

STATE OF ALABAMA  
COUNTY OF JEFFERSON

718  
MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE is made this 22nd day of November, 1989, by and between Sheamake Development Co., Inc. (hereinafter referred to as "Borrower") whose address is 3195 Cahaba Heights Road, Birmingham, Alabama 35243; and STATESMAN BANK FOR SAVINGS, F.S.B., a federal savings bank, whose address is 3657 Canton Highway, Suite 201, Marietta, Georgia 30066 (hereinafter referred to as "Lender").

WITNESSETH:

FOR AND IN CONSIDERATION of the loan to Borrower by Lender resulting in the indebtedness which is hereinafter more particularly described, and in order to secure that loan and payment of the note evidencing the same and the performance of all obligations of Borrower under the documents executed in connection with said loan, Borrower hereby grants, bargains, conveys, transfers, assigns and sells unto Lender, Lender's successors and assigns, with power of sale, the following described property in Jefferson and Shelby Counties, Alabama:

Lot 73, in Block 4, according to the Survey of Inverness Point - Phase II, as recorded in Map Book 159, Page 30, in the Probate Office of Jefferson County, Alabama, and in Map Book 13, Page 19, in the Probate Office of Shelby County, Alabama.

BOOK 273 PAGE 857  
TOGETHER WITH: (i) all buildings, structures and other improvements now or hereafter located on the Property or on any part or parcel of the Property, hereinafter called the "Improvements"; (ii) all and singular the tenements, hereditaments, easements, and appurtenances belonging to the Property or in anywise appertaining to the Property, and the reversion or reversions, remainder or remainders thereof; (iii) all leases, undertakings to lease, contracts to rent, usufructs and other agreements for use, occupancy or possession now or hereafter in force with respect to the Property or any part or parcel of the Property or any of the Improvements, and any and all other agreements, contracts, licenses, permits or arrangements now or hereafter affecting the Property or any part or parcel of the Property or any of the Improvements, whether written or oral, and whether now or hereafter made or executed and delivered, hereinafter collectively called the "Leases"; (iv) all rents, issues, income, revenues and profits now or hereafter accruing from and all accounts and contract rights now or hereafter arising in connection with, the Property or any part or parcel of the Property or any of the Improvements, including without limitation all rents, issues, income, revenues, and profits accruing from, and all accounts and contract rights arising in connection with, the Leases, together with all monies and proceeds now or hereafter due or payable with respect thereto or on account thereof, and all security deposits, damage deposits and other funds paid by any lessee, sublessee, tenant, subtenant, licensee, permittee, obligee under any of the leases, whether paid in a lump sum or installments, all of which are hereinafter collectively called the "Rents"; (v) all minerals, flowers, crops, trees, timber, shrubbery and other emblements now or hereafter located on the Property or under the Property or on or under any part or parcel of the Property; (vi) all estates, rights, titles, and interests in the Property, or in any part or parcel of the Property; (vii) all equipment, machinery, apparatus, fittings and personal property of every kind or description whatsoever now or hereafter located on the Property or on any part or parcel of the Property or in any of the Improvements, and used in connection with the plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning and heating, and sprinkling equipment and systems, and all accessions and additions to and replacements of the foregoing and all proceeds (direct and remote) of the foregoing, and all screens, awning and signs; (viii) all fixtures now or hereafter on the Property or on any part or parcel of the Property or in or on any of the Improvements, whether actually or constructively attached or affixed, including without limitation all plumbing, heating, lighting, ventilating, refrigerating, water-heating, incinerating, air-conditioning, and heating, and sprinkling, fixtures, and all screens, awnings and signs which are fixtures; (ix) all building materials, supplies, goods, machinery, and equipment delivered to the Property and placed on the Property for the purpose of being affixed to or installed or incorporated or otherwise used in or on the Property or any part or parcel of the Property or any of the Improvements, and all accessions and additions to and replacements of the foregoing and all proceeds (direct or remote) of the foregoing; (x) all payments, awards, judgments, and settlements, (including interest thereon) to which Borrower may be or become entitled as a result of the exercise of the right of eminent domain with respect to the Property or any part or parcel of the Property or any of the Improvements; (xi) all policies of insurance which insure against loss or damage to any property described above and all proceeds from and payments under such policies; and (xii) all names, trade names, signs, marks and trademarks under which any business located on the Property is operated or known. The Property and all of the foregoing are hereinafter sometimes collectively called the "Premises."

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water rights and stock and all fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument.

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THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO 9-402(6) OF THE UNIFORM COMMERCIAL CODE FOR THE STATE OF ALABAMA AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF BORROWER, AS DEBTOR, AND LENDER, AS SECURED PARTY.

THE NAMES OF THE DEBTOR AND THE SECURED PARTY FROM WHICH INFORMATION CONCERNING THIS SECURITY INTEREST MAY BE OBTAINED, THE MAILING ADDRESS OF THE DEBTOR AND A STATEMENT INDICATING THE TYPES, OR DESCRIBING THE ITEMS, OF COLLATERAL ARE AS DESCRIBED IN SECTION 1.13(c) HEREOF, IN COMPLIANCE WITH THE REQUIREMENTS OF 9-402 OF THE UNIFORM COMMERCIAL CODE FOR THE STATE OF ALABAMA.

THIS INSTRUMENT IS A "CONSTRUCTION MORTGAGE" AS THAT TERM IS DEFINED IN ARTICLE 9, SECTION 313(1)(C) OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF ALABAMA, AND THE PROCEEDS OF THE INDEBTEDNESS SECURED HEREBY HAVE BEEN GIVEN TO FINANCE THE CONSTRUCTION OF AN IMPROVEMENT UPON LAND.

McCALLA, RAYNER, PADRICK, COBB & NICHOLS  
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Suite 450  
975 Johnson Ferry Road  
Atlanta, Georgia 30342

If Borrower shall well and truly pay and discharge all the indebtedness hereby secured (including extensions and renewals of the original indebtedness and all future advances) as the same shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect thereof, then and in that event only this conveyance and the security interest herein granted shall be and become null and void.

Borrower WARRANTS that, subject only to those items set forth on Exhibit "B" attached hereto and made a part hereof, Borrower has good and marketable fee simple title to the Premises, that Borrower is lawfully seized and possessed of the Premises, that Borrower has the right to convey the Premises, that the Premises are unencumbered and that Borrower shall forever warrant and defend the title to the Premises unto Lender against the claims of all persons whomsoever.

THIS INSTRUMENT IS A MORTGAGE pursuant to the laws of the State of Alabama governing mortgages, and is also a security agreement granting a present and continuing security interest and security title in the portion of the Premises constituting personal property or fixtures, and a financing statement filed as a fixture filing, pursuant to the Uniform Commercial Code of the State of Alabama. This mortgage and security agreement is made and intended to secure payment and performance of: (i) an indebtedness of Borrower to Lender evidenced by that certain Real Estate Note of even date herewith, made by Borrower and payable to the order of Lender, in the stated principal amount of: TWO HUNDRED SEVENTY FOUR THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$274,400.00) bearing interest and default interest and payable as therein provided a final payment of which is due and payable on or before November 22, 1990, (hereinafter referred to as the "Note"); (ii) any and all renewal or renewals, extension or extensions, modification or modifications, consolidation or consolidations of the Note, and substitution or substitutions for the Note, either in whole or in part; (iii) all advances, if any, made by Lender pursuant to the terms of this deed to secure debt and security agreement; (iv) all expenses incident to the collection of the indebtedness secured by this deed to secure debt and security agreement; and (v) all duties and obligations of Borrower under this deed to secure debt and security agreement, and acquisition and development loan agreement. The obligations and indebtedness which this deed to secure debt and security agreement is given to secure are hereinafter sometimes collectively referred to as the "Indebtedness." This deed to secure debt and security agreement is hereinafter sometimes referred to as the "Security Instrument".

#### ARTICLE 1

##### COVENANTS OF Borrower

1.01 Junior Encumbrances. Without the prior written consent of Lender, Borrower shall not create or permit to exist any liens or encumbrances on the Premises which are junior and inferior in terms of priority of this Security Instrument.

1.02 Payments by Borrower. Borrower shall pay, when due and payable: (i) the Indebtedness in accordance with the terms and conditions of the instruments evidencing the same; (ii) all taxes, all assessments, general or special, and all other charges levied or imposed upon or assessed or placed or made against the Premises, this Security Instrument, the Note or the Indebtedness or any interest of Lender in the Premises, this Security Instrument, the Note or the Indebtedness; (iii) premiums on policies of fire or casualty insurance covering the Premises required by this Security Instrument or now or hereafter required by Lender; (iv) premiums on all life insurance policies now or hereafter pledged as collateral for the Indebtedness or any part thereof; (v) premiums on all liability, rental, rental value, business interruption mortgage and flood insurance policies required by this Security Instrument or now or hereafter required by Lender in connection with the Premises or the Indebtedness or any part of either; and (vi) all ground rents, lease rentals, and other payments respecting the Premises payable by Borrower. Borrower shall promptly deliver to Lender, upon request by Lender, receipts showing payment in full of all of the foregoing items, other than the Indebtedness. In the event of the passage of any state, federal, municipal or other governmental law, order, rule, or regulation, subsequent to the date hereof, in any manner changing or modifying the laws in force governing the taxation of the Indebtedness or the manner of collecting such taxes so as to adversely affect Lender, Borrower will promptly pay any such tax on or before the date it is due if, in the opinion of counsel for Lender, Lender is not prohibited by any such law, order, rule, or regulation from requiring such payment by Borrower. If, in the opinion of counsel for Lender, Lender is prohibited by any such law, order, rule or regulation from requiring such payment by Borrower, then, at Lender's option, if Borrower does not pay the Indebtedness in full within thirty (30) days of demand therefor, Borrower shall be in default under this Security Instrument as if an event of default had occurred, and Lender may exercise any or all of the rights and remedies Lender has upon the occurrence of a default under this Security Instrument.

1.03 Lender's Acts on Behalf of Borrower. In the event Borrower shall either fail or refuse to pay or cause to be paid, as the same shall become due and payable, any item (including all items specified in Section 1.02 hereof) which Borrower is required to pay hereunder or which Borrower may pay to cure a default under this Security Instrument, or in the event Borrower shall either fail or refuse to do or perform any act which Borrower is obligated to do or perform under this Security Instrument or which Borrower may do or perform to cure a default under this Security Instrument, or in the event Lender shall be required, or shall find it necessary or desirable in Lender's discretion, to defend, enforce or protect any of the rights and benefits accruing to Lender under any provision of this Security Instrument (including, without limitation, Lender's interest in the premises, insurance and condemnation proceeds, and the Rents), act on behalf of Borrower, or proceed in any manner to defend, enforce or protect any such rights and benefits. All such payments made by Lender and all costs and expenses incurred by Lender in doing or performing all such acts shall be and shall become part of the Indebtedness and shall bear interest at the rate of four percentage (4.0%) points per annum in excess of the highest rate of interest then being charged with respect to any portion of the Indebtedness from the date paid or incurred by Lender, and the interest thereon shall also be part of the Indebtedness.

1.04 Further Assurances. Borrower shall at any time, and from time to time, upon request by Lender, make, execute, and deliver, or cause to be made, executed, and delivered, any and all other and further instruments, documents, certificates, agreements, letters, representations, and other writings as may be necessary or desirable, in the opinion of Lender, in order to effectuate, complete, correct, perfect, or continue and preserve the liability and obligation of Borrower for payment of the Indebtedness and the lien, security interest, and security title of Lender under this Security Instrument. Borrower shall, upon request by Lender, certify in writing to Lender, or to any proposed assignee of this Security Instrument, the amount of principal and interest then owing on the Indebtedness and whether or not any setoffs or defenses exist against all or any part of the Indebtedness.

1.05 Maintenance and Repair. Borrower shall comply with, or cause to be complied with, all statutes, ordinances, rules, regulations and directives of any governmental authority relating to the Premises or any part thereof. Borrower shall have the right to clear, grade, excavate, and fill all or any portion of the Property without being in default under this Security Instrument or being guilty of committing "waste"; and, in addition, Borrower shall have the right to improve the Property at Borrower's expense, without being in default under this Security Agreement.

1.06 Insurance. Borrower shall keep the Premises insured against loss or damage by fire and such other casualties and risks as the Lender may require from time to time. Upon written request of Lender, the insurance maintained by Borrower shall include rental and rental value or business interruption insurance, as applicable. Such policies shall be written by such companies, in such amounts, and under such forms of policies as Lender may approve. Such policies shall insure Lender's interest in the Premises, name Lender as an insured party thereunder, provide that losses thereunder shall be payable to Lender pursuant to such forms of loss payable clauses as Lender may approve and provide that no cancellation or reduction in coverage shall be effective unless the insurer first gives Lender thirty (30) days prior written notice. Irrespective of the insurance required and approved by Lender hereunder, the security interest of Lender hereunder shall cover all policies of insurance which insure against loss or damage to the Premises, and the proceeds from any and all such policies. Borrower shall also procure and maintain general comprehensive public liability insurance coverage with such companies in such amounts and under such forms of policies as Lender may approve, naming Lender as an additional insured thereunder and providing that no cancellation or reduction in coverage thereunder shall be effective unless the insurer first gives Lender thirty (30) days prior written notice. Forthwith upon the issuance of all such policies, Borrower shall deliver the same (or certificates of insurance) to Lender together with evidence satisfactory to Lender that the premiums have been paid. Within fifteen (15) days prior to the expiration date of each such policy, Borrower shall deliver to Lender a renewal policy together with evidence satisfactory to Lender that the premium therefor has been paid. In the event of a foreclosure and sale by Lender of the Premises, the purchaser of the Premises shall succeed to all rights of Borrower in and to such policies, including the right to the refund of unearned premiums and to dividends thereunder, and Lender may, at Lender's election, assign and deliver the policies to such purchaser without any warranty or representations, express or implied, and without recourse. In the event of damage to or destruction of the Premises or any part thereof, Lender may adjust, settle, or compromise claims under said policies, and the proceeds therefrom shall be paid to Lender. Lender, at Lender's option and in Lender's sole discretion may either (i) apply the proceeds or any part thereof to payment of the indebtedness, in such order as Lender may determine, or (ii) require Borrower to repair, replace, or reconstruct the Premises or any part thereof and disburse the proceeds to Borrower to be applied against the costs and expenses thereof as incurred or paid by Borrower, pursuant to a disbursement procedure, and under such other terms and conditions, as shall be acceptable to Lender; provided, however, Borrower shall be entitled to apply to Lender for and receive from Lender pursuant to the terms set forth in (ii) above such portion of the proceeds paid on account of such casualty as are necessary to restore the Premises to a presentable condition for the current use of the Premises.

1.07 Inventory of Personal Property. Upon request of Lender, Borrower shall deliver to Lender an inventory describing and showing the make, model, serial number, and location of all fixtures and personal property used in the management, maintenance, and operation of the Premises with a certification by Borrower that said inventory is a true and complete schedule of such fixtures and personal property used in the management, maintenance, and operation of the Premises and that such items specified in the inventory constitute all of the fixtures and personal property required in the management, maintenance, and operation of the Premises, and that such items are owned by Borrower free and clear of any security interests, liens, conditional sales contracts, or title retention agreements, other than the lien and security interest in this Security Instrument.

1.08 Condemnation. If all or any portion of the Premises shall be damaged or taken through condemnation (which term when used in this Security Instrument shall include any damage or taking by any governmental authority, quasi-governmental authority, or any party having the power of condemnation and any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire indebtedness shall, at the option of Lender, become immediately due and payable. Borrower, immediately upon obtaining knowledge of the institution, or the proposed, contemplated, or threatened institution of any action or proceeding for the taking through condemnation of the Premises or any part thereof, shall notify Lender, and Lender is hereby authorized, at its option, to commence, appear in or prosecute, through counsel selected by Lender, in its own or in Borrower's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards, or damages and to give proper receipts and acquittances therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including attorney's fees, Lender may apply the net proceeds of any part thereof, at its option (a) to the payment of the indebtedness, whether or not due and in whatsoever order Lender elects, (b) the repair and/or restoration of the Premises and/or (c) for any other purposes or objects for which Lender is entitled to advance funds under this Security Instrument, all without affecting the lien of this Security Instrument; and any balance of such monies then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto. Borrower agrees to execute such further assignments of any compensation, awards, damages, claims, rights of action, and proceeds as Lender may require. If, prior to the receipt by Lender of such award or proceeds, the Premises shall have been sold on foreclosure of this Security Instrument, or under the power of sale herein granted, Lender shall have the right to receive such award or proceeds to the extent of any unpaid indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Security Instrument or the Note shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such awards or proceeds.

1.09. Leases, Contracts, Etc.

(a) As additional collateral and further security for the indebtedness, Borrower does hereby assign to Lender Borrower's interest in any and all leases, tenant contracts, rental agreements, franchise agreements, management contracts, construction contracts, plans, specifications, reports, and other contracts, licenses and permits now or hereafter affecting the Premises, or any part thereof, and borrower agrees to execute and deliver to Lender such additional instruments, in form and substance satisfactory to Lender, as may hereafter from time to time be requested by Lender further to evidence and confirm said assignment; provided, however, that acceptance of any such assignment shall not be construed as a consent by Lender to any lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract,



license or permit or to impose on Lender any obligation with respect thereto. Without first obtaining on each occasion the written approval of Lender, Borrower shall not cancel, modify or permit the cancellation of any such lease, tenant contract, rental agreement, franchise agreement, management contract, construction contract, or other contract license, or permit, or modify any of said instruments, or accept, or permit to be made, any prepayment of any installment of rent or fees thereunder for more than two (2) months in advance (except for security deposits); provided, however, Borrower may modify waive, terminate or release in the ordinary course of business, those leases which have a term of less than five (5) years without the prior written consent of Lender as long as any such terminations do not cause the premises to become less than eighty percent (80%) leased. Borrower shall faithfully keep and perform, or cause to be kept and performed, all of the covenants, conditions and agreements contained in each of said instruments, now or hereafter existing, on the part of Borrower to be kept and performed and shall at all times do all things necessary to compel performance by each other party to said instruments of all obligations, covenants, and agreements by such other party to be performed thereunder.

(b) Borrower shall not execute any further assignment of income, rents, issues, or profits, or any part thereof, from the Premises unless Lender shall first consent to such assignment and unless such assignment shall expressly provide that it is subordinate to the assignment contained in this Indebtedness.

(c) Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a sworn statement setting forth the name of all lessees and tenants of the Premises, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating whether any defaults, off-sets, or defenses exist under or in connection with any of said leases, tenant contract or rental agreements. Any and all leases, tenant contracts or rental agreements affecting the Premises and executed after the date hereof shall provide for giving by the lessees or tenants thereunder of certificates with respect to the status of such leases, tenant contracts or rental agreements, and Borrower shall exercise Borrower's rights to request such certificates within five (5) days of any demand therefor by Lender.

(d) Each lease, tenant contract and rental agreement executed after the date hereof, pertaining to the Premise, or any part thereof, shall be subject to the reasonable written approval of Lender as to the form and content, however, no Lender approval is required for leases (a) executed on Borrower's form lease which Lender has approved; (b) which are subordinate to this instrument; (c) which produce a triple net rental approved by Lender and (d) which do not violate the use restrictions imposed by applicable law and by the Security Instrument vesting title in Borrower. Each lease shall provide that, in the event of the enforcement by Lender of the remedies provided by law or by this Security Instrument, the lessee or tenant thereunder will upon request of Lender or any other person or entity succeeding to the interest of Lender as a result of such enforcement, automatically become the lessee or tenant of Lender or said successor in interest, without change in the terms or other provisions of said lease, tenant or rental agreement; provided, however, that neither Lender nor any such successor in interest shall be bound by (i) any payment of rental or additional rental for more than two (2) months in advance, except prepayments in the nature of security for the performance by said lessee or tenant of its obligations under said lease, tenant contract, or rental agreement (and then only if such prepayments have been deposited with and are under the control of Lender); or (ii) any amendment or modification of any of said leases, tenant contracts or rental agreements made without the express written consent of Lender or said successor in title, except with respect to modifications in the ordinary course of business. Each lease, tenant contract and rental agreement pertaining to the Premises shall also provide that, upon request by said successor in title, the lessee or tenant thereunder shall deliver an instrument or instruments confirming such attornment.

1.10. Financial Information and Inspection. Borrower shall maintain complete and accurate books of account and other records with respect to all receipts derived from, and all expenses, costs and payments relating to, the Premises. Borrower shall deliver to Lender, within ninety (90) days after the close of each calendar year, with respect to the Premises, a copy of Borrower's balance sheet as of the end of each such calendar year and a statement of profit and loss for the period then ending, together with such supporting schedules as shall be required by Lender, prepared according to generally accepted accounting principles and signed by an independent Certified Public Accountant, and Borrower shall also deliver to Lender annual personal financial statements in such detail as Lender may require. Borrower shall permit any person designated by Lender to visit and inspect the Premises, to examine the books of account and other records of Borrower with respect to the Premises, and to discuss the affairs, finances, and accounts of Borrower with and to be advised as to the same by Borrower or a knowledgeable and duly authorized representative of Borrower, all at such reasonable times and intervals as Lender may desire.

1.11 Restriction on Transfer. Without the prior written consent of Lender thereto (which consent may be granted or withheld at Lender's sole and absolute discretion) and the recordation of such consent in the public deed records in the Office of the Clerk of the Superior Court of the County in which the Premises or any part thereof is located, prior to the cancellation, satisfaction, and release by Lender of this Security Instrument, neither Borrower nor any party comprising Borrower shall grant, bargain, sell, convey, transfer, assign or exchange all or any portion of the Premises or the interest of Borrower or such other party in the Premises. For the purpose of this Section 1.11, any of the following shall constitute a transfer or conveyance of the Premises proscribed hereby:

(i) in the event Borrower or any party comprising Borrower shall be a corporation, if any amount of any class of stock in Borrower or such party comprising Borrower shall be granted, bargained, sold, conveyed, transferred, assigned, or exchanged after the execution and delivery of this Security Instrument and, after such transaction, more than fifty percent (50%) of such class of stock shall be owned by a party or parties other than the party or parties owning such stock as of the date of the execution and delivery of this Security Instrument; and (ii) in the event Borrower or any party comprising Borrower shall be a general partnership or a limited partnership, (a) if any general partnership interest in Borrower or such party comprising Borrower shall be granted, bargained, sold, conveyed, transferred, assigned, or exchanged after the execution and delivery of this Security Instrument, or (b) if any amount of any class of limited partnership interests in Borrower or such party comprising Borrower shall be granted, bargained, sold, conveyed, transferred, assigned or exchanged after the execution and delivery of this Security Instrument, and, after such transaction more than fifty percent (50%) of such class of limited partnership interests shall be owned by a party or parties other than the party or parties owning such limited partnership interest as of the date of the execution and delivery of this Security Instrument. The foregoing proscription shall apply to any such sale, conveyance, transfer, assignment, or exchange, whether made with or without consideration, and whether arising voluntarily or involuntarily, by reason of merger, consolidation, or reorganization, by operation of law, or otherwise.

1.12 Subrogation. Lender shall be subrogated to all right, title, equity, liens, and claims of all persons to whom Lender has paid or pays money in settlement of claims, liens, encumbrances, or charges or in the acquisition of any right or title for Lender's benefit under this Security Instrument or for the benefit and account of Borrower.

1.13 Security Agreement.

(a) With respect to the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, chattels, chattel paper, documents, inventory, accounts, consumer goods and general intangibles referred to or described in this Security Instrument, or in any way connected with the use and enjoyment of the Premises, this Security Instrument is hereby made and declared to be a security agreement, encumbering each and every item of such property included herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the property lies. Upon request by Lender, at any time and from time to time, a financing statement or statements reciting this Security Instrument to be a security agreement affecting all of such property shall be executed by Borrower and Lender and appropriately filed. The remedies for any violation of the covenants, terms, and conditions of the security agreement contained in this Security Instrument shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted or specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statements or statements in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Premises or adapted for use therein (except for removable personal property) or which is described or reflected in this deed, is, and at all times and for the purposes and in all proceedings, legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements (b) serial numbers are used for the better identification of certain items capable of being thus identified as an Exhibit to this Security Instrument, or (c) any such item is referred to or reflected in any such financing statement or statements so filed at any time. Similarly, the mention in any such financing statement or statements of the rights in and to (aa) the proceeds of any fire and/or hazard insurance policy, or (bb) any award in eminent domain proceedings for a taking or for loss of value, or (cc) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this Security Instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect to the foregoing clauses (aa), (bb), or (cc) of this sentence, that notice of Lender's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) Borrower warrants that (i) Borrower's (that is "Debtor's") name, identity or corporate structure and residence or principal place of business are as set forth in Subsection 1.13(c) hereof; (ii) Borrower (that is "Debtor") has been using or operating under said name, identity or corporate structure without change for the time period set forth in Subsection 1.13(c) hereof; and (iii) the location of the collateral is upon the Land. Borrower covenants and agrees that Borrower will furnish Lender with notice of any change in the matters addressed by clauses (i) and (iii) of this Subsection 1.13(b) within thirty (30) days of the effective date of any such change and Borrower will promptly execute any financing statements or other instruments deemed necessary by Lender to prevent any filed financing statement from being misleading or losing its perfected status.

(c) The information contained in this Subsection 1.13(c) is provided in order that this Security Instrument shall comply with the requirements of the Uniform Commercial Code, as enacted in the state wherein the Property lies, for instruments to be filed as financing statements. The names of the "Debtor" and the "Secured Party", the identity or corporate structure and residence or principal place of business of "Debtor", and the time period for which "Debtor" has been using or operating under said name and identity or corporate structure without change are as set forth in Schedule 1 of Exhibit "C" attached hereto and by this reference made a part hereof; the mailing address of the "Secured Party" from which information concerning the security interest may be obtained, and the mailing address of "Debtor", are as set forth in Schedule 2 of said Exhibit "C" attached hereto; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove.

1.14 Further Assurances: After Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds to secure debt, mortgages, deeds of trust, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (i) the obligation of Borrower under the Note and under this Security Instrument and (ii) the security interest created by this Security Instrument as a first and prior security interest upon and security title in and to all of the Premises. The security title of this Security Instrument and the security interest created hereby will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Premises or any part thereof.

1.15 Expenses. Borrower will pay or reimburse Lender, upon demand therefore, for all attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, affecting the indebtedness, this Security Instrument or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Security Instrument, any condemnation action involving the Premises or any action to protect the security hereof; and any such amounts paid by Lender shall be added to the indebtedness and shall be secured by this Security Instrument.

1.16 Estoppel Affidavits. Borrower and Lender, upon ten (10) days' prior written notice, shall furnish the other a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the indebtedness secured hereby and whether or not any defaults, offsets or defenses exist relating to the indebtedness, or any portion thereof, and, if such offsets or defenses exist, stating in detail the specific facts relating to each.

1.17 Limit of Validity. If from any circumstances whatsoever fulfillment of any provision of this Security Instrument or of the Note, at the time performance of such provision shall be due, shall involve

transcending the limits of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount then inso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Security Instrument or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section 1.17 shall control every other provision of this Security Instrument and of the Note.

#### 1.18 Hazardous Substances.

(a) Borrower warrants and represents to Lender that neither Borrower or its tenants nor, to the best of its knowledge after due inquiry, any predecessor in title, has used the Property, or any portion thereof, for the disposal or storage of hazardous wastes or materials. Borrower shall not generate, store, handle, discharge or otherwise deal with, or cause or permit any tenant of the Land or Improvements to generate, store, handle, discharge or otherwise deal with any toxic or hazardous waste, substance or material or any pesticide on the Property or Improvements. Borrower shall not allow a lien relating to any such substance to be imposed on the Property or Improvements pursuant to any law, order, rule or regulation of the United States, any state or local government or any agency or instrumentality thereof, as heretofore or hereafter amended. If it shall be determined that any predecessor in title to the Property caused or permitted any such discharge, and action by Borrower to clear the Land or Improvements of such waste or material is not instituted and completed within such periods of time as may be allowed to Borrower by the governmental authorities with jurisdiction over the Property or Improvements, such failure shall constitute an Event of Default under this Security Instrument.

(b) If Borrower received any notice of (i) the happening of any event involving the use, storage, spill, discharge or cleanup of any hazardous or toxic waste, substance or material or pesticide or any significant quantity of oil on or about the Property or Improvements, or any portion thereof, or caused by Borrower or any tenant of the Property (a "Hazardous Discharge"), or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, noise emissions or any other environmental, health or safety matter affecting Borrower, the Property or Improvements, or any portion thereof, or its or Borrower's operations on the Land (an "Environmental Complaint") from any person or entity, including without limitation, the State of Alabama (the "State"), the United States Environmental Protection Agency ("EPA"), the United States Army Corps of Engineers (the "Corps"), or the United States Coast Guard (the "Coast Guard"), then Borrower will immediately give written notice of same to Lender and shall promptly comply with its obligations under law with regard to such Hazardous Discharge or Environmental Complaint.

(c) Without limiting Lender's rights under this Security Instrument, Lender shall have the right, but not the obligation, to exercise any of its rights as may be provided for elsewhere in this Security Instrument or to enter onto the Land or Improvements or to take such other actions as it deems necessary or advisable to clean up, remove, resolve, or minimize the impact of or otherwise deal with, any such Hazardous Discharge or Environmental Complaint upon its receipt of any notice from any person or entity, including, without limitation, the State, and EPA, the Corps, the Coast Guard of Borrower, asserting the happening of a Hazardous Discharge or Environmental Complaint which, if true, could result in any order, suit or other action against Borrower and/or the Property, or any portion thereof, by any governmental agency or otherwise which, in the sole opinion of Lender, could jeopardize its security under this Security Instrument or any portion thereof, provided, however that Borrower has not immediately commenced and is diligently pursuing either (x) the cure or correction, in form, scope and substance reasonably acceptable to Lender and acceptable to the agency or entity asserting the happening of the Hazardous Discharge or Environmental Complaint, of the event which constitutes the basis for the Hazardous Discharge or Environmental Complaint, and is continuing diligently to pursue such cure or correction to completion, or (y) proceedings for an injunction, a restraining order or other appropriate emergency relief preventing such agency or entity from asserting such claim, which relief is granted within ten (10) days of the occurrence giving rise to the claim and the injunction, order or emergency relief is not thereafter dissolved or reversed on appeal; and in either of the foregoing events, Borrower has posted a bond, letter of credit or other security satisfactory in form, substance and amount to both Lender and the agency or entity asserting the Hazardous Discharge or Environmental Complaint to secure the proper and complete cure or correction of the event which constitutes the basis for the claim.

(d) In addition to those events hereinafter specified, the occurrence of any of the following events shall constitute an Event of Default under this Security Instrument, entitling Lender to all of the rights and remedies provided therefor:

(i) If Borrower receives a first notice of a Hazardous Discharge or Environmental Complaint and does not give Lender notice of the same from Borrower within five (5) business days of the date Borrower first receives said notice; or

(ii) If the State, EPA or any other state or federal agency asserts or creates a lien upon any or all of the Property by reason of the occurrence of a Hazardous Discharge or Environmental Complaint or otherwise and Borrower fails promptly to remedy the problem or to post security adequate to protect Lender's interest in the Property; or

(iii) If the State, EPA or any other state or federal agency asserts a claim against Borrower, the Property or Lender for damages or cleanup costs related to a Hazardous Discharge or Environmental Complaint.

(e) In the event that Borrower is unable or unwilling, after a reasonable period of time, to correct any situation which has resulted in an Hazardous Discharge or Environmental Complaint, Borrower shall have the right to substitute collateral acceptable to Lender. Lender shall have the right to require such proceeding involving an Hazardous Discharge or Environmental Complaint in connection with the Property; (ii) furnishes to Borrower the written opinion of counsel to Lender that Lender's position as Lender under this Security Instrument is jeopardized in connection with an Hazardous Discharge or Environmental Complaint; or (iii) Lender obtains independent evidence showing that the value of the Property has been substantially diminished as a result of such Hazardous Discharge or Environmental Complaint.

(f) Borrower shall defend, indemnify, and hold Lender harmless from and against any and all claims, losses, liabilities, damages and expenses (including without limitation, cleanup costs and attorneys' fees and expenses, including those arising by reason of any of the aforesaid or an action against Borrower under this indemnity) in connection with any presence on the Property or the Improvements of any toxic or hazardous waste substance or material or otherwise arising directly or indirectly from, out of, or by reason of any Hazardous Discharge, Environmental Complaint, or any environmental, health or safety law governing Borrower,



its operation of the Property or its tenant's operation of the Property or any portion thereof. This paragraph 1.18 shall survive the foreclosure, expiration or sooner termination of this Security Instrument but shall not be construed to apply to Hazardous Discharges which occur after Borrower no longer holds any interest in the Property.

## ARTICLE II

### EVENTS OF DEFAULT

The following shall constitute events of default by Borrower hereunder:

2.01 Payment of Indebtedness. If Borrower should fail to pay the Indebtedness or any part thereof when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment or at a date fixed by reason of acceleration of the due date thereof.

2.02 Other Payments and Terms. If Borrower should fail to make any payment (other than on the Indebtedness) required hereunder, or if Borrower should fail fully and completely to perform its duties and obligations under, or should violate or breach or fail fully and completely to observe, satisfy, or comply with any of the terms, covenants, conditions, agreements, requirements, restrictions, or provisions set forth in, this Security Instrument or any other instrument, document, agreement, letter, or other writing now or hereafter evidencing or securing the Indebtedness or any portion thereof, or heretofore, concurrently herewith or in the future executed by Borrower in favor of Lender in connection with any transaction which resulted in the Indebtedness or any part thereof.

2.03 False Statements. If any certificate, representation, warranty, statement, or other writing made herein or furnished to Lender by or on behalf of Borrower in connection with any transaction which resulted in the Indebtedness or any part thereof should be false, untrue, incomplete, or misleading in any respect as of the date made.

2.04 Seizure or Levy. If the Premises or any part thereof should be seized or levied upon under legal process or a receiver should be appointed for the Premises or any part thereof, and such seizure, levy or appointment is not vacated within thirty (30) days after notice to Borrower by Lender.

2.05 Liens. If any Federal tax lien or any claim of lien for labor or services performed or rendered or alleged to have been performed or rendered, or for materials supplied or furnished or alleged to have been supplied or furnished, or for architectural or engineering services performed or rendered or alleged to have been performed or rendered, in connection with the improvement of or with respect to the Premises should be filed of record against Borrower or the Premises and not be removed from record by payment or posting of bond within thirty (30) days from the date of such filing.

2.06 Priority Claim. If any claim of priority over this Security Instrument should be asserted in any legal or equitable proceeding, and not be dismissed with prejudice within sixty (60) days after the filing thereof.

2.07 Insolvency or Bankruptcy. If Borrower became insolvent as defined in the Uniform Commercial Code of the state wherein the Property lies or makes an assignment for the benefit of creditors; or if any action is brought by Borrower seeking its dissolution or liquidation of its assets or seeking the appointment of a trustee, interim trustee, receiver, or other custodian for any of its property; or if Borrower commences a voluntary proceeding under the Federal Bankruptcy Code; or if any reorganization or arrangement proceeding is instituted by Borrower for the settlement, readjustment, composition, or extension of any of its debts upon any terms; or if any action or petition is otherwise brought by Borrower seeking similar relief or alleging that it is insolvent or unable to pay its debts as they mature. If any action is brought against Borrower seeking its dissolution or liquidation of any of its assets, or seeking the appointment of a trustee, interim trustee, receiver, or other custodian for any of its property, and any such action is consented to or acquiesced in by Borrower or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any proceeding under the Federal Bankruptcy Code is instituted against Borrower and, (i) an order for relief is entered in such proceeding, or, (ii) such proceeding is consented to or acquiesced in by Borrower or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any reorganization or arrangement proceeding is instituted against Borrower for the settlement, readjustment, composition, or extension of any of its debts upon any terms, and such proceeding is consented to or acquiesced in by Borrower or is not dismissed within sixty (60) days after the date upon which it was instituted; or if any action or petition is otherwise brought against Borrower seeking similar relief or alleging that it is insolvent, unable to pay its debts as they mature or generally not paying its debts as they become due, and such action or petition is consented to or acquiesced in by Borrower or is not dismissed within sixty (60) days after the date upon which it was brought.

2.08 Judgments. If any judgment should be rendered against Borrower and such judgment should not be paid in full and satisfied, or appealed from within the time allowed for appeals and be paid in full and satisfied when it becomes final.

2.09 Dissolution or Liquidation. Should Borrower, if a corporation, be liquidated or dissolved or its articles of incorporation expire or be revoked, or, if a partnership or business association, be dissolved or partitioned, or, if a trust, be terminated or expire.

2.10 Diminution of Premises. If the Premises are subjected to actual or threatened waste, or any part thereof is removed, demolished or altered (except for replaceable personal property which is promptly replaced) without the prior written consent of Lender.

2.11 Transfer of Premises. Except as expressly permitted in this Security Instrument, if Borrower transfers, sells, conveys, or assigns all or any portion of the Premises or Borrower's interest therein, without the prior written consent of Lender.

2.12 Encumbrance of Premises. Except as expressly permitted by this Security Instrument, if Borrower mortgages, pledges, hypothecates or otherwise encumbers all or any portion of the Premises or Borrower's interest therein, without the prior written consent of Lender.

ARTICLE IIIREMEDIES AND POWER OF SALE

Upon the occurrence of an event of default, Borrower shall be in default hereunder. If Borrower shall be in default hereunder, Lender may, at its option and election after giving such notice as is required herein, if any, and where an opportunity is provided herein for Borrower to cure default, allowing Borrower to cure said default if any such opportunity is provided herein for Borrower, do any one or more of the following:

3.01 Acceleration of Indebtedness. Lender may immediately declare all or any portion of the indebtedness to be immediately due and payable, whereupon the same shall be and shall become due and payable forthwith without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.

3.02 Entry and Possession. Lender may enter upon the Premises or any part thereof and take possession thereof, excluding therefrom Borrower and all agents, employees, and representatives of Borrower; employ a manager of the Premises or any part thereof; hold, store, use, operate, manage, control, maintain, and lease the Premises or any part thereof; conduct business thereon; make all necessary and appropriate repairs, renewals, and replacements; insure or keep the Premises insured; carry out or enter into agreements of any kind with respect to the Premises; and assume any of the Borrower's rights under any contracts Borrower has respecting the Premises.

3.03 Collection of Rents. Lender may collect and receive all Rents, and apply the same to the indebtedness, after deducting therefrom all costs, charges, and expenses of taking, holding, managing, and operating the Premises, including the reasonable fees and expenses of Lender's attorneys and agents.

3.04 Payments. Lender may pay any sum or sums deemed necessary or appropriate by Lender to protect the Premises or any part thereof or Lender's interest therein.

3.05 Other Remedies. Lender may exercise all rights and remedies contained in any other instrument, document, agreement, or other writing now or hereafter evidencing or securing the indebtedness or any part thereof, or heretofore, concurrently herewith or in the future executed by Borrower in favor of Lender in connection with any transaction resulting in the indebtedness or any part thereof, including, without limiting the generality of the foregoing, the Note.

3.06 Appointment of Receiver. Lender may make application to any court and be entitled to the appointment of a receiver to take charge of the Premises or any part thereof without alleging or proving, or having any consideration given to, the insolvency of Borrower, the value of the Premises as security for the indebtedness or any other matter usually incident to the appointment of a receiver.

3.07 UCC Remedies. With respect to the personal property and fixtures in which a security interest is herein granted, at Lender's option, Lender may exercise any or all of the rights accruing to a secured party under this instrument, the Uniform Commercial Code of the state wherein the Property lies and any other applicable law. Borrower shall, if Lender requests, assemble all such personal property and make it available to Lender at a place or places, to be designated by Lender, which shall be reasonably convenient to Borrower and Lender. Any notice required to be given by Lender of a public or private sale, lease, or other disposition of the personal property or any other intended action by Lender may be personally delivered to Borrower or may be deposited in the United States mail with postage prepaid duly addressed to Borrower at the address shown in the paragraph herein captioned "Notices," or at other address therefore designated by Borrower in writing to Lender, at least five (5) business days prior to such proposed action, and shall constitute reasonable and fair notice to Borrower of any such action.

3.08 Power of Sale. Lender shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same before the Court House door of the County (or the division thereof) where said property, or any substantial part of said property, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said County; and upon the payment of the purchase price, Lender or the auctioneer at said sale is authorized to execute to the purchaser for and in the name of Borrower a good and sufficient deed to the property sold. Lender may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder. Borrower hereby waives any requirement that the mortgaged property be sold in separate tracts and agrees that Lender may, at its option, sell the property en masse regardless of the number of parcels hereby conveyed. Lender may hold one (1) or more sales hereunder until the indebtedness has been satisfied in full. The proceeds of each sale by Lender hereunder shall be applied first to the costs and expenses of the sale and of all proceedings in connection therewith (including without limitation the fees and expenses of Lender's attorneys in connection therewith), then to the payment of the balance of the indebtedness, and the remainder, if any, shall be paid to Borrower or to the parties entitled thereto by law. If the proceeds of any sale are not sufficient to pay the indebtedness in full, Lender shall determine, at Lender's option and in Lender's discretion, the portions of the indebtedness to which the proceeds (after deducting therefrom the costs and expense of the sale and all proceedings in connection therewith) shall be applied and in what order the proceeds shall be so applied. Borrower covenants and agrees that, in the event of any sale pursuant to the agency and power herein granted, Borrower shall be and become a tenant holding over and shall deliver possession of the Premises, or the part thereof or interest therein sold, to the purchaser or purchasers at the sale or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over.

3.09 Remedies Cumulative. All of the foregoing rights and remedies are cumulative of and in addition to, and not restrictive of or in lieu of, any right or remedy provided for by statute, or now or hereafter existing at law or in equity. Lender may, at Lender's election and at Lender's sole discretion, exercise each and every such right and remedy concurrently or separately or in any combination.

ARTICLE IVADDITIONAL PROVISIONS

The following terms and conditions shall constitute additional covenants and agreements by Borrowers:



4.01 Non-Residential Status of Premises. Borrower represents and warrants to Lender that neither all of the Premises nor any part thereof is to be used as a dwelling place by Borrower at the time this Security Instrument is entered into by Borrower.

4.02 Commercial Transaction. The interest of Lender under this Security Instrument and the liability and obligation of Borrower for the payment of the indebtedness arise from a "commercial transaction" Borrower waives any and all rights which Borrower may have to notice prior to seizure by Lender of any interest in personal property of Borrower which constitutes part of the Premises, whether such seizure is by writ of possession or otherwise.

4.03 Applicable Law. This agreement shall be governed by, construed under, and interpreted and enforced in accordance with the laws of the state wherein the Property lies.

4.04 Forbearance. Lender shall not be deemed to waive any of Lender's rights or remedies under this Security Instrument unless such waiver be expressed in writing and signed by or on behalf of Lender. No delay, omission or forbearance by Lender in exercising any of Lender's rights or remedies shall operate as a waiver of such rights or remedies. A waiver in writing on one occasion shall not be construed as a waiver of any right or any remedy on any future occasion.

4.05 Time. Time is and shall be the essence of this Security Instrument and the covenants and agreements by Borrower.

4.06 Captions. Any captions or headings preceding the text of separate section, paragraphs, and subparagraphs hereof are solely for reference purposes and shall not affect the meaning, construction, interpretation, or effect of the text.

4.07 Notices. All notices, requests, demands, and other communications under this Security Instrument, the Note, shall be in writing and shall be deemed to have been duly given: (i) to Borrower when personally delivered to Borrower, (ii) to Lender when personally delivered to an officer of Lender authorized to receive such notices, or, (iii) two (2) days after deposited in the United States Mail, certified mail with return receipt requested and with all postage prepaid, addressed as follows:

To Borrower:

Shewmake Development Co., Inc.  
3195 Cahaba Heights Road  
Birmingham, Alabama 35243

To Lender:

Statesman Bank for Savings, F.S.B.  
3657 Canton Highway, Suite 201  
Marietta, Georgia 30066

Either party may, by written notice to the other, use a different address for receiving notices hereunder; provided, however, that no change in either party's address for receiving notices hereunder shall be effective until the other party has actually received notice thereof. The foregoing address of Borrower constitutes the mailing address of the Debtor, and the foregoing address of Lender constitutes an address of the secured party from which information concerning the security interest may be obtained, as required by the Uniform Commercial Code of the state wherein the Property lies.

4.08 Severability. Wherever possible, each provision of this Security Instrument shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Security Instrument shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Security Instrument.

4.09 Definitions. The word "Borrower" as used herein shall include the legal representatives, successors, and permitted assigns of Borrower as if so specified at length throughout this Security Instrument, and all covenants, agreements, duties, obligations, liabilities, and responsibilities of Borrower shall be binding upon and enforceable against the legal representatives, successors, and permitted assigns of Borrower. The word "Lender" as used herein shall include the transferees, successors, legal representatives, and assigns of Lender as if so specified at length throughout this Security Instrument, and all rights of Lender under this Security Instrument shall inure to the benefit of the transferees, successors, legal representatives, and assigns of Lender. The words "Borrower" and "Lender" shall include the neuter, masculine, and feminine genders, and the singular and the plural.

4.10 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft or destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement, reasonably satisfactory to Borrower or in the case of any such mutilation, upon surrender of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Security Instrument to the Note shall be deemed to refer to such replacement Note.

IN WITNESS WHEREOF, the Borrower has executed, sealed, and delivered this Security Instrument on the day and year first written above.

Shewmake Development Co., Inc.

By: *Jack L. Shewmake*  
Jack L. Shewmake, President

(CORPORATE SEAL)

BOOK 273 PAGE 865

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said State and County hereby certify that JACK L. SHEWMAKE, whose name as President of Shewmake Development Co., Inc., is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation.

Given under my hand and seal this 22nd day of November, 1989.

*Linda A. Lynch*  
Notary Public

My Commission Expires: 9/93

[NOTARIAL SEAL]

BOOK 273 PAGE 866

## EXHIBIT "A"

Lot 73, in Block 4, according to the Survey of Inverness Point - Phase II, as recorded in Map Book 159, Page 30, in the Probate Office of Jefferson County, Alabama, and in Map Book 13, Page 19, in the Probate Office of Shelby County, Alabama.



## EXHIBIT "B"

1. General and special taxes for the current year and subsequent years.
2. Restrictions appearing of record in Book 209, Page 890, Book 221, page 275; Book 226, page 837; Book 232, page 3; and Book 237, page 700, Shelby County, Alabama; AND Real Volume 3524, page 901; Real Volume 3524, page 957; Real Volume 3573, page 281; and Real Volume 3592, page 735, Jefferson County, Alabama.
3. Agreement as recorded in Book 322, page 377, Shelby County, Alabama.
4. Terms and conditions of that certain easement agreement as recorded in Real Volume 3318, Page 27; and Real Volume 3502, page 848, Jefferson County, Alabama; and Book 169, page 384, Shelby County, Alabama.
5. Riparian and other rights created by the fact that the subject property fronts on Lake Highland.
6. 35 foot building line running back from Glenstone Circle and Glenstone Lane; also a 10 foot side building line on the northeasterly side of lot, as shown on recorded map.

EXHIBIT "C"

SCHEDULE 1

DESCRIPTION OF "DEBTOR" AND "SECURED PARTY"

A. Debtor

1. Name and identity of organizational structure:

Sheweake Development Co., Inc.

2. The principal place of business of Debtor in the State of Alabama is:

3195 Cahaba Heights Road  
Birmingham, Alabama 35243

3. Debtor has been using or operating under the name and structure since:

B. Secured Party

STATESMAN BANK FOR SAVINGS, F.S.B.

SCHEDULE 2

(NOTICE MAILING ADDRESSES OF "DEBTOR" AND "SECURED PARTY")

A. The mailing address of Debtor is:

Sheweake Development Co., Inc.  
3195 Cahaba Heights Road  
Birmingham, Alabama 35243

B. The mailing address of Secured Party is:

Statesman Bank for Savings, FSB  
3657 Canton Highway, Suite 201  
Marietta, Georgia 30066

(C:\WP\DATA\SD73)

BOOK 273 PAGE 869

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

1989 DEC 21 PM 12:40

RECORDED & INDEXED  
DEED TAX HAS BEEN PD. ON THIS INSTRUMENT

*George R. Powell*  
JUDGE OF PROBATE

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

90 JAN 11 AM 9:16

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

NO TAX COLLECTED

1. Deed Tax	-----	\$	-----
2. Imp. Tax	-----	\$	-----
3. Int. Filing Fee	-----	\$	32.50
4. Int. Filing Fee	-----	\$	3.00
5. Int. Filing Fee	-----	\$	1.00
6. Int. Filing Fee	-----	\$	1.00
7. Int. Filing Fee	-----	\$	37.50