

Loan Number: 00-60-000138

800

FIRST MORTGAGE AND SECURITY AGREEMENT

BETWEEN

EDDLEMAN PROPERTIES, INC.,  
an Alabama corporation

AND

JEFFERSON FEDERAL SAVINGS and LOAN  
ASSOCIATION OF BIRMINGHAM

BOOK 229 PAGE 941

✓ Correll, Susan

## TABLE OF CONTENTS

		<u>Page</u>
	First Mortgage and Security Agreement.....	1
1.	Payment of Indebtedness.....	3
2.	Cost of Protecting Mortgagee's Lien.....	3
3.	Taxes, Liens and Other Charges.....	4
4.	Insurance.....	4
5.	Municipal, Governmental Charges, Etc.....	4
6.	Extension.....	5
7.	No Waiver.....	5
8.	Condition Subsequent.....	5
9.	Default; Acceleration of Maturity.....	6
10.	Application of Foreclosure Proceeds.....	6
11.	Status of Mortgagor After Foreclosure.....	7
12.	Care of Premises.....	7
13.	Right of Entry.....	7
14.	Waiver of Exemption.....	7
15.	Mortgagee To Approve Management Agreement.....	7
16.	Rights Cumulative.....	8
17.	Estoppel.....	8
18.	Eminent Domain.....	8
19.	Security Agreement-Uniform Commercial Code.....	8
20.	Certificates of Completion.....	11
21.	Annual Statements and Reports.....	11
22.	Examination of Books and Accounts.....	11
23.	Brundage Clause.....	11
24.	Governmental Approvals.....	12
25.	Usury.....	12
26.	Land Development and Subdivision Loan Agreement.....	12
27.	Land Development and Subdivision Loan Agreement Limitation...	13
28.	Partial Releases.....	13
29.	Mortgagee's Right to Inspect.....	13
30.	Mortgagor's Obligation To Reimburse Mortgagee.....	13
31.	No Sale, or Further Encumbrance Without Mortgagee's Consent...	13
32.	Hazardous Waste and Hazardous Substances.....	14
33.	No Litigation.....	14
34.	Indemnification From Liability.....	14
35.	Subsurface Conditions.....	15
36.	No Obligation To Marshal Assets-Subrogation.....	15
37.	Late Charge.....	15
38.	Prepayment Privilege.....	15
39.	No Rezoning.....	15
40.	Compliance With All Laws and Regulations.....	15
41.	Further Assurances.....	15
42.	No Oral Changes.....	15
43.	Bind and Inure-Definitions.....	15
44.	Captions.....	16
45.	Severability.....	16
46.	Applicable Law.....	16
47.	Title.....	16
48.	This Mortgage Governs.....	16
49.	Time is of the Essence.....	17

THIS DOCUMENT PREPARED BY:

Mary Douglas Hawkins  
CORRETTI & NEWSOM  
1804 Seventh Avenue North  
Birmingham, Alabama 35203  
Telephone: (205) 251-1164

THE STATE OF ALABAMA )  
SHELBY COUNTY )

FIRST MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT, WHEREAS, the undersigned EDDLEMAN PROPERTIES, INC., an Alabama corporation, having as a mailing address 2700 Highway 280 South, Suite 325, Birmingham, Alabama 35223 (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 TWO MILLION and NO/100 (\$2,000,000.00) DOLLARS 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:

Interest only at the rate hereinafter set out shall be payable monthly during the term hereof with the first such monthly payment being due and payable on the first day of April, 1989, and on the first day of each successive calendar month thereafter to and including the first (1st) day of March, 1991 on which said later date the entire unpaid balance of principal together with all accrued interest thereon shall be due and payable. Said interest shall be at a rate equal to one percent (1%) (the "spread") in excess of and above the Prime Rate. The term "Prime Rate" as used herein shall mean interest announced or posted by the AmSouth Bank N.A., Birmingham, Alabama, at its main office, as its Prime Rate in effect from time to time, as the same may fluctuate from time to time adjusted on the day of each change in the Prime Rate. Interest shall be computed on the basis that each year contains 360 days. Each change in the interest rate is to become effective on the first (1st) day of the month following a change in the Prime

Rate. However, interest paid by the Mortgagor shall not exceed the maximum legal rate permissible under the laws of the State of Alabama.

WHEREAS, Mortgagor, as hereinafter defined, is desirous of securing the prompt payment of said note 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.

This is a FUTURE ADVANCE MORTGAGE and the said TWO MILLION and NO/100 (\$2,000,000.00) DOLLARS indebtedness shall be advanced by the Mortgagee to the Mortgagor in accordance with a Land Development and Subdivision Loan Agreement of even date herewith.

NOW, THEREFORE, in consideration of the premises and the ultimate disbursement of a sum not to exceed TWO MILLION and NO/100 (\$2,000,000.00) DOLLARS 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 building materials, equipment, 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 materials, equipment, 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 landscaping, water and sewer pipe, signage, paving and fencing, plumbing and plumbing fixtures, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, plants, trees, flowers and shrubs (including live and artificial), water fountains to be used in connection with the developing and subdividing of the real property described in Exhibit "A", and all increases, substitutions, replacements, additions, and accessions thereto, and in general, all building material and equipment of every kind and character used or useful in connection with the developing and subdividing of said real property, and together with all the rights, privileges, tenements and appurtenances thereunto belonging or in any wise appertaining, 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,

BOX 229 PAGE 944

hereditaments, and appurtenances thereunto appertaining, and the reversions and remainders.

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, successors, assigns and personal representatives 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, including but not limited to eminent domain and condemnation proceedings and actions 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.

BOOK 229 PAGE 945



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.

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 which has not been cured after thirty (30) days written notice thereof 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

BOOK 229 PAGE 947

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 the rate specified in said Note 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 for any sum or sums advanced hereunder by Mortgagee for the development 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. 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.

9. 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 its 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 its creditors, or if Mortgagor defaults under any of the terms and provisions of the Land Development and Subdivision Loan Agreement, or any of the other Loan Documents, which default or defaults have not been cured within the applicable cure period, then, in any one or more of such events, the whole indebtedness hereby secured shall, at the option of Mortgagee, and after the required 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 Property before the main entrance of the Shelby County Courthouse in the City of Columbiana, Shelby County, 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.

10. 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

BOOK 229 PAGE 948



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.

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

12. 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.

13. 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.

14. 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.

15. 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

with ut 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.

16. 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.

17. 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.

18. 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.

19. 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 it 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 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, which default has not been cured within the applicable cure period 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

(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

229 PAGE 952



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.

20. Certificates of Completion. Mortgagor shall procure and deliver to Mortgagee on the completion of all work necessary in the developing and subdividing of said real property, the following:

229 PAGE 953  
BOOK  
Certificate of the Engineer of the appropriate governmental and municipal authorities, the Project Engineer and the supervising architect, if any, certifying that said real property has been subdivided in accordance with the plans and specifications, and that such subdivision, including grading, drainage, streets, sanitary sewer, paving, fencing, curbs and gutters, landscaping, entryways, and utilities, are in compliance with all subdivision regulations and other environmental, ecological, and governmental requirements relating to the mortgaged premises.

21. Annual Statements and Reports. Mortgagor shall, at his 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 interim 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 satisfactory to Mortgagee, who has prepared such statement in accordance with generally accepted auditing principles.

22. 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.

23. 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.

24. 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.

25. 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.

26. Land Development and Subdivision Loan Agreement. Anything herein contained to the contrary notwithstanding, the total principal indebtedness recited above has not been advanced by Mortgagee to Mortgagor at the time of the execution and delivery of this First Mortgage and Security Agreement but shall be advanced in accordance with the provisions of a Land Development and Subdivision Loan Agreement of even date herewith entered into between Mortgagor and Mortgagee, which provides, among other things: (a) that the funds advanced hereunder are and shall be advanced to aid Mortgagor in the developing and subdividing of real property described in said Exhibit "A" (b) that Mortgagor agrees therein to diligently proceed with and complete the developing and subdividing in accordance with the agreements made in the Land Development and Subdivision Loan Agreement, and (c) that in the event of any default under any of the terms, covenants, conditions, provisions, and stipulations of the Land Development and Subdivision Loan Agreement, which default has not been cured within the applicable cure period, other than default on the part of Mortgagee, Mortgagee may, at its election, declare the entire indebtedness created under the Land Development and Subdivision Loan Agreement and secured by this First Mortgage and Security Agreement immediately due and payable and Mortgagee shall thereupon have all of the rights and remedies provided for in this Mortgage and in the Land Development and Subdivision Loan Agreement, including, without limitation, the right to foreclose this Mortgage as herein provided.

27. Land Development and Subdivision Loan Agreement Limitation. Notwithstanding anything contained herein and the Note and all other Loan Documents to the contrary, Mortgagee shall in no event be obligated to disburse to Mortgagor more than TWO MILLION and NO/100 (\$2,000,000.00) DOLLARS. No disbursements shall be made to Mortgagor until such time as Mortgagee has established to its satisfaction that all bills, accounts and debts due any laborers, materialmen, subcontractors, general contractor or architect who have performed labor, services or furnished material on and to the Mortgage Premises, have been paid in full as of the date of such disbursement.

28. Partial Releases. Upon ten (10) days prior written notice from Mortgagor to Mortgagee and provided Mortgagor is not then in default under this First Mortgage and Security Agreement and the Note which same secures and any of the other Loan Documents, Mortgagee shall release from this First Mortgage and Security Agreement lots within the subdivision upon payment by Mortgagor to Mortgagee of an amount equal to the net proceeds derived from the sale of each lot for which a release is being requested. The term "net proceeds" as used herein shall mean the gross revenues derived from the sale of each lot less expenses and commissions required to be paid in connection with the sale.

29. Mortgagee's Right To Inspect. Mortgagee is hereby authorized and empowered, at its option, to make periodic inspections of the Mortgaged Premises during the land development period and at all other times during the term hereof for the purpose of evaluating and determining the progress of development and the quality of workmanship and materials. After development has been completed 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.

30. 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.

31. No Sale, or Further Encumbrance Without Mortgagee's Consent. Mortgagor shall not, without Mortgagee's prior written consent, 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.

32. Hazardous Waste and Hazardous Substances. Mortgagor hereby warrants and represents that during the period of its 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 it 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 substances", and "hazardous wastes" 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.

33. No Litigation. Mortgagor hereby warrants and represents that, during the period of its 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.

34. 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 32) 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, its employees, agents, contractors, subcontractors, or other such persons, to comply with any of such laws, regulations, guidelines, codes, ordinances, or other legal requirements.

35. Subsurface Conditions. Mortgagor warrants and represents unto Mortgagee that Mortgagor has caused the subsurface conditions to be examined and studied by professional soils engineer and that the herein above-described real property is suitable for subdivision and development into 76 single family residential lots with residences and all amenities placed thereon.

36. 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.

37. 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 fifteenth (15) day of the month when due, not as a penalty but as compensation to Mortgagee for the cost of collecting such late payment.

38. Prepayment Privilege. Privilege is reserved and Mortgagor shall have the right to prepay this loan in whole on any interest payment date without the payment of any prepayment premium or fee.

39. No Rezoning. Mortgagor covenants and agrees that it 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.

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

41. Further Assurances. Mortgagor, its 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.

42. 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.

43. 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, UCC Financing Statements and Land Development and Subdivision Loan Agreement.

44. 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.

45. Severability. If any provision of this First Mortgage and Security Agreement or the application thereof to any person, legal entities 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.

46. 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.

47. Title. Mortgagor warrants and represents unto Mortgagee that title to the Mortgaged Premises is vested in Mortgagor, Eddleman Properties, Inc., an Alabama corporation, and that Mortgagor is duly authorized and empowered to deliver the within First Mortgage and Security Agreement and all other Loan Documents.

48. 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 February 16, 1989, the Loan Documents shall prevail in all respects.



49. 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, Eddleman Properties, Inc., has caused this First Mortgage and Security Agreement to be executed by its President, who is thereunto duly authorized and has caused its seal to be affixed hereunto on this 10th day of March, 1989.

ATTEST:

  
E. Kay Hawac  
NOTARY PUBLIC

EDDLEMAN PROPERTIES, INC.,  
an Alabama Corporation

By:  (SEAL)  
Billy D. Eddleman, President

THE STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Billy D. Eddleman, whose name as President of EDDLEMAN PROPERTIES, INC., an Alabama corporation, 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, 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 10th day of March, 1989.

  
NOTARY PUBLIC

My Commission Expires November 28, 1992

My Commission expires: \_\_\_\_\_

BOOK 229 PAGE 959

EXHIBIT "A"

A parcel of land situated in Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and a part of Lots 23 through 32 inclusively of Jessica Ingram Property as recorded in Map Book 3, page 54, in the Office of the Judge of Probate of Shelby County Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Section 31 and run thence South 0 degrees 08 minutes 50 seconds West along the East line of said Section 31 for a distance 592.07 feet to the point of beginning, said point of beginning being on the Southwest right of way of Brook Highland Parkway as recorded in Map Book 12, pages 71 and 72, in the Office of the Judge of Probate, Shelby County, Alabama; thence continue along last stated course for a distance of 231.63 feet to an iron pin found at the Southeast corner of said Lot 23; thence run North 89 degrees 12 minutes 47 seconds West along the South line of said Lot 23 and also along the South line of said Lot 24 for a distance of 2,427.79 feet to a point on the Southeast right of way of said Brook Highland Parkway, said point being on a curve which is concave to the Southeast having a radial bearing in of South 37 degrees 25 minutes 02 seconds East and a central angle of 4 degrees 57 minutes 25 seconds and a radius of 701.94 feet; thence run in a Northeasterly direction along the arc of said curve and also along said right of way for a distance of 60.73 feet to a point; thence run North 57 degrees 32 minutes 23 seconds East along said right of way for a distance of 1,193.12 feet to a point on a curve to the right having a central angle of 63 degrees 16 minutes 40 seconds and a radius of 510.96 feet; thence run in a Northeasterly to Southeasterly direction along the arc of said curve and also along said right of way for a distance of 564.31 feet to a point; thence run South 59 degrees 10 minutes 57 seconds East along said right of way for a distance of 306.35 feet to a point; thence run North 30 degrees 49 minutes 03 seconds East along said right of way for a distance of 12.00 feet to a point; thence run South 59 degrees 10 minutes 57 seconds East along said right of way for a distance of 659.56 feet to the point of beginning. Said parcel containing 26.36 acres, more or less.

LESS AND EXCEPT a thirty-foot road right of way being more particularly described as follows:

Commence at the Northeast corner of said Section 31 and run thence South 0 degrees 08 minutes 50 seconds West along the East line of said Section 31 for a distance of 823.70 feet to an iron pin found at the Southeast corner of said Lot 23; thence run North 89 degrees 12 minutes 47 seconds West along the South line of said Lot 23 for a distance of 1,364.62 feet to the point of beginning, said point being on the East line of said thirty-foot road right of way; thence run North 04 degrees 58 minutes 34 seconds East along said road right of way for a distance of 330.11 feet to a point; thence run North 0 degrees 13 minutes 09

BOOK 229 PAGE 360

*JS*

EXHIBIT "A" CONTINUED

seconds West along said road right of way for a distance of 380.58 feet to a point on the Southeast right of way of Brook Highland Parkway as recorded in Map Book 12, on pages 71 and 72, in the Office of the Judge of Probate, Shelby County, Alabama, said point being on a curve which is concave to the Southeast having a radial bearing in of South 28 degrees 04 minutes 30 seconds East and a radius of 510.96 feet and a central angle of 3 degrees 52 minutes 36 seconds; thence run in a Southwesterly direction along the arc of said curve and also along said right of way for a distance of 34.57 feet to a point, said point being on the West line of said thirty-foot road right of way; thence run South 0 degrees 13 minutes 09 seconds East along said road right of way for a distance of 363.56 feet to a point; thence run South 5 degrees 04 minutes 31 seconds West along said road right of way for a distance of 329.47 feet to a point; thence run South 89 degrees 12 minutes 47 seconds East for a distance of 30.51 feet to the point of beginning. Said less and except parcel containing .48 acres, more or less.

BE

EXHIBIT "B"

1. Taxes for the year 1989 and subsequent years.
2. Declaration of Protective Covenants and Watershed Covenants as shown by instrument recorded in Real 194, page 54, 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 conveyed in Deed Book 32, page 183, and Deed Book 327, page 553, in said Probate Office.
4. Drainage easement as set out in Real 125, page 238, in said Probate Office.
5. Easement for sanitary sewer lines and water lines set out by instrument in Real 194, page 1, in said Probate Office.
6. Location of manholes, inlet and headwall, as shown on survey of Carl D. Moore, dated December 18, 1988.
7. Locations of power lines and power poles, as shown by survey by Carl D. Moore dated December 18, 1988.

BOOK 229 PAGE 962

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
89 MAR 13 AM 11:08

*William A. Snowden, Jr.*

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
89 MAR 13 AM 11:08

*William A. Snowden, Jr.*  
JUDGE OF PROBATE

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax 3000.00  
3. Recording Fee 55.00  
4. Indexing Fee 1.00  
TOTAL 3,056.00

*BZ*