

THIS INSTRUMENT PREPARED BY:

1140  
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The Harbert-Equitable Joint Venture  
P. O. Box 1297  
Birmingham, AL 35201  
(205) 988-4730

STATE OF ALABAMA )

COUNTY OF SHELBY )

PURCHASE MONEY MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the undersigned FALCON PROPERTIES, INC.

, a builder (hereinafter called "Mortgagor"), is, contemporaneously with the execution hereof, becoming indebted to THE HARBERT-EQUITABLE JOINT VENTURE, an Alabama general partnership (hereinafter referred to as "Mortgagee") on a loan in the sum of FORTY-SEVEN THOUSAND FIVE HUNDRED TWENTY AND NO/100 Dollars (\$47,520.00) principal, as evidenced by a promissory note of even date herewith, payable to Mortgagee with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

WHEREAS, it is desired by the parties to secure said principal amount with interest, and all renewals, extensions or modifications thereof, and any and all other additional indebtedness of Mortgagor to Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and all renewals, modifications or extensions thereof, and whether incurred or given as maker, endorser, guarantor or otherwise (all of which additional indebtedness is hereinafter referred to as "Other Indebtedness").

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NOW, THEREFORE, the undersigned Mortgagor and all others executing this Mortgage, in consideration of making the loan or loans above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals or modifications of same, and any and all charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorney's fees, and any and all Other Indebtedness of Mortgagor to Mortgagee as set forth above, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and as may be set forth in any other instruments evidencing, securing or given in connection with the Note or Other Indebtedness of Mortgagor to Mortgagee, have bargained and sold and do hereby grant, bargain, sell and convey unto the said Mortgagee, its successors and assigns, the following described real estate situated in Shelby County, Alabama, together with all buildings, improvements, and fixtures now or hereafter located thereon (hereinafter referred to as the "Property") to-wit:

Lot 2413, according to the survey of Riverchase Country Club 24th Addition as recorded in Map Book 10, Page 64, in the Office of the Judge or Probate of Shelby County, Alabama.

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

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

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to attorney's fees, and shall pay any and all Other Indebtedness of Mortgagor to Mortgagee, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the Note, and in this Mortgage, and in any other instruments evidencing, securing or given in connection with the Note or Other Indebtedness of Mortgagor to Mortgagee, expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

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Upon the happening of a default in the payment of the Note, or of any installment thereof, principal or interest, when due, or upon the happening of a default in the payment of any Other Indebtedness, obligation or liability hereby secured, or any renewals, extensions, or modifications thereof when due, or upon default in the performance of any of the covenants, conditions or agreements in the Note, or in this Mortgage, or in any other instruments evidencing, securing or given in connection with the Note or Other Indebtedness of Mortgagor to Mortgagee, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Mortgagor, or any endorser, surety or guarantor of the Note or Other Indebtedness of Mortgagor to Mortgagee, file, or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law for relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all indebtedness, Other Indebtedness, obligations, and liabilities secured hereby to be immediately due and payable, and the Mortgagor hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of the county or counties in which all or a portion of said Property is located, as Mortgagee may elect, subject to the provisions of any applicable law. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in the county or counties and state in which all or a portion of said Property is located. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and

auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagor, and all recitals made in any deed executed under this Mortgage shall be evidence of the facts therein recited.

The Mortgagor and its successors and assigns hereby covenant with the Mortgagee, its successors and assigns, that it is seized of an indefeasible estate in fee simple in and to said Property, that said Property is free from all liens and encumbrances except as may be set forth herein, and that they will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, its successors and assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

It is specifically agreed between Mortgagee and Mortgagor that this Mortgage shall be second and subordinate to a construction mortgage placed on the Property by Mortgagor within sixty (60) days following the date hereof. Upon request of the construction lender, Mortgagee agrees to execute a separate instrument acknowledging the intent of this paragraph.

The Mortgagor further expressly agrees and covenants as follows:

1. Mortgagor shall pay the Note and all Other Indebtedness of Mortgagor to Mortgagee, and all installments of principal and interest thereon, when they respectively fall due.

2. Mortgagor shall keep the Property in a good state of repair and shall not commit or permit waste of the Property.

3. Mortgagor shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.

4. If it shall become necessary to employ an attorney to collect the debt or any of the indebtedness or Other Indebtedness hereby secured, or any portion thereof, or to foreclose this Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceedings, then the said Mortgagor shall pay and allow a reasonable attorney's fee.

5. Mortgagor shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.

6. If the said Mortgagor, at its option, fails to perform any of the duties herein specified, the Mortgagee may perform the same, including but not limited to payment of taxes, liens and other charges.

7. The Mortgagee, at its option, may advance to said Mortgagor such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property, or to pay for any work done upon said Property, or materials furnished to said Property.

8. The Mortgagee shall have an additional lien upon said Property, secured by this Mortgage, for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 5 through 8 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate set forth in the Note or at the prime rate announced as such by AmSouth Bank (formerly The First National Bank

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of Birmingham) plus 2%, whichever is greater, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.

9. Except for the construction mortgage referred to hereinabove, Mortgagor shall not sell or otherwise transfer or dispose of the Property without the prior written consent of the Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all indebtedness, Other Indebtedness, obligations, and liabilities secured hereby to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this Mortgage shall be at such rate as Mortgagee shall request. If Mortgagee has waived the option to accelerate provided in this paragraph 10, and if Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by Mortgagee, Mortgagee shall release Mortgagor from all obligations under this Mortgage and the Note.

10. The provisions of this Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.

11. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Mortgage, or the Note, or any other instrument, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

12. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

13. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

IN WITNESS WHEREOF, said Mortgagor has caused this instrument to be executed on this the 17<sup>th</sup> day of November, 1989.

WITNESS:

Jada R. Wilson

MORTGAGOR: FALCON PROPERTIES, INC.

By

Donald E. Smith  
Its President

STATE OF

COUNTY OF

I, Evelyn A. Blackburn, a Notary Public in and for said County in said State, hereby certify that Donald Lee Johnston, whose name as President of Falcon Properties, a Corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such President and with full authority, executed the same voluntarily for and as the act of said President.

Given under my hand this 12<sup>th</sup> day of November, 1989.

Evelyn A. Blackburn  
Notary Public

My commission expires: 10-29-93

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

89 DEC 18 PM 12:39

Thomas A. Shumaker, Jr.  
JUDGE OF PROBATE

1. Deed Tax -----	\$	
2. Mig. Tax -----	\$	11.40
3. Recording Fee -----	\$	12.50
4. Notary Fee -----		3.00
5. -----		
6. -----		1.00
Total -----	\$	87.90