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This Instrument Prepared By:  
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2222 Arlington Avenue South  
Birmingham, Alabama 35205

REAL ESTATE MORTGAGE

THIS MORTGAGE is made and entered into as of the 28th day of July, 1989, by and between BROOKLINE, LTD., a Tennessee limited partnership (hereinafter referred to as "Mortgagor") and GOLDOME CREDIT CORPORATION (hereinafter referred to as "Mortgagee"), as follows:

W I T N E S S E T H:

WHEREAS, Mortgagor is justly indebted to Mortgagee in the initial face principal sum of Nine Hundred Fifty Thousand and No/100 Dollars (\$950,000.00), as evidenced by that certain note bearing even date herewith and payable in accordance with the terms of said note; and

WHEREAS, Mortgagor may hereafter become further indebted to Mortgagee as may be evidenced by promissory note(s) or otherwise, and it is the intent of the parties hereto that this mortgage shall secure any and all indebtedness of Mortgagor to Mortgagee, whether now existing or hereafter arising, due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is to secure not only the indebtedness evidenced by the note hereinabove specifically referred to, but any and all other debts, obligations or liabilities of Mortgagor to Mortgagee, now existing or hereafter arising, and any and all extensions, modifications or renewals of same, or any part thereof, whether evidenced by note, open account, endorsement, guaranty, pledge or otherwise.

NOW, THEREFORE, Mortgagor in consideration of the premises, and to secure the payment of said indebtedness evidenced by the note hereinabove specifically referred to, and any and all other indebtedness due or to become due as hereinabove generally referred to, and the compliance with all of the covenants and stipulations herein contained, has bargained and sold, and does hereby grant, bargain, sell, alien, convey, transfer and mortgage unto Mortgagee, its successors and assigns, the following described real estate, together with buildings and improvements thereon (hereinafter sometimes called the "real estate" or the "mortgaged real estate"), lying and being situated in the County of Shelby, State of Alabama, and more particularly described as set forth on Exhibit "A" attached hereto and made a part hereof, together with all awards received through eminent domain, and payments upon any insurance policies covering the real estate, and all rights, privileges, tenements, and appurtenances thereunto belonging or in anywise appertaining to said real estate including easements and rights-of-way appurtenant thereto and all gas, steam, electric and other heating, cooling and lighting apparatus, plumbing, and other fixtures appertaining to the real estate and improvements located thereon, all of which shall be deemed realty and conveyed by this mortgage.

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*Calaha Title*

TO HAVE AND TO HOLD the real estate, and every part thereof, unto Mortgagee, its successors and assigns forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of the real estate in fee simple and has a good right to sell and convey the same as aforesaid; that the real estate is free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to the real estate unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

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

1. SUBORDINATION WITH RESPECT TO PHASE II. With respect to Phase II of the property described on Exhibit "A", this Mortgage is a second mortgage and is subordinate to that certain prior mortgage to City Federal Savings & Loan Association as recorded in Real 144, at Page 679, as recorded in the Office of the Judge of Probate of Shelby County, Alabama; provided however, this mortgage is subordinate to said prior mortgage only to the extent of the principal sum of Two Hundred Forty-Six Thousand and No/100 Dollars (\$246,000.00) and interest thereon pursuant to said prior mortgage. Mortgagor hereby agrees not to increase the principal balance that is secured by said prior mortgage. In the event the Mortgagor should fail to make any payments which become due on said prior mortgage, or should default in any of the other terms, provisions and conditions of said prior mortgage occur, then such default under the prior mortgage shall constitute a default under the terms and provisions of the within Mortgage, and the Mortgagee herein may, at Mortgagee's option, declare the entire indebtedness due hereunder immediately due and payable and the within Mortgage subject to foreclosure. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent default. The Mortgagee herein may, at Mortgagee's option, make on behalf of Mortgagor any such payments which become due on said prior mortgage, or incur any such expenses or obligations on behalf of Mortgagor, in connection with the said prior mortgage, in order to prevent the foreclosure of said prior mortgage, and all such amounts so expended by Mortgagee on behalf of Mortgagor shall become a debt to Mortgagee, or Mortgagee's assigns additional to the debt hereby secured, and shall be covered by this Mortgage, and shall bear interest from date of payment by Mortgagee, or Mortgagee's assigns, at the same interest rate as the indebtedness secured hereby and shall entitle the Mortgagee to all of the rights and remedies provided herein, including at Mortgagee's option, the right to foreclose this Mortgage.

2. PAYMENTS. That Mortgagor shall pay when due all sums due pursuant to the note described above, including without limitation, all principal, interest and other charges therein described and shall further pay all future indebtedness secured hereby and interest thereon when and as it shall become due, whether evidenced by statement, note, account ledgers, agreements or otherwise, it being the intent of the Mortgagor to provide security for all indebtedness of Mortgagor to Mortgagee including, without limitation, the indebtedness described in paragraph 17 below.

3. INSURANCE, TAXES. (a) That Mortgagor shall provide, maintain and deliver to Mortgagee policies of fire insurance (with extended coverage), rent coverage insurance, comprehensive general liability insurance with coverages of not less than Two Million Dollars (\$2,000,000) per incident (with Mortgagee identified as an additional insured

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thereunder), and such other insurance as Mortgagee may from time to time require in companies, form, types, amounts and with endorsements satisfactory to Mortgagee, and shall assign to Mortgagee, and deliver to Mortgagee with mortgage clauses satisfactory to Mortgagee, all insurance policies of any kind or in any amount now or hereafter issued with respect to the real estate. Not later than thirty (30) days prior to the expiration date of any and all such insurance policies and at any time upon reasonable request of Mortgagee, Mortgagor shall furnish Mortgagee certificates of insurance issued by insurance companies satisfactory to Mortgagee showing that the amount and type of insurance required by Mortgagee hereunder is in effect. All renewal policies, with premiums paid, shall be delivered to Mortgagee at least thirty (30) days before the expiration of the old policies. If any insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by Mortgagor's breach of any condition thereof, or become void or unsafe by reason of the failure or impairment of the capital of any company by which the insurance may then be carried, or if for any reason in Mortgagee's sole judgment, the insurance shall be unsatisfactory to Mortgagee, Mortgagor shall procure and deliver to Mortgagee new insurance on the premises, satisfactory to Mortgagee. If Mortgagor fails to procure and deliver such new insurance, Mortgagee may, but shall not be obligated to, procure same, and upon demand, Mortgagor shall reimburse Mortgagee all such costs expended with interest on such advance at the rate set forth in the note described hereinabove and secured hereby. Mortgagor shall give immediate notice in writing to Mortgagee of any loss, injury or damage affecting the mortgaged real estate caused by any casualty or occurrence. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand, receive, and receipt for all monies becoming payable thereunder and to assign absolutely all policies to any holder of the note or to the grantee of the real estate in the event of the foreclosure of this mortgage or other transfer of title to the real estate in extinguishment of the indebtedness secured hereby. In the event of loss covered by any of the policies of insurance herein referred to, each individual insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, after deducting all costs of collection, including reasonable attorneys' fees, may be applied by the Mortgagee at its option, either as a payment on account of the indebtedness secured hereby whether or not then due or payable, or toward the restoration, reconstruction, repair, or alteration of the real estate, either to the portion thereof by which said loss was sustained or any other portion thereof.

(b) That together with and in addition to the monthly payments of principal and interest due pursuant to the note described above, and on the same date on which the principal and interest are payable under the terms of such note, Mortgagor, if required by Mortgagee, shall deposit with the Mortgagee, in a non-interest bearing account, a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may be levied against the real estate and which may attain priority over this mortgage, plus one-twelfth (1/12) of the yearly premiums for insurance that will become due and payable to renew the insurance on the real estate for coverage against loss by fire or such other hazard as may reasonably be required by the Mortgagee. The amount of such taxes, assessments, and premiums when unknown, shall be estimated by the Mortgagee. If the amount of funds held

shall exceed at any time the amount deemed necessary by the Mortgagee to provide for the payment of taxes, assessments, and insurance premiums as they fall due, such excess shall be repaid to Mortgagor or credited to Mortgagor as Mortgagee may determine. If the amount of the funds held shall not be sufficient at any time to pay taxes, assessments, and insurance premiums as they fall due, Mortgagor shall pay to Mortgagee any amount necessary to make up the deficiency upon notice from Mortgagee to Mortgagor requesting payment thereof.

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BOOK (c) That Mortgagor shall pay and discharge as the same become due all taxes and assessments that may accrue, be levied, or assessed upon the real estate or any part thereof, which may be or become a lien prior to this mortgage or have priority in payment to the indebtedness secured hereby, or upon Mortgagee's interest therein or upon this mortgage or the indebtedness or evidence of indebtedness secured hereby, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee; upon the passage of any law imposing the payment of the whole or any part thereof upon Mortgagee or upon the rendering by an appellate court of competent jurisdiction that the undertaking by Mortgagor to pay such taxes is legally inoperative, then the indebtedness secured hereby without deduction shall, at the option of Mortgagee, become immediately due and payable, notwithstanding anything contained in this mortgage or any law heretofore enacted; and Mortgagor shall not suffer or permit any such taxes on the said real estate to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments; and further shall furnish annually to Mortgagee, prior to the date when they become delinquent certificates or receipts of the proper officers showing full payment of all such taxes and assessments.

BOOK 4. NO WASTE. That the real estate and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon.

5. ALTERATION OF PREMISES. That no building or other improvement on the real estate shall be materially and structurally altered, removed or demolished, without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the real estate be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagor. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the indebtedness secured hereby immediately due and payable.

6. MECHANICS AND MATERIALMEN'S LIENS. That Mortgagor agrees that the indebtedness hereby secured shall at once become due and payable and this mortgage subject to foreclosure as provided for herein, at the option of the holder hereof, when and if any lien is filed under the statutes of relating to the liens of mechanics and materialmen, and which is not removed within ten (10) days of the date of filing without regard to form and contents of such statement, and without regard to the existence or nonexistence of the debt, or any part thereof, or of the lien, on which such filing is based. Notwithstanding any provision herein to the contrary, Mortgagee shall permit Mortgagor to post an adequate bond within the ten (10) day period described above and to contest any lien which



Mortgagor in good faith believes is not valid and which is subordinate to the rights of Mortgagee herein.

7. COMPLIANCE WITH AUTHORITIES. That Mortgagor shall comply with all statutes, ordinances, regulations and laws promulgated by any governmental entity asserting jurisdiction over the real estate or the business of Mortgagor and any and all legal requirements shall be fully complied with by Mortgagor. Without limiting the foregoing, Mortgagor shall pay all sums and take all actions necessary to keep all licenses and permits in full force and effect.

8. MORTGAGEE MAY MAKE PAYMENTS. That if Mortgagor fails to insure the real estate as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against the real estate or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure the real estate and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid shall constitute a debt to Mortgagee additional to the indebtedness secured hereby; shall be secured by this mortgage; shall bear the interest set out in the note hereinabove referred to from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable.

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9. NO WAIVER. That Mortgagor agrees that no delay or failure of Mortgagee to exercise any option to declare the maturity of any indebtedness secured by this mortgage, shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this mortgage can be waived, altered or changed except as evidenced in writing, signed by the Mortgagor and by the holder hereof; 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.

10. TITLE DISPUTE. That if Mortgagee shall be made a party to any suit involving the title to the real estate and employs an attorney to represent it therein, or if Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the real estate hereby conveyed that purports to be superior to the lien of this mortgage in any respect or otherwise threatens Mortgagee's secured position in the Property, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be permitted by law and as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness secured hereby, and shall bear interest from the date it is paid or incurred at the rate set out in the note hereinabove referred to and shall be at once due and payable.

11. LIEN CLAIMS. That all expenses incurred by Mortgagee, including reasonable attorney's fees to the extent permitted by law, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the real estate hereby conveyed, whether such claims or

encumbrances be valid or not, shall become a part of the indebtedness hereby secured.

12 COLLECTION OF INDEBTEDNESS. That Mortgagor agrees to pay all costs incurred by Mortgagee, including, but not limited to, reasonable attorney's fees to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this mortgage or to enforce any provisions herein contained.

13 CONDEMNATION PROCEEDS. That notwithstanding that the assignment of awards hereinabove referred to 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 sums secured by this mortgage and including, but not limited to, sums described in the note which this mortgage secures, whether such sums are then due or not by the terms of said note or of this mortgage.

14 ASSIGNMENT OF RENTS, PROFITS. That if Mortgagor shall make 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 proceed to collect the rent, income and profits from the real estate, 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 cost of collecting the same, including any reasonable real estate commission or reasonable attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt(s) hereby secured. Application of rents shall not operate to cure a default or prevent foreclosure or enforcement of any other remedy.

15. FORECLOSURE. That it is further agreed that if Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal sum of the note described above, or any installment of interest thereon, or any other indebtedness the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on, the real estate, or should default be made in any of the covenants, conditions and agreements herein contained or in any of the covenants, conditions, and agreements contained in that certain note described above, Security Agreement or Collateral Assignment of Rents and Leases executed by Mortgagor in favor of Mortgagee on even date herewith, or the Guaranty Agreements executed in connection herewith, or the Indemnity Agreement Regarding Hazardous Materials, or any other instrument executed for the benefit of the Mortgagee or given in connection with, or as additional security, for the indebtedness described herein, whether executed by Mortgagor or by any guarantor of the note described hereinabove, or in the event of any default under the terms of any mortgage on any real estate which may now or hereafter secure the indebtedness described herein, or any other instrument

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relating to collateral given as security for the indebtedness described herein, including, without limitation, the real estate described in the Real Estate Mortgage and Assignment of Rents and Leases executed by Phillip G. Hayden in favor of City Federal Savings and Loan Association, then and in that event the whole of said principal sum, with interest thereon, and all other indebtedness secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the indebtedness hereby secured shall have the right to enter upon and take possession of the real estate and after, or without, taking such possession of the same, sell the mortgaged real estate at public outcry, in front of the courthouse door of the county wherein the real estate is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place, and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the real estate so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the real estate, or the equity of redemption from this mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, the Mortgagee, or the then holder of the indebtedness hereby secured, may bid in the indebtedness secured hereby, or any portion thereof at such sale and become the purchaser of the real estate if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including reasonable attorneys' fees, as permitted by law for such services as may be, or have been, necessary in any one or more of the foreclosure of this mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor or anyone liable for said indebtedness or interested in the mortgaged real estate to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c) to the payment and satisfaction of the indebtedness of Mortgagor, including, without limitation, interest thereon specifically referred to hereinabove to the day of sale and any other indebtedness secured by this mortgage; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

16. CHANGE OF LAW. That in the event of the enactment of any law by the State of Alabama, after the date of this mortgage, deducting from the value of the real estate for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor

fails to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this mortgage, together with the interest due thereon shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

17. INSOLVENCY, BANKRUPTCY, AND OTHER CONDITIONS OF DEFAULT. That should Mortgagor or its general partner become insolvent or bankrupt or should a petition under any chapter of the Bankruptcy Code or for the appointment of a receiver of all or any part of the property of Mortgagor or any other proceeding for the relief of creditors be filed by or against Mortgagor, its general partner or any guarantor of the indebtedness secured hereby; or should Mortgagor intentionally damage or attempt to remove any improvements upon said mortgaged real estate; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on the real estate prior to the lien hereof; or in case of an error or defect in the above described note or this instrument or in the execution or the acknowledgment thereof; or if a homestead claim be set up to the real estate or any part thereof adverse to this mortgage and if the said Mortgagor shall fail for ten (10) days after demand by the Mortgagee, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or homestead claim, or to correct any error in said note or this instrument or its execution; then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by the power of sale herein contained or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect.

18. FUTURE INDEBTEDNESS. That it is the intent of the Mortgagor and Mortgagee to secure any and all indebtedness of said Mortgagor to Mortgagee, now existing or hereafter arising, due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is intended and does secure, not only the indebtedness hereinabove specifically referred to, but also any and all other debts, obligations and liabilities of said Mortgagor to said Mortgagee, whether now existing or hereafter arising, and any and all extensions, increases, modifications, or renewals of same, or any part thereof, at any time before actual satisfaction and cancellation of this mortgage in the Real Estate Records where recorded, and whether the same be evidenced by promissory note, open account, endorsement, pledge agreement, or otherwise; that it is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this mortgage; and the lien priority of this mortgage shall continue on all of the real estate and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this mortgage; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this mortgage; and all security



for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

19. HOLDOVERS. That Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor, that if it or any one or more of them shall hold possession of the above described real estate or any part thereof subsequent to foreclosure hereunder, it or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the real estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, to the extent permitted by law and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

20. LEASES. That Mortgagor agrees to faithfully perform all the covenants of the lessor or landlord under present and future leases affecting the mortgaged real estate, and neither do nor neglect, nor permit to be done, anything which may diminish or impair their value, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. Mortgagor warrants that the rent roll provided to Mortgagee is true and accurate, that all leases pertaining to the real estate as reflected on such rent roll are in full force and effect and that all tenants reflected on the rent roll are in possession and occupancy on the date of execution of this Mortgage.

21. FINANCIAL RECORDS. That Mortgagor shall furnish to Mortgagee within sixty (60) days after the close of each fiscal year of Mortgagor, such financial records as the holder of this mortgage may require including, but not limited to, an annual statement of the operation of the real estate which shall include annual statements itemizing the income and expenses, together with a complete financial statement of Mortgagor's assets and liabilities and its profit and loss statement and then current financial statements of Mortgagor's general partner and of Brooks D. Collier, Phillip G. Hayden, and Kirby O. Foster, all in form satisfactory to Mortgagee. Such statement shall be prepared by a certified public accountant acceptable to Mortgagee or at Mortgagee's discretion may be supported by the affidavit of Mortgagor. Upon Mortgagee's reasonable request, Mortgagor shall at any time furnish to Mortgagee the current status of leases covering the real estate, together with rentals and related information, and allow Mortgagee to enter on and inspect the real estate; and further, within thirty (30) days of the close of Mortgagor's fiscal year, Mortgagor shall provide Mortgagee with a certified rent roll on the real estate in form satisfactory to Mortgagee. All information shall be provided to Mortgagee at no expense to Mortgagee.

22. INDEMNIFICATION: HAZARDOUS WASTE. The Mortgagor shall indemnify, protect, defend and hold the Mortgagee harmless from and against any and all claims, causes of action, liabilities, losses, damages, injuries, expenses, charges, penalties or costs (including attorney's fees), of whatsoever character, nature and kind, whether groundless or not, whether to property or to person, and whether by direct or derivative action, known or unknown, suspected or unsuspected, latent or patent, existing or contingent (collectively, "Losses and Liabilities"), directly or indirectly relating to, or arising out of or in

connection with claims or allegations relating to, (a) any breach or default of Mortgagor hereunder, (b) any of Mortgagor's activities on the real estate (or the activities of Mortgagor's agents, employees, representatives, independent contractors, licensees, guests, or invitees on the real estate) including without limitation the use of equipment or machinery on the real estate, (c) Mortgagor's actual or alleged breach of any brokerage or finder's contract or agreement, actual or alleged, connected in any way with the purchase, construction or financing of the real estate or any portion thereof, and (d) any other fact, circumstance or event related to Mortgagor's performance hereunder, regardless of whether any such Losses and Liabilities arise from tort or contract. The Mortgagor shall indemnify, protect and hold harmless Mortgagee, its directors, officers, employees, and agents, and any successors to Mortgagee's interest in the chain of title to the real estate, their directors, officers, employees and agents, from and against any and all Losses and Liabilities including all foreseeable and all unforeseeable liabilities and consequential damages, directly or indirectly relating to, or arising out of claims or allegations relating to, the presence, use, generation, storage, or disposal (whether actual or threatened) of Hazardous Materials by Mortgagor or any person or entity, on, in, under or otherwise affecting the real estate, and including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following transfer of title to the real estate to Mortgagee, to the full extent that such action is attributable, directly or indirectly, to the actual or alleged presence or use, generation, storage, release, threatened release, or disposal of Hazardous Materials. For the purposes of this paragraph, Hazardous Materials shall include but not be limited to substances defined as "hazardous substances," "hazardous materials," or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Transportation Act, 49 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et. seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; or any other federal, state or local laws pertaining to such matters, and the regulations adopted and publications promulgated pursuant to said laws, and Hazardous Materials shall also include, without limitation, all storage containers, tanks and tank systems located on, under or otherwise affecting the real estate, whether underground or otherwise.

Mortgagor further covenants that Mortgagor will not use the real estate in a manner which will result in the disposal or any other release of any Hazardous Materials (as hereinabove defined) on, under or otherwise affecting the real estate. Mortgagor covenants and agrees to keep or cause the real estate to be kept free of any Hazardous Materials or other contaminant. In response to the presence of any Hazardous Materials on, under or otherwise affecting the real estate, Mortgagor shall immediately notify Mortgagee and at Mortgagor's sole expense, take all remedial action required by any applicable environmental laws or any judgment, consent decree, settlement or compromise with respect thereto.

Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any Hazardous Materials on, under or otherwise affecting the real estate; (ii) any knowledge by Mortgagor that the real estate does not comply

with any Hazardous Materials law; (iii) any Hazardous Materials claims or hazardous conditions; and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the real estate that could cause the real estate or any part thereof to be designated as border zone property under the provisions of any applicable environmental law.

23. NO CONVEYANCE. That no right, title or interest in or to the mortgaged real estate, or any part thereof, shall be sold, transferred, assigned, conveyed, mortgaged or encumbered by a lien (including grant of easement for any purpose whatsoever) and neither the ownership nor any interest in the general partner of the Mortgagor may become vested by operation of law or otherwise in any other person or entity at any time prior to the payment in full of the indebtedness secured hereby without first obtaining the prior written consent and approval of Mortgagee which consent and approval shall be within Mortgagee's sole discretion; that in the event of any violation of this provision, the entire unpaid balance of the indebtedness secured hereby, together with all interest thereon, shall become due and payable immediately at the option of Mortgagee without notice to Mortgagor, and shall be recoverable by Mortgagee forthwith or at any time thereafter without stay of execution or other process and failure of Mortgagor to pay all monies to Mortgagee secured by this mortgage shall be an act of default entitling Mortgagee to foreclose this mortgage in accordance with the terms hereof. Notwithstanding any provision herein to the contrary, however, Mortgagee shall not unreasonably withhold its consent to permit one sale or transfer of the real estate to a qualified third party if (i) such third party is satisfactory to Mortgagee in its good faith discretion; (ii) Mortgagee receives a transfer fee in the amount of Nine Thousand Five Hundred and No/100 Dollars (\$9,500), (iii) Mortgagor pays all attorney's fees, costs, and expenses incurred by Mortgagee in connection with such transfer; (iv) no event of default has occurred pursuant to this mortgage, the note described hereinabove or any other document given as security for the note or executed in connection therewith; (v) the transfer does not release Mortgagor, or any guarantor of the note described above from their payment or performance responsibilities as described in the note or documents evidencing or securing the note or described therein and further, does not release any assets securing repayment of such indebtedness; and (vi) Mortgagor provides, and/or executes, or as Mortgagee may require, executes all documentation as Mortgagee deems necessary in connection with such transfer.

24. PAYMENT IN FULL. That provided always that if Mortgagor pays the indebtedness secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amount it may have expended pursuant to the authorization of this mortgage, including without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

25. WAIVER OF RIGHTS OF EXEMPTION. That 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 the Mortgagor waives, to the extent permitted by law, all rights of exemption under

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the laws and Constitution of the State of Alabama and agrees to pay as permitted by law a reasonable attorney's fee for the collection thereof.

26. SUBORDINATION OF FEES AND CHARGES. That Mortgagor shall not incur or pay any management fees or other fees or charges with respect to management of the real estate unless such fees are subordinate to the Mortgagee's right to receive payment on the note secured hereby or unless Mortgagee consents in writing to such charges.

27. NO ESTOPPEL, WAIVER. That 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 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.

28. MINERAL AND MINING RIGHTS. That neither Mortgagor nor Mortgagee has or shall give its consent to use of the surface of the real estate for mineral, mining or other uses not contemplated herein.

29. NOTICES. That wherever and whenever in this mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall be deemed to have been delivered, given or served when set forth in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: Brookline, Ltd.  
c/o Brooks D. Collier  
Vantage Capital, Inc.  
One Maryland Farms, Suite 220  
Brentwood, TN 37027

To Mortgagee: Goldome Credit Corporation  
Two Perimeter Park South  
P. O. Box 43200  
Birmingham, Alabama 35243  
Attention: Commercial  
Loan Division

30. SUCCESSORS AND ASSIGNS. That singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker of this mortgage, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

31. CHOICE OF LAW. That this Real Estate Mortgage shall be subject to and construed in accordance with the laws of the State of Alabama.

32. SEVERABILITY. The unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.



33. CAPTIONS. The captions of each paragraph are intended for reference purposes only and shall not be used to interpret the meaning of any paragraph.

IN WITNESS WHEREOF, the undersigned has executed this instrument in Birmingham, Alabama, as of the day and year first above written.

BROOKLINE, LTD., a Tennessee  
limited partnership

By: Vantage Capital, Inc.  
Its general partner

By: Don Collier  
Its: President

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STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Day Conner, whose name as President of Vantage Capital, Inc., a corporation, said corporation being the sole general partner of Brookline, Ltd., a Tennessee limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as general partner of Brookline, Ltd., a Tennessee limited partnership.

Given under my hand and official seal this 28th day of July, 1989.

Carla M. Haraca  
Notary Public

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES MAY 26, 1992

Ref: JCR/637890524

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Exhibit "A"

Parcel I

Lots 5A through 27, Lots 31 through 35, and Lots 37 through 50, according to the Resurvey of Brookline, as recorded in Map Book 10 page 93, recorded in the Probate Office of Shelby County, Alabama; all being situated in Shelby County, Alabama.

Also, That certain 10 foot Vegetation Buffer Zone lying immediately North of said Lots 5 through 27, both inclusive, according to the Resurvey of Brookline, as recorded in Map Book 10 page 93 in the Probate Office of Shelby County, Alabama.

Phase I

Commence at the Northwest corner of the Southwest 1/4 of Section 22, Township 20 South, Range 3 West, Shelby County, Alabama, and run in a Southerly direction along the West line of said 1/4 Section a distance of 291.05 feet to the point of beginning of the herein described parcel; thence turn a deflection angle of 88 deg. 48 min. 23 sec. to the left and run in an Easterly direction a distance of 676.87 feet to a point; thence turn an interior angle of 285 deg. 20 min. 30 sec. and run to the left in a Northwesterly direction a distance of 125.23 feet to a point; thence turn an interior angle of 74 deg. 39 min. 30 sec. and run to the right in an Easterly direction a distance of 40.15 feet to a point of curvature; thence continue in a Southeasterly direction along the arc of a curve to the right having a central angle of 65 deg. 55 min. 15 sec. and a radius of 76.10 feet a distance of 20.40 feet to the point of tangency of said curve; thence turn an interior angle of 270 deg. 00 min. 00 sec. from the tangent to said curve and run to the left in a Northeasterly direction a distance of 169.00 feet to a point, said point also being a point on the Southwesterly right-of-way of Roy Drive; thence turn an interior angle of 133 deg. 47 min. 46 sec. and run to the right in a Southeasterly direction along the Southeasterly right of way of Roy Drive a distance of 142.98 feet to a point; thence turn an interior angle of 121 deg. 28 min. 46 sec. and leaving said right of way run in a Southerly direction a distance of 30.16 feet to a point; thence turn an interior angle of 152 deg. 51 min. 44 sec. and run to the right in a Southwesterly direction a distance of 201.15 feet to a point; thence turn an interior angle of 188 deg. 35 min. 41 sec. and run to the left in a Southerly direction a distance of 76.63 feet to a point; thence turn an interior angle of 170 deg. 06 min. 30 sec. and run to the right in a Southwesterly direction a distance of 107.34 feet to a point; thence turn an interior angle of 54 deg. 44 min. 00 sec. and run to the right in a Northwesterly direction a distance of 133.16 feet to a point; thence turn an interior angle of 187 deg. 04 min. 12 sec. and run to the left in a Northwesterly direction a distance of 107.45 feet to a point; thence turn an interior angle of 263 deg. 15 min. 53 sec. and run to the left in a Southwesterly direction a distance of 135.02 feet to a point; thence turn an interior angle of 144 deg. 00 min. 42 sec. and run to the right in a Westerly direction a distance of 120.16 feet to a point; thence turn an interior angle of 191 deg. 43 min. 46 sec. and run to the left in a Southwesterly direction a distance of 142.46 feet to a point; thence turn an interior angle of 180 deg. 31 min. 15 sec. and run thence left in a Southwesterly direction a distance of 181.57 feet; thence turn an interior angle of 177 deg. 02 min. 28 sec. and run to the right in a Southwesterly direction a distance of 260.74 feet to a point; thence turn an interior angle of 171 deg. 03 min. 31 sec. and run to the right in a Westerly direction a distance of 191.46 feet to a point on a curve on the Easterly right of way of Brookline Parkway; thence turn an interior angle of 94 deg. 17 min. 31 sec. to the tangent of a curve to the left having a central angle of 35 deg. 27 min. 33 sec. and a radius of 260.00 feet and run in a Northwesterly direction along the arc of said curve and the Easterly right of way of Brookline Parkway a distance of 160.91 feet to the point of tangency of said curve; thence turn an interior angle of 151 deg. 59 min. 45 sec. from the tangent of the last described curve and run in a Northwesterly direction a distance of 153.23 feet to a point; thence turn an interior angle of 122 deg. 14 min. 42 sec. and run to the right in a Northeasterly direction a distance of 20.40 feet to a point; thence turn an interior angle of 135 deg. 39 min. 30 sec. and run to the right in an Easterly direction a distance of 287.15 feet, more or less, to the point of beginning of the herein described parcel; being situated in Shelby County, Alabama.

1. Deed Tax \$  
 2. Mlg. Tax 1425.00  
 3. Recording Fee 40.00  
 4. Indexing Fee 3.00  
 TOTAL 1469.00

89 AUG -3 AM 8:30

# Phase II

Commence at the Northwest corner of the Southwest 1/4 of Section 22, Township 20 South, Range 3 West, Shelby County, Alabama, and run in a Southerly direction along the West line of said 1/4 Section a distance of 596.50 feet to the point of beginning of the herein described parcel; thence turn a deflection angle of 98 deg. 05 min. 52 sec. to the left and run in a Northeasterly direction a distance of 236.15 feet to a point; thence turn an interior angle of 182 deg. 57 min. 32 sec. and run to the left in a Northeasterly direction a distance of 181.57 feet to a point; thence turn an interior angle of 179 deg. 28 min. 45 sec. and run to the right in a Northeasterly direction a distance of 142.46 feet to a point; thence turn an interior angle of 168 deg. 16 min. 14 sec. and run to the right in an Easterly direction a distance of 120.16 feet to a point; thence turn an interior angle of 215 deg. 59 min. 18 sec. and run to the left in a Northeasterly direction a distance of 135.02 feet to a point; thence turn an interior angle of 96 deg. 44 min. 07 sec. and run to the right in a Southeasterly direction a distance of 107.45 feet to a point; thence turn an interior angle of 172 deg. 55 min. 48 sec. and run to the right in a Southeasterly direction a distance of 63.43 feet to a point; thence turn an interior angle of 108 deg. 55 min. 49 sec. and run to the right in a Southwesterly direction a distance of 20.35 feet to a point; thence turn an interior angle of 135 deg. 00 min. 00 sec. and run to the right in a Southwesterly direction a distance of 15.68 feet to a point; thence turn an interior angle of 228 deg. 08 min. 23 sec. and run to the left in a Southeasterly direction a distance of 382.88 feet to a point; thence turn an interior angle of 100 deg. 09 min. 40 sec. and run to the right in a Southwesterly direction a distance of 60.96 feet to a point; thence turn an interior angle of 154 deg. 50 min. 20 sec. and run to the right in a Northwesterly direction a distance of 92.95 feet to a point; thence turn an interior angle of 214 deg. 45 min. 08 sec. and run to the left in a Northwesterly direction a distance of 53.13 feet to a point; thence turn an interior angle of 201 deg. 48 min. 55 sec. and run to the left in a Southwesterly direction a distance of 693.86 feet to a point on the Easterly right of way of Brookline Parkway; thence turn an interior angle of 84 deg. 02 min. 31 sec. and run to the right in a Northwesterly direction along the Easterly right of way of Brookline Parkway a distance of 287.13 feet to a point of curvature; thence continue in a Northwesterly direction along the Easterly right of way of Brookline Parkway and along the arc of a curve to the left having a central angle of 1 deg. 18 min. 31 sec. and a radius of 260.00 feet a distance of 5.94 feet to the point of tangency of said curve; thence turn an interior angle of 85 deg. 42 min. 29 sec. from the tangent to the last described curve and run to the right in an Easterly direction a distance of 191.46 feet to a point; thence turn an interior angle of 188 deg. 56 min. 29 sec. and run to the left in a Northeasterly direction a distance of 24.59 feet, more or less, to the point of beginning of the herein described parcel; being situated in Shelby County, Alabama.

Phase I and II above are situated in the Northwest 1/4 of the Southwest 1/4 of Section 22 and the Northeast 1/4 of the Southeast 1/4 of Section 21, all in Township 20 South, Range 3 West, Shelby County, Alabama.