

STATE OF ALABAMA)

SHELBY COUNTY )

1239

**MORTGAGE**

THIS INDENTURE is made this the 11th day of October, 1990, by and between BIRMINGHAM REALTY COMPANY, an Alabama corporation with its principal place of business at Two Perimeter Park South, Suite 230 E, Birmingham, Alabama 35243 (the "Mortgagor"), and FIRST ALABAMA BANK, an Alabama banking corporation with its principal place of business at 417 North 20th Street, Birmingham, Alabama 35203 (the "Mortgagee").

**W I T N E S S E T H:**

WHEREAS, Mortgagor is indebted to Mortgagee in the principal amount of THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS, as evidenced by a promissory note of even date herewith (the "Note"), the terms of which are incorporated herein by reference, with principal and interest payable as stipulated and provided therein; and

WHEREAS, the said THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS has been loaned by Mortgagee in accordance with a Loan Agreement of even date herewith (the "Loan Agreement"), the terms of which agreement are incorporated herein by reference; and

WHEREAS, Mortgagee desires to secure the prompt payment of the indebtedness evidenced by the Note, and the payment of principal and interest therein provided for; and

WHEREAS, as a condition of advancing the monies under the Loan Agreement, Mortgagee has required Mortgagor to grant to Mortgagee a first mortgage lien on the real property hereinafter described;

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the premises, the disbursement to Mortgagor of the aforesaid sum of THREE MILLION AND NO/100 (\$3,000,000.00) DOLLARS, to secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and, further, to secure the performance of the covenants, conditions and agreements hereinafter and in the Note set forth, Mortgagor has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, the real estate lying and being in Shelby County, Alabama, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

TOGETHER WITH all and singular the tenements, hereditaments, rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and the

*Lawrence Simpson*

reversions, remainder and remainders, rents, issues and profits thereof; and all rights, title and interests, if any, of Mortgagor in and to any streets, alleys, roads or highways abutting the described Property; and

TOGETHER WITH any awards hereafter made for any taking of or injury to said Property through eminent domain or otherwise, including awards or damages for change of grade, and also any return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, premiums and payments are hereby assigned to Mortgagee and may be at any time collected by Mortgagee; and

TOGETHER WITH all buildings and structures, now or hereafter constructed on the Property; and all goods, machinery, apparatus, equipment, fittings, and fixtures, whether actually or constructively attached or to be attached to said Property, and articles of personal property of every kind and nature whatsoever, now or hereafter located in, upon or under said property or any part thereof and used or usable in connection with any present or future operation of said property and now owned or hereafter acquired by Mortgagor, including, but without limiting the generality of the foregoing, all heating, air conditioning, air cooling, freezing, lighting, laundry, incinerating and power apparatus and equipment, engines, pipes, pumps, tanks, motors, conduits, switchboards, plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigerating, ventilating and communications apparatus and equipment, boilers, ranges, furnaces, oil burners or units thereof, appliances, vacuum cleaning systems, elevators, escalators, shades, awnings, screens, storm doors and windows, stoves, refrigerators, attached cabinets, partitions, ducts and compressors, rugs and carpets, draperies, furniture and furnishings, and together with all additions thereto and replacements thereof and all proceeds of the foregoing.

TOGETHER WITH all of Mortgagor's rights further to encumber said property for debt without the prior written approval of the Mortgagee.

TO HAVE AND TO HOLD the said Property, rights and privileges, and every part thereof (collectively referred to as the "Mortgaged Property"), unto Mortgagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that Mortgagor is lawfully seized of the Mortgaged Property and the improvements thereon, and has good right to sell and convey the same as aforesaid; and Mortgagor covenants with the Mortgagee that the Mortgaged Property is free of all encumbrances except as herein set out, and that the Mortgagor will warrant and forever defend the title to said Property unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

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The said indebtedness which is secured hereby has been advanced by Mortgagee to Mortgagor in accordance with the Loan Agreement of even date herewith between Mortgagor and Mortgagee, the terms of which are incorporated as a part hereof. In the event of default in the terms of said Loan Agreement, such default shall be an event of default hereunder entitling the Mortgagee herein to exercise the remedies provided herein, including the right to foreclose this Mortgage in accordance with the terms hereof.

This conveyance is intended to operate and is to be construed as a mortgage and is given to secure (a) the debt evidenced by the aforementioned Note and the interest thereon and any renewals, extensions or modifications thereof, and (b) any additional sums as may be advanced or re-advanced to or for Mortgagor's account for taxes, insurance premiums, public assessments and repairs; said additional sums to bear interest from the date advanced at the per annum rate set forth in the Note. (The Note and the other obligations secured hereby are sometimes collectively referred to as the "Secured Indebtedness.")

PROVIDED THAT, if all of the Secured Indebtedness is paid as and when due, and if Mortgagor keeps and performs all of the covenants, provisions, and agreements of this Mortgage and the Loan Agreement, then this Mortgage will be void and release or satisfaction thereof will be made at the expense of the Mortgagor, otherwise this Mortgage will remain in full force and effect.

FOR THE PURPOSE of further securing the payment of the Secured Indebtedness, Mortgagor warrants, covenants, and agrees with Mortgagee as follows:

(1) Mortgagor shall pay the Secured Indebtedness and interest thereon when and as they shall become due, whether in course or under any condition, covenant or agreement herein set forth, together with any other indebtedness which Mortgagor may owe to Mortgagee, and if not paid when due, such Secured Indebtedness shall bear interest from the due date at the per annum rate set forth in the Note from its due date and such additional interest shall be secured hereby.

(2) That, for the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage, malicious mischief, and rent coverage insurance policies and, when available and required by Mortgagee, war damage and other hazard insurance with respect to any and all buildings on the Mortgaged Property, such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee the fire and other insurance policies covering said property and

any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified, then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this Mortgage and bear interest at the per annum rate set forth in the Note from the date of payment by Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this Mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be applied in payment for any repair or replacement of such building, or buildings, without affecting the lien of this Mortgage for the Secured Indebtedness. Mortgagor agrees to give Mortgagee notice in writing of any damage to the Mortgaged Property or the improvements thereon caused by fire or other casualty within ten (10) days after the occurrence of any such damage.

(3) That the Mortgaged Property and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted. Taxes and assessments or other charges which may be levied upon or accrue against the Mortgaged Property, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this Mortgage.

(4) No building or other improvement on the Mortgaged Property shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this Mortgage and adapted to the proper use and enjoyment of the Mortgaged Property be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagor. In the event of any breach of this covenant, the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(5) That any lien which may be filed against the Mortgaged Property under the provisions of the statutes of



Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens, such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

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(6) If Mortgagor fails to insure the Mortgaged Property and the improvements thereon as hereinabove provided, or fails to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this Mortgage, Mortgagee may, at its option, insure said property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specifically secured, shall be secured by this Mortgage, shall bear interest at the per annum rate set forth in the Note from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(7) No failure of Mortgagee to exercise any option herein given to declare the maturity of the Secured Indebtedness shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the Secured Indebtedness by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

(8) If Mortgagee shall be made a party to any suit involving the title to the Mortgaged Property and employs an attorney to represent it therein, or if the Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the Mortgaged Property that purports to be superior to the lien of this Mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee, the same shall be secured by the lien of this Mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the per annum rate set forth

in the Note from the date it is paid or incurred and shall be at once due and payable.

(9) All expenses incurred by Mortgagee, including attorney's fees, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the Mortgaged Property, whether such claims or encumbrances be valid or not, shall become a part of the Secured Indebtedness.

(10) Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this Mortgage or to appear in any bankruptcy proceeding affecting the Mortgagee under this Mortgage.

(11) In the event damages are paid or awarded for the taking of or injury to the Mortgaged Property, whether such taking or injury be done under the power of eminent domain or otherwise, any and all such payments, awards and damages arising thereunder shall be paid to Mortgagee to be applied at the option of Mortgagee toward the satisfaction of any and all of the Secured Indebtedness.

(12) Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage, and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the per annum rate set forth in the Note to the date of payment, whether such remaining principal sum is then due or not by the terms of said Note or of this Mortgage.

(13) Mortgagor shall not, without Mortgagee's written consent, initiate, join in, or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restriction limiting or defining the uses which may be made of the Mortgaged Property or any part thereof.

(14) Mortgagor will faithfully perform the covenants of the lessor contained in any present or future lease of any part or all of the Mortgaged Property, will neither do anything nor neglect to do anything nor permit anything to be done which would cause the modification or termination of any such lease or the obligation of the lessee, his or its successor and assigns, or the rents provided for therein, or the interest of the lessor or of the Mortgagee therein or thereunder. Mortgagor will not assign the rent or any part of the rent

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derived from any lease affecting the Mortgaged Property to anyone other than the Mortgagee, not cancel or amend any lease now in existence or hereinafter made, nor permit the assignment or subletting of any lease affecting the Mortgaged Property for more than one (1) month in advance, nor do any other act with regard to a lease whereby the lien of this Mortgage may be impaired in value or quality. Mortgagor will give Mortgagee immediate notice by certified mail of any notice of default or notice of cancellation received from the lessee. This provision shall not be construed to prevent Mortgagor from suing for appropriate remedies against any defaulting lessee. Mortgagor will procure and deliver to Mortgagee, within thirty (30) days after notice and demand, estoppel letters or certificates from each lessee, tenant or occupant in possession of the Mortgaged Property, as required by, or in form and substance satisfactory to Mortgagee, and deliver to Mortgagee a recorded assignment of the lessor's interest in the lease, in form and substance satisfactory to Mortgagee (in addition to the conveyance hereunder).

If at any time there is any conflict between any provision of this Mortgage and any provision of the aforesaid leases, then such provision of this Mortgage shall govern and apply.

(15) Without the prior written consent of Mortgagee, Mortgagor shall not encumber any interest in the Mortgaged Property or sell, contract to sell, lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property. Mortgagee shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer (each such encumbrance, sale, contract, lease and other transfer described in subparagraphs (a) and (b) is hereinafter referred to as a "Prohibited Transfer"), and Mortgagee's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Mortgagee's security or whether or not it may or may not be reasonable (commercially or otherwise) for Mortgagee to consent to any Prohibited Transfer. Without limiting the foregoing, Mortgagee's consent may, at the sole option of Mortgagee, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Mortgagee with a manager acceptable to Mortgagee, an assignment to Mortgagee of any security given to Mortgagor in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or the Loan Agreement.

(16) If Mortgagor shall make default in the payment of any of the Secured Indebtedness, or in the performance of any of the terms or conditions hereof or of the Loan Agreement, Mortgagee may proceed to collect the rent, income and profits from the Mortgaged Property, either with or without the

appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this Mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to the interest due on the principal of the Secured Indebtedness, and the remainder, if any, to the principal of the Secured Indebtedness.

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(17) If Mortgagor shall fail to pay, or cause to be paid, the whole or any portion of the principal of the Secured Indebtedness or any installment of interest thereon, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein set forth, or should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment now, or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in any of the covenants, conditions and agreements herein set forth (other than a default in payment of principal or interest as referred to above), and if such defaults have not been cured after Mortgagee has given Mortgagor thirty (30) days written notice thereof, then and in that event, the whole of said Secured Indebtedness, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of said property and after, or without, taking such possession of the same, sell the Mortgaged Property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property in the name and on behalf of Mortgagor, and the certificate of the holder of the Secured Indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the Mortgaged Property. The Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of the Mortgaged Property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the Secured Indebtedness, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this Mortgage, of the collection of said Secured Indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said Secured Indebtedness, or



interested in the Mortgaged Property, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal of the Secured Indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(18) In the event of the enactment of any law by the State of Alabama, after the date of this Mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect the interest of the Mortgagee, Mortgagor shall forthwith pay any such obligation imposed on Mortgagee thereby; provided, that if any for reason payment by the Mortgagor of any such new or additional taxes would be unlawful, or if the payment thereof would constitute usury or render the loan or the Secured Indebtedness wholly or partially usurious under any of the terms or provisions of the Note, this Mortgage, or otherwise, Mortgagee may, at its option, pay that amount or portion of such taxes as would render the loan or the Secured Indebtedness unlawful or usurious if paid by the Mortgagor, in which event Mortgagor shall concurrently therewith pay the remaining lawful and nonusurious portion or balance of said taxes, or the Mortgagee may, after giving Mortgagor thirty (30) days notice, declare the entire Secured Indebtedness and all interest accrued thereon to be, and the same shall thereupon become, immediately due and payable.

(19) Should Mortgagor be or become insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed; or should Mortgagor intentionally damage or attempt to remove any improvements upon said Mortgaged Property; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on said Mortgaged Property prior to the lien hereof; or should there be a default in any Guaranty Agreement which guarantees the Note secured by this Mortgage; then, upon any such default, failure or contingency, the Mortgagee shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this Mortgage by the power of sale herein set forth or any suit as the Mortgagee may elect.

(20) It is expressly agreed that any of the Secured Indebtedness may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of said Mortgaged Property and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said Secured Indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said Secured Indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said Secured Indebtedness or any part thereof shall be taken, considered and held as cumulative.

(21) Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor, that if they or any one or more of them shall hold possession of the Mortgaged Property or any part thereof subsequent to foreclosure hereunder, they or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of wrongful detainer and shall be liable to such purchaser or purchasers for reasonable rental of said Mortgaged Property, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(22) Mortgagor agrees that where, by the terms of this Mortgage or the Note, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the time stated enters into the consideration and is the essence of the whole contract.

(23) Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be deemed to have been given or served when deposited in the United States Mail by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor:

Birmingham Realty Company  
Attn: President  
Two Perimeter Park South  
Suite 230 E  
Birmingham, Alabama 35243

To Mortgagee:

First Alabama Bank  
Attention: Mortgage Loan Dept.  
P.O. Box 10247  
Birmingham, Alabama 35202

With Copy To:

Joseph W. Mathews, Jr.  
Lange, Simpson, Robinson &  
Somerville  
1700 First Alabama Bank Building  
Birmingham, Alabama 35203

or to such other address as either party may have given to the other by written notice.

(24) Mortgagee shall have the right from time to time to sue for any sums, whether interest, principal or any installment of either or both, taxes, penalties, or any other sums required to be paid under the terms of this Mortgage, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of Mortgagee to thereafter enforce any appropriate remedy against the Mortgagor, including an action of foreclosure, or any other action, for a default or defaults by Mortgagor existing at the time such earlier action was commenced.

(25) The rights of Mortgagee granted and arising under the clauses and covenants contained in this Mortgage, the Assignment of Leases and Rents, the Loan Agreement, and the Note, shall be separate, distinct and cumulative of other powers and rights herein granted and all other rights which Mortgagee may have in law or equity, and all of them are cumulative to the remedies for collection of indebtedness, enforcement of rights under mortgages, and preservation of security as provided at law. No act of Mortgagee shall be construed as an election to proceed under any one provision herein or under the Note or any other instrument executed in connection herewith to the exclusion of any other provision or as an election of remedies to the bar of any other remedy allowed at law or in equity, anything herein or otherwise to the contrary notwithstanding.

(26) No delay or forbearance by the Mortgagee in exercising any or all of its rights hereunder or rights otherwise afforded by law or equity shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default as set forth herein or in the event of any subsequent default hereunder. All of the covenants, terms and conditions hereof shall bind and inure to the benefit of the respective successors and assigns of the parties hereto. If any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder

of this Mortgage shall remain operative and in full force and effect. This Mortgage may be executed in two or more counterparts, each of which shall be an original instrument, but all of which shall constitute a single agreement. All interest provided for in this Mortgage shall be calculated on the basis of a 365/366-day year and the actual number of days elapsed.

IN WITNESS WHEREOF, the undersigned Birmingham Realty Company has caused this Mortgage to be duly executed in its name and behalf by its duly authorized officer, all as of the day and year first above written.

MORTGAGOR

BERMINGHAM REALTY COMPANY

By:   
Its President

This instrument prepared by:

Joseph W. Mathews, Jr.  
Lange, Simpson, Robinson &  
Somerville  
1700 First Alabama Bank Bldg.  
Birmingham, Alabama 35203

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STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Russell M. Cunningham, III, whose name as President of Birmingham Realty Company, an Alabama corporation, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 11th day of October, 1990.

  
Notary Public  
My Commission  
Expires: 9/17/93

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Exhibit A

Commence at the Northwest corner of the Southwest 1/4 of Section 25, Township 20 South, Range 3 West; run thence South 0 deg. 51 min. 34 sec. West along the West line of said Section 25 for 373.97 feet; run thence South 80 deg. 28 min. 22 sec. East for 193.0 feet to the East Right of Way of CSX Railroad and the point of beginning; continue South 80 deg. 28 min. 22 sec. East along the South line of the "Walmart Property" as recorded in Deed Book 39, page 584 for 459.61 feet; run thence South 04 deg. 52 min. 18 sec. West for 188.0 feet; run thence South 88 deg. 21 min. 26 sec. East for 45.12 feet to the West Right of Way of U. S. Highway Number 31; run thence South 16 deg. 07 min. 33 sec. West along said West Right of Way for 389.72 feet; run thence North 88 deg. 16 min. 30 sec. West along the North line of the "McDonald's Corporation Property"; as recorded in Deed Book 345, page 583 for 255.0 feet; run thence South 16 deg. 07 min. 34 sec. West along the West line of said "McDonald's Corporation Property" for 28.06 feet; run thence North 81 deg. 29 min. 25 sec. West for 207.68 feet to the East Right of Way of said CSX Railroad; run thence North 08 deg. 30 min. 35 sec. East along said East Right of Way for 634.61 feet to the point of beginning; being situated in Shelby County, Alabama.

Said land being in the Northwest 1/4 of the Southwest 1/4 of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama.

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1	Deed Tax	\$	4.50
2		\$	5.00
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STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

90 OCT 22 AM 8:49

JUDGE OF PROBATE