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THIS INSTRUMENT IS ALSO A FINANCING STATEMENT FILED AS A  
FIXTURE FILING, PURSUANT TO THE 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 MORTGAGOR, AS  
DEBTOR, AND MORTGAGEE, AS SECURED PARTY.

**PURCHASE MONEY MORTGAGE  
AND  
SECURITY AGREEMENT**

**AMERICARE CENTERS CORPORATION,  
P. O. Box 241223  
Montgomery, Alabama 36124-1223**

**as Borrower**

**and**

**COLONIAL PROPERTIES, INC.  
as Lender**

**Dated as of June 14, 1991**

**This instrument was prepared by:**

**Bradley G. Siegal  
Leitman, Siegal, Payne & Campbell, P.C.  
600 North 20th Street, Suite 400  
Land Title Building  
Birmingham, Alabama 35203**

*Land Title*

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**PURCHASE MONEY MORTGAGE  
AND SECURITY AGREEMENT**

THIS PURCHASE MONEY MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of the 14th day of June, 1991 by and between AMERICARE CENTERS CORPORATION, an Alabama corporation, ("Borrower") and COLONIAL PROPERTIES, INC. ("Lender").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited, the receipt of which is hereby acknowledged, Borrower hereby irrevocably grants, bargains, sells, transfers, conveys and assigns to Lender, for the benefit and security of Lender, under and subject to the terms and conditions hereinafter set forth, all of the following-described estate, property and interest of Borrower now or hereafter acquired, together with all cash and noncash proceeds thereof, which may be referred to herein as the "Mortgaged Estate":

**Land, Rents and Derivative Interests**

The real property, located in the County of Shelby, State of Alabama, described in Exhibit A attached hereto and by this reference incorporated herein (the "Property"); all rents, issues, profits, royalties, income and other benefits derived from the Property (collectively the "rents"); all right, title and interest of Borrower in and to all options to purchase or lease the Property or any portion thereof or interest therein, and any greater estate in the Property owned or hereafter acquired; all interests, estate or other claims, both in law and in equity, which Borrower now has or may hereafter acquire in the Property; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all right, title and interest of Borrower, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Property;

**Improvements**

Any and all buildings and improvements now or hereafter erected on the Property, including,

but not limited to, the fixtures, attachments, appliances, equipment, machinery, and other articles attached to such buildings and improvements (the "Improvements");

#### Personal Property

All right, title and interest of Borrower in and to all tangible personal property now owned or hereafter acquired by Borrower and now or at any time hereafter located on or at the Property or used in connection therewith, including, but not limited to: all building materials stored on the Property, goods, machinery, tools, equipment (including fire sprinklers and alarm systems, air conditioning, heating and refrigerating equipment, equipment for electronic monitoring, entertainment, recreation, window or structural cleaning, maintenance, exclusion of vermin or insects, removal of dust, refuse or garbage and all other equipment of every kind), lobby and all other indoor and outdoor furniture (including tables, chairs, planters, desks, sofas, shelves, lockers and cabinets), wall beds, wall safes, furnishings, appliances (including dishwashers, garbage disposal units, refrigerators, fans, heaters, stoves, water heaters and incinerators), inventory, rugs, carpets and other floor coverings, draperies and drapery rods and brackets, awnings, window shades, venetian blinds, curtains, lamps, chandeliers and other lighting fixtures and maintenance and other supplies, other than such property owned by tenants of Borrower (the "Personal Property");

#### Intangibles

All of Borrower's interest in all existing and future accounts, contract rights, insurance policies, general intangibles, files, books of account, agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the Mortgaged Estate (as defined herein), whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the Mortgaged Estate or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials,

trademarks and good will in any way relating to the Mortgaged Estate or any portion thereof; and

Claims and Awards

All the estate, interest, right, title, other claim or demand, including claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Borrower now has or may hereafter acquire in the Mortgaged Estate, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Mortgaged Estate, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages, and Borrower hereby authorizes, directs and empowers Lender, at its option, on Borrower's behalf, or on behalf of the successors or assigns of Borrower, to adjust, compromise, claim, collect and receive such proceeds and to give proper receipts and acquittances therefor.

TO HAVE AND TO HOLD the Mortgaged Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Lender, its successors and assigns, in fee simple forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the indebtedness secured hereby shall be paid when due, and if the Borrower shall keep, perform and observe all and singular the obligations, covenants, agreements and provisions in this Mortgage expressed to be kept, performed by and observed by or on the part of the Borrower, then this Mortgage and the estate and rights hereby granted shall cease, determine and be void, but otherwise shall be and remain in full force and effect.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS:

(i) Payment of indebtedness evidenced by that certain Note dated of even date herewith (the "Note") executed by Borrower in favor of Lender in the aggregate principal amount of \$125,000.00 bearing interest and being payable as provided therein;

(ii) Payment of all other indebtedness and performance of all other obligations and covenants of Borrower contained in any Loan Document (as defined herein), together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and

(iii) Payment of all other sums, with interest thereon, which may hereafter be owed by Borrower or its successors or assigns pursuant to the Loan Documents to Lender or its successors or assigns.

The indebtedness and the obligations secured by this Mortgage, which are described in (i) through (iii) above, may be referred to herein as the "Secured Obligations."

This Mortgage, the Note, and any other instrument given to evidence or further secure the payment and performance of any of the several Secured Obligations are hereafter referred to as the "Loan Documents."

All capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Note.

#### ARTICLE I

##### REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS OF BORROWER

Borrower hereby represents, warrants, covenants and agrees:

Section 1.01. Payment of Secured Obligations. Borrower hereby grants this Mortgage to secure the payment and performance when due of the Secured Obligations. The consideration received by Borrower to execute and deliver this Mortgage and the liens and security-interests created herein is sufficient and will provide a direct economic benefit to Borrower.

Section 1.02. Title of Borrower. Borrower has, subject to Permitted Encumbrances set forth in Exhibit B hereto, in its own right, good, marketable and indefeasible title in fee simple to the Mortgaged Estate, which is free from encumbrance superior to the encumbrance created by this Mortgage and has full right to make this conveyance.

Section 1.03. Capital Improvements. Borrower shall not make any expenditures for Improvements on the Property which, individually or in the aggregate, would exceed \$50,000.00 during any calendar year without the prior written approval of Lender.

Section 1.04. Maintenance, Repair, Alterations. Borrower shall: (i) keep the Mortgaged Estate in good condition and repair, subject to reasonable and ordinary

wear and tear; (ii) complete promptly and in good and workmanlike manner any building or other improvement which may be constructed on the Property and promptly restore in like manner any Improvement which may be damaged or destroyed thereon, subject to the provisions of Section 1.07, and to pay when due all claims for labor performed and materials furnished therefor; (iii) comply with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Mortgaged Estate or any part thereof; not to commit or permit any waste or deterioration of the Mortgaged Estate; (iv) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair; and (v) not commit, suffer or permit any act to be done in or upon the Mortgaged Estate in violation of any law, ordinance or regulation.

Section 1.05. Required Insurance. Borrower shall provide, maintain and keep at all times in force the following policies of insurance:

(a) Insurance against loss or damage to the Improvements by fire, seepage, backup of sewers and drains and any of the risks covered by insurance of the type now known as "fire and extended coverage," in an amount not less than the original amount of the Note or the full replacement cost of the Improvements and Personal Property, whichever is greater; and with a deductible from the loss payable for any casualty in amounts acceptable to Lender. The policies of insurance carried in accordance with this subparagraph (a) shall contain the "Replacement Cost Endorsement;"

(b) Workers' compensation insurance (including employer's liability insurance, if required by Lender) for all employees of Borrower engaged on or with respect to the Mortgaged Estate in such amount as is satisfactory to Lender, or, if such limits are established by law, in such amounts;

(c) During the course of any construction or repair of Improvements on the Property, builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of such Improvements, with deductibles acceptable to Lender, in nonreporting form, at Borrower's option covering the total value of work performed and equipment, supplies and materials furnished. Such policy of insurance shall contain the "permission to occupy upon completion of work or occupancy" endorsement;

(d) Flood insurance if the Property is in an area identified as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973, as amended, or other applicable law, with such insurance to be at least the amount available under the National Flood Insurance Act of 1968 and, if available under other policies issued by other sources, then in such additional amounts as Lender may reasonably require; and

(e) Such other insurance, including, without limitation, insurance on other Improvements and earthquake insurance, as may from time to time be required by Lender in such amounts and against such hazards and risks as is commonly obtained by prudent owners of property similar in use to the Mortgaged Estate and located in the same area in which the Property is located.

All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Borrower which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of setoff, counterclaim or deductions against Borrower.

Section 1.06. Delivery of Insurance Policies; Payment of Premiums. All policies of insurance shall be issued by companies and in amounts as required by the provisions of the Loan Documents and as otherwise satisfactory to Lender. All policies of insurance shall name Lender as a named insured, and shall have attached thereto a lender's loss payable endorsement for the benefit of Lender, which endorsement indicates that all insurance proceeds are payable directly to Lender, and shall be otherwise in form satisfactory to Lender. Borrower shall furnish Lender with an original or certified copy of all policies of required insurance.

Thirty (30) days prior to the expiration of each such policy, Borrower shall furnish Lender with evidence satisfactory to Lender of the reissuance of a policy continuing insurance in force as required by this Mortgage. All such policies shall contain a provision that such policies will not be cancelled or materially amended in any manner, including, without limitation, amended to reduce the scope or limits of coverage, without twenty (20) days' prior written notice to Lender and shall provide that no claims shall be paid thereunder without at least ten (10) days' prior written notice to Lender. In all cases, Borrower shall immediately give notice to

Lender of any notice received by Borrower of any expiration, cancellation or modification of, or material reduction of coverage under, any such policy.

In the event Borrower fails to provide, maintain, keep in force or deliver and furnish to Lender the policies of insurance required by this Mortgage or make the deposits required hereunder, Lender may, but shall not be required to, procure such insurance or single-interest insurance for such risks covering Lender's interest, and Borrower will pay all premiums thereon promptly upon demand by Lender, and until such payment is made by Borrower, the amount of all such premiums, together with interest thereon at the Late Rate provided by the Note, shall be secured by this Mortgage.

Borrower shall pay all insurance premiums at least thirty (30) days prior to their due dates and shall, within ten (10) days of such payment, deliver proof thereof to Lender.

Upon occurrence of an Event of Default, Lender may, at any time at Lender's option, apply any sums or amounts received pursuant hereto, or as rents or income of the Mortgaged Estate or otherwise, upon any Secured Obligation in such manner and order as Lender may elect. The receipt, use or application of any such sums by Lender hereunder shall not be construed to affect the maturity of any Secured Obligation or any of the rights or powers of Lender under the terms of the Loan Documents or any of the obligations of Borrower under the Loan Documents.

Section 1.07. Insurance Proceeds. After the occurrence of any casualty to the Mortgaged Estate or any part thereof, Borrower shall give prompt written notice thereof to Lender and each insurer and promptly submit a claim to insurer for payment of insurance proceeds; Borrower shall provide Lender with a copy of such claim.

(a) All proceeds of insurance paid or payable under any insurance policy (the "Insurance Proceeds") with respect to the Mortgaged Estate shall be paid to Lender, each insurer is hereby authorized and directed to make payment for any such loss directly to Lender instead of payment to Borrower. Any Insurance Proceeds shall be applied first to the payment of all costs and expenses incurred by Lender in obtaining such proceeds. The balance of the proceeds, if any, may be applied at the option of Lender, against sums secured hereby in such order as Lender may in its absolute discretion elect. Such damage or destruction shall not affect the lien of this Mortgage or the obligations of Borrower hereunder, and Lender is

authorized at Lender's option to compromise and settle all loss claims on said policies if not adjusted promptly by Borrower.

(b) Notwithstanding the application of Insurance Proceeds to the payment of a portion of the Secured Obligations, any unpaid portion of the Secured Obligations shall remain in full force and effect, and Borrower shall not be excused in the payment thereof. If any act or occurrence of any kind or nature on which insurance was not obtained or obtainable shall result in damage to or loss or destruction of the Mortgaged Estate, Borrower shall give immediate notice thereof to Lender and, unless otherwise so instructed by Lender, shall promptly, at Borrower's sole cost and expense, whether or not the Insurance Proceeds are adequate to cover such cost and expense, restore, repair, replace and rebuild the Mortgaged Estate as nearly as possible to its value, condition and character immediately prior to such damage, loss or destruction, in accordance with plans and specifications submitted to and approved by Lender.

(c) Except as provided below, nothing contained in this Mortgage shall be deemed to excuse Borrower from repairing or maintaining the Mortgaged Estate as provided in Section 1.04 hereof. The application or release by Lender of any Insurance Proceeds shall not cure or waive any Event of Default or notice of default under this Mortgage or invalidate any act done pursuant to such notice. If Lender elects not to so apply the Insurance Proceeds to the restoration, rebuilding or repair of the Mortgaged Estate pursuant to Section 1.07(a) hereof, Borrower shall not be required to restore, rebuild or repair the portion of the Mortgaged Estate damaged or destroyed, and the failure to do so shall not constitute an Event of Default under this Mortgage.

Section 1.08. Assignment of Policies Upon Foreclosure. In the event of the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Estate, or any part thereof, by nonjudicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Estate, or such part thereof, shall succeed to all of Borrower's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by Section 1.05, subject to limitations on assignment of blanket policies, and limited to such rights as relate to the Mortgaged Estate or such part thereof. If Lender acquires title to

the Mortgaged Estate, or any part thereof, in any manner, it shall thereupon (as between Borrower and Lender) become the sole and absolute owner of the insurance policies, and all proceeds payable thereunder with respect to the Mortgaged Estate, or such part thereof, required by Section 1.05, with the sole right to collect and retain all unearned or returnable premiums thereon with respect to the Mortgaged Estate, or such part thereof, if any.

**Section 1.09    Indemnification; Subrogation; Waiver of Offset.**

(a) If Lender is made a party defendant to any litigation concerning this Mortgage or the Mortgaged Estate or any part thereof or interest therein, or the occupancy thereof by Borrower, then Borrower shall indemnify and hold Lender harmless from all liability by reason of such litigation, including all attorneys' fees and expenses incurred by Lender in any such litigation, whether or not any such litigation is prosecuted to judgment. Upon an Event of Default, Lender may employ an attorney or attorneys to protect its rights hereunder, and in the event of such employment following an Event of Default, Borrower shall pay all attorneys' fees and expenses incurred by Lender, whether or not an action is actually commenced against Borrower by reason of an Event of Default.

(b) Borrower waives any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for loss of or damage to Borrower, the Mortgaged Estate, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

(c) All sums payable by Borrower hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the Secured Obligations of Borrower hereunder shall in no way be released, discharged or otherwise affected by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Mortgaged Estate or any part thereof; (ii) any restriction or prevention of or interference with any use of the Mortgaged Estate or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Borrower, or any action taken with respect to this

Mortgage by any trustee or receiver of Borrower, or by any court, in any such proceeding; or (v) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not Borrower shall have notice or knowledge of any of the foregoing. To the extent permitted by law, Borrower waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any Secured Obligation.

**Section 1.10. Taxes and Impositions.**

(a) Subject to paragraph (d) of this Section 1.10, Borrower agrees to pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, which are assessed or imposed upon the Mortgaged Estate, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Estate, or any part thereof, or upon any personal property, equipment or other facility used in the operation or maintenance thereof (all of which taxes, assessments and other governmental and nongovernmental charges of like nature are hereinafter referred to as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the Mortgaged Estate in lieu of or in addition to the Impositions payable by Borrower pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Lender and measured by or based in whole or in part upon the amount of the outstanding Secured Obligations, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Borrower shall pay and discharge the same as herein provided with respect to the payment of Impositions. In addition to the other remedies of Lender under Article V of this Mortgage, at the option of Lender, all Secured Obligations together with all accrued interest thereon, shall become due and payable thirty (30) days after Borrower receives written notice thereof in the event that Borrower shall not be

permitted to pay such fees, taxes or assessments on behalf of Lender.

(c) Subject to the provisions of subparagraph (d) of this Section 1.10, Borrower covenants to furnish Lender within thirty (30) days after the date upon which any such Imposition is due and payable by Borrower, official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

(d) Subject to the applicable state law provisions, Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying, or extending Borrower's covenant to pay any such Imposition at the time and in the manner provided in this Section 1.10, unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to an Imposition, and unless, at Lender's sole option,

(i) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Estate, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; (ii) Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(e) Borrower covenants and agrees not to suffer, permit or initiate the joint assessment of the real and personal property, or any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Mortgaged Estate as a single lien.

Section 1.11. Utilities. Borrower shall pay when due all utility charges or deposits related thereto which are incurred for the benefit of the Mortgaged Estate or which may become a charge or lien against the Mortgaged Estate for gas, electricity, water or sewer services furnished to the Mortgaged Estate and all other assessments or charges of a similar nature, whether public or private, affecting the Mortgaged Estate or any portion thereof, whether or not such taxes, assessments or charges are liens thereon.

Section 1.12. Actions Affecting Mortgaged Estate. Borrower shall appear in and contest any action or

proceeding purporting to affect the title of Borrower in the Mortgaged Estate or security hereof or the rights or powers of Lender; and Borrower shall pay all costs and expenses, including cost of evidence of title and attorneys' fees, in any such action or proceeding in which Lender may appear.

**Section 1.13. Actions by Lender To Preserve Mortgaged Estate.** Should Borrower fail to make any payment or to do any act as and in the manner provided in this Mortgage, Lender, in its sole discretion, without obligation to do so and without notice to or demand upon Borrower and without releasing Borrower from any Secured Obligation, may make or do the same in such manner and to such extent as Lender may deem necessary to protect the security hereof. In connection therewith (without limiting its general powers), Lender shall have and is hereby given the right, but not the obligation: (i) to enter upon and take possession of the Mortgaged Estate; (ii) to direct Borrower to terminate any management agent and to employ such management agent as Lender may determine in its sole and absolute discretion; (iii) to make additions, alterations, repairs and improvements to the Mortgaged Estate which it may consider necessary or proper to keep the Mortgaged Estate in good condition and repair; (iv) to appear and participate in any action or proceeding affecting or which may affect the security hereof or the rights or powers of Lender; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of Lender may affect or appears to affect the security of this Mortgage or be prior or superior hereto; and (vi) in exercising such powers, to pay necessary expenses, including employment of counsel or other necessary or desirable consultants. Borrower shall immediately upon demand therefor by Lender pay all costs and expenses incurred by Lender in connection with the exercise by Lender of the foregoing rights, including, without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees.

**Section 1.14. Survival of Warranties.** Borrower shall fully and faithfully satisfy and perform the Secured Obligations of Borrower contained herein. All representations, warranties and covenants of Borrower contained herein shall remain continuing obligations, warranties and representations of Borrower during any time when any portion of the obligations secured by this Mortgage remain outstanding.

**Section 1.15. Eminent Domain.** Should the Mortgaged Estate, or any part thereof or interest therein, be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner

("Condemnation"), or should Borrower receive any notice or other information regarding such proceeding, Borrower shall give prompt written notice thereof to Lender. Lender may participate in any such Condemnation proceedings, and Borrower shall from time to time deliver to Lender all instruments requested by Lender to permit such participation. Borrower shall, at its expense, diligently prosecute any such proceedings and shall consult with Lender and its attorneys and experts, and cooperate with them in the carrying on or defense of any such proceedings. All proceeds of Condemnation awards or proceeds of sale in lieu of Condemnation with respect to the Mortgaged Estate and all judgments, decrees and awards for injury or damage to the Mortgaged Estate or any part thereof or interest therein shall be paid to Lender and shall be applied first to all costs and expenses incurred by Lender in obtaining the proceeds. The balance of the proceeds, if any, shall be applied at the option of Lender (i) toward altering, restoring or rebuilding the Mortgaged Estate or such portion thereof that may have been altered, damaged or destroyed or (ii) against sums secured hereby in such order as Lender may in its absolute discretion elect. If Lender elects not to apply all of the Condemnation proceeds for the restoration or repair of the Mortgaged Estate, Borrower shall not be required to repair or restore that portion of the Mortgaged Estate affected by Lender's election and the failure to do so shall not constitute a breach by Borrower of its obligation to maintain the Mortgaged Estate set forth in Section 1.04 hereof.

Borrower hereby assigns and transfers to Lender, and agrees to execute such further assignments of, all such proceeds, judgments, decrees and awards as Lender may request. Lender is hereby authorized, in the name of Borrower, to execute and deliver valid acquittances for, and to appeal from, any such judgment, decree or award. Lender shall not be, in any event or circumstance, liable or responsible for failure to collect or exercise diligence in the collection of any proceeds, judgments, decrees or awards.

Section 1.16. Additional Security. In the event Lender at any time holds additional security for any of the Secured Obligations secured hereby, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before, concurrently with or after any sale is made hereunder.

Section 1.17. Additional Indebtedness. Subject to Permitted Encumbrances, the Borrower shall not further encumber the Mortgaged Estate or any portion thereof

(including, without limitation, secured transactions under the UCC) without the prior written consent of Lender.

Section 1.18. Successors and Assigns. This Mortgage applies to, inures to the benefit of and binds all parties hereto, their administrators, successors and assigns. The covenants and agreements of Borrower contained herein shall apply to and be binding upon any successor owner of the Mortgaged Estate or any part thereof.

Section 1.19. Inspections. Lender, or its agents, representatives or workmen, are authorized to enter at any reasonable time upon or in any part of the Mortgaged Estate for the purpose of inspecting the same and all books, records and documents relating thereto, and for the purpose of performing any of the acts it is authorized to perform under the terms of any of the Loan Documents.

Section 1.20. Liens. Borrower shall pay and promptly discharge, at Borrower's cost and expense, all liens, encumbrances and charges upon the Mortgaged Estate, or any part thereof or interest therein. Borrower shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Borrower shall first deposit with Lender a bond or other security satisfactory to Lender in such amounts as Lender shall require but not more than one hundred fifty percent (150%) of the amount of the claim plus costs (including attorneys' fees) and interest and provided further that Borrower shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If Borrower shall fail so to discharge any such lien, encumbrance or charge, then, in addition to any other right or remedy of Lender, Lender may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien either by depositing in court a bond in the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law. Any cost incurred by Lender in connection with any such payment or discharge shall be secured hereby and shall be immediately due and payable without notice or demand.

Section 1.21. Restrictions Affecting Title. Borrower shall perform when due all Secured Obligations required to be performed by Borrower by the provisions of any agreement affecting title to the Mortgaged Estate.

Section 1.22. Further Assurances. Borrower shall take all action and do all things which it is authorized by law to take and do, and cooperate with Lender as Lender deems necessary or desirable, to insure the release of all

encumbrances against the Mortgaged Estate, except Permitted Encumbrances, existing prior to the date hereof.

So long as any Secured Obligation shall remain unpaid, Borrower shall execute, acknowledge, where appropriate, and deliver from time to time promptly at the request of Lender all such instruments and documents as in the opinion of Lender are necessary or desirable to preserve the first priority lien created by this Mortgage.

Section 1.23. Performance of Covenants. Borrower shall faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in the Loan Documents and in all of its proceedings pertaining to this Mortgage.

Section 1.24. No Event of Default Under Loan Documents. Borrower agrees to notify Lender immediately in writing of any default by Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of Borrower set forth in this Mortgage. Borrower shall also notify Lender in writing of any event or condition which with the lapse of time or the giving of notice would constitute an Event of Default.

Section 1.25. Rules, Regulations, Environmental Laws. Borrower represents, warrants and covenants:

(i) that the location, construction, occupancy, operation and use of the Mortgaged Estate do not and will not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any governmental authority or any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (record or otherwise) affecting the Mortgaged Estate, including, without limitation, all applicable zoning ordinances and building codes, flood disaster laws and health and environmental laws and regulations (hereinafter sometimes collectively called "Applicable Regulations");

(ii) that the Mortgaged Estate and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Regulations pertaining to health or the environment (hereinafter sometimes collectively called "Applicable Environmental Laws"), 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 ("RCRA"), and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Estate. If any such investigation or inquiry is subsequently initiated, Borrower will promptly notify Lender;

(iii) that Borrower 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 and equipment forming a part of the Mortgaged Estate by reason of any Applicable Environmental Laws;

(iv) that Borrower has taken all reasonable steps to determine and has determined to its reasonable satisfaction that no hazardous substances or solid wastes have been disposed of or otherwise released on or about the Mortgaged Estate;

(v) that the Mortgaged Estate does not contain asbestos, ureaformaldehyde foam insulation or any other chemical, material or substance exposure to which may or could pose a health hazard, whether or not the substance is prohibited, limited or regulated by any governmental authority;

(vi) that the use which Borrower makes and intends to make of the Mortgaged Estate will not result in the manufacture, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Mortgaged Estate. For purposes of Sections 1.25 and 6.12, the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the state where the Property is located establish a meaning for "hazardous substance," "release," "solid waste" or "disposal" which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply;

(vii) Borrower agrees to promptly notify Lender of any violation or alleged violation of any

Applicable Environmental Laws of which Borrower becomes aware; and

(viii) Borrower agrees to indemnify and hold harmless Lender from and against any and all liabilities, damages, claims, losses, judgments, causes of action, costs and expenses (including the reasonable fees and expenses of counsel) which may be incurred by Lender, or threatened against Lender, relating to or arising out of the generation, storage, manufacturing, refining, releasing, transportation, treatment, disposal or other presence of any hazardous substances on or about the Mortgaged Estate.

Section 1.26. Organization; Due Authorization. Borrower is a corporation duly organized, validly existing and in good standing under the laws of the State of Alabama and has the requisite power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents to which it is a party. The execution and delivery of the Loan Documents to which it is a party and the performance and observance of the provisions thereof have all been authorized by all necessary actions of Borrower.

Section 1.27. Liabilities; Compliance With Other Instruments. Borrower has no liabilities except hereunder and those incurred in the ordinary course of business and which are not delinquent or which are otherwise contemplated or permitted by this Mortgage and the other Loan Documents to which it is a party. Borrower is not in default (i) in the payment of any taxes levied or assessed against it or its assets, (ii) under any applicable statute, rule, order or regulation of any governmental authority, (iii) under this Mortgage or any of the other Loan Documents to which it is a party or (iv) under any other agreement to which it is a party or by which it or any of its properties are bound.

Neither the execution and delivery of this Mortgage or any of the other Loan Documents to which Borrower is a party, nor the consummation of the transaction herein or therein contemplated nor compliance with the terms and provisions hereof or thereof, conflicts with or results or will result in a breach of any of the terms, conditions or provisions of the articles of incorporation or bylaws of Borrower, any law, order, rule, regulation, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Borrower is a party or by which it or any of its properties are bound, or constitutes or will constitute a default thereunder, or result or will result in the

creation or imposition of any lien of any nature whatsoever upon any of its property or assets pursuant to the terms of any such agreement or instrument except the liens created or permitted by the Loan Documents to which it is a party.

Section 1.28. Enforceability. This Mortgage and each of the other Loan Documents to which Borrower is a party have been duly executed and delivered by Borrower and constitute valid and binding obligations of Borrower enforceable in accordance with their respective terms, except as the enforceability (but not the validity thereof) may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally.

Section 1.29. Pending Litigation. There are no proceedings pending or, to the knowledge of Borrower threatened, against or affecting Borrower in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Borrower or the right or ability of Borrower to enter into the Loan Documents to which it is a party, and if any such proceedings are subsequently initiated or threatened, then Borrower will promptly provide written notice to Lender. Borrower is not in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

Section 1.30. Compliance With Law.\*\*\* Borrower is in substantial compliance with all laws, ordinances, governmental rules or regulations to which it is subject, including, without limitation, the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974 and all laws, ordinances, governmental rules or regulations relating to environmental protection, the violation of which would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of Borrower.

Section 1.31. Transfer of Interests in Borrower or Mortgaged Estate. Borrower shall not, by operation of law or otherwise, sell, convey, alienate, transfer, mortgage, pledge or assign ownership or control of all or any part of the Mortgaged Estate or any interest therein (or in Borrower), except Borrower may sell or otherwise convey the Mortgaged Estate in the event it pays the total Secured Obligations in full.

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## ARTICLE II

### LENDER'S POWERS

At any time, or from time to time, without liability therefor, Lender, without affecting the personal liability, if any, of any person for payment of the Secured Obligations or the effect of this Mortgage upon the remainder of said Mortgaged Estate, may from time to time without notice (i) release any part of said Mortgaged Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon, (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof, (v) release any person so liable, (vi) extend the maturity or alter any of the terms of any Secured Obligations, (vii) grant other indulgences, (viii) take or release any other or additional security for any obligation herein mentioned, (ix) make compositions or other arrangements with debtors in relation thereto, or (x) advance additional funds to protect the security hereof and pay or discharge the Secured Obligations of Borrower hereunder, and all amounts so advanced, with interest thereon at the rate provided by the Note, shall be secured hereby.

## ARTICLE III

(Intentionally Omitted)

## ARTICLE IV

### SECURITY AGREEMENT

Section 4.01. Creation of Security Interest. With respect to any portion of the Mortgaged Estate which constitutes personal property, fixtures or other property governed by the Uniform Commercial Code of the state in which the Property is located ("UCC"), this Mortgage shall constitute a security agreement between Borrower as the debtor and Lender as the secured party, and Borrower hereby grants to Lender a security interest in such portion of the Mortgaged Estate. Cumulative of all other rights of Lender hereunder, Lender shall have all of the rights conferred upon secured parties by the UCC. Borrower will execute and deliver to Lender all financing statements that may from time to time be required by Lender to establish and maintain the validity and priority of the security interest of Lender, or any modification thereof, and all costs and expenses of any searches required by Lender. Lender may exercise any or all of the

remedies of a secured party available to it under the UCC with respect to such property, and it is expressly agreed that if, upon an Event of Default, Lender should proceed to dispose of such property in accordance with the provisions of the UCC, ten (10) days' notice by Lender to Borrower shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Lender may at its option dispose of such property in accordance with Lender's rights and remedies with respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the UCC.

Borrower shall give advance notice in writing to Lender of any proposed change in Borrower's name, identity, or business form or structure and will execute and deliver to Lender, prior to or concurrently with the occurrence of any such change, all additional financing statements that Lender may require to establish and maintain the validity and priority of Lender's security interest with respect to any of the Mortgaged Estate described or referred to herein.

Some of the items of the Mortgaged Estate described herein are goods that are or are to become fixtures related to the Property, and it is intended that as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Mortgaged Estate is situated. Information concerning the security interest created by this instrument may be obtained from Lender, as secured party, at the address of Lender stated in Section 6.05 of this Mortgage. The mailing address of Borrower, as debtor, is as stated in Section 6.05 of this Mortgage.

Section 4.02. Warranties, Representations and Covenants of Borrower. Borrower hereby warrants, represents and covenants, with respect to the Personal Property, as follows:

(a) except for the security interest granted hereby, Borrower is, and as to any of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any adverse lien, security interest, encumbrance or adverse claims thereon of any kind whatsoever except for Permitted Encumbrances. Borrower will notify Lender of, and will defend the Personal Property against, all prohibited claims and demands of all persons at any time claiming the same or any interest therein;

(b) Borrower will not lease, sell, convey or in any manner transfer the Personal Property (except Personal Property transferred in the ordinary course of business and replaced by Personal Property of a similar nature and having at least the same value as the Personal Property replaced) without the prior written consent of Lender;

(c) the Personal Property is not used or bought for personal, family or household purposes;

(d) the Personal Property will be kept on or at the Property and Borrower will not remove the Personal Property from the Property without the prior written consent of Lender, except such portions or items of Personal Property which are consumed or worn out in ordinary usage, all of which shall be promptly replaced by Borrower with new items of equal or greater quality; and

(e) all covenants and obligations of Borrower contained herein relating to the Mortgaged Estate shall be deemed to apply to the Personal Property whether or not expressly referred to herein.

#### ARTICLE V

##### EVENTS OF DEFAULT AND REMEDIES UPON DEFAULT

Section 5.01. Events of Default. Any one or more of the following events shall be deemed an Event of Default hereunder:

(a) failure by Borrower to pay as and when due, (i) any payment of principal of or interest on the Note or (ii) any other sum secured hereby or due hereunder or under any other Loan Document, together with interest at the Late Rate provided by the Note;

(b) failure by Borrower to punctually perform or observe any covenant or agreement contained in this Mortgage (other than the monetary obligations described in paragraph (a) above) and such failure shall not have been cured within ten (10) days after notice from Lender of such failure;

(c) the occurrence of a default or an Event of Default under any Loan Document (other than this Mortgage);

(d) Borrower shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Borrower or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due;

(e) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against Borrower seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the first date of entry thereof; or any trustee, receiver or liquidator of Borrower or of all or any part of the Mortgaged Estate, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed without the consent or acquiescence of Borrower and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) a writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Mortgaged Estate, or any judgment involving monetary damages shall be entered against Borrower which shall become a lien on the Mortgaged Estate or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within sixty (60) days after its entry or levy;

(g) any suit or proceeding shall be filed against Borrower or any endorser, surety or guarantor of Borrower on any of the Loan Documents, which, if adversely determined, could substantially impair the

ability of Borrower or any endorser, surety or guarantor of Borrower to perform any of their obligations contained in the Loan Documents, as determined by Lender in its sole and absolute discretion;

(h) if, during the term of the Note secured by this Mortgage, Borrower shall, without the prior written approval of Lender, sell, convey, alienate, mortgage or encumber the Mortgaged Estate or any part thereof or any interest therein, or shall be divested of its title or any interest therein, in any manner, whether voluntarily or involuntarily, or if there is any merger, consolidation or dissolution affecting Borrower, or if there is a transfer of a majority interest in the Borrower in a series of transactions or as a single transaction;

(i) any assignment by Borrower of the whole or any part of the rents, issues or profits arising from the Property to any person without the consent of Lender or if, without such consent, Borrower shall further encumber the Mortgaged Estate or any portion thereof (including, without limitation, secured transactions under the UCC); or

(j) at any time any representation, warranty or statement made by Borrower in any Loan Document or certificate delivered by Borrower shall be incorrect or misleading in any material respect, or any material misrepresentation shall at any time be made to Lender by Borrower.

Section 5.02. Acceleration Upon Default; Additional Remedies. Upon the occurrence of an Event of Default, Lender may declare all Secured Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind except as otherwise provided herein, and Borrower hereby waives notice of intent to accelerate the Secured Obligations. Thereafter, Lender may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Mortgaged Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession

of the Mortgaged Estate, take any action described in Articles II or IV hereof, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any Secured Obligations, all in such order as Lender may determine. The entering upon and taking possession of the Mortgaged Estate, the taking of any action described in Articles II or IV hereof, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Mortgaged Estate or the collection, receipt and application of rents, issues or profits, Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon occurrence of any Event of Default;

(ii) Commence an action to foreclose this Mortgage, appoint a receiver, specifically enforce any of the covenants hereof.

(iii) Exercise any or all of the remedies available to a secured party under the UCC, including, but not limited to:

1. Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of ~~all~~ or any of the Personal Property and exclude therefrom Borrower and all others claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Personal Property or any part thereof. In the event Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Borrower promises and agrees to promptly turn over and deliver complete possession thereof to Lender;

2. Without notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance,

charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

3. Require Borrower to assemble the Personal Property or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly to deliver such Personal Property to Lender, or an agent or representative designated by it. Lender, and its agents and representatives, shall have the right to enter upon any or all of Borrower's premises and property to exercise Lender's rights hereunder;

4. Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as Lender may determine. Lender may be a purchaser at any such sale; and

5. Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give Borrower at least ten (10) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be mailed to Borrower at the address set forth at the beginning of this Mortgage and shall be deemed to be given on the date of mailing thereof.

Section 5.03. Appointment of Receiver. If an Event of Default shall have occurred, Lender, as a matter of right and without notice to Borrower or anyone claiming under Borrower, and without regard to the then value of the Mortgaged Estate or the interest of Borrower therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Estate and Borrower hereby irrevocably consents to such appointment and waives notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases and all the powers and duties of Lender in case of entry as provided in Section 5.02(i) and shall continue as such and exercise all such powers until the date of confirmation of sale of the Mortgaged Estate unless such receivership is sooner terminated.

Section 5.04 Mortgagee's Power of Enforcement. If an Event of Default shall have occurred and be continuing, 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 Note 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 them, 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.

Section 5.05 Power of Sale. If a default or Event of Default should occur hereunder, the holder of the debt hereby secured shall have the right to enter upon and take possession of the Mortgaged 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 the Mortgaged 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 Lender or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Lender Property so purchased in the name and on behalf of the Borrower, and the certificate of the holder of the mortgage indebtedness appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Alternatively, the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages. The Lender, 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.

Section 5.06 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to this Mortgage 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, 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 specially secured with interest to date of sale;

(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.

Section 5.07 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 expenses, 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 sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 5.08 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real 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.

Section 5.09 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Note 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.

Section 5.10 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.

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If the Lender (a) grants forbearance of 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 Note; (d) releases any part of the Mortgaged Property from the lien of the Mortgage or otherwise changes any of the terms of the Note or 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 Note, Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, cosigner, 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, without notice to any person or corporation, is hereby 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.

Section 5.11 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 Borrower 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.

Section 5.12. Remedies Not Exclusive. Lender shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers

under this Mortgage or under any Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the said Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender, or to which Lender may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Lender. Lender may pursue inconsistent remedies.

The acceptance by Lender of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a default as herein provided. The acceptance by Lender of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Borrower to pay the entire sum then due, and failure of Borrower to pay such entire sum then due shall be and continue to be an Event of Default notwithstanding such acceptance of such amount on account, as aforesaid. Lender shall be, at all times thereafter and until the entire sum then due shall have been paid, and notwithstanding the acceptance by Lender thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon Lender and the right to exercise any rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such exercise. Consent by Lender to any action or inaction of Borrower which is subject to consent or approval of Lender hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 5.13. Possession of Mortgaged Estate. In the event of a foreclosure sale hereunder and after the time of such sale, and Borrower occupies the portion of the Mortgaged Estate so sold, or any part thereof, Borrower

shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day based upon the value of the portion of the Mortgaged Estate so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Mortgaged Estate and premises; and this agreement shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Mortgage shall be construed to constitute Lender as a "mortgagee in possession" in the absence of its taking actual possession of the Mortgaged Estate pursuant to the powers granted herein.

#### ARTICLE VI

#### MISCELLANEOUS

Section 6.01. Governing Law. This Mortgage shall be governed by the laws of the state of Alabama. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage are declared to be severable. This instrument cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of any waiver, change, discharge or termination is sought.

Section 6.02. Waiver of Rights. To the extent permitted by law, Borrower waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisalment before sale of any portion of the Mortgaged Estate, and (ii) in any way extending the time for the enforcement of the collection of the Secured Obligations or creating or extending a period of redemption from any sale made in collecting Secured Obligations. To the full extent Borrower may do so, Borrower agrees that Borrower will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisalment, valuation, stay, extension or redemption, and Borrower, for Borrower, Borrower's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Estate, to the extent permitted by law, hereby waives and releases all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of Secured Obligations and marshaling in the event

of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Borrower, Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Borrower expressly waives and relinquishes any and all rights, remedies and defenses that Borrower may have or be able to assert by reason of the laws of the state in which the Property is located pertaining to the rights, remedies and defenses of sureties.

Section 6.03. Limitation of Interest. All agreements between Borrower and Lender, whether now existing or hereafter arising, and whether written or oral, are expressly limited so that in no contingency or event whatsoever shall the amount paid, or agreed to be paid, to Lender for the use, forbearance, or detention of the money to be loaned pursuant to the Note or otherwise, or for the performance or payment of any covenant or obligation contained herein, exceed the maximum amount permissible under applicable law. If from any circumstance whatsoever fulfillment of any provision hereof at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any such circumstance Lender or holder of the Note shall ever receive as interest under the Note or this Mortgage or otherwise anything of value which would exceed interest at the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the principal amount owing under the Note or on account of the other Secured Obligations and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal of the Note and such other Secured Obligations, such excess shall be refunded to Borrower, or to the maker of the Note, or other evidence of the Secured Obligations, if other than Borrower. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Secured Obligations shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of such obligations until payment in full so that the rate of interest on account of the Secured Obligations is uniform throughout the term thereof. The terms and provisions of this paragraph shall control all agreements between Borrower, or the maker of the Note, or other evidence of the Secured Obligations, if other than Borrower, and Lender.

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Section 6.04. Statements by Borrower. Borrower, within ten (10) days after being given notice, will furnish, or cause to be furnished, to Lender a written statement stating the unpaid principal of and interest on the Note and any other amounts secured by this Mortgage and stating that no offset or defense exists against such amounts. Borrower will submit (i) annual and quarterly income and expense statements on the Mortgaged Estate and (ii) upon request by Lender, such other reports and statements which are prepared by Borrower and its representatives and agents in the ordinary course of business.

Section 6.05. Notices. Whenever Lender or Borrower shall desire to give or serve any notice, demand, request or other communication with respect to this Mortgage, each such notice, demand, request or other communication shall be in writing and shall be deemed to have been given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the following addresses:

If to Borrower: Americare Centers Corporation  
P. O. Box 241223  
Montgomery, Alabama 36124-1223  
Attention: A. R. Tillery

If to Lender: Colonial Properties, Inc.  
2101 6th Avenue North  
Suite 750  
Birmingham, Alabama 35202  
Attention: Thomas H. Lowder

Any party may at any time change its address for such notices by delivering to the other parties hereto, as aforesaid, a notice of such change.

Section 6.06. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 6.07. Invalidity of Certain Provisions; Conflicting Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Mortgaged Estate, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining

and secured portion of the Secured Obligations, and all payments made on the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Mortgage.

Section 6.08. Change in Ownership. If the ownership of the Mortgaged Estate or any part thereof or interest therein becomes vested in a person other than Borrower owing the same on the date hereof, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Mortgage and the Secured Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability hereunder or upon the Secured Obligations. No sale of the Mortgaged Estate, and no forbearance on the part of Lender, and no extension of the time for the payment of the Secured Obligations, given by Lender, shall operate to release, discharge, modify, change or affect the original liability, if any, of Borrower or the liability of any guarantors or sureties of Borrower, either in whole or in part.

Section 6.09. Assignment of Lender's Interest. It is expressly agreed that any and all terms of this Mortgage, the other Loan Documents and all other agreements made or executed by Borrower or others in favor of Lender, and all rights, powers, privileges, options and remedies conferred upon Lender herein and therein, shall inure to and be for the benefit of Lender and may be exercised by Lender, its successors and assigns, and the word "Lender" shall also mean and include the successor or successors and the assign or assigns of Lender and its successors and assigns. Borrower hereby specifically grants unto Lender the right and privilege, at Lender's option, to transfer and assign to any third person all or any part of Lender's rights to receive funds or payments hereunder.

Section 6.10. Time Is of the Essence. Time is of the essence under this Mortgage and the other Loan Documents.

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed on the day and year set forth in the acknowledgment attached hereto and effective on the date first written above.

AMERICARE CENTERS CORPORATION

By A. R. Tillery  
Name A. R. Tillery  
Title President CHAIRMAN

STATE OF ALABAMA )

JEFFERSON COUNTY )

*Chairman*

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that A. R. Tillery, whose name as ~~President~~ of Americare Centers Corporation, a corporation, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, 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 14th day of June, 1991.

*Betty Jane Tiller*  
Notary Public

My Commission Expires: 1-15-92

2672j  
6/10/91

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Lot 1-B, according to Colonial Properties Survey of Lot 1-B and 1-C, Heatherbrooke Office Park, being a Resurvey of Lot 1, of a Resurvey of Lot 1, as recorded in Map Book 15, Page 46 in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

PERMITTED ENCUMBRANCES

1. All taxes for the year 1991 and subsequent years not yet due and payable.
2. Fire dues, if any, due North Shelby County Fire District.
3. Association dues, if any, due North Shelby County Library District.
4. 20-foot building line as shown by recorded Map.
5. Right of way to Alabama Power Company as recorded in Volume 97, page 556; Volume 109, page 289; Volume 182, page 51; Volume 285, page 93 and Real 302, page 379 in the Probate Office of Shelby County, Alabama.
6. Coal, oil, gas and other mineral interests in, to or under the land are not transferred herein.
7. Declaration of Protective Covenants, Agreements, Easements, and Charges for Heatherbrooke Office Park of Shelby County, Alabama as recorded in 352, page 170 in the Probate Office of Shelby County, Alabama (the "Declaration").

STATE OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

91 JUL -8 PM 3:16

JUDGE OF PROBATE

1. Deed Fee	_____
2. Map Fee	_____
3. Recording Fee	_____
4. Indexing Fee	_____
5. Notary Fee	_____
6. Certified Fee	_____
Total	_____

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