



STATE OF ALABAMA )

SHELBY COUNTY )

SECOND AMENDMENT TO MORTGAGE, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES

This Second Amendment is made and entered into this 18th day of December, 1990, by and between 119 Properties, Ltd., an Alabama limited partnership (the "Mortgagor"), whose address is 119 Hillsdale Road, Birmingham, Alabama 35213, and AmSouth Bank N.A., a national banking association (the "Mortgagee"), whose address is P.O. Box 11007, Birmingham, Alabama 35288, attention: Commercial Real Estate Department.

Recitals

A. The Mortgagor granted to the Mortgagee that certain Mortgage, Security Agreement and Assignment of Rents and Leases dated August 11, 1989, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Book 251, page 57.

B. The Mortgagor and the Mortgagee amended the above-referenced mortgage by document entitled First Amendment to Mortgage, Security Agreement and Assignment of Rents and Leases, dated October 25, 1989, which First Amendment is recorded in said Probate Office in Book 263, page 301 (the initial mortgage, as subsequently amended by the First Amendment, is herein called the "Mortgage").

C. The Mortgage, by its terms, secures two promissory notes, one in the principal amount of \$4,000,000, executed by the Mortgagor in favor of the Mortgagee and dated August 11, 1989, and the second, which has been paid in full, in the principal amount of \$237,500, executed by the Mortgagor in favor of the Mortgagee and dated October 25, 1989.

D. The Mortgagor has requested the extension of additional credit from the Mortgagee.

E. The Mortgagee has agreed to the extension of additional credit to the Mortgagor upon certain conditions, one of which is the execution of this Second Amendment.

Agreement

NOW, THEREFORE, in consideration of the premises, the Mortgagor and the Mortgagee hereby amend the Mortgage as follows:

1. Wherever the defined term "Note" appears in the Mortgage, it shall hereafter mean that certain promissory note in the amount of \$5,132,000, dated December 18, 1990, which note bears interest as provided therein, and which note is a restatement of and increase in that certain Promissory Note in the amount of \$4,000,000, executed by the Mortgagor, dated August 11, 1989. The

CABANISS, JOHNSTON, GARDNER,  
DUMAS & O'NEAL

AMSouth - SONAT TOWER

1800 5TH AVENUE NORTH, SUITE 1700

BIRMINGHAM, ALABAMA 35203

amount of additional principal indebtedness secured by the Mortgage, and on which mortgage tax shall be paid upon the recording of this Second Amendment, is \$1,674,000.

2. Exhibit B paragraphs III (a) and (b) are hereby deleted and replaced with the following:

(a) Unless payment to the Mortgagee is made in accordance with (b) (ii) below, the Mortgagor shall sell Exhibit B Real Estate for no less than \$3.00 per square foot.

(b)(i) So long as no Event of Default has occurred and is continuing, the Release Price to be paid to the Mortgagee for the release of any Exhibit B Real Estate shall equal:

Number of square feet of Exhibit B Real Estate being sold times \$3.00 (the "Exhibit B Required Sales Price") less costs of closing (not to exceed 10% of Exhibit B Required Sales Price).

(ii) In the event that the actual sales price of Exhibit B Real Estate is less than the Exhibit B Required Sales Price, the Mortgagor shall pay to the Mortgagee from its own funds the amount necessary to meet the Release Price.

(iii) In the event that the actual sales price for Exhibit B Real Estate is greater than the Exhibit B Required Sales Price (the funds in excess of the applicable Release Price from the sale of Exhibit B, C or D Real Estate being herein called "Excess Proceeds"), and so long as no Event of Default has occurred and is continuing, the Mortgagor shall be entitled to retain the Excess Proceeds derived from the sale of any Exhibit B Real Estate, provided that such Excess Proceeds shall be used exclusively by the Mortgagor for expenses related to the business of the Mortgagor.

3. Exhibit C paragraphs III (a), (b) and (c) are hereby deleted and replaced with the following:

(a) Unless payment to the Mortgagee is made in accordance with (b) (ii) below, the Mortgagor shall sell Exhibit C Real Estate for no less than (i) \$3.00 per square foot for parcels C12 and C13 as described on Schedule I attached hereto, and (ii) \$1.75 per square foot for all remaining Exhibit C Real Estate; provided, however, that the release price of \$3.00 per square foot shall be applicable only to the first three (3) acres sold from combined parcels C12 and C13, and any acreage in excess of said 3 acres sold from combined parcels C12 and C13 shall be subject to the \$1.75 per square foot sales price.

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(b) (i) So long as no Event of Default has occurred and is continuing, the Release Price for the sale of any Exhibit C Real Estate shall equal:

Number of square feet of Exhibit C Real Estate being sold times \$1.75 or \$3.00, whichever is applicable in accordance with (a)(i) or (a)(ii) immediately above (the "Exhibit C Required Sales Price"), less costs of closing (not to exceed 10% of Exhibit C Required Sales Price).

The Mortgagee shall pay, from the Release Price received, the payment, if any, due on the Pritchard Mortgage (the "Pritchard Release Price"), by check made payable jointly to the Mortgagor and the holder of the Pritchard Mortgage. Any excess between the Pritchard Release Price and the Release Price shall be retained by the Mortgagee and applied to the Debt.

For example, the Mortgagor enters a contract to sell 60,780 square feet of Exhibit C Real Estate at the rate of \$3.50 per square foot, for a sales price of \$212,730. The Exhibit C Required Sales Price is \$182,340 (\$3.00 per square foot assuming parcels C12 and C13); and the Exhibit C Release Price equals \$164,106 (\$182,340 less 10%). The Mortgagee shall be entitled to retain the difference between \$164,106 and the Pritchard Release Price, if any. The Mortgagor shall be entitled to all amounts received in excess of \$164,106.

(ii) In the event that the actual sales price of Exhibit C Real Estate is less than the Exhibit C Required Sales Price, the Mortgagor shall pay to the Mortgagee from its own funds the amount necessary to meet the Release Price.

(iii) In the event that the actual sales price for Exhibit C Real Estate is greater than the Exhibit C Required Sales Price and so long as no Event of Default has occurred and is continuing, the Mortgagor shall be entitled to retain the Excess Proceeds derived from the sale of any Exhibit C Real Estate, provided that such Excess Proceeds shall be used exclusively by the Mortgagor for expenses related to the business of the Mortgagor.

(c) The parties acknowledge that the plat attached hereto as Schedule I is not a legal re-survey of Exhibit C Real Estate shown thereon, and the individual lot lines are, therefore, subject to change. The Mortgagor hereby represents and warrants to the Mortgagee that:

(i) parcels C12 and C13 as and when legally resurveyed will contain, jointly, no less than 3.0 acres;

(ii) upon the sale of any Real Estate, the Mortgagor shall provide to the Mortgagee a certificate from a surveyor satisfactory to the Mortgagee certifying that the Real Estate being sold is or is not, as the case may be, part or all of either parcel C12 or C13 as they appear on Schedule I; and

(iii) in the event the Mortgagee is of the opinion that any Real Estate under contract to be sold lies within C8, C9, C10 or C11, as those parcels appear on Schedule I, the Mortgagor shall provide to the Mortgagee a survey in form satisfactory to the Mortgagee, by a surveyor also satisfactory to the Mortgagee, of parcels C12 and C13, including a certification from said surveyor that none of the Real Estate to be sold lies within C12 or C13 as surveyed.

4. Exhibit D III is hereby deleted and replaced with the following:

(a) Unless payment to the Mortgagee is made in accordance with (b)(ii) below, the Mortgagor shall sell Exhibit D Real Estate for no less than (i) \$3.00 per square foot for parcel A-15 as described on Schedule I attached hereto, and (ii) \$1.75 per square foot for all remaining Exhibit D Real Estate.

(b)(i) So long as no Event of Default has occurred and is continuing, the Release Price for the sale of any Exhibit D Real Estate shall equal:

Number of square feet of Exhibit B Real Estate being sold times \$1.75 or \$3.00 whichever is applicable in accordance with (a)(i) or (a)(ii) immediately above (the "Exhibit D Required Sales Price"), less costs of closing (not to exceed 10% of Exhibit D Required Sales Price).

(ii) In the event that the actual sales price of Exhibit D Real Estate is less than the Exhibit D Required Sales Price, the Mortgagor shall pay to the Mortgagee from its own funds the amount necessary to meet the Release Price.

(iii) In the event that the actual sales price for Exhibit D Real Estate is greater than the Exhibit D Required Sales Price and so long as no Event of Default has occurred and is continuing, the Mortgagor shall be entitled to retain the Excess Proceeds derived from the sale of any Exhibit D Real Estate, provided that such Excess Proceeds shall be used exclusively by the Mortgagor for expenses related to the business of the Mortgagor.

(c) The parties acknowledge that the plat attached hereto as Schedule I is not a legal resurvey of Exhibit D Real Estate shown thereon, and the individual lot lines are, therefore, subject to change. The Mortgagor hereby represents and warrants to the Mortgagee that:

(i) parcel A15 as and when legally resurveyed will contain no less than 9.5 acres;

(ii) upon the sale of any Real Estate, the Mortgagor shall provide to the Mortgagee a certificate from a surveyor satisfactory to the Mortgagee certifying that the Real Estate being sold is or is not, as the case may be, part or all of parcel A-15 as it appears on Schedule I; and

(iii) in the event the Mortgagee is of the opinion that any Real Estate under contract to be sold lies within A11, A12, A13 or A14, as they appear on Schedule I, the Mortgagor shall provide to the Mortgagee a survey in form satisfactory to the Mortgagee, by a surveyor also satisfactory to the Mortgagee, of parcel A15, including a certification from said surveyor that none of the Real Estate to be sold lies within A15 as surveyed.

Except as expressly amended hereby, the Mortgage shall remain in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Mortgagor and the Mortgagee have caused this Second Amendment to be executed by their duly authorized representatives as of the date first set forth above.

119 PROPERTIES, LTD.

By Cahaba Valley Properties, Inc.  
Its General Partner

By Charles H. Stephens  
Its President

AMSOUTH BANK N.A.

By Arthur J. Shauls, III  
Its Assistant Vice President

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that Charles H. Stephens, whose name as President of Cahaba Valley Properties, Inc., as general partner of 119 Properties, Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged

before me on this day that, being informed of the contents of said instrument, he, as such President of such general partner and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this the 17<sup>th</sup> day of December, 1990.

Inya Thompson  
Notary Public

AFFIX SEAL

My commission expires: 8/23/93

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Arthur J. Sharbel, III, whose name as Assistant Vice President of AmSouth Bank N.A., a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand and official seal this the 18<sup>th</sup> day of December, 1990.

Kay K. Bains  
Notary Public

AFFIX SEAL

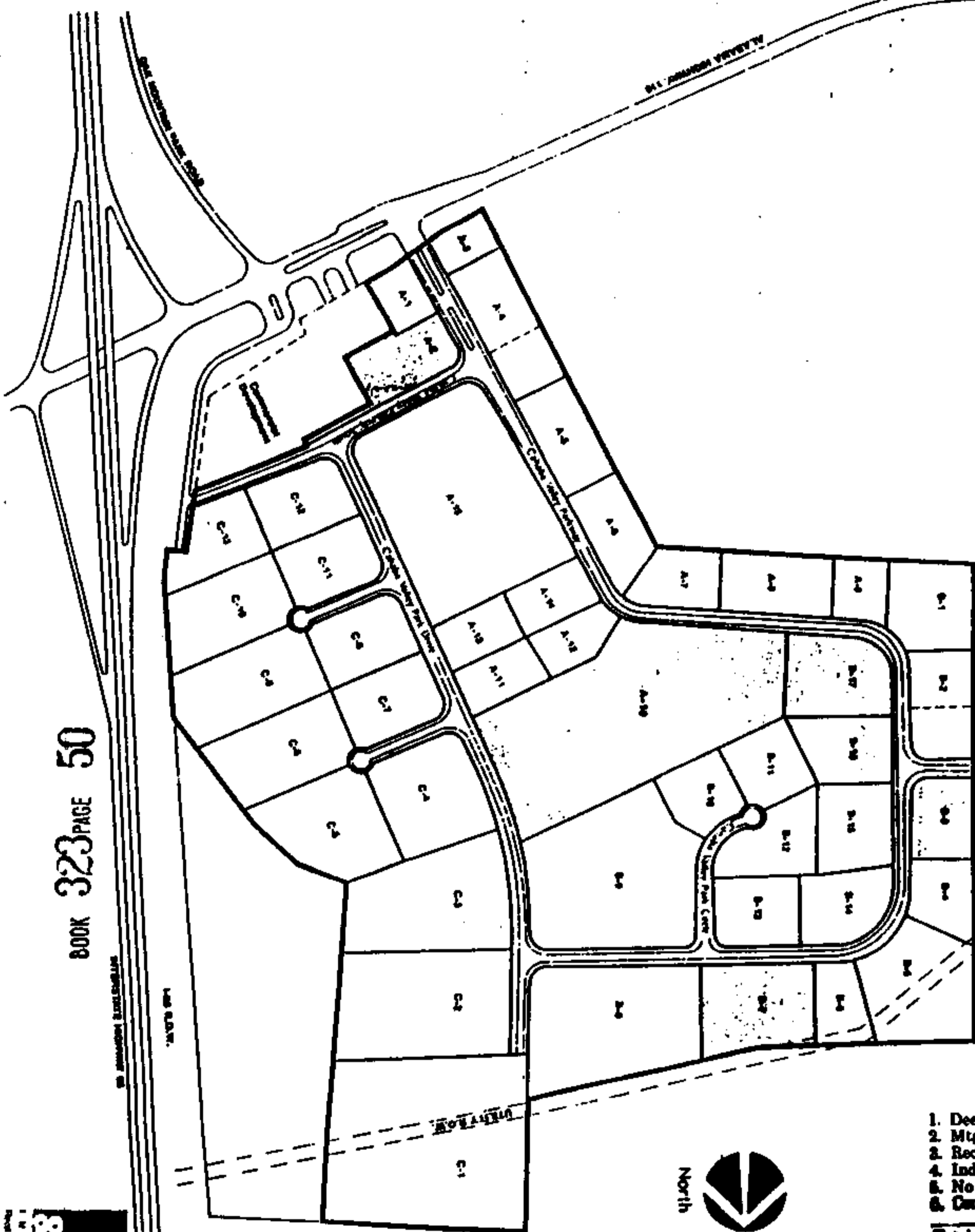
My commission expires: 11/16/92

This instrument prepared by:

Kay K. Bains  
CABANISS, JOHNSTON, GARDNER,  
DUMAS & O'NEAL  
1900 AmSouth-Sonat Building  
P. O. Box 830612  
Birmingham, Alabama 35283-0612  
(205) 252-8800

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# Cayaba Valley Park



1. Deed Tax	---
2. Mtg. Tax	---
3. Recording Fee	---
4. Indexing Fee	---
5. No Tax Fee	---
6. Certified Fee	---
<b>Total</b>	<b>---</b>

## Distances to Major Business Areas

Valleydale Road	1.2
I-459	4.0
Galleria	4.5
U.S. Highway 280	8.5
Downtown Birmingham	15.0
U.A.B. Medical Center	19.0
Birmingham Airport	19.0

## Distance to Residential Areas

Riverchase	5.0
Vestavia Hills	5.0
Meadowbrook	6.0
Homewood	7.0
Inverness	8.0
Mountain Brook	12.0

## 1988 Traffic Statistics - Vehicles per day

Highway 119	75,000
Between U.S. 31 and I-65	75,000
I-65 at Highway 119	45,000

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

90 DEC 20 AM 10:39

*[Signature]*  
JUDGE OF PROBATE

**EASON  
EYSTER  
&  
SANDNER**  
INCORPORATED

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