

1896

MORTGAGE, ASSIGNMENT AND SECURITY AGREEMENT

THIS INSTRUMENT (this "Instrument"), made and entered into as of the 27th day of July, 1990, by and between VALLEYDALE LIMITED PARTNERSHIP, a Georgia limited partnership ("Borrower") and THE FIRST NATIONAL BANK OF ATLANTA, a national banking association ("Lender");

500,000.00

W I T N E S S E T H:

1.01 THAT FOR AND IN CONSIDERATION of the sum of \$10.00 and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower does hereby grant, bargain, sell, convey, assign, transfer, pledge, and set over unto Lender the following described property (collectively, the "Premises"): (a) all those certain tracts, pieces or parcels of land more particularly described in Exhibit "A" hereto (the "Land"); (b) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land; and all right, title and interest of Borrower in all furnishings, furniture, fixtures, machinery, apparatus, equipment, fittings, appliances, building supplies and materials, vehicles (excluding Borrower's personal automobiles), warranties, chattels, chattel paper, documents, accounts, general intangibles, goods, consumer goods, farm products, inventory, trade names, trademarks, servicemarks, logos and goodwill related thereto and all other articles of personal property of every kind and nature whatsoever, now or hereafter acquired with proceeds of any loan secured by this Instrument or located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises; and all extensions, additions, *****

BOOK 302 PAGE 746

THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO CODE OF ALABAMA (1975) SECTION 7-9-402(6) AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF LENDER, AS DEBTOR, AND BORROWER, AS SECURED PARTY.

This instrument was prepared by:

R. Dale Hughes, Esq.
Dow, Lohnes & Albertson
Suite 1300
One Ravinia Drive
Atlanta, Georgia 30346
(404) 395-8800

Land Title

improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing, and all inventory, accounts, chattel paper, documents, equipment, fixtures, farm products, consumer goods and general intangibles constituting proceeds acquired with cash proceeds of any of the property described hereinabove; all of which foregoing items are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Instrument, a portion of the above described collateral being located upon the Land; (c) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower; (d) all right, title and interest of Borrower in all leases, rental agreements and arrangements of any sort now or hereafter affecting the Premises or any portion thereof and providing for or resulting in the payment of money to Borrower for the use of the Premises or any part thereof, whether the user enjoys the Premises or any part thereof as tenant for years, invitee, licensee, tenant at sufferance or otherwise, and irrespective of whether such leases, rental agreements and arrangements be oral or written, including those certain leases, if any, more particularly described in Exhibit "B" hereto, including any and all extensions, renewals and modifications thereof (the "Leases") and guaranties of the performance or obligations of any tenants or lessees thereunder (the "Tenants"), together with all rents, issues, profits and revenues from the Leases (including all tenant security and other deposits whether held by Borrower or in a trust account) and all other rents, issues, profits and revenues from the Premises from time to time accruing (including all utility and other deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower in and to the same; provided, however, that although this Instrument contains a present and current assignment of all of said rents, issues, profits and revenues, Borrower and Lender have agreed that so long as there shall exist no Default or condition which, with notice or passage of time or both, would constitute a Default, Lender shall not demand that such rents, issues, profits and revenues be paid directly to Lender, and Borrower may collect the same, but not more than one month prior to accrual; (e) all right, title and interest

BOOK 302 PAGE 747

of Borrower in all franchise agreements, management contracts, service contracts, leases of equipment, documents relating to the construction of any improvements on the Premises (including any and all construction contracts, architectural contracts, engineering contracts, plans, specifications, drawings, surveys, bonds and governmental approvals) and other contracts, licenses and permits now or hereafter affecting the Premises or any part thereof (the "Contracts"); (f) all right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to the Premises, including any unearned premiums thereon; (g) all right, title and interest of Borrower in any and all awards, payments, proceeds and the right to receive the same, either before or after any foreclosure hereunder, as a result of any temporary or permanent injury or damage to, taking of or decrease in the value of the Premises by reason of casualty, condemnation or otherwise; (h) all right, title and interest of Borrower in all utility, escrow and all other deposits (and all letters of credit, certificates of deposit, negotiable instruments and other rights and evidence of rights to cash) relating to the Premises or the construction or operation thereof; (i) all right, title and interest of Borrower in all cash funds, deposit accounts, escrow or other deposits, certificates of deposit, negotiable instruments and other evidence of rights to cash created under or held by Lender pursuant to any loan agreement ("Loan Agreement") between Borrower and Lender relating to the "Indebtedness" (as hereinafter defined) or pursuant to any other documents to or of which Lender is a party or beneficiary now or hereafter evidencing, securing or otherwise relating to the Indebtedness or the Premises (all such documents, including this Instrument, the Note referred to hereinbelow, any guaranty and any Loan Agreement, being herein called collectively the "Loan Documents"), including any account into which any portion of the Indebtedness is disbursed by Lender; (j) all claims and causes of action arising from or otherwise related to any of the foregoing; and (k) all proceeds of any of the property described above.

1.02 TO HAVE AND TO HOLD the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, IN FEE SIMPLE forever; and Borrower covenants that Borrower is lawfully seized and possessed of the Premises as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit "C" hereto, and Borrower does warrant and will forever defend the title thereto against the claims of all person whomsoever, except as to the matters set forth on Exhibit "C."

1.03 THIS INSTRUMENT is given to secure the payment of the following described indebtedness (collectively, the "Indebtedness"): (a) the debt evidenced by that certain promissory note (the "Note") dated July 27, 1990, made by Borrower to the order of

Lender in the principal amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00), with the final payment due on or before July 1, 1992, together with any and all renewals, modifications, consolidations, replacements and extensions of the Note; (b) any and all additional advances made by Lender to protect or preserve the Premises or the security interest created hereby, or for taxes, assessments or insurance premiums as hereinafter provided, or for performance of any of Borrower's obligations hereunder or for any other purpose provided herein (whether or not the original Borrower remains the owner of the Premises at the time of such advances); and (c) any and all other indebtedness now or hereafter owing by Borrower to Lender, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

1.04 SHOULD THE INDEBTEDNESS BE PAID according to the tenor and effect thereof when the same shall become due and payable, and should Borrower perform all covenants herein contained in a timely manner, then this Instrument shall be cancelled and surrendered.

COVENANTS AND AGREEMENTS

2.01 Payment of Indebtedness. Borrower shall pay the Note according to the tenor thereof and the remainder of the Indebtedness promptly as the same shall become due.

2.02 Taxes, Liens and Other Charges. Borrower shall pay or cause to be paid, on or before the due date thereof, all (a) taxes, assessments, and other charges of every character whatsoever now or hereafter levied on, assessed, placed or made against the Indebtedness, the Premises, this Instrument, or any other Loan Document, or any interest of Lender in the Indebtedness, the Premises or the Loan Documents; (b) premiums on policies of insurance now or hereafter covering the Premises, and any and all other insurance policies now or hereafter collaterally pledged to Lender; (c) ground rentals or other lease rentals, if any, payable by Borrower; (d) utility charges, whether public or private; and (e) penalties and interest on any of the foregoing. Borrower will promptly pay any tax arising out of the passage of any law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of deeds to secure debt or security agreements, or debts secured thereby, or the manner of collection thereof. Borrower shall promptly deliver to Lender upon demand receipts showing timely payment in full of all of the above items.

BOOK 302 PAGE 749

2.03 Insurance and Condemnation.

(a) Borrower shall procure for, deliver to and maintain for the benefit of Lender during the term of this Instrument, original, fully paid insurance policies issued by such insurance companies, in such amounts, form and substance, insuring such parties (including Borrower and any contractor performing work upon the Premises) and with such expiration dates as are acceptable to Lender, providing "all risk" permanent real and personal property and "all risk" builder's risk (for improvements completed or under construction, respectively), public liability (insuring Borrower and any contractor performing work on the Premises), workers' compensation, rent loss, and such other coverage as Lender may from time to time require, naming Lender as mortgagee and loss payee with respect to all property insurance and as an additional insured with respect to all liability insurance except workers' compensation. Each insurance company is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender, but disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower and Borrower hereby irrevocably appoints Lender as Borrower's agent and attorney-in-fact so to do. At least thirty (30) days prior to the expiration date of each insurance policy maintained pursuant to this Subsection 2.03(a), a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender, together with receipts evidencing payment thereof. At the request of Lender, Borrower shall provide evidence satisfactory to Lender that all insurance is in effect.

(b) Borrower shall notify Lender immediately upon obtaining knowledge of (i) the institution, or the proposed, contemplated or threatened institution, of any action for the taking through condemnation (which term as used in this instrument shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof) of the Premises or any portion thereof, or (ii) the damage to the Premises or any part thereof. Lender shall be entitled to all compensation, awards and other payments arising from any casualty or condemnation and to give receipts and acquittances therefor and is hereby authorized, at its option, to adjust or compromise any casualty or condemnation loss, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceeding relating to any insurance or condemnation loss, and to settle or compromise any claim in connection therewith. If Lender, by reason of such insurance or condemnation, receives any money for

loss or damage, and after deducting from said proceeds all its expenses incurred in the collection and administration of said sums (including reasonable attorneys' fees actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11), such amount may, at the option of Lender, be retained and applied by Lender toward payment of the Indebtedness, whether or not due and in whatever order Lender elects, or may be paid over, wholly or in part, to Borrower for the repair, replacement or restoration of the Premises or any part thereof, or may be applied by Lender for any other purpose for which Lender is entitled to advance funds under this Instrument, all without affecting the security interest created by this Instrument, and any balance of such moneys not applied by Lender as aforesaid shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy, or to collect any condemnation award, regardless of the cause of such failure. In the event of the foreclosure of this Instrument or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrower in and to all insurance policies then in force and all condemnation proceeds and awards shall pass to the purchaser or Lender, and Lender shall have the right to receive such award of proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Instrument or the Note shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements actually incurred by Lender in connection with the collection of such award or proceeds (but not statutory attorneys' fees under O.C.G.A. § 13-1-11).

BOOK 302 PAGE 751

2.04 Leases and Contracts. Borrower shall (a) fulfill, perform and observe each and every condition and covenant of landlord or lessor contained in each of the Leases and each and every condition and covenant of Borrower contained in the Contracts; (b) give prompt notice to Lender of any claim of default under any of the Leases or the Contracts, whether given by or given to Borrower, together with a complete copy of any notice expressing such claim; (c) at no cost or expense to Lender, enforce, short of termination, the performance and observance of each and every condition and covenant of each of the parties under the Leases and the Contracts; (d) appear in and defend any action against any one or more of Borrower, Lender, and the Premises arising out of, or in any manner connected with, any of the Leases or the Contracts, or the obligations or liabilities of any party thereto or any guarantor thereof; and (e) furnish to Lender upon demand copies of all Leases and Contracts. Borrower shall not, without the prior written consent of Lender, (i) enter into new Leases or Contracts; (ii) modify any Leases or Contracts; (iii) terminate or accept the surrender of any Leases or Contracts; (iv) waive or release any

other party from the performance or observance of any obligation or condition under any Leases or Contracts; (v) give any consent to any assignment or sublease by any Tenant under any of the Leases; (vi) permit the prepayment of any rents under any of the Leases for more than one month prior to the actual accrual thereof; or (vii) assign its interest in, to or under any Leases or Contracts or the rents, issues and profits from the Leases or from the Premises to any person or entity other than Lender, except as otherwise expressly permitted by Lender in writing. Borrower shall take no action which will cause or permit the estate of any Tenant under any of the Leases to merge with the interest of Borrower in the Premises or any part thereof. Borrower shall and does hereby authorize and direct each and every present and future Tenant of all or any part of the Premises to pay all rental to Lender upon receipt of written demand from Lender to so pay the same.

2.05 Operation, Care and Inspection of Premises.

Borrower shall operate the Premises at all times for such purposes as may be approved by Lender in writing. Borrower shall maintain the Premises in good condition and repair, shall not commit or suffer any waste to the Premises or do or suffer to be done anything which would increase the risk of casualty to the Premises or any part thereof or which would result in the cancellation of any insurance policy carried with respect to the Premises. Borrower shall comply promptly with all applicable laws, rules, ordinances, regulations, restrictive covenants and easements affecting the Premises (the "Requirements") and shall construct and at all times operate the Premises in accordance with the Requirements. Borrower shall promptly repair, restore or replace, to the extent and in a manner satisfactory to Lender, any part of the Premises which may be damaged by fire or other casualty or which may be affected by any condemnation proceeding, provided that Lender thereafter makes available to Borrower (pursuant to a procedure satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or replacement; provided, however, that the insufficiency of any such net proceeds shall in no way relieve Borrower of its obligation to restore, repair or replace. Lender and any other persons authorized by Lender shall have the right at all reasonable times to inspect the Premises, any improvements existing or being constructed thereon and all materials used or to be used in such improvements; provided, however, that nothing contained herein shall be deemed to impose upon Lender any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. Notwithstanding anything to the contrary herein, no part of the Premises now or hereafter conveyed as security under this Instrument shall be removed,

BOOK 302 PAGE 752

demolished or materially altered without the prior written consent of Lender.

2.06 Security Agreement. This Instrument is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the jurisdiction applicable thereto (the "Code"). The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Instrument shall be as prescribed herein, or as prescribed by general law, or as prescribed by the Code, all at Lender's election in the discretion of Lender. Upon request or demand by Lender, Borrower shall at its expense assemble all personal property which is a part of the Premises, and with respect to which such request or demand is made, and make the same available to Lender at a convenient place upon the Land (or within an improvement upon the Land, as may be appropriate for the protection of such personal property) acceptable to Lender. Any notice of sale, disposition or other action by Lender with respect to personal property which is a part of the Premises sent to Borrower in accordance with the provisions relating to communications at least five (5) days prior to such action shall constitute adequate and reasonable notice to Borrower of such action. Borrower and Lender agree that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Instrument is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby and that the filing of any financing statement or statements in the records normally having to do with personal property shall not in any way affect such agreement; provided, however, that Lender may determine in its discretion that certain items of such property constitute personal property and are subject to remedies available with respect to personal property. The mention in any such financing statement or statements of the rights in and to (a) the proceeds of any insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) 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 a Lease or otherwise, shall not in any way limit any of the rights of Lender as determined by this 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 thereto that notice of Lender's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the Code records. The names of the "Debtor" and the "Secured Party" (which are Borrower and Lender,

BOOK 302 PAGE 733

respectively), the address of the Debtor and the address of Secured Party (which is also the address from which information concerning the security interest created hereby may be obtained from Secured Party) are set forth in Section 4.06 hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Borrower agrees to furnish Lender with notice of any change in its (i) name, identity or corporate structure, (ii) residence or principal place of business, or (iii) mailing address, within ten (10) days of the effective day of any such change.

2.07 Further Assurances; After-Acquired Property. Borrower shall execute and/or deliver (and pay the costs of preparation and recording thereof) to Lender, upon demand, any further instrument or instruments so as to evidence, reaffirm, correct, perfect, continue or preserve the obligations of Borrower under the Note or the other Loan Documents, the collateral at any time securing or intended to secure the Note, and the first and prior legal security title and interest of Lender to all or any part of the Premises, whether now owned or hereafter acquired by Borrower. Upon any failure of Borrower so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such instruments for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower to do so. The security title of this Instrument and the security title created hereby will automatically attach, without further act, to all after-acquired property attached to or used in the operation of the Premises or any part thereof.

2.08 Expenses. Borrower will pay or reimburse Lender, upon demand therefor, for all costs and expenses (including fees of auditors, appraisers and inspectors and reasonable attorneys' fees actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11) paid or incurred by Lender in connection with the commitment, negotiation, documentation, preparation, closing, disbursement, administration, enforcement, collection (including foreclosure or other realization upon collateral) or transfer (in connection with repayment or after default) of the Indebtedness or any one or more of the Loan Documents, and for any expenses incurred by Lender in connection with the collection of any insurance or other proceeds or enforcement of any rights of Lender under this Instrument, including the costs of any suits or proceedings or disputes of any kind in which Lender is made or appears as a party plaintiff or defendant or which are, in the judgment of Lender, expedient to preserve or protect its interest in the Premises (including condemnation, insolvency or bankruptcy proceedings, administrative proceedings and appeals at all levels of appeal, whether before or after entry of judgment or other determination), and any such amounts paid by Lender shall be added to the Indebtedness and shall be secured by this Instrument.

Borrower will pay any and all interest and penalties owing on account of the Indebtedness or any one or more of the Loan Documents, including any interest or penalties arising on account of failure or delay in payment of any of the items listed herein.

2.09 Reports. Borrower shall keep and maintain or shall cause to be kept and maintained, at Borrower's cost and expense and in accordance with sound accounting practices and principles consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises and all items of cost in connection with the construction of any improvements which are now or hereafter a portion of the Premises, and Lender and any persons authorized by Lender shall have the right at all reasonable times to inspect such books, records and accounts and to make copies thereof. Borrower shall deliver to Lender within thirty (30) days after notice by Lender unaudited statements of the income, expenses and capital expenditures arising out of the conduct of any business on the Premises, or any part thereof or the construction of any improvements thereon, for the twelve (12) month period prior to the giving of such notice or for such other period as may be designated by Lender in such notice, prepared in such detail and containing such supporting documentation, including rent rolls and lease information, as Lender may request. As soon as practicable, but in any event within thirty (30) days after the end of each of the first three quarters of each calendar year (or applicable fiscal year) and within ninety (90) days after the end of each calendar year (or applicable fiscal year), Borrower shall furnish to Lender unaudited general financial statements of Borrower and each endorser or guarantor of the Note or of any obligations of Borrower under the Loan Documents, including any party providing any environmental guaranty (individually and collectively, "Guarantor") for such quarter or such year, and prepared in such detail as Lender may request. All unaudited statements referred to in this Section 2.09 shall be prepared in accordance with sound accounting practices and principles consistently applied and shall be certified by Borrower (or Guarantor, where appropriate), if an individual, or by the chief financial officer or partner of Borrower (or Guarantor, where appropriate). Borrower shall also promptly deliver to Lender copies of any audited general financial statements prepared for Borrower or any Guarantor and copies of any audited financial statements prepared for Borrower or any Guarantor and copies of any audited reports available to Borrower relating to the conduct of any business on the Premises or the construction of any improvements thereon. In the event of a Default hereunder or if Lender suspects that inaccurate information has been provided by Borrower under this Section 2.09, Borrower shall deliver to Lender within thirty (30) days after demand by Lender, statements of the income and expense of the Premises or of the cost of construction of any improvements thereon, for the period desig-

nated by Lender, certified by a certified public accountant. Borrower, upon ten (10) days' prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and stating whether or any offsets or defenses exist against the Indebtedness, or any portion thereof and the specific facts relating to any such offset or defense .

2.10 Conveyance or Encumbrance. Borrower shall not encumber, pledge, convey, transfer or assign any or all of its interest in the Premises or execute or consent to any instrument or matter which might affect the title to the Premises or which might effect a change in any one or more of the Requirements or acquire any portion of the personal property covered by this Instrument subject to any charge or lien, without the prior written consent of Lender, which consent shall be given or withheld by Lender at its discretion; and if Borrower is a corporation, partnership or other artificial entity, there shall be no encumbrance, pledge, conveyance, transfer or assignment of any legal or beneficial interest whatsoever in Borrower without such prior written consent of Lender.

DEFAULTS AND REMEDIES

3.01 Defaults. The term "Default," wherever used in this Instrument, shall mean any one or more of the following events: (a) failure by Borrower to pay any portion of the Indebtedness when due; or (b) the breach or failure by Borrower or any endorser or Guarantor to perform, observe and satisfy all other terms, covenants, conditions and agreements contained in this Instrument, in the Leases or in any of the other Loan Documents; or (c) any warranty or representation of Borrower or any endorser or Guarantor contained in this Instrument or in any other of the Loan Documents, or any material information relating to the Indebtedness or the Loan Documents given to Lender by Borrower or any partner or officer of Borrower, or by any other party on behalf of or at the request of Borrower, being untrue or misleading in any material respect; or (d) a levy shall be made under any process on the Premises or any part thereof or any other property of Borrower or any Guarantor; or (e) the admission in writing by Borrower or any Guarantor of the inability to pay debts generally as they become due; or (f) Borrower or any Guarantor, pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or any other present or future federal, state or common law, case law, statute or regulation relating to bankruptcy, insolvency, appointment of receivers or custodians, dissolution or other relief for debtors (i) commences a voluntary case, or (ii) consents to or suffers the entry of any order for relief against it in an involuntary case, or (iii) remains a debtor in an involuntary case for sixty (60)

days after the commencement of such case, or (iv) consents to or suffers the appointment of a receiver, trustee, liquidator, custodian or other party serving a similar function for the Premises or any other property of Borrower or any Guarantor, or (v) makes a general assignment for the benefit of creditors, or (vi) becomes insolvent, or (vii) suffers or is subject to the entry of an order for the liquidation of Borrower or any Guarantor; or (g) the assertion of any claim of priority to this Instrument, by title, lien or otherwise in any legal or equitable proceeding; or (h) Borrower or any Guarantor (if a corporation) commences the process of liquidation or dissolution or its charter expires or is revoked, or Borrower or any Guarantor (if a partnership or business association) commences the process of dissolution or partition, or Borrower or any Guarantor (if a trust) commences the process of termination or expires or Borrower or any Guarantor (if an individual) dies; or (i) the subjection of the Premises to actual or threatened waste, or the removal, demolition, or alteration of any part thereof without the prior written consent of Lender; or (j) any mechanic's, materialmen's, laborer's, statutory or other lien is filed against the Premises or any portion thereof and not totally released or removed as a lien against the Premises and every part thereof (by bonding, payment or otherwise) within five (5) days after the date of filing thereof; or (k) any suit shall be filed against Borrower or any Guarantor which, if adversely determined, could reasonably be expected substantially to impair the ability of Borrower or such Guarantor to perform each and every one of their respective obligations under the Loan Documents; or (l) any default (for which no cure periods is provided, or with respect to which the applicable cure period has expired without cure having been accepted) shall exist under any document evidencing, securing or otherwise relating to any other indebtedness owing, in whole or in part, to Lender, for which Borrower or Guarantor is liable, whether as maker, endorser, surety, guarantor, partner of one of the foregoing, or otherwise; or (m) all or any substantial portion of the Premises shall be taken through condemnation, or any portion of the Premises shall be damaged by or taken through condemnation and the value thereof shall, in the discretion of Lender, be materially diminished, either temporarily or permanently; or (n) the failure or inability (whether imposed by law or otherwise) of Borrower to make any payment required under Section 2.02 of this Instrument; or (o) the failure of this Instrument to grant to Lender a valid, binding and enforceable first lien on and/or security title in and to the Premises, including the personal property of Borrower referred to herein, or the failure of any one or more of the Loan Documents to be legal, valid, binding upon and enforceable against all parties thereto (other than Lender), or the claim by any party (other than Lender) to any one or more of the Loan Documents that any one or more of the Loan Documents is not legal, valid, binding upon and enforceable against all parties thereto (other than Lender).

BOOK 302 PAGE 757

3.02 Rights of Lender upon Default. If a Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence, and Lender, at its option, may do any one or more of the following, all without regard to the adequacy or value of the security for the Indebtedness:

(a) Enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor; at its option, operate the Premises; at its option, exclude Borrower and its agents and employees wholly therefrom; at its option, employ a managing agent of the Premises; and at its option, exercise any one or more of the rights and powers of Borrower to the same extent as Borrower could, either in its own name or in the name of Borrower; and receive the rents, incomes, issues and profits of the Premises. Lender shall have no obligation to discharge any duties of a landlord to any Tenant or to incur any liability as a result of any exercise by Lender of any rights hereunder; and Lender shall not be liable for any failure to collect rents, issues, profits or revenues, nor liable to account for any rents, issues, profits or revenues unless actually received by Lender.

(b) Apply, as a matter of strict right, without notice and without regard to the solvency of any party bound for its payments, for the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues thereof.

(c) Pay, perform or observe any term, covenant or condition of this Instrument and any of the other Loan Documents and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at the default rate provided in the Note. The necessity for any such actions and the amounts to be paid shall be determined by Lender in its discretion. Lender is hereby empowered to enter and to authorize others to enter upon the Premises or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Borrower or to any person in possession holding under Borrower. Borrower hereby acknowledges and agrees that the remedies set forth in this paragraph 3.02(c) shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrower with interest thereon at the default rate, notwithstanding the fact that such remedies were exercised and such payments were made and costs incurred by Lender after the filing by Borrower of a voluntary case

or the filing against Borrower of an involuntary case pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Borrower, Lender, Guarantor, the Loan or any of the Loan Documents.

(d) Sell the Premises or any part of the Premises at one or more public sale or sales at the usual place for conducting sales of the county in which the Land or any part of the Land is situated, to the highest bidder for cash, in order to pay the Indebtedness, and all expenses of sale and of all proceedings in connection therewith (including reasonable attorneys' fees actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11), after advertising the time, place and term of sale once a week for three (3) weeks immediately preceding such sale (but without regard to the number of days) in some newspaper in said county, all other notice being hereby waived by Borrower. At any such public sale, Lender may execute and deliver to the purchaser a conveyance of the Premises or any part of the Premises in fee simple, with full warranties of title, and to this end Borrower hereby constitutes and appoints Lender the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title and equity that Borrower may have in and to the Premises and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney-in-fact are hereby ratified and confirmed, and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon Borrower. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and shall not be exhausted by one exercise thereof but may be exercised until full payment of all of the Indebtedness. In the event of any sale under this Instrument by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceeding or otherwise, the Premises may be sold as an entirety or in separate parcels and in such manner or order as Lender in its discretion may elect, and if Lender so elects, Lender may sell the personal property covered by this Instrument at one or more separate sales in any manner permitted by the Code, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Premises are sold or the Indebtedness is paid in full. Lender may, at its option, sell the Premises subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be asserted by Borrower to be a defense to any proceedings instituted by Lender to collect the Indebtedness. If the Indebtedness is now or hereafter further secured by any chattel mortgages, pledges,

BOOK 302 PAGE 759

contracts of guaranty, assignments of lease or other security instruments, Lender may at its option exhaust the remedies granted under any or said security either concurrently or independently, and in such order as Lender may determine in its discretion. Upon any foreclosure sale, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price. In the event of any such foreclosure sale by Lender, Borrower shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. In case Lender shall have proceeded to enforce any right, power or remedy under this Instrument by foreclosure, entry or otherwise or in the event Lender commences advertising of the intended exercise of the sale under power provided hereunder, and such proceeding or advertisement shall have been withdrawn, discontinued or abandoned for any reason, then in every such case (i) Borrower and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Default, and (iv) neither this Instrument, nor the Note, nor the Indebtedness, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrower hereby expressly waives the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

(e) Proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term, covenant, condition or agreement of this Instrument or any of the other Loan Documents or any other right or (ii) to pursue any other remedy available to Lender.

(f) Lender may apply any moneys and proceeds received by Lender as a result of the exercise by Lender of any right conferred under this Section 3.02 in such order as Lender in its discretion may elect against (i) all costs and expenses (including reasonable attorneys' fees actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11), incurred in connection with the operation of the Premises, the performance of Borrower's obligations under the Leases and the collection of the rents thereunder; (ii) all costs and expenses (including reasonable attorneys' fees actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11), incurred in the collection of any or all of the Indebtedness, including those incurred in seeking to realize on or to protect or preserve Lender's interest in any other

collateral securing any or all of the Indebtedness; (iii) any or all unpaid principal on the Indebtedness; (iv) any other amounts owing under the Loan Documents; and (v) accrued interest and charges on any or all of the foregoing. The remainder, if any, shall be paid to Borrower or any person or entity lawfully entitled thereto.

GENERAL CONDITIONS

4.01 No Waiver; Remedies Cumulative. No delay or omission by Lender to exercise any right, power or remedy accruing upon any Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Default, or acquiescence therein, and every right, power and remedy given by this Instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, expressed or implied, by Lender to or of any Default shall be deemed or construed to be a consent or waiver to or of any other Default. No delay, indulgence, departure, act or omission by Lender or any holder of the Note shall release, discharge, modify, change or otherwise affect the original liability under the Note or any other obligation of Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude Lender from exercising any right, privilege or power granted herein or alter the security title, security interest or lien hereof. Lender may at any time, without notice to or further consent from Borrower, surrender or substitute any property or other security of any kind or nature whatsoever securing the Indebtedness or release any Guarantor, and no such action will release Borrower's obligations hereunder or alter the effect hereof. No right, power or remedy conferred upon or reserved to Lender hereunder is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the other Loan Documents or now or hereafter existing at law, in equity or by statute.

4.02 Replacement of Note. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation 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.

4.03 Survival of Certain Agreements. Notwithstanding the repayment of the Indebtedness and the cancellation or transfer of the Loan Documents, or any foreclosure of, or sale under power contained in this Instrument, or the acquisition by Lender of title

to the Premises in lieu of foreclosure, or any other realization upon collateral securing the Indebtedness, all agreements of Borrower contained herein or in any of the other Loan Documents to pay the costs and expenses of Lender in connection with the loan contemplated by the Loan Documents, and all agreements of Borrower contained herein or in any of the other Loan Documents to indemnify and or/hold harmless Lender shall continue in full force and effect so long as there exists any possibility of expense or liability on the part of Lender.

4.04 No Obligation to Third Parties. The Loan Documents are made solely for the benefit of Lender. No tenant nor any party involved with the construction of any improvements on any part of the Premises nor any other party whatsoever shall have standing to bring any action against Lender as the result of the Loan Documents, or to assume that Lender will exercise any remedies provided herein, and no party other than Lender shall be deemed to be a beneficiary of any provision of the Loan Documents, any and all of which may be freely waived in whole or in part by Lender in its discretion at any time. Nothing contained in the Loan Documents shall be deemed to impose upon Lender any liability for the performance of any obligation of Borrower under any of the Leases or Contracts. Nothing contained in this Section 4.04 is intended to deprive Borrower of the benefit of any covenant by Lender in favor of Borrower contained in the Loan Documents.

4.05 Miscellaneous. The Loan Documents shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, subject to all restrictions on transfer herein or in the other Loan Documents. The loan evidenced by the Note (the "Loan") and Loan Documents (and any interest therein) are assignable by Lender, and any assignment of the Loan Documents by Lender shall operate to vest in the assignee all rights and powers conferred upon and granted to Lender by the Loan Documents; and in the event of any such assignment of the entire interest of Lender in the Loan Documents, Lender shall be relieved of all obligations and liabilities under the Loan Documents; neither the Loan Documents nor the proceeds of the Loan may be assigned by Borrower without the prior written consent of Lender, which may be given or withheld at the discretion of Lender. The Loan Documents may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought. The Loan Documents and the "Key Documents" (as defined in the Loan Documents) contain the entire agreement between Borrower and Lender relating to the loan transaction contemplated thereby. Nothing contained in the Loan Documents shall be construed to create an agency, partnership or joint venture between Borrower and Lender. All personal pronouns used in the Loan Documents, whether

used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections in the Loan Documents are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions thereof. If more than one person or entity constitutes, collectively, Borrower or Guarantor, all of the provisions of the Loan Documents referring to Borrower or Guarantor shall be construed to refer to each such person or entity individually as well as collectively; and if Borrower or Guarantor is a partnership, all of the provisions hereof referring to Borrower or Guarantor shall be construed to apply to each of the general partners thereof. When anything is described in the Loan Documents in general terms and one or more examples or components of what has been described generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description in any way. Wherever in the Loan Documents the approval or consent of Lender is required or permitted, or wherever a requirement of Lender or the standard of acceptability or satisfaction of Lender must be determined, such approval, consent or determination of Lender shall not be unreasonably exercised; provided, however, that wherever it is indicated that such approval, consent or determination is to be given or made at the option or in the discretion or judgment of Lender, then Lender may grant or withhold such approval or consent or make such determination without restriction in its sole and absolute discretion. If any provisions of the Loan Documents or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of the Loan Documents and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrower under the Loan Documents. All exhibits referred to in the Loan Documents are by such reference incorporated into the Loan Documents as if fully set forth therein.

4.06 Communications. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under the Loan Documents shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective (unless otherwise specifically provided herein) upon being personally delivered, or upon being deposited in the United States Mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given

in accordance herewith; provided, however, that the time period in which a response to any such Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such Communication, if given to Lender, shall be addressed as follows:

The First National Bank of Atlanta
Real Estate Finance Division
First Atlanta Tower, Suite 1810
Two Peachtree Street
Atlanta, Georgia 30383

and if given to Borrower, shall be addressed as follows:

Valleydale Limited Partnership
c/o Leon Novak
6400 Powers Ferry Road, Suite 100
Atlanta, Georgia 30339

4.07 Indemnity. Borrower shall protect, defend, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including reasonable attorneys' fees and expenses actually incurred, but not statutory attorneys' fees under O.C.G.A. § 13-1-11) imposed upon or incurred by Lender by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Indebtedness, or (b) the condition of the Premises, or (c) failure to pay recording, mortgage, intangibles or similar taxes, fees or charges relating to the Loan or any one or more of the Loan Documents, or (d) the Loan Documents or any claim or demand whatsoever which may be asserted against Lender by reason of any alleged action, obligation or undertaking of Lender relating in any way to the Indebtedness or to any matter contemplated by the Loan Documents. In the event Lender incurs any liability, loss or damage arising out of or in any way relating to the loan transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the interest rate specified in the Note from the date incurred until paid and shall be payable on demand.

4.08 Greater Estate. In the event that Borrower is the owner of a leasehold estate with respect to any portion of the Premises and Borrower obtains a fee estate in such portion of the Premises, then such fee estate shall automatically, and without

further action of any kind on the part of Borrower, be and become subject to the security title and lien hereof.

4.09 Applicable Law. Borrower and Lender hereby agree that this Instrument shall be interpreted, construed and enforced according to the laws of the State of Georgia, except that the laws of the State of Alabama shall govern as to the creation, priority and enforcement of security interests in property located in the State of Alabama. Should any obligation or remedy under this instrument be invalid or unenforceable pursuant to the laws provided herein to govern, the laws of the other state referred to hereinabove or of another state whose laws can validate and apply thereto shall govern.

4.10 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit "D" hereto shall, in the event of any conflict between such further stipulations and any of the other provisions of this Instrument, be deemed to control.

IN WITNESS WHEREOF, Borrower has executed this Instrument under seal, as of the day and year first above written.

BORROWER:

VALLEYDALE LIMITED PARTNERSHIP, a
Georgia limited partnership (SEAL)

By: Leon Novak (SEAL)
Leon Novak, its sole general
partner

BOOK 302 PAGE 765

ACKNOWLEDGMENT

STATE OF GEORGIA
COUNTY OF DEKALB

I do hereby certify that on this 27th day of July, 1990, before me, the undersigned notary public in and for the county and state aforesaid, and duly commissioned, personally appeared Leon Novak, with whom I am personally acquainted, and acknowledged under oath to and before me that he is the sole general partner of Valleydale Limited Partnership, a Georgia limited partnership, the Borrower named in and which executed the foregoing instrument, and that on behalf of and in the name of said partnership, as such partner thereof, and being duly authorized thereby, he signed, sealed and delivered the foregoing instrument for the uses and purposes therein set forth, as his free and voluntary act and as the free and voluntary act of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid.



Notary Public

Name: ERIK KETELSEN
(Type or Print)

[NOTARIAL SEAL]

My Commission Expires:

~~Notary Public, Fulton County, Georgia~~
~~My Commission Expires March 10, 1992~~

BOOK 302 PAGE 766

Lender has executed this Instrument for the purpose of becoming a signatory to the security agreement set forth herein.

THE FIRST NATIONAL BANK OF ATLANTA

By: Ward Heath
Title: Commercial Officer

(BANK SEAL)

ACKNOWLEDGMENT

STATE OF GEORGIA
COUNTY OF DEKALB

I do hereby certify that on this 27th day of July, 1990, before me, the undersigned notary public in and for the county and state aforesaid, and duly commissioned, personally appeared WARD HEATH, with whom I am personally acquainted, and acknowledged under oath to and before me that he is the COMMERCIAL OFFICER of The First National Bank of Atlanta, a national banking association, the Lender named in and which executed the foregoing instrument, and that he knows the seal of said association, and the seal affixed to the foregoing instrument is the seal of said association, and that it was affixed to the foregoing instrument by due and regular authority, and that on behalf of and in the name of said association, as such officer thereof, and being authorized thereby, he signed, sealed and delivered the foregoing instrument for the uses and purposes therein set forth, as his free and voluntary act and as the free and voluntary act of said association.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid.

Erik Ketelsen
Notary Public

Name: ERIK KETELSEN
(Type or Print)

[NOTARIAL SEAL]

My Commission Expires:

Notary Public, Fulton County, Georgia
My Commission Expires March 10, 1992

EXHIBIT "A"

[Legal Description]

Lot 1 according to the Survey of Village on Valleydale at Southlake, as recorded in Map Book 11, Page 84, together with Declaration of Restrictions and grant of Easement as recorded in Real 173, Page 355 in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

[Leases]

1. That certain Lease dated as of April 23, 1990 (as amended, the "Lease") between Novak Development Corporation, a Georgia corporation as "Lessor," and The Goodyear Tire & Rubber Company, an Ohio corporation as "Lessee," as said Lease was amended by that certain Letter Agreement dated June 22, 1990, executed by Lessor and accepted by Lessee, and as said Lease was assigned to Borrower by Lessor pursuant to that certain Assignment and Assumption of Lease Agreement dated July 3, 1990 between Lessor and Borrower.
2. Any other leases and arrangements of any sort now or hereafter affecting the Premises and providing for or resulting in the payment of money to Borrower for the use of the Premises or any part thereof, whether the user enjoys the Premises or any part thereof as tenant for years, invitee, licensee, tenant at sufferance or otherwise and irrespective of whether such leases and arrangements be oral or written.

EXHIBIT "C"

[Permitted Encumbrances]

1. Ad valorem taxes for 1990 and subsequent years not yet due and payable.
2. Mineral and mining rights not owned by Borrower, including, but not limited to, rights conveyed in Deed Book 121, Page 294; Deed Book 127, Page 140; Deed Book 111, Page 625; and Deed Book 4, Page 542, in the Office of the Judge of Probate of Shelby County, Alabama.
3. Ten foot (10') Easement on North and East boundary lines as shown on Survey of Village on Valleydale at Southlake, as recorded in Map Book 11, Page 84, in the Office of the Judge of Probate of Shelby County, Alabama.
4. Right of Way to Alabama Power Company as recorded in Real 224, Page 644 and Real 255, page 823, in the Office of the Judge of Probate of Shelby County, Alabama.
5. Declaration of Protective Covenants of Southlake (Business), recorded in Real 153, beginning at Page 395, as amended in Real 182, Page 1, in the Office of the Judge of Probate of Shelby County, Alabama.
6. Declaration of Restrictions and grant of Easement as recorded in Real 173, Page 355, in the Office of the Judge of Probate of Shelby County, Alabama.
7. Restrictions as to laundry and dry cleaning use of property, as set forth in exception number 8 of deed recorded in Real 173, Page 304, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT "D"

FURTHER STIPULATIONS

D-1. Cure of Defaults. Anything herein contained to the contrary notwithstanding, the provisions of this Section D-1 shall not pertain to Defaults arising as a result of the events set forth in Subsections 3.01(d) (as the same applies to the Premises or any part thereof), 3.01(e), 3.01(f), 3.01(h), 3.01(l) or 3.01(m) hereof, to any Default consisting of a failure to provide insurance as required by Subsection 2.03(a) hereof, to any Default consisting of a failure to comply with Section 2.10 hereof, to any Default consisting of a failure to give a required notice to Lender, to any Default consisting of a failure to repay the Indebtedness at maturity, or to any Default excluded from any provision for cure of defaults contained in any other of the Loan Documents. In the event of the occurrence of a Default which consists solely of the first failure, during the period of 365 days ending on the date of such occurrence of Default, to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness, if, within ten (10) days of the date of mailing by Lender of notice of said Default to Borrower at Borrower's address provided in Section 4.06 hereof, Borrower makes such payment to Lender, and if Borrower makes such payment within said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. In the event of the occurrence of a Default, other than a Default consisting of a failure to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness, if, within twenty (20) days of the date of mailing by Lender of notice of said Default to Borrower at Borrower's address provided in Section 4.06 hereof, Borrower fully cures said Default to the satisfaction of Lender; and if Borrower so cures said Default within said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. The provisions of this Section D-1 to the effect

that the cure periods described herein shall commence on the date of mailing by Lender of notice of said Default shall apply notwithstanding any provision of Section 4.06 hereof to the contrary concerning the measurement of time periods for response to notices; provided, however, that all other terms of Section 4.06 hereof shall apply to the notice to be provided by Lender pursuant to this Section D-1.

BOOK 302 PAGE 772

CERTIFICATE

STATE OF GEORGIA

COUNTY OF DEKALB

In accordance with Section 40-22-2(2)b of the Code of Alabama, 1975, the undersigned, a national banking association organized under the laws of the United States of America, does hereby certify that the amount of the indebtedness presently incurred by Valleydale Limited Partnership to the undersigned and secured by the foregoing mortgage is \$500,000.00.

The undersigned agrees that during the month of September of each year, if this mortgage is in existence, it shall report to the Judge of Probate of Shelby County, Alabama the amount of additional indebtedness of liability, if any, secured by said mortgage and pay any tax required upon the additional indebtedness.

Dated as of the 27th day of July, 1990.

THE FIRST NATIONAL BANK OF ATLANTA

By: Ward Heath
Title: Commercial Officer

(BANK SEAL)

Sworn to and subscribed
before me this 27th day of
July, 1990.

Erin L. Latta
Notary Public

My Commission Expires:
Notary Public, Fulton County, Georgia
by Commission Expires March 10, 1992

(NOTARIAL SEAL)

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

90 JUL 31 AM 8:55

James A. Lanning, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Notary Fee	\$	756.00
3. Title Insurance	\$	70.00
4. Recording Fee	\$	3.00
5. Notary Fee	\$	
6. Notary Fee	\$	1.00
Total	\$	829.00

