

STATE OF ALABAMA  
COUNTY OF SHELBY

2034  
MORTGAGE  
AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made this 25 day of October, 1990, is between BILL D. EDDLEMAN, a married man (hereinafter called the "Mortgagor"), Mortgagor, whose address is c/o Eddleman Properties, 2700 Highway 280, Birmingham, Alabama 35223, and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (hereinafter called the "Lender"), Mortgagee, whose address is P.O. Box 2554, Birmingham, Alabama 35290, Attention: Commercial Real Estate Department.

W I T N E S S E T H:

WHEREAS, Mountain Brook Associates, an Alabama general partnership ("Borrower"), is justly indebted to Lender in the aggregate principal sum of \$6,100,000.00, as evidenced by the following instruments (as the same may hereafter be extended, amended or modified, referred to individually herein as a "Note" and collectively as the "Notes"):

(1) Promissory Note from Borrower to Lender dated February 13, 1985, in the original principal sum of \$2,600,000.00, as modified, amended, extended and increased to the principal sum of \$3,300,000.00 by Note Modification Agreements dated August 28, 1985, July 1, 1987, November 13, 1987, July 1, 1989, and July 1, 1990.

(2) Promissory Note from Borrower to Lender dated May 31, 1983, in the original principal sum of \$2,400,000.00, as modified, amended, extended and increased to the principal sum of \$2,800,000.00 by Note Modification Agreements dated May 30, 1984, July 1, 1984, February 13, 1985, June 1, 1986, July 1, 1987, July 1, 1988, July 1, 1989 and July 1, 1990.

WHEREAS, Mortgagor, as a general partner of Borrower, wishes to secure up to One Hundred Sixty-Six Thousand and NO/100 Dollars (\$166,000.00) of the aggregate principal indebtedness of Borrower to Lender;

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to such principal sum, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in any loan agreement executed in connection with the Notes, has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its

successors and assigns, the following described land (which together with any additional such property hereafter acquired by the Mortgagor and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

PARCEL I

Lot 12, according to the Survey of Meadowbrook, 5th Sector, 1st Phase, as recorded in Map Book 8, Page 109, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL II

Lot 08, according to the Amended Map of Meadowbrook, 5th Sector, 2nd Phase, as recorded in Map Book 11, Page 76 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL III

Lot 01, according to the Survey of Meadowbrook, 5th Sector, 3rd Phase, as recorded in Map Book 10, Page 27 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL IV

Lot 28, according to the Survey of Meadowbrook, 5th Sector, 3rd Phase, as recorded in Map Book 10, Page 27 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL V

Lot 20, according to the Survey of Meadowbrook, 5th Sector, 3rd Phase, as recorded in Map Book 10, Page 27 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

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

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

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

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Notes, any loan agreement executed in connection therewith and this mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform, and observe, and cause the Borrower to keep, perform, and observe, all and singular the covenants and promises in the Notes, in any loan agreement executed in connection therewith and in this mortgage expressed to be kept, performed, and observed by and on the part of the Mortgagor or the Borrower, as the case may be, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Lender as follows:

#### ARTICLE I

1.01. Performance of Notes and Mortgage. The Mortgagor will perform, observe and comply with all provisions hereof, and will cause the Borrower to perform, observe and comply with all

provisions of the Notes secured hereby and to duly and punctually pay to the Lender the sum of money expressed in the Notes with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of the Notes, or by the Mortgagor pursuant to the provisions of this mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower or the Mortgagor, as the case may be.

1.02. **Warranty of Title.** The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth herein, the same is free and clear of all liens, charges, and encumbrances whatsoever, and that Mortgagor shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03. **Monthly Tax Deposits.** If required by the Lender, following Lender's request, the Mortgagor will pay to the Lender on the first day of each month, until the Notes are fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges when due. Upon an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Paragraph 1.03 of Article I remaining to the Mortgagor's credit.

1.04. **Other Taxes, Utilities and Liens.**

(a) The Mortgagor will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part



thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

(b) The Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) The Mortgagor shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.05. Insurance. The Mortgagor will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against such insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Mortgagor and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said funds, the Lender may apply the net proceeds, at its option, either

Property, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Mortgagor to be used to repair such improvements or to build new improvements in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by the Lender, following Lender's request, the Mortgagor will pay to the Lender on the first day of each month, together with and in addition to any monthly tax deposit (as required by Section 1.03 hereof) until the Notes are fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Mortgagor's credit.

1.06. Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards,

damages, claims, rights of action and proceeds as the Lender may require.

**1.07. Care of the Property.**

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Lender.

(c) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(d) The Mortgagor will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.

**1.08. Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by the Lender, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable, by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Mortgagor under this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Mortgagor and the Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Mortgagor so to do.

The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09. **Leases Affecting Mortgaged Property.** The Mortgagor will enter into no leases affecting the Mortgaged Property or any part thereof, nor permit or suffer to exist any tenancy of or affecting the Mortgaged Property or any part thereof.

1.10. **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Notes, this mortgage, Mortgagor, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to two percent (2%) in excess of the highest interest rate then borne by either of the Notes, shall be payable upon demand, and shall be secured by the lien of this mortgage.

1.11. **Performance by Lender of Defaults by Mortgagor.** If the Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender with interest thereon at a rate equal to two percent (2%) in excess of the highest rate then borne by either of the Notes. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The 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 covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

## ARTICLE II

2.01. **Event of Default.** The term "Event of Default," wherever used in the mortgage, shall mean any one or more of the following events:



(a) Failure by the Mortgagor or the Borrower, as the case may be, to pay as and when due and payable under the Notes, this mortgage or any loan agreement executed in connection with the Notes any principal, interest or other sums due; or

(b) Failure by the Mortgagor or the Borrower, as the case may be, duly to observe any other covenant, condition, or agreement of the Notes, this mortgage, any loan agreement executed in connection with the Notes, or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues for thirty (30) days or more after written notice to Mortgagor or Borrower, as the case may be, in the manner set forth herein or therein, or the occurrence of an Event of Default under any such document or instrument; or

(c) Except as otherwise expressly provided herein, the sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein; or

(d) The creation or suffering to exist by the Mortgagor of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage, the lien for ad valorem taxes not then delinquent, and matters otherwise permitted herein, if any, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(e) Any representation or warranty provided herein, in any loan agreement executed in connection with the Notes, in any document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby or in any document, instrument, financial statement or other material given or provided by or on behalf of Borrower or Mortgagor in connection with the loan secured hereby, is false or materially misleading at the time given or provided or thereafter becomes untrue in any material respect.

2.02. **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of the Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of the Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

2.03. **Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall have occurred, the Mortgagor, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession, of all

the Mortgaged Property, and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in Mortgagor's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04. **Lender's Power of Enforcement.** If an Event of Default shall have occurred, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Notes or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes.

The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

2.05. **Power of Sale.** If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

2.06. **Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.05 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to two percent (2%) in excess of the highest rate borne by either of the Notes, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

2.07. **Lender's Option on Foreclosure.** At the option of the Lender, this mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the mortgage in equity, Lender may, at its option, foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants

parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.08. **Waiver of Exemption.** Borrower waives all rights of exemption, including, without limitation, homestead, pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

2.09. **Suits to Protect the Mortgaged Property.** The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents, and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule, or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

2.10. **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of the Notes 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 mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

2.11. **No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon.

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Notes; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the Notes or this mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original



liability under the Notes, this mortgage or otherwise of the Mortgagor or the Borrower, as the case may be, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.12. **Discontinuance of Proceedings - Position of Parties, Restored.** In case the Lender shall have proceeded to enforce any right or remedy under this mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case the Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Lender shall continue as if no such proceeding has been taken.

2.13. **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this mortgage is intended to be exclusive of any 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 now or hereafter existing at law or in equity or by statute.

### ARTICLE III

3.01. **Successors and Assigns Included in Parties.** Whenever in this mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this mortgage by or on behalf of the Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.02. **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part

hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03. **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in this mortgage or in the Notes shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained herein and in the Notes shall in no way be affected, prejudiced, or disturbed thereby.

3.04 **Environmental Matters.** Mortgagor represents and warrants to Lender that neither the Mortgaged Property nor Mortgagor is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and Mortgagor further represents and warrants that there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Mortgagor represents and warrants that it has not obtained and is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Mortgagor represents and warrants that no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Mortgagor agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended, to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Mortgagor shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the Mortgagor or the Mortgaged Property (whether or not due to any fault of Mortgagor) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure.

3.05 **Permitted Transfers.** Notwithstanding any provision hereof to the contrary, Mortgagor shall be permitted to sell or

otherwise transfer, and upon such sale or transfer Lender shall release from the lien of this mortgage, any of Parcels I, II, III, IV, or V of the Mortgaged Property, as more particularly described herein, provided that (i) at the time of such sale or transfer there exists no Event of Default or event which, but for the giving of any required notice or the expiration of any applicable grace or cure period, or both, would constitute an Event of Default hereunder, and (ii) contemporaneously with such sale or transfer, Mortgagor shall assign, pledge and deliver to Lender as additional collateral security for the indebtedness secured hereby, for each such Parcel sold or transferred, a certificate of deposit in the principal sum of \$33,000.00, the form and content of which certificate shall be in all respects satisfactory to Lender, and shall be issued by a financial institution acceptable to Lender, all in Lender's sole discretion.

IN WITNESS WHEREOF, the Mortgagor has executed this mortgage on the day and year first above written.

MORTGAGOR:

Bill D. Eddleman  
Bill D. Eddleman

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Bill D. Eddleman, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this 25 day of October, 1990.

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

90 OCT 30 AM 9:52

JUDGE OF PROBATE

Leresa V. Whitmore  
NOTARY PUBLIC  
My Commission Expires:  
12/2/93

This instrument prepared by:

Jeffrey T. Baker  
Burr & Forman  
3000 SouthTrust Tower  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000

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10066254

1. Debt Tax	249.00
2. Notary Fee	62.50
3. Recording Fee	3.00
4. Title Insurance	1.00
5. Other	
Total	290.50

