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**MORTGAGE AND SECURITY AGREEMENT**

**between**

**EES JOINT VENTURE**

**and**

**FIRST COMMERCIAL BANK**

**March 30, 1990**

BOOK 285 PAGE 215

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**This instrument prepared by  
and after recordation should  
be returned to:**

**Charles A. J. Beavers, Jr.  
Bradley, Arant, Rose & White  
1400 Park Place Tower  
Birmingham, Alabama 35203  
(205) 521-8000**

ch'l.

STATE OF ALABAMA )  
 )  
SHELBY COUNTY )

**MORTGAGE AND SECURITY AGREEMENT**

**KNOW ALL BY THESE PRESENTS:** That, the undersigned, **EES Joint Venture**, an Alabama general partnership ("Mortgagor"), whose address is 600 Luckie Drive, The Luckie Building, Suite 215, Birmingham, Alabama 35223 for and in consideration of the indebtedness as herein recited hereby **GRANTS, BARGAINS, SELLS, CONVEYS, MORTGAGES and WARRANTS** to **First Commercial Bank**, a state banking corporation ("Mortgagee") whose address is P. O. Box 11746, Birmingham, Alabama 35202-1746, its successors and assigns, and the heirs of such successors and assigns, forever, all and singular, the real property located in Shelby County, Alabama, which is more particularly described in Exhibit A attached hereto and made a part hereof as if specifically set out herein, (the "Real Estate"), subject to the matters set forth on Exhibit B attached hereto and made a part hereof ("Permitted Encumbrances").

Together with all rights, hereditaments and appurtenances in anywise appertaining or belonging thereto; and together with all buildings and improvements now or hereafter located on the Real Estate and all equipment, fixtures and articles of personal property now or hereafter attached to or used in and about the building or buildings, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment, switchboards, stoves, ranges, vacuum cleaning systems, garbage disposals, refrigerators, dishwashers, hot water heaters, trash compactors, other appliances, paging systems, alarm systems, generators, sprinkler systems and other fire prevention and extinguishing apparatus and all other goods, materials, motors, machinery, pipes, equipment, inventory, fittings and fixtures now or hereafter affixed to or located on the Real Estate, and other improvements (such building or buildings and other improvements being hereinafter called the "Project") now or hereafter erected, constructed or developed on the Real Estate which are necessary or useful for complete and comfortable use and occupancy of the Project for the purposes for which they were or are to be erected, constructed or developed, or which are or may be used in or related to the planning, development, financing or the operation thereof; all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to the Project in any manner; all building materials and equipment now or hereafter delivered to the Project and intended to be installed therein including but not limited to all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general, all building material and equipment of every kind and character used or useful in connection with said improvements; all plans and specifications for the Project; all contracts and subcontracts relating to the Project, all deposits (including tenant's security

deposits), funds, accounts, contract rights, instruments, documents, general intangibles (including trademarks, trade names and symbols used in connection therewith), and notes or chattel paper arising from or by virtue of any transactions related to the Project; all permits, licenses, franchises, certificates, and other rights and privileges obtained in connection with the Project; all proceeds arising from or by virtue of the sale, lease or other disposition of any of the real or personal property or interest therein described herein; all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Project; all proceeds arising from the taking of all or a part of the Real Estate or any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, for any public or quasi-public use under any law, or by right of eminent domain, or by private or other purchase in lieu thereof; all good will and books and records relating to the business or businesses operated on the Real Estate; and all other interest of every kind and character which Mortgagor now has or at any time hereafter acquires in and to the above-described real and personal property and all property which is used or useful in connection therewith, including rights of ingress and egress, easements, licenses, and all reversionary rights or interests of Mortgagor with respect to such property, unto Mortgagee, its successors and assigns forever. It is agreed hereby that to the extent permitted by law, the foregoing personal property and fixtures are to be deemed and held to be a part of and affixed to the Real Estate. The foregoing-described real and personal property, and interests in real and personal property are hereinafter collectively called the "Mortgaged Property".

TO HAVE AND TO HOLD, said Mortgaged Property, unto Mortgagee, its successors and assigns forever.

This Mortgage is made to secure and enforce the following described indebtedness, obligations and liabilities (herein called the "Secured Indebtedness"):

(i) Payment of a certain promissory note (the "Note") in the principal sum of Two Million and No/100 (\$2,000,000.00) of even date herewith, executed by Mortgagor, payable to the order of Mortgagee, bearing interest as provided in said note, and any and all renewals, extensions, modifications, substitutions or increases of said note, or any part thereof;

(ii) Complete and full performance of each and every obligation, covenant, duty and agreement of Mortgagor contained in this Mortgage;

(iii) Performance of all obligations of Mortgagor under the Loan Agreement of even date herewith (herein so called) and under any other instrument evidencing, securing or pertaining to the Secured Indebtedness, or evidencing any renewal or extension or modification or increase of the Secured Indebtedness, or any part thereof, and further, Mortgagor's punctual and proper performance of all of Mortgagor's covenants, obligations and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, assignment, loan agreement or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with or related to the Secured Indebtedness, or any part thereof, (hereinafter referred to as the Loan Documents);

(iv) Payment of all funds hereafter advanced by Mortgagee to or for the benefit of Mortgagor, as contemplated by any covenant or provision herein contained.

All Secured Indebtedness shall be payable to Mortgagee at Mortgagee's address specified above, or at such other address as may be designated by Mortgagee from time to time; and, unless otherwise provided in the instrument evidencing or creating such indebtedness, shall bear interest at the same rate per annum as the Note bears, from the date of accrual of such indebtedness until paid. If any Secured Indebtedness shall be collected by legal proceedings, whether through a probate or bankruptcy court or otherwise, or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by any option given to Mortgagee to mature same, Mortgagor agrees to pay Mortgagee's reasonable attorneys' and collection fees, whether suit be brought or not, and such fees shall be a part of the Secured Indebtedness. This Mortgage shall also secure all renewals, extensions, modifications, substitutions and increases of any of the Secured Indebtedness.

This conveyance is intended to operate and is to be construed as a Mortgage and Security Agreement and is made under those provisions of existing laws of the State of Alabama.

And for the purpose of further securing the payment of said Secured Indebtedness Mortgagor covenants and agrees as follows:

(1) **Mortgagor's Warranties of Title.** That Mortgagor is lawfully seized in fee and possessed of said Mortgaged Property and has a good right to convey the same as aforesaid, that Mortgagor will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said property is free and clear of all encumbrances, easements and restrictions, except the Permitted Encumbrances.

(2) **Payment and Performance.** Mortgagor will pay all of the Secured Indebtedness, together with the interest thereon, when the same shall become due, in accordance with the terms of the Note, Loan Agreement, and the Loan Documents.

(3) **Mortgagee's Right to Perform.** Upon Mortgagor's failure to make any payment or perform any act required by the Note, Loan Agreement or Loan Documents, then at any time thereafter, and without written notice to or demand upon Mortgagor, Mortgagee may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Mortgagor, and shall have the right to enter the Mortgaged Property for such purpose and to take all such action thereon as Mortgagee may deem necessary or appropriate.

(4) **Organization and Power and Restriction on Change of Interests in Mortgagor.** Mortgagor and each general partner in Mortgagor are duly organized and validly existing under applicable state laws and the transaction contemplated hereby is within their respective powers, has been duly authorized by all requisite action and is not in contravention of law or the by-laws or other instruments by which they are created or governed.

(5) **Existence of Mortgagor.** Mortgagor will preserve and keep in full force and effect its existence, rights, franchises, and trade names.

(6) **Insurance.** Mortgagor shall keep or cause to be kept the Mortgaged Property insured under comprehensive general liability insurance and, to the extent of any improvements located or work being done upon the Mortgaged Property, against loss or damage by fire, extended coverage perils, vandalism, malicious mischief, workmen's compensation coverage, and any such other hazards, casualties, or other contingencies as from time to time may be required by Mortgagee in such manner and in such companies and amounts as Mortgagee may approve. All such policies shall name Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to Mortgagee, to be attached to each policy) be payable to Mortgagee to the extent the Secured Indebtedness, and provide that the insurance provided thereby, as to the interest of Mortgagee, shall not be invalidated by any act or neglect of Mortgagor, nor by the commencement of any proceedings by or against Mortgagor in bankruptcy, insolvency, receivership or any other proceeding for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. All such insurance shall be replacement cost coverage rather than actual cash value coverage. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee. At least thirty (30) business days prior to the date the premiums on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Mortgagor will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to Mortgagee) to give Mortgagee at least thirty (30) business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. Mortgagor agrees that Mortgagor will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damages to the Mortgaged Property caused by any casualty. If Mortgagor fails to keep the Mortgaged Property insured as above specified, Mortgagee may at its option and sole discretion, insure the Mortgaged Property for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Mortgagee and may procure such insurance at Mortgagor's expense.

Mortgagee is hereby authorized, but not required, on behalf of Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Secured Indebtedness, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Secured Indebtedness or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to Mortgagor, but no such application, holding in reserve or release shall cure or waive any default by Mortgagor. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Property in extinguishment of the Secured Indebtedness, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. If the Mortgaged Property or any part thereof is located within an area that has



been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, then Mortgagor will obtain such insurance as is required by such governmental authority in amounts required by Mortgagee.

(7) **Taxes and Assessments.** Mortgagor will pay all taxes and assessments against or affecting the Mortgaged Property as the same shall become due and payable, and, if Mortgagor fails to do so, Mortgagee may pay them, together with all costs and penalties thereon, at Mortgagor's expense; provided, however, that Mortgagor may in good faith, in lieu of paying such taxes and assessments as they become due and payable, by appropriate proceedings, contest the validity thereof, and pending such contest Mortgagor shall not be deemed in default hereunder because of such nonpayment, if prior to delinquency of the asserted tax or assessment, Mortgagor furnishes Mortgagee an indemnity bond, conditioned that such tax or assessment with interest, cost and penalties be paid as herein stipulated secured by a deposit in cash, or security acceptable to Mortgagee, or with surety acceptable to Mortgagee, in the amount of the tax or assessment being contested to Mortgagor, and a reasonable additional sum to pay all possible costs, interest and penalties imposed or incurred in connection therewith, and if Mortgagor promptly pays any amount adjudged by a court of competent jurisdiction to be due, with all costs, penalties and interest thereon, before such judgment becomes final; and provided further, that in any event, each such contest shall be concluded and the tax, assessment, penalties, interest and costs shall be paid prior to the date such judgment becomes final or any writ or order is issued under which the Mortgaged Property may be sold pursuant to such judgment.

(8) **Condemnation.** All judgments, decrees and awards for injury or damage to the Mortgaged Property, and all awards pursuant to proceedings for condemnation thereof, are hereby assigned in their entirety to Mortgagee, who may apply the same to the Secured Indebtedness in such manner as it may elect; and Mortgagee is hereby authorized, in the name of Mortgagor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree. Immediately upon its obtaining knowledge of the institution or the threatened institution of any proceedings for the condemnation of the Mortgaged Property, Mortgagor shall notify Mortgagee of such fact. Mortgagor shall then, if requested by Mortgagee, file or defend its claim thereunder and prosecute same with due diligence to its final disposition and shall cause any awards or settlements to be paid over to Mortgagee for disposition pursuant to the terms of this Mortgage. Mortgagee shall be entitled to participate in and to control same and to be represented therein by counsel of its own choice, and Mortgagor will deliver, or cause to be delivered, to Mortgagee such instruments as may be requested by it from time to time to permit such participation. In the event Mortgagee, as a result of any such judgment, decree, or award, believes that the payment or performance of any obligation secured by this Mortgage is impaired, Mortgagee may, without notice, declare all of the Secured Indebtedness immediately due and payable.

(9) **Mortgagor's Interest in the Mortgaged Property.** If, while this Mortgage is in force, the interest of Mortgagor or the lien of Mortgagee in the Mortgaged Property hereby conveyed or any part thereof, shall be endangered or shall be attacked directly or indirectly, and if Mortgagor is not defending said attacks or otherwise protecting

the lien of this Mortgage, Mortgagor hereby authorizes Mortgagee at Mortgagor's expense, to take all necessary and proper steps for the defense of such interest, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against such interest.

(10) Taxes on Note or Mortgage. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Mortgage, or upon any rights, titles, liens or security interests created hereby, or upon the Note, or any part thereof, Mortgagor shall immediately pay all such taxes; provided that, in the alternative, Mortgagor may, in the event of the enactment of such a law, and must, if it is unlawful for Mortgagor to pay such taxes and Mortgagor cannot legally reimburse Mortgagee for payment of such taxes, prepay the Note within sixty (60) days after demand for such prepayment by Mortgagee.

(11) Statements by Mortgagor. Mortgagor shall, at any time and from time to time, furnish promptly, upon request, a written statement or affidavit, in such form as may be required by Mortgagee, stating the unpaid balance of the Note and that there are no offsets or defenses against full payment of the Note, or if there are any such offsets and defenses, specifying them. Mortgagor waives any claim against Mortgagee for such offsets or defenses if not specified as provided herein and agrees to hold Mortgagee harmless therefor.

(12) Mortgagee's Expenses. If, in pursuance of any covenant contained herein or in any other instrument executed in connection with the loan evidenced by the Note or in connection with any other Secured Indebtedness, Mortgagee shall expend any money chargeable to Mortgagor or subject to reimbursement by Mortgagor under the terms of such covenant or agreement, Mortgagor will repay the same to Mortgagee immediately at the place where the Note or other Secured Indebtedness is payable, together with interest thereon at the rate of interest payable on account of the Note or such other indebtedness in the event of a default thereunder from and after the date of Mortgagee's making such payment. The sum of each such payment shall be added to the Secured Indebtedness and thereafter shall form a part of the same, and it shall be secured by this Mortgage and by subrogation to all the rights of the person or entity receiving such payment. Mortgagee may make advances, but shall not be obligated to do so, for any of the following: (i) insurance, (ii) payment of taxes or any part thereof, (iii) repair, maintenance and preservation of the Mortgaged Property, or of any buildings or other structures thereon, including fixtures, (iv) for the discharge of any liens or encumbrances on the Mortgaged Property, (v) for perfecting the title thereto, (vi) for enforcing collection of the Secured Indebtedness, (vii) for any water, gas or electric charge imposed for any services rendered to the Mortgaged Property, (viii) for the protecting or preserving of any use being made of the Mortgaged Property, (ix) for advances to any trustee or receiver of the Mortgaged Property, and (x) for any additions or improvements to the Mortgaged Property or to any buildings or other structures thereon, including fixtures, considered desirable by Mortgagee while it or any receiver or trustee is in possession thereof. Mortgagee may make and is hereby authorized to pay any payment herein, according to any bill, statement or estimate without inquiry into the accuracy of the bill, statement or estimate or into the validity thereof. Mortgagee in making any payment herein authorized, relating to any apparent or

threatened adverse title, lien, statement or lien, encumbrance, mortgage, claim or charge, shall be the sole judge of the legality or validity of same.

**(13) Waste, Demolition, Alteration, Replacement or Repair of Mortgaged Property.** Mortgagor shall cause the Mortgaged Property and every part thereof to be maintained, preserved, kept safe and in good repair, and in good working condition. Mortgagor shall not commit or permit waste thereon. Except in accordance with the Land Plans (as defined in the Loan Agreement), Mortgagor shall not remove, demolish or alter the design or structural character of the Project or the Mortgaged Property now or hereafter erected on the Real Estate without the express prior written consent of Mortgagee. Mortgagor shall comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mortgagor will discharge all claims for labor performed and material furnished therefor, and will not suffer any lien of mechanics or materialmen to attach to any part of the Mortgaged Property. Mortgagor agrees not to remove any of the fixtures or personal property included in the Project or the Mortgaged Property without the express prior written consent of Mortgagee and unless the same is immediately replaced with like property of at least equal value and utility.

BOOK 285 PAGE 222  
Mortgagee and other persons authorized by Mortgagee shall have access to and the right to enter and inspect the Project and the Mortgaged Property at all reasonable times, and upon reasonable notice to Mortgagor, including monthly inspections if deemed necessary by Mortgagee. In the event Mortgagee finds that Mortgagor is not maintaining the Mortgaged Property as referenced herein, Mortgagee shall notify Mortgagor in writing of the needed repairs and Mortgagor shall have ten (10) business days to make satisfactory arrangements to bring the Mortgaged Property back to good condition. If after such time, satisfactory arrangements have not been made to bring the Mortgaged Property back to good condition as determined by the sole discretion of Mortgagee, Mortgagee shall have the right to make the repairs required at the expense of Mortgagor as previously enunciated in this Mortgage, or shall have the right to declare the Secured Indebtedness to be at once due and payable under the terms of this Mortgage.

**(14) Impairment.** Mortgagor will not do, or omit to do, any act or thing which would impair the security of this Mortgage.

**(15) Sale of Mortgaged Property.** Except as provided in paragraph 49 hereof, it shall be a default hereunder if all or any part of the Mortgaged Property (other than items of personalty which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new) shall become vested in any party other than Mortgagor, whether by operation of law or otherwise without the prior written consent of Mortgagee which may be withheld arbitrarily in Mortgagee's sole discretion. If Mortgagee should consent to any sale or conveyance of the Mortgaged Property, which consent may be arbitrarily withheld with or without cause, Mortgagor will not sell all or any portion of the Mortgaged Property unless the purchaser, as a part of the consideration, shall either



(a) expressly agree to assume the payment of the Secured Indebtedness or (b) expressly agree that the title and rights of such purchaser are and shall remain unconditionally subject to all of the terms of this Mortgage for the complete fulfillment of all obligations of Mortgagor hereunder, and unless also, the deed shall expressly set forth such agreement of the purchaser. As a condition to its consent to any sale, transfer, conveyance, lease, assignment or other disposition of the Mortgaged Property, Mortgagee may, at its option, charge a transfer fee not to exceed five (5%) percent of the then outstanding principal balance of the Note. Mortgagor shall also not grant any easement whatever with respect to any of the Mortgaged Property without the joinder therein of Mortgagee, or rent or lease any of the Mortgaged Property for any purpose whatever for a period longer than one year without the prior written consent of Mortgagee, which in Mortgagee's sole discretion can be arbitrarily withheld with or without cause. The provisions of this Paragraph (15) shall apply to any and all sales, transfers, conveyances, exchanges, leases, assignments or other dispositions by Mortgagor, its successors and assigns, and any subsequent owners of the Mortgaged Property, or any part thereof.

BOOK 285 PAGE 223  
(16) **Successors.** If the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the Secured Indebtedness in the same manner as with Mortgagor without in any way vitiating or discharging Mortgagor's liability hereunder or upon the Secured Indebtedness. No sale of the Mortgaged Property, and no forbearance on the part of Mortgagee, and no extension of the time for the payment of the Secured Indebtedness, given by Mortgagee, shall operate to release, discharge, modify, change or affect the original liability of Mortgagor or the liability of any guarantors or sureties of Mortgagor, either in whole or in part.

(17) **Subsequent Easements.** The purchaser at any foreclosure sale hereunder may disaffirm any easement granted, or rental, lease or other contract hereafter made, without the express written consent of Mortgagee or in violation of any provision of this Mortgage, and may take immediate possession of the Mortgaged Property free from, and despite the terms of, such grant of easement and rental or lease contract.

(18) **Subordinate Mortgages.** Mortgagor shall not execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property, except as provided in the Loan Agreement.

(19) **Payment of Prior Lien.** To the extent that proceeds of the Note are used to pay any outstanding lien, charge or encumbrance against or affecting the Mortgaged Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to all rights, interests and liens owned or held by any owner or holder of such outstanding liens, charges or encumbrances, irrespective of whether such liens, charges or encumbrances are released of record.

(20) **Limitation on Interest.** All agreements between Mortgagor and Mortgagee, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or

BOOK 285 PAGE 224  
agreed to be paid, to Mortgagee for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law (state or federal). If from any circumstance whatsoever fulfillment of any provision thereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Mortgagee shall ever receive anything of value as interest, or deemed interest under applicable law, under such Note or this Mortgage or otherwise an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other Secured Indebtedness and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note and such other indebtedness, such excess shall be refunded to Mortgagor. All sums paid or agreed to be paid to Mortgagee for the use, forbearance, or detention of the Secured Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and/or spread throughout the full term of such indebtedness until payment in full to the end that the rate of interest on account of such indebtedness never exceeds the maximum lawful rate at any time in effect and applicable to such indebtedness. The terms and provisions of this paragraph (20) shall control and supersede every other provisions of all agreements between Mortgagor and Mortgagee.

(21) Security Agreement and Financing Statement. With respect to any portion of the Mortgaged Property which constitutes personal property or fixtures governed by the Uniform Commercial Code of the State of Alabama (hereinafter called the "Code"), this Mortgage shall constitute a security agreement between Mortgagor, as the Debtor, and Mortgagee, as the Secured Party, and Mortgagor hereby grants to Mortgagee a security interest in such portion of the Mortgaged Property. Cumulative of all other rights of Mortgagee hereunder, Mortgagee shall have all of the rights conferred upon secured parties by the Code. Mortgagor will execute and deliver to Mortgagee all financing statements that may from time to time be required by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagor hereby authorizes Mortgagee to execute and file, without Mortgagor's joinder, any and all financing statements or continuation statements necessary or desirable to perfect or maintain the validity and priority of Mortgagee's security interest. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Code with respect to such property, and it is expressly agreed that if upon default Mortgagee should proceed to dispose of such property in accordance with the provisions of the Code, ten (10) business days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Code requiring such notice; provided, however, that Mortgagee may at its option dispose of such property in accordance with Mortgagee's rights and remedies with respect to the Real Estate pursuant to the provisions of this Mortgage, in lieu of proceeding under the Code.

Mortgagor shall give advance notice in writing to Mortgagee of any proposed change in Mortgagor's name, identity or structure and will execute and deliver to Mortgagee, prior to or concurrently with the occurrence of any such change, all additional

financing statements that Mortgagee may require to establish and maintain the validity and priority of Mortgagee's security interest with respect to any Mortgaged Property described or referred to herein.

Some of the items of Mortgaged Property described herein are goods that are or are to become fixtures related to the Real Estate, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Property is situated. Information concerning the security interest created by this instrument may be obtained from Mortgagee, as secured party, at the address of Mortgagee stated above. The mailing address of Mortgagor, as debtor, is as stated above.

(22) **Financial Statements.** Mortgagor shall deliver to Mortgagee such financial statements as are required in the Loan Agreement.

(23) **Notice of Litigation.** Mortgagor consents and agrees that it will give notice to Mortgagee of any litigation which Mortgagor becomes involved in and will continue to thereafter provide to Mortgagee periodic statements of the status and progress of such litigation as may be requested by Mortgagee.

(24) **Change of Zoning.** Mortgagor covenants and agrees not to request or consent to any change in the zoning of or restrictive covenants affecting the Mortgaged Property without the prior written consent of Mortgagee.

(25) **Compliance with Laws.** The Mortgaged Property, and the use thereof by Mortgagor shall comply with all laws, rules, ordinances, regulations, covenants, conditions, restrictions, orders and decrees of any governmental authority or court applicable to Mortgagor, Mortgaged Property, and its use, and Mortgagor shall pay all fees or charges of any kind in connection therewith. Mortgagor will not use or occupy or allow the use or occupancy of the Mortgaged Property in any manner which violates any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or subject to cancellation any insurance then in force with respect thereto.

(26) **Hold Harmless.** Mortgagor will defend, at its own cost and expense, and hold Mortgagee harmless from, any proceeding or claim affecting the Mortgaged Property. All costs and expenses incurred by Mortgagor in protecting its interests hereunder, including all court costs and reasonable attorneys' fees, shall be borne by Mortgagor.

(27) **Further Assurances.** Mortgagor, upon the request of Mortgagee, will execute, acknowledge, deliver and record such further instruments and do such further acts as may be necessary, desirable or proper to carry out the purposes of any of the Note, Mortgage, Loan Agreement and Loan Documents and to subject to the liens and security interests created thereby any property intended by the terms thereof to be covered thereby, including specifically but without limitation, any renewals, additions, substitutions, replacements, improvements, or appurtenances to the Mortgaged Property.

(28) **Consent.** In any instance hereunder where Mortgagee's approval or consent is required or the exercise of Mortgagee's judgment is required, the granting or denial of such approval or consent and the exercise of such judgment shall be within the sole discretion of Mortgagee and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner; provided, however, that Mortgagee agrees to consider such requests and otherwise exercise its judgment in a reasonable manner.

(29) **No Partnership.** Nothing contained herein is intended to create any partnership, joint venture or association between Mortgagor and Mortgagee, or in any way make Mortgagee a co-principal with Mortgagor with reference to the Mortgaged Property, and any inferences to the contrary are hereby expressly negated.

(30) **No Pledge or Change of Ownership Interest.** Mortgagor and the general partners in Mortgagor shall neither sell, pledge nor assign more than ten percent (10.00%) of their outstanding stock or partnership interests, as the case may be, without the prior written consent of Mortgagee.

(31) **Notices by Governmental Authority, Fire and Casualty Losses, Etc.** Mortgagor shall timely comply with and promptly furnish to Mortgagee true and complete copies of any official notice or claim by any governmental authority pertaining to the Mortgaged Property. Mortgagor shall promptly notify Mortgagee of any fire or other casualty or any notice or taking of eminent domain action or proceeding affecting the Mortgaged Property.

(32) **Trade Names.** At the request of Mortgagee, Mortgagor shall execute a certificate in form satisfactory to Mortgagee listing the trade names under which Mortgagor intends to operate the Mortgaged Property, and representing and warranting that Mortgagor does business under no other trade names with respect to the Mortgaged Property. Mortgagor shall immediately notify Mortgagee in writing of any change in said trade names, and will, upon request of Mortgagee, execute any additional financing statements and other certificates required to reflect the change in trade names and will execute and file any assumed name certificate required by applicable laws.

(33) **Recording and Filing.** This Mortgage and all applicable Loan Documents and all amendments, supplements and extensions thereto and substitutions therefor shall be recorded, filed, rerecorded and refilled in such manner and in such places as Mortgagee shall reasonably request, and Mortgagor will pay all such recording, filing, rerecording and refiling fees, title insurance premiums, and other charges.

(34) **Mineral Rights.** Subject to existing rights of other parties holding mineral interests, without written consent of Mortgagee there shall be no drilling or exploring for, or extraction, removal or production of minerals from the surface or subsurface of the Mortgaged Property. The term "minerals" as used herein shall include, without limiting the generality of such term, oil, gas, casinghead gas, coal, lignite hydrocarbons, methane, carbon dioxide, helium, uranium and all other natural elements, compounds and substances, including sand and gravel.

285 PAGE 227 BOOK

(35) **Defeasance.** If Mortgagor shall: (a) pay in full (i) all of the Secured Indebtedness (as defined herein including future advances), including but not limited to all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and (ii) all sums becoming due and payable by Mortgagor under the terms of this Mortgage and Loan Agreement and Loan Documents, including but not limited to advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage; and (b) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Mortgagor, and the entire estate, right, title and interest of Mortgagee will thereupon cease; and Mortgagee in such case shall, upon the request of Mortgagor and at Mortgagor's cost and expense, deliver to Mortgagor proper instruments acknowledging satisfaction of this Mortgage; otherwise, this Mortgage shall remain in full force and effect.

(36) **Events of Default.** The happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default") shall constitute a default under this Mortgage:

(a) any representation or warranty made herein or in the Loan Documents related to any of the Secured Indebtedness shall prove to be false or misleading in any material respect; or

(b) any report, certificate, financial statement or other instrument furnished in connection with any of the Secured Indebtedness or any Loan Document shall prove to be false or misleading in any material respect; or

(c) default shall be made in the prompt payment (within any applicable grace periods) of the principal of and interest payable on the Note or any of the other Secured Indebtedness, as and when due and payable; or

(d) default shall be made with respect to any indebtedness (other than the Secured Indebtedness) of Mortgagor when due or the performance of any other obligation incurred in connection with any indebtedness for borrowed money of Mortgagor, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or any such indebtedness shall not be paid when due; or

(e) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of Mortgagor to be observed or performed pursuant to the terms of any Loan Document or any other event of default shall occur under this Mortgage or the Loan Agreement; or

(f) Mortgagor or any maker, endorser, surety or guarantor of the Note (Mortgagor and any such maker, endorser, surety or guarantor being hereinafter individually called an "Obligor") shall (i) apply for or consent to the appointment of a



receiver, trustee, liquidator or custodian of any such Obligor or of any of such Obligor's properties or assets, (ii) admit in writing any such Obligor's inability to pay such Obligor's debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against such Obligor in any proceeding under the federal Bankruptcy Code, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or file an answer admitting the material allegations of a petition filed against such Obligor in any proceeding under any such law or statute which petition is not dismissed within thirty (30) days of the date of filing, or if corporate, partnership or other action shall be taken by any Obligor for the purpose of effecting any of the foregoing; or

(g) a petition shall be filed, without the application, approval or consent of any Obligor in any court of competent jurisdiction, seeking reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in clause (v) of paragraph (e) above against such Obligor, or the appointment of a receiver, trustee or liquidator or custodian of such Obligor, or of all or a substantial part of such Obligor's properties or assets, and such petition shall not be dismissed within thirty (30) days after the filing thereof; or

(h) a final judgment for the payment of money in excess of an aggregate of \$25,000 shall be rendered against Mortgagor, and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed by appeal or otherwise; or

(i) the interest of Mortgagee in the Mortgaged Property shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon; or

(j) default shall be made in the prompt payment of any advances for insurance, maintenance, repairs, taxes, liens, inspections, assessments or any other advances made by Mortgagee that are called for under this Mortgage; or

(k) if title to all or any part of the Mortgaged Property (other than obsolete or worn personal property replaced by adequate substitutes equal or greater in value than the replaced items when new) shall become vested in any party other than Mortgagor, except as permitted herein, whether by operation of law or otherwise without the prior written consent of Mortgagee, which may be withheld arbitrarily in Mortgagee's sole discretion; or

(l) if the holder of any lien or security interest on the Mortgaged Property institutes foreclosure or other proceedings for the enforcement of its remedies thereunder, or if there is any default under any such lien or security interest or the debt secured thereto; or

(m) acceptance by Mortgagee of any payment of less than the full amount due on the Secured Indebtedness shall be deemed acceptance on account only, and the failure of Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Secured Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

(37) **Remedies of Mortgagee Upon Default.**

(a) **Acceleration of Indebtedness.** Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor, declare all or any part of the Secured Indebtedness immediately due and payable whereupon all such Secured Indebtedness shall forthwith become due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, the Loan Agreement, and any of the other Loan Documents and applicable law.

(b) **Operation of Property by Mortgagee.** Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee) may, but shall not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; and Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default, Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Mortgaged property, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken,

after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Secured Indebtedness shall have been paid in full.

(e) **Personal Property and Fixtures.** On the happening of any Event of Default or at any time thereafter, Mortgagee shall have and may exercise with respect to the personal property and fixtures included in the Mortgaged Property (sometimes referred to as the "Collateral") all rights, remedies and powers of a secured party under the Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At Mortgagee's request, Mortgagor shall assemble the Collateral and make the Collateral available to Mortgagee at any place designated by Mortgagee. To the extent permitted by law, Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Mortgagee existing after default. To the extent that such notice is required and cannot be waived, Mortgagor agrees that if such notice is given to Mortgagor in accordance with the provisions of Paragraph (38) below, at least five (5) business days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

Mortgagor agrees that Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Mortgaged Property in accordance with the

rights and remedies granted under this Mortgage with respect to the Real Estate covered hereby. Mortgagor hereby grants Mortgagee the right, at its option after default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Secured Indebtedness in such order and amounts and manner as Mortgagee may elect. Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) **Assignment of Leases and Rents.** All of the rents, royalties, issues, profits, revenue, income and other benefits derived from the Mortgaged Property or arising from the use or enjoyment of any portion thereof or from any lease or agreement pertaining thereto (hereinafter called the "Rents and Profits") are hereby absolutely and unconditionally assigned, transferred, conveyed and set over to Mortgagee to be applied by Mortgagee in payment of all proper charges and expenses including the just and reasonable compensation for the services of Mortgagee, its attorneys, agents, and others employed by Mortgagee in connection with the operation, management and control of the Mortgaged Property and the conduct of the business thereof, and such further sums as may be sufficient to indemnify Mortgagee from and against any liability, loss or damage on account of any matter or thing done in good faith in pursuance of the rights and powers of Mortgagee hereunder. Mortgagee may, at its option, credit the remainder of the payment of the principal and interest and all other sums payable on the Note and other Secured Indebtedness. Prior to the occurrence of any default hereunder, Mortgagor shall collect and receive all Rents and Profits for the benefit of Mortgagee and Mortgagor, and Mortgagor shall apply the funds so collected first to the payment of the principal and interest and all other sums payable on the Note and in payment of all other Secured Indebtedness and thereafter, so long as no default hereunder has occurred, the balance shall be distributed to the account of Mortgagor. Mortgagor will not (i) execute an assignment of any of its rights, title or interest in the Rents and Profits, or (ii) except where the lessee is in default thereunder, terminate or consent to the cancellation or surrender of any lease of the Mortgaged Property or any part thereof, now or hereafter existing, having an unexpired term of one year or more except that any lease may be cancelled, provided that promptly after the cancellation or surrender thereof a new lease is entered into with a new lessee having a credit standing, in the judgment of Mortgagee, at least equivalent to that of the lessee whose lease was cancelled, on substantially the same terms as the terminated or cancelled lease, or (iii) modify any lease of the Mortgaged Property or any part thereof so as to shorten the unexpired term thereof or so as to decrease the amount of the rent payable thereunder, or (iv) accept prepayments of any installments of rent to become due under any of such leases in excess of one month, except prepayments in the nature of security for the performance of the lessee thereunder, or (v) in any other manner impair the value of the Mortgaged Property or the security of this Mortgage. Mortgagor will not execute any lease of all or any substantial portion of the Mortgaged Property except for actual occupancy by the lessee thereunder, and will at all times promptly and faithfully perform, or cause to be performed, each covenant, condition and



agreement contained in each lease of the Mortgaged Property now or hereafter existing, on the part of lessor thereunder to be kept and performed. Mortgagor shall furnish to Mortgagee, within ten (10) business days after a request by Mortgagee to do so, a written statement containing the names of all lessees of the Mortgaged Property, the terms of their respective leases, the spaces occupied and the rentals payable thereunder.

(g) **Foreclosure Deeds.** Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) **Application of Proceeds.** All payments received by Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Secured Indebtedness that is then due and payable (including without limitation principal, accrued interest, advances and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) any other sums that might be due under this Mortgage, the Note, the Loan Agreement, or the Loan Documents, which have not otherwise been contemplated in (i) and (ii) above, and (iv) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** Upon the occurrence of any Event of Default or at any time thereafter, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Secured Indebtedness due. Any such sale may be made subject to the unmatured part of the Secured Indebtedness, and such sale, if so made, shall not in any manner affect the unmatured part of the Secured Indebtedness, but as to such unmatured part of the Secured Indebtedness shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Secured Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Secured Indebtedness without exhausting any power of foreclosure and the power to sell the Mortgaged property for any other part of the Secured Indebtedness, whether matured at the time or subsequently maturing.

(j) **Waiver of Appraisal Laws.** Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Mortgaged Property (commonly known as appraisal laws), or (ii) any extension of time for the enforcement of the collection of the Secured Indebtedness or any creation or extension of a period of



redemption from any sale made in collecting the Secured Indebtedness (commonly known as stay laws and redemption laws).

(k) **Prerequisites of Sales.** In case of any sale of the Mortgaged Property as authorized by this Paragraph (37), all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment of any of the Secured Indebtedness or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(38) **Notice and Addresses for Notices.** All notices, requests, demands and other communications provided for hereunder shall be in writing and mailed or hand delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other party thereto. Any such notice shall be deemed received five (5) days after properly posting and addressing and depositing said letter in the United States Postal Service, certified mail return receipt requested.

(39) **Partial Release and Additional Security.** Any part of the Mortgaged Property may be released by Mortgagee without affecting the lien, security interest and assignment hereof against the remainder. The lien, security interest and other rights granted hereby shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security, or the extension or renewal of the Secured Indebtedness or any part thereof, shall not release or impair the lien, security interest and other rights granted hereby, or affect the liability of any endorser, guarantor or surety, or improve the right of any permitted junior lienholder; and this Mortgage, as well as any instrument given to secure any renewal or extension of the Secured Indebtedness, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the obligations and Secured Indebtedness are completely paid, performed and discharged.

(40) **Waiver.** To the extent that Mortgagor may lawfully do so, Mortgagor agrees that Mortgagor shall not assert and hereby expressly waives, any right under any statute or rule of law pertaining to the marshalling of assets, valuation and appraisement, the exemption of business or residential homestead, the administration of estates of decedents, dower and curtesy, the rights and remedies of sureties or other matter whatever to defeat, reduce or affect the right of Mortgagee, under the terms of this Mortgage, to sell the Mortgaged Property for the collection of the Secured Indebtedness (without any prior or different resort for collection) or the right of Mortgagee, under the terms of this Mortgage, to the payment of such Secured Indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses of such sale being first deducted).

(41) **No Waiver and Severability.** No waiver of any default on the part of Mortgagor or breach of any of the provisions of this Mortgage or of any other instrument executed in connection with the Secured Indebtedness shall be considered a waiver of any

other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers, and likewise no exercise or enforcement of any rights or powers hereunder shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. If any provision of this Mortgage is held to be illegal, invalid or unenforceable under present or future laws effective while this Mortgage is in effect, the legality, validity and enforceability of the remaining provisions of this Mortgage shall not be affected thereby, and in lieu of each such illegal, invalid or unenforceable provision there shall be added automatically as a part of this Mortgage a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable. If any of the liens, security interests or assignment of rents created by this Mortgage shall be invalid or unenforceable, the unsecured portion of the Secured Indebtedness shall be completely paid prior to the payment of the remaining and secured portion of the Secured Indebtedness and all payments made on account of such indebtedness shall be considered to have been paid on and applied first to the complete payment of the unsecured portion of such indebtedness.

BOOK 285 PAGE 234  
(42) **Remedies Cumulative.** In addition to and notwithstanding and without modifying the other remedies provided herein and without limiting the rights of Mortgagee to exercise such remedies, Mortgagee is given the additional right to enforce the covenants, agreements, and obligations of Mortgagor hereunder, by the securing of equitable remedies, including that of temporary and permanent injunction and specific performance, without the necessity of Mortgagee filing any bond or other security which would otherwise be required by the statutes of the State of Alabama or the Alabama Rules of Civil Procedure, as amended, in seeking such equitable remedies, the requirement for filing of any such bond or other security being hereby expressly waived.

(43) **Amendments.** No amendment, modification or cancellation of this Mortgage shall be valid unless in writing and signed by the party against whom enforcement is sought.

(44) **Headings.** The Paragraph and Subparagraph headings hereof are inserted for convenience and reference only and shall not alter, define, or be used in construing the text of such Paragraphs or Subparagraphs.

(45) **Governing Law.** This Mortgage shall be governed and construed under the laws of the State of Alabama except to the extent any law, rule or regulation of the federal government of the United States of America may be applicable, in which case such federal law, rule or regulation shall control.

(46) **Copies.** Mortgagor acknowledges receipt of a true and correct copy of this Mortgage.

(47) **Meaning of Particular Terms.** Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective heirs, personal representatives, successors and assigns. The term "Mortgagor"

as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, partnerships, corporations, associations, trusts or other entities or organizations.

**(48) Environmental Protection**

DOM 285 PAGE 235  
(a) Mortgagor represents and covenants that (i) Mortgagor has not caused or suffered to occur and Mortgagor will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may be amended from time to time (collectively the "Act"), at, upon, under or within the Mortgaged Property or any contiguous real estate which has been included in the property description of the Mortgaged Property within the preceding three years; (ii) neither Mortgagor nor any other party has been, is or will be involved in operations at or near the Mortgaged Property which could lead to the imposition on Mortgagor or any other owner of the Mortgaged Property of liability or the creation of a lien on the Mortgaged Property under the Act or under any similar applicable laws or regulations; and (iii) Mortgagor has not permitted and will not permit any tenant or occupant of the Mortgaged Property to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Mortgagor or any other owner of any of the Mortgaged Property, or the creation of a lien on the Mortgaged Property under the Act or any similar applicable laws or regulations;

(b) Mortgagor shall comply strictly and in all respects with the requirements of the Act and related regulations and with all similar state and local applicable laws and regulations and shall notify Mortgagee promptly in the event of any spill or hazardous substance upon the Mortgaged Property, and shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Mortgaged Property.

(c) Mortgagor, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Mortgagee.

(d) Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by Mortgagee, whether as holder of this Mortgage, as mortgagee in possession or as successor in interest to Mortgagor as owner of the Mortgaged Property by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Act or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Mortgaged Property whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, including any loss of value of the

Mortgaged Property as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the Mortgaged Property within the jurisdiction of EPA or the equivalent agency or department of the State of Alabama.

(e) In the event of any spill or hazardous substance affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, and/or if Mortgagor shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Mortgaged Property and/or take any and all other actions as Mortgagee shall deem necessary or advisable in order to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Interest Rate (as specified in the Note) from the date of payment by Mortgagee, shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof.

(49) **Partial Releases.** Mortgagee agrees to release from the lien of this Mortgage any portion of the Mortgaged Property which has been subdivided into a separate lot provided that each of the following requirements and conditions are first met:

(a) Mortgagee has approved in writing the size, configuration, location and all other aspects and characteristics of such lot and the impact that the creation thereof has upon the remainder of the Mortgaged Property;

(b) Such lot has been legally created and the subdivision plat therefor approved by Mortgagee and all applicable governmental authorities and has been recorded in the Office of the Judge of Probate of Shelby County, Alabama;

(c) There has been no default under this Mortgage, the Loan Agreement, the Note, or any other of the Loan Documents;

(d) Such lot has been sold to a bona fide purchaser for a gross sales price and on terms and conditions that are acceptable to Mortgagee and have been first approved by Mortgagee in writing and Mortgagee receives seventy-five percent (75.00%) of the net sales proceeds, which shall also be in an amount acceptable to and approved by Mortgagee; and

(e) Mortgagee receives all that portion of the remaining twenty-five percent (25.00%) of said net sales proceeds which is payable to or for the benefit of any guarantor of the Loan who has pledged to Mortgagee the interest of said guarantor in said proceeds or in Mortgagor or any partner in Mortgagor, in connection with any obligation owing by such guarantor to Mortgagee.

IN WITNESS WHEREOF, the undersigned has hereunto set its signature and seal, this 30th day of March, 1990.

**MORTGAGOR:**

**EES JOINT VENTURE**  
An Alabama General Partnership

**BY: EES DEVELOPMENT CORPORATION**  
An Alabama Corporation  
As Managing General Partner


By:

  
\_\_\_\_\_  
Marc A. Eason  
Its President

**BY: PARTNERS IN PROGRESS VI**  
An Alabama General Partnership  
As General Partner

**By: EAGLE & ASSOCIATES**  
An Alabama General Partnership  
As Managing General Partner

By:

  
\_\_\_\_\_  
Lee Hines  
Its General Partner

**BY: EES GROUP**  
An Alabama General Partnership  
As General Partner

**By: EES DEVELOPMENT CORPORATION**  
An Alabama Corporation  
As General Partner

By:

  
\_\_\_\_\_  
Marc A. Eason  
Its President

BOOK 285 PAGE 237



STATE OF ALABAMA       )  
                                  :  
JEFFERSON COUNTY       )

I, the undersigned, a notary public in and for said county and state, hereby certify that Marc A. Eason, whose name as President of EES Development Corporation, an Alabama corporation, as Managing General Partner of EES Joint Venture, an Alabama general 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, acting in its capacity as Managing General Partner as aforesaid.

Given under my hand and official seal this 30th day of March, 1990.

Edna Canon  
Notary Public

[NOTARIAL SEAL]

My commission expires: 5/16/1990

STATE OF ALABAMA       )  
                                  :  
JEFFERSON COUNTY       )

I, the undersigned, a notary public in and for said county and state, hereby certify that Lee Hines, whose name as General Partner of Eagle & Associates, an Alabama general partnership, in its capacity as Managing General Partner of Partners in Progress VI, an Alabama general partnership, as General Partner of EES Joint Venture, an Alabama general 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 General Partner and with full authority, executed the same voluntarily for and as the act of said partnership, acting in its capacity as aforesaid.

Given under my hand and official seal this 30th day of March, 1990.

Edna Canon  
Notary Public

[NOTARIAL SEAL]

My commission expires: 5/16/1990

STATE OF ALABAMA           )  
                                  :  
JEFFERSON COUNTY         )

I, the undersigned, a notary public in and for said county and state, hereby certify that Marc A. Eason, whose name as President of EES Development Corporation, an Alabama corporation, in its capacity as General Partner of EES Group, an Alabama general partnership, as General Partner of EES Joint Venture, an Alabama general 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, acting in its capacity as aforesaid.

Given under my hand and official seal this 30th day of March, 1990.

Edne Canon  
Notary Public

[NOTARIAL SEAL]

My commission expires: 5/16/1990

285 PAGE 239

**EXHIBIT A**  
**TO THE**  
**MORTGAGE AND SECURITY AGREEMENT**

All that certain parcel of land situated in Shelby County, Alabama and more particularly described as follows:

Lot 1, Sunlink Subdivision, as recorded in Map Book 14,  
page 25, in the Office of the Judge of Probate of Shelby  
County, Alabama.

TOGETHER WITH all of the rights of Mortgagor pursuant to  
that certain Temporary Construction and Grading Easement  
Agreement dated March 30, 1990, among Sunlink Corporation,  
BellSouth Services, Incorporated, and Mortgagor and recorded  
simultaneously herewith.

285 MAY 240

**EXHIBIT B**  
**TO THE**  
**MORTGAGE AND SECURITY AGREEMENT**

**PERMITTED ENCUMBRANCES**

1. Easement to Harbert-Equitable Joint Venture recorded in Real Record 267, page 420, in the Office of the Judge of Probate of Shelby County, Alabama.
2. Title to oil, gas, petroleum, and sulfur, together with mining rights and privileges belonging thereto as reserved in Deed Book 127, page 140, in said Probate Office, as to the northwest quarter of the southwest quarter of Section 30, Township 19 South, Range 2 West, Shelby County, Alabama.
3. 35 foot building setback line as shown on record plat.
4. All easements for sanitary sewer, storm sewer, storm drainage, water lines, and ingress and egress as shown on record plat and as shown on survey of Walter Schoel, Jr. dated March 30, 1990.
5. Rights reserved by Sunlink Corporation in deed to EES Joint Venture, set forth in instrument recorded in Book 285, page 203, in said Probate Office.
6. Agreement between The Harbert-Equitable Joint Venture and EES Joint Venture dated February 15, 1990, as referred to in deed to EES Joint Venture recorded in Book 285, page 207, in said Probate Office.

BOOK 285 PAGE 241

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

90 APR -2 PM 3: 56

*[Signature]*  
JUDGE OF PROBATE

1. Deed Tax	\$	3000.00
2. Mtg. Tax	\$	62.50
3. Recording Fee	\$	3.00
4. Indexing Fee	\$	1.00
5. No Tax Fee	\$	
6. Certified Fee	\$	1.00
<b>Total</b>	<b>\$</b>	<b>3071.50</b>

