by Mortgagee, the receipt, adequacy and sufficiency whereof are hereby acknowledged, and for the purpose of securing the prompt payment of said indebtedness as it becomes due, Mortgagor does hereby grant, bargain, sell, assign and convey unto said Mortgagee, its successors and assigns, the real property described in Exhibit "A" which is attached hereto and incorporated herein as if set out in full and expressly made a part hereof by reference.

TOGETHER WITH all machinery, equipment, personal property, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagor for the purpose of or used or useful in connection with the improvements located, or to be located, on the hereinabove described real estate, whether such machinery, equipment, personal property, fixtures and fittings are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located. The personal property herein conveyed and mortgaged

shall include, without limitation, all plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, incinerating and sprinkling and other fire prevention or extinguishing equipment of whatever kind and nature (and in case such fixtures and articles are subject to the lien of a conditional sales contract, chattel mortgage or any other security interest, including any deposits or payments heretofore or hereafter made with respect thereto), electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, plants, trees, flowers and shrubs (including live and artificial), water fountains, benches, tables or other items of furniture to be used in connection with the operation and maintenance of the shopping center and the off street paved parking area to be provided therefor on the property described in Exhibit "A", and all increases, substitutions, replacements, additions, and accessions thereto, and in general, all equipment of every kind and character used or useful in connection with said improvements, and together with all the rights, privileges, tenements and appurtenances thereunto belonging or in any wise appertaining, including screen windows and doors, gas, steam, electric and other heating, lighting, equipment, elevators, elevator machinery, escalators and escalator machinery, ice boxes, plumbing and other fixtures appertaining to the said premises, parking area, sweeping and cleaning tools, equipment and accessories, all of which shall be deemed realty and conveyed by this Mortgage. Also, together with all and singular the buildings, improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties, privileges, easements, tenements, hereditaments, and appurtenances thereunto appertaining, and the reversions and remainders, and all present and future leases, rents and profits connected with or derived from said premises, all of the said property, whether real or personal.

All of the hereinabove described real property, buildings and improvements to be constructed thereon, and personal property are hereinafter referred to as "Mortgaged Premises".

TO HAVE AND TO HOLD the same with all the rights, privileges and appurtenances thereunto belonging or in anywise appertaining unto said Mortgagee, its successors and assigns forever.

And Mortgagor hereby covenants that Mortgagor is lawfully seized of said real property in fee simple, and has a good right to sell and convey the same; that the property is free from all encumbrances, except as set forth in Exhibit "B" attached hereto and made a part hereof, and that Mortgagor and Mortgagor's heirs, personal representatives, successors and assigns will forever defend the same unto Mortgagee and its successors and assigns against the claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions and agreements:

1. Payment of Indebtedness. Mortgagor shall pay the indebtedness evidenced by said note and interest thereon when and as

it shall become due, whether in due course or under any condition, covenant or agreement herein contained; together with any other indebtedness which Mortgagor may owe to Mortgagee pursuant to the terms and provisions of the within Mortgage or other Loan Documents.

2. Cost of Protecting Mortgagee's Lien. Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses, reasonable agent's or attorney's fees which Mortgagee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, or to which Mortgagee is made a party because of its interest in the Mortgaged Premises, or to establish or sustain the lien of this Mortgage, or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions asserting priority to this Mortgage; or in payment, settlement, discharge or release of any asserted lien, claim, right, easement, or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage, either in law or in fact; or to enforce any obligation of or to foreclose this Mortgage, or to recover any sums hereby secured; and for payment of all sums due under this paragraph including interest at a rate equal to three (3%) percent per annum in excess of the applicable rate at such time until paid, this Mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

3. Taxes, Liens and Other Charges. Mortgagor shall pay as the same shall become due all taxes and assessments that may be levied or accrue upon said Mortgaged Premises or any part thereof, or upon Mortgagee's interest therein, or upon this Mortgage, or the indebtedness or the evidence of indebtedness secured hereby, and all other charges that may become liens upon the Mortgaged Premises; and shall not permit any lien which might take precedence over this Mortgage to accrue and remain on the Mortgaged Premises, or any part thereof, or on the buildings and improvements thereon.

4. Insurance. Mortgagor will continuously maintain hazard insurance of such type or types and amounts as Mortgagee may from time to time require including fire and extended coverage insurance, builder's risk insurance, rents insurance, flood hazard insurance, and war risk insurance (if available from the United States Government or an agency thereof), on the improvements now or hereafter on the Mortgaged Premises, and Mortgagor will pay promptly when due any premiums therefor. All insurance shall be carried in companies approved by Mortgagee and the policies and renewals thereof shall be delivered to and held by Mortgagee with loss payable clauses in favor of and in form acceptable to Mortgagee. Also, Mortgagor shall deliver to Mortgagee receipts for the premiums paid at least ten (10) days prior to the due date of such premiums. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly; and the insurance

proceeds, or any part thereof, may be applied by Mortgagee, at its option, either to the reduction of the indebtedness hereby secured, or to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force, and any and all proceeds due or which may become due thereon, shall pass to the purchaser or grantee.

BOOK 217 PAGE 390

5. Municipal, Governmental Charges, Etc. Mortgagor shall: (a) insure the Mortgaged Premises as hereinabove provided, (b) pay all or any part of said taxes or assessments so levied, accrued or assessed on and against the Mortgaged Premises, (c) pay immediately and discharge any and all liens, debts and charges which might become liens superior to this Mortgage, and (d) keep the Mortgaged Premises in good condition and repair. The failure of Mortgagor to perform any one or more of the covenants in this paragraph of the within Mortgage shall constitute an event of default hereunder, and this Mortgage shall be subject to foreclosure at the option of Mortgagee. Mortgagee may, however, at its option, insure the Mortgaged Premises and pay said taxes, assessments, debts, liens and charges, or enter upon the Mortgaged Premises and make such repairs as it may deem necessary, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specially secured and shall be secured by this Mortgage, and shall bear interest at a rate equal to three (3%) percent per annum in excess of the applicable rate at such time from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable. Mortgagee shall have no obligation to procure such insurance, to pay such taxes, or assessments, debts, liens or charges, or make such repairs.

6. Extension. Mortgagee in its sole discretion may by agreement with Mortgagor extend the time for the repayment to it of any sum or sums advanced hereunder by Mortgagee for the alteration, modernization, improvement, maintenance, or repair of the Mortgaged Premises, for taxes or assessments against the same, and for any other purpose authorized hereunder; and upon the request of Mortgagee, Mortgagor shall execute and deliver a supplemental note or notes for the sum or sums advanced by Mortgagee for such purposes. Said note or notes shall be secured hereby on a parity with and as fully as if the advances evidenced thereby were included in the original principal indebtedness. Absent agreement to the contrary, the sum or sums so advanced shall be due and payable thirty (30) days after demand by Mortgagee. In no event shall the maturity extend beyond the ultimate maturity of the original principal indebtedness as it may be extended, provided, however, that Mortgagee shall be under no obligation whatsoever to waive any of the provisions of this instrument with respect to the reimbursement of Mortgagee for any of the outlays made by it, and unless such extension is made by notes executed by Mortgagor and accepted by Mortgagee as herein provided, Mortgagor shall repay Mortgagee the amount together

with interest on each and every payment or advance made by Mortgagee on or before the next installment of said Mortgage debt as provided in said principal note hereby secured.

7. No Waiver. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its rights to exercise such option or to declare such maturity by reason of any past or present default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges; and this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness, or any part thereof, secured hereby.

8. Monthly Escrow Deposits. Mortgagor agrees that with the monthly payments of principal and interest, Mortgagor shall pay to Mortgagee an additional sum in an amount equal to one-twelfth (1/12th) of the ad valorem taxes, hazard insurance premium, and assessments, if any, next to become due as estimated by Mortgagee. Money so held shall not bear interest, and upon default may be applied by Mortgagee on account of the indebtedness secured by this Mortgage.

9. Condition Subsequent. If Mortgagor shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall do and perform all acts and agreements to be done and performed by Mortgagor under the terms and provisions of this Mortgage, then this conveyance shall be and become null and void.

10. Default; Acceleration of Maturity. If Mortgagor shall fail to pay or cause to be paid, as it matures, the indebtedness evidenced by said note and secured hereby or any part thereof, according to the terms thereof, or if Mortgagor shall fail to do or perform any other act or thing herein required, or agreed to be done or performed, or if the interest of Mortgagee in the Mortgaged Premises becomes impaired by reason of the filing of or enforcement of any prior lien or encumbrance thereon, or if Mortgagor should become insolvent, or if Mortgagor should file or cause to be filed an insolvency or bankruptcy proceeding in a State or Federal court, or if at any time Mortgagor admits her inability to pay the indebtedness secured hereby as it becomes due, or if an involuntary petition in bankruptcy is filed against Mortgagor and same is not dismissed within thirty (30) days after such filing, or if Mortgagor makes an assignment for the benefit of her creditors, then, in any one or more of such events, the whole indebtedness hereby secured shall, at the option of Mortgagee, and without notice, become immediately due and payable and this Mortgage shall be subject to foreclosure; and in any such event, Mortgagee shall have the right and is hereby

authorized, to enter upon and take possession of the Mortgaged Premises, and, after or without taking possession, to sell the same before the Main Entrance of the Shelby County Courthouse in the City of Columbiana, Alabama, at public outcry for cash, first giving notice of the time, place and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper published in Shelby County, Alabama; and upon the payment of the purchase money, Mortgagee, or any person conducting said sale for it, is authorized to execute to the purchaser at said sale a deed to the property so purchased, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. Mortgagee may bid at the sale and purchase the Mortgaged Premises, if the highest bidder therefor. At said foreclosure sale, the Mortgaged Premises may be offered for sale and sold as a whole without first offering it in any other manner, or may be offered for sale and sold in any other manner as Mortgagee may elect. The presence of any of the above-described security at the time and place of sale is expressly waived. In addition to the remedies provided for herein or those provided by law, the Mortgagee may, at its election, foreclose the within Mortgage by judicial proceedings.

BOOK 217 PAGE 392
11. Application of Foreclosure Proceeds. The proceeds of a foreclosure sale, judicial or otherwise, shall be applied; First, to the expenses of advertising and selling, including reasonable attorney's fees as provided in said Note or Notes; Second, to the repayment of any money with interest thereon, which Mortgagee may have paid or become liable to pay, or which it may then be necessary to pay for taxes, assessments, insurance or other charges, liens or debts as hereinabove provided; Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest, but interest to date of sale only shall be charged; Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Premises at the time of the sale after deducting any expenses of ascertaining who is such owner. If this Mortgage be foreclosed in Chancery, such reasonable attorney's fees shall be paid out of the proceeds of the sale.

12. Status of Mortgagor After Foreclosure. After foreclosure of this First Mortgage and Security Agreement, Mortgagor and all holding under him, shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

13. Care of Premises. Mortgagor shall keep the Mortgaged Premises in good condition and repair, reasonable wear and tear excepted; shall not permit nor perform any act which would in any way impair the value of the Mortgaged Premises; shall not remove any fixture; shall not remove or demolish any building or improvement located on the above-described land which would impair the value of the premises without the written consent of Mortgagee; and shall neither commit nor permit waste of the Mortgaged Premises.

14. Right of Entry. If Mortgagor shall default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may at its option take immediate possession of the Mortgaged Premises and proceed to collect the rents, income and profits from the Mortgaged Premises, either with or without the appointment of a receiver. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate commission or attorney's fees incurred, shall be credited on the indebtedness hereby secured in such manner or proportion as Mortgagee may elect.

15. Mortgagor's Obligations as Lessor. Mortgagor shall perform every obligation of the lessor and shall enforce every obligation of the lessee in every lease that is assigned to Mortgagee or any tenancy in which the rents are assigned to Mortgagee; and shall not modify, alter, waive or cancel any such lease or any part thereof, nor anticipate for more than one month any rents that may be collectible under such lease or leases, or that may have been assigned to Mortgagee, and shall not assign any such lease or leases, or any such rents.

16. Assignment of Lessor's Interest In Leases. All right, title and interest of Mortgagor in and to all leases, oral or written, affecting the Mortgaged Premises, together with any and all future leases, oral or written upon all or any part of the Mortgaged Premises, and together with all of the rents, income, receipts, revenues and profits from or due or arising out of the Mortgaged Premises are hereby transferred and assigned to Mortgagee (reserving, however, in Mortgagor the right to collect and receive same until default hereunder) as further security for the repayment of the said indebtedness.

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

18. Leases-Subordinate. All leases covering all or any part of the Mortgaged Premises, shall be subordinate, junior, and inferior to this Mortgage, unless otherwise specified by Mortgagee. Mortgagee may, at its election, require that specified leases be made superior to this Mortgage at the expense of Mortgagor. In any event, Mortgagor agrees not to enter into any lease on terms, and for rents materially different than those set out in the Leases and Rent Roll to be provided by Mortgagor to Mortgagee.

19. Mortgagee To Approve Management Agreement. Mortgagor shall not enter into any Agreement with a Real Estate Broker,

Certified Property Manager or Manager of the Mortgaged Premises including any of the improvements situated thereon without first obtaining the written approval of Mortgagee. Any such Management and/or Leasing Agreement shall at all times be junior, inferior and subordinate in all respects to this First Mortgage and Security Agreement and all other Loan Documents.

20. Rights Cumulative. Any promise made by Mortgagor herein to pay money may be enforced by a suit at law, and the security of this Mortgage shall not be waived thereby, and as to such debts, Mortgagor waives all rights of exemption under the law and agrees to pay a reasonable attorney's fee for the collection thereof.

21. Estoppel. No delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option, or estop Mortgagee from afterwards exercising same, or any other option at any time and the payment or contracting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments, and shall not estop Mortgagee from foreclosing this Mortgage on account of such failure of Mortgagor.

22. Eminent Domain. Mortgagor hereby assigns to Mortgagee any and all awards or damages, actual and consequential, considerations or proceeds for the taking of any portion or all of the Mortgaged Premises, by the exercise of the right of eminent domain or condemnation, including but not limited to, damages or awards for changes to the grades of streets, or acquiring title to streets. The proceeds of such awards or damages, when received by Mortgagee, shall be applied, at the option of Mortgagee, either in reduction of the Mortgage indebtedness, or shall be paid to Mortgagor or Mortgagor's assigns as reimbursement for amounts expended by Mortgagor in restoring the Mortgaged Premises following a condemnation. Notwithstanding that the assignment of awards referred to herein shall be deemed to be self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage then remaining unpaid, with interest thereon, at the rate specified herein or in the Note which this Mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this Mortgage, and also, together with any other indebtedness which Mortgagor may owe to Mortgagee pursuant to the terms and provisions of the within Mortgage or other Loan Documents.

23. Security Agreement-Uniform Commercial Code. Mortgagor and Mortgagee are respectively the Debtor and Secured Party in

certain Uniform Commercial Code Financing Statements covering personal property referred to or described herein; and it is agreed that:

(a) This instrument shall also constitute a Security Agreement under the Uniform Commercial Code as in force in the State of Alabama from time to time.

(b) In order to further secure the payment of the indebtedness described herein and the performance of all the obligations, agreements, terms and conditions of this Mortgage and of the Note and any other Loan Documents, Mortgagor hereby grants to Mortgagee a security interest in all goods, equipment, furnishings, fixtures, furniture, chattels and personal property of whatever nature owned by Mortgagor (except such property which is leased by Mortgagor from third parties or which is purchased with separate funds and is subject to a purchase money security interest) now or hereafter attached or affixed to or used in and about the building or buildings now or hereafter erected or placed on the property described in this instrument, and all building materials and equipment now or hereafter delivered to said property and intended to be attached thereto or installed therein, together with all accessions and appurtenances thereto, and all renewals or replacements of or substitutions for any of the foregoing, all of which is hereinafter collectively called the "Collateral", and together with all proceeds of the Collateral.

(c) Mortgagor represents that she is the owner of the Collateral and has good right and authority to grant a security interest in the Collateral, that there is no presently outstanding adverse lien, security interest or encumbrance in or on the Collateral or its proceeds (except for the security interest granted in this Mortgage), and that there is no financing statement covering the Collateral or its proceeds on file in any public office.

(d) So long as the indebtedness secured hereby or any part thereof remains unpaid, Mortgagor covenants and agrees with the Mortgagee as follows:

(i) Mortgagor shall account fully and faithfully for and, if Mortgagee so elects, shall promptly pay or turn over to Mortgagee the proceeds in whatever form received from the disposition in any manner of any of the Collateral. Mortgagor shall at all times keep any proceeds from the Collateral separate and distinct from other property of Mortgagor and shall keep accurate and complete records of such proceeds.

(ii) Mortgagor shall sign and execute along or with Mortgagee any financing statement or other document, or procure any document, and pay all connected costs,

deemed advisable by Mortgagee to protect the security interest hereunder against the rights or interest of third persons.

(iii) The Collateral will be used in the business of Mortgagor and shall remain in Mortgagor's possession or control at all times at Mortgagor's risk of loss and shall be located and maintained on the property described herein except for its temporary removal in connection with its ordinary use or unless Mortgagor notifies Mortgagee in advance of its removal to another location.

(e) Upon the occurrence of any default under this instrument or under the Note or under the other Loan Documents, Mortgagee may, with respect to the Collateral, exercise its rights of enforcement under the Uniform Commercial Code; and, in conjunction with, in addition to, or in substitution for those rights and remedies and all other rights and remedies provided under this instrument:

(i) Mortgagee may enter upon any premises of Mortgagor to take possession of, assemble and collect the Collateral; and

(ii) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; and

BOOK 217 PAGE 396
(iii) Mortgagee may remedy any default in any reasonable manner without waiving the default remedied and without waiving any other prior or subsequent default; and

(iv) written notice mailed to Mortgagor as provided herein five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; and

(v) any sale of all or any part of the Collateral shall be deemed to have been conducted in a commercially reasonable manner if held contemporaneously with, or included with, the sale of real property described herein under power of sale as provided in this Mortgage; and

(vi) in the event of a sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Collateral and all other property constituting the premises may, at the option of Mortgagee, be sold as a whole or in part; and

(vii) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior

to the time that any sale pursuant to the provisions of this paragraph is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale.

(f) The Collateral is intended to be and shall be subject to all the other provisions of this instrument, and the terms and provisions of this paragraph shall not in any way limit any rights or remedies of Mortgagee with respect to the Collateral under other provisions of this instrument.

24. Certificates of Completion. Mortgagor shall procure and deliver to Mortgagee at the time of the execution of this First Mortgage and Security Agreement the following:

(a) Certificates of Occupancy issued by the governmental authority having jurisdiction of the Mortgaged Premises.

(b) Certificates of Approval issued by the appropriate governmental and municipal authorities setting forth that the Mortgaged Premises are in full compliance with all existing environmental, ecological and other governmental requirements relating to the Mortgaged Premises and/or the occupancy thereof.

25. Annual Statements and Reports. Mortgagor shall, at its expense and without expense to Mortgagee, deliver to Mortgagee (a) within ninety (90) days after the close of each fiscal year, an annual audit of the operation of the Mortgaged Premises, showing in complete detail the total income received and total expenses, together with annual balance sheets and profit and loss statements, prepared and certified by Mortgagor's Certified Public Accountant accompanied by the opinion of said Certified Public Accountant who has prepared such statement in accordance with generally acceptable auditing principals to Mortgagee, and (b) such rent rolls and interim balance sheets and profit and loss statements as may be required by Mortgagee.

26. Examination of Books and Accounts. Mortgagor shall permit and allow Mortgagee at any time to examine the books, records and accounts of Mortgagor insofar as they relate to the Mortgaged Premises and to make copies thereof. Mortgagor shall exhibit to Mortgagee, or to any person designated by Mortgagee for that purpose, such books, accounts and records at such times and places as Mortgagee may designate.

27. Brundage Clause. In the event of the passage after the date of this Mortgage of any law of the State of Alabama, deducting from the land for the purpose of taxation any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, deeds of trust, or debts secured thereby, for state or local purposes, or the manner of the operation of any such taxes so as to affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount

of such taxes, provided, that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the loan or indebtedness secured hereby wholly or partially usurious under any of the terms or provisions of said Note or Notes, or the within Mortgage, or otherwise, Mortgagee may, at its option, declare the whole sum secured by this Mortgage with interest thereon to be immediately due and payable or Mortgagee may, at its option, pay that amount or portion of such taxes as renders the loan or indebtedness secured hereby unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

28. Governmental Approvals. Mortgagor shall obtain and at all times keep in full force and effect during the term of this Mortgage or any extension thereof such governmental and municipal approvals as may be from time to time necessary to comply with all environmental, ecological and other governmental requirements relating to the Mortgaged Premises described herein and/or the occupancy thereof.

29. Usury. Anything to the contrary notwithstanding contained herein or in the Note which is secured hereby, the total liability for payment in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of Alabama.

30. Mortgagee's Right To Inspect. Mortgagee is authorized and empowered, at its option, to make inspections of the Mortgaged Premises at all reasonable times for the purpose of evaluating and determining the physical condition and state of repair of the Mortgaged Premises and the percentage of occupancy of same.

31. Mortgagor's Obligation To Reimburse Mortgagee. If Mortgagee shall at any time be made a party to any legal action or proceeding affecting or questioning the title or possession of, or the priority of this Mortgage on the Mortgaged Premises, Mortgagor agrees to pay all loss, damage, costs, fees, claims, liabilities, or expenses of any kind, including a reasonable attorney's fee incurred by Mortgagee in such legal action or proceedings, and this Mortgage shall secure payment thereof.

32. No Sale, or Further Encumbrance Without Mortgagee's Consent. Mortgagor shall not, without Mortgagee's prior written consent, which may be withheld reasonably or unreasonably sell, transfer, convey, pledge, encumber, grant a security interest in, or otherwise hypothecate or dispose of the Mortgaged Premises or any interest therein, whether or not as collateral security or for any other obligations of Mortgagor. Mortgagor shall not cause or permit any junior lien, encumbrance, or mortgage to be placed on the Mortgaged Premises or any other security granted to Mortgagee under the Loan Documents.

Anything to the contrary notwithstanding contained herein, with Mortgagee's prior written approval, Mortgagor shall have a

one time right to transfer the Mortgaged Premises to a general partnership to be formed provided Mortgagor owns a controlling interest in said partnership. Such transfer shall not relieve Mortgagor from personal liability on the Note, this Mortgage and all other Loan Documents throughout the term of the loan or any extension thereof.

33. Subsurface Conditions. Mortgagor warrants and represents unto Mortgagee that Mortgagor has no knowledge of any sink holes, cave-ins, geological conditions or formations or other subsurface or surface conditions which would prevent the hereinabove described real property from being used as and for a shopping center.

34. Hazardous Waste and Hazardous Substances. Mortgagor hereby warrants and represents that during the period of her ownership of the Mortgaged Premises, there has been no disposal, release, or threatened release of hazardous substance or hazardous waste on, from, or under the Mortgaged Premises. Mortgagor further warrants and represents that she has no knowledge of any presence, disposal, release, or threatened release of any hazardous substance or hazardous waste on, from, or under the Mortgaged Premises that may have occurred prior to Mortgagor's acquisition of title to any of the Mortgaged Premises. For purposes of this First Mortgage and Security Agreement, the terms "disposal", "release", "threatened release", "hazardous substance", and "hazardous waste" shall mean and include any hazardous, toxic, or dangerous waste, substance, or material, or any disposal, discharge, release, or threatened release, or any defined as such in (or for purposes of) the Federal Comprehensive Environmental Response, Compensation, and Liability Act, or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect.

35. No Litigation. Mortgagor hereby warrants and represents that, during the period of her ownership of the Mortgaged Premises, there has been no litigation or administrative enforcement actions or proceedings brought or threatened to be brought, nor have any settlements been reached by or with any party or parties, public or private, alleging the presence, disposal, release, or threatened release of any hazardous waste or hazardous substance on, from, or under any of the Mortgaged Premises.

36. Indemnification From Liability. Mortgagor agrees at all times to comply fully and in a timely manner with, and to cause all employees, agents, contractors, and subcontractors of Mortgagor and any other persons occupying or present on the Mortgaged Premises to so comply with, all applicable federal,

state, and local laws, regulations, guidelines, codes, regulations, and other legal requirements relating to the generation, use, handling, storage, treatment, transport, and disposal of any Hazardous Materials (as defined in Paragraph 34) now or hereafter located or present on or under the Mortgaged Premises. Mortgagor agrees to indemnify and hold Mortgagee harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorneys' fees and expenses), arising directly or indirectly, in whole or in part, out of any failure of Mortgagor, her employees, agents, contractors, subcontractors, or other such persons, to comply with any of such laws, regulations, guidelines, codes, ordinances, or other legal requirements.

BOOK 217 PAGE 400
37. No Obligation To Marshal Assets-Subrogation. Notice is hereby given that no holder of any mortgage, or other encumbrance affecting all or a part of the Mortgaged Premises which is inferior or may become inferior to this Mortgage shall have any right to require Mortgagee to marshal assets. Mortgagee shall be subrogated to the claims, liens and mortgages of all parties whose claims, liens or mortgages are discharged or paid from and with the proceeds of the loan secured hereby.

38. Late Charge. Mortgagor shall pay to Mortgagee a late charge equal to Five (5%) percent of any amount, including any interest, not received on or before the sixth (6th) day of the month, when due, not as a penalty but as compensation to Mortgagee for the cost of collecting such late payment.

39. Prepayment Privilege. Privilege is reserved and Mortgagor shall have the right to prepay the loan in whole but not in part on any interest payment date upon sixty (60) days prior written notice to Mortgagee and upon payment of a prepayment premium or fee in an amount equal to one percent (1%) of the amount so prepaid.

40. No Rezoning. Mortgagor covenants and agrees that she will not file, consent to or participate in the filing of an application to rezone all or any part of the subject property described in Exhibit "A" during the term hereof without the prior written consent of Mortgagee.

41. Compliance With All Laws and Regulations. Mortgagor, her heirs, personal representatives, successors and assigns, shall comply with and not violate any law, statute, ordinance, rule, or regulation, enacted or enforceable by any governmental entity or subdivision thereof, having jurisdiction over the Mortgaged Premises, or Mortgagor.

42. Further Assurances. Mortgagor, her heirs, personal representatives, successors and assigns, will at all times on

request of Mortgagee, its successors or assigns, execute and do all such assurances, deeds, and things, as may be deemed reasonably necessary or advisable by Mortgagee to carry out the intention of this First Mortgage and Security Agreement and all other Loan Documents.

43. No Oral Changes. This First Mortgage and Security Agreement and the other Loan Documents may not be amended, changed, modified or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any amendment, change, modification or termination is sought.

44. Bind and Inure-Definitions. The covenants, conditions and agreements herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders, and the term "Mortgagee" shall include any Payee or Holder of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise. The word "Note" shall mean Note of even date herewith secured by this First Mortgage and Security Agreement and any additional Note or Notes at any time secured hereby. The term "Loan Documents" as used herein and in the Note secured hereby shall mean this First Mortgage and Security Agreement and the Note which same secures, First Assignment of Lessor's Interest In Leases, Subordination of Management Agreement, UCC Financing Statements.

45. Captions. The captions in this First Mortgage and Security Agreement are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

46. Severability. If any provision of this First Mortgage and Security Agreement or the application thereof to any person, legal entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this First Mortgage and Security Agreement and the application of such provisions to other persons, legal entities or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

47. Applicable Law. This First Mortgage and Security Agreement is intended as a contract and conveyance under and shall be construed and enforced in accordance with the laws of the State of Alabama, on the date hereof, and, to the extent applicable by the regulations of the Federal Home Loan Bank Board.

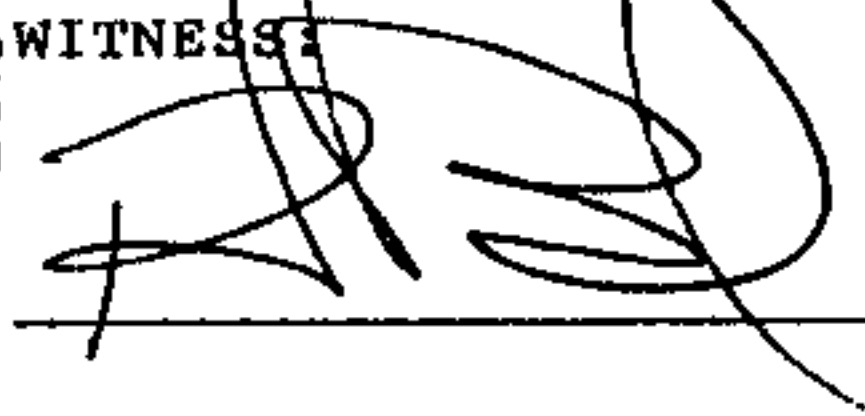
48. Title. Mortgagor warrants and represents unto Mortgagee that title to the Mortgaged Premises is vested in Mortgagor, Veronica A. Zeigler.

49. This Mortgage Governs. This First Mortgage and Security Agreement, the Note secured hereby and all other Loan Documents of even date herewith state the entire agreement between Mortgagor and Mortgagee and merges in this First Mortgage and Security Agreement, the Note secured hereby and all other Loan Documents, all statements, representations and covenants heretofore made, and any agreements not incorporated herein and in the Note and other Loan Documents are void and of no force and effect. In the event of any conflict between the Loan Documents and the Letter of Loan Commitment dated September 16, 1988, the Loan Documents shall prevail in all respects.

50. Time is of the Essence. Time, whenever, wherever and however used in this First Mortgage and Security Agreement and all other Loan Documents shall be of the essence.

IN WITNESS WHEREOF, Mortgagor, Veronica A. Zeigler, has caused this First Mortgage and Security Agreement to be executed on this 9th day of December, 1988.

WITNESS:

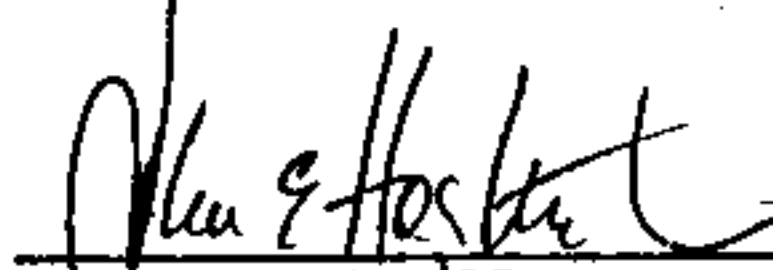


 (SEAL)
VERONICA A. ZEIGLER
Individually

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Veronica A. Zeigler, whose name is signed to the foregoing First Mortgage and Security Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of same, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 9th day of December, 1988.


NOTARY PUBLIC
My commission expires: NOVEMBER 13, 1990

My commission expires: _____

EXHIBIT "A"

A part of the Northwest Quarter of the Southwest Quarter of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama more particularly described as follows:

Commence at the Northeast corner of the Northwest Quarter of the Southwest Quarter of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, and run thence Westerly along the North line of said Quarter/Quarter Section a distance of 327.40 feet to a point on the Easterly right of way line of U. S. Highway No. 31; thence turn a deflection angle 75 degrees 52 minutes to the left and run Southwesterly along the said Easterly right of way line of said Highway No. 31 a distance of 514.00 feet to the point of beginning of the property being described; thence continue along last described course a distance of 280.00 feet to a point marking the intersection of the Easterly right of way line of said U. S. Highway No. 31 and the Northerly right of way line of Shelby County Road No. 68; thence turn a deflection angle of 80 degrees 24 minutes 10 seconds to the left and run Southeasterly along the said Northerly line of said Shelby County Road No. 68 a distance of 196.85 feet to a point; thence turn a deflection angle of 99 degrees 41 minutes 18 seconds to the left and run Northeasterly a distance of 361.32 feet to a point; thence turn a deflection angle of 103 degrees 58 minutes 40 seconds to the left and run Westerly a distance of 199.50 feet to the point of beginning; being situated in Shelby County, Alabama.

103,
PD

EXHIBIT "B"

1. Ad valorem taxes for the current year, 1989.
2. Transmission Line Permit to Alabama Power Company as shown by instrument recorded in Deed Book 187, page 53, in the Probate Office of Shelby County, Alabama.
3. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 36, page 426, in said Probate Office.
4. Mineral and mining rights lease to Cities Service Company as set out in Deed Book 331, page 699, in said Probate Office.
5. Power lines and guy wires and water mains as shown by survey of Joseph E. Conn, Jr. dated November 10, 1988.

BOOK 217 PAGE 404

012.
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STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED

88 DEC -9 PM 3:26

Thomas A. Shawcross, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		<u>975.00</u>
3. Recording Fee		<u>52.50</u>
4. Indexing Fee		<u>10.00</u>
TOTAL		<u>1028.50</u>