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STATE OF ALABAMA  
COUNTY OF SHELBY

**MORTGAGE  
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT, made this 16th day of October, 1991, between EDDLEMAN PROPERTIES, INC., an Alabama corporation (hereinafter called the "Borrower"), Mortgagor, whose address is 2700 Highway 280 South, Birmingham, Alabama 35223, and SOUTHRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (hereinafter called the "Lender"), Mortgagee, whose address is P.O. Box 2554, Birmingham, Alabama 35290, Attention: Real Estate Loan Department.

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

WHEREAS, Lender has made or has agreed to make a loan to Borrower and its principal shareholder, Billy D. Eddleman, in the aggregate principal sum of One Million One Hundred Eighty Thousand and No/100 Dollars (\$1,180,000.00), evidenced or to be evidenced by certain Notes from Billy D. Eddleman in the amount of \$250,000.00 dated October 4, 1990, from Billy D. Eddleman in the amount of \$250,000.00 dated August 28, 1991 and from Borrower in the amount of \$680,000.00 of even date herewith, each payable to Lender with interest thereon (each said Note, as the same may hereafter be renewed, extended or modified, being herein individually called a "Note" and collectively called the "Notes").

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NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances up to but not exceeding the aforesaid principal sum at any time outstanding, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as hereinafter set forth, have bargained and sold and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Borrower and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property

described in Exhibit A, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the improvements located or to be located on the real estate described herein, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

All of the foregoing shall be deemed real property and conveyed by this mortgage.

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

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

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

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Lender the principal and interest and other indebtedness (including future advances) payable in respect to the Notes and this mortgage, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and upon the condition that at the time of such payment neither Borrower nor Billy D. Eddleman may, whether or not at discretion of Lender, reborrow amounts repaid pursuant to the Notes, and provided Borrower shall keep, perform, and observe all and singular the covenants and promises in the Notes and in this mortgage expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect. Borrower acknowledges, however, that so long as either Borrower or Billy D. Eddleman may, with or without the consent of Lender, reborrow amounts repaid pursuant to any of the Notes, this mortgage shall remain in full force and effect notwithstanding the fact that from time to time there may be no indebtedness then outstanding that is secured by this mortgage.

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

#### ARTICLE I

1.01. Performance of Notes and Mortgage. The Borrower will perform, observe and comply with all provisions hereof and of the Notes secured hereby and duly and punctually will pay or cause to be paid to the Lender the sums of money expressed in the Notes with interest thereon and all other sums required to be paid by

the Borrower pursuant to the provisions of this mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02. **Warranty of Title.** The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit A hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

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

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

(a) The Borrower will pay promptly, when and as due, and will exhibit promptly to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), or upon this mortgage or the indebtedness secured hereby (including recording taxes on the initial indebtedness as well as any future

indebtedness secured hereby) as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.

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

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

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

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

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance



policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Borrower to be used to repair such buildings or to build new buildings in its place or for any other purpose or object satisfactory to the Lender without affecting the lien of the mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

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

1.06. Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower

to the Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

**1.07. Care of the Property.**

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

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender, other than buildings, if any, existing on the date of this mortgage which are to be removed or demolished in connection with the development of the Mortgaged Property as a residential subdivision. The Borrower may sell or otherwise dispose of, free from the lien of this mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars (\$1,000.00) for any single transaction, or a total of Five Thousand Dollars (\$5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this mortgage.

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

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

(e) The Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any

governmental authority affecting the Mortgaged Property or any part thereof.

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

1.08. Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrower under the Notes and this mortgage, and the lien of this mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of the Borrower and the Borrower hereby irrevocably appoints the Lender the agent and attorney-in-fact of the Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09. Leases Affecting Mortgaged Property. The Borrower represents and warrants to Lender that there are no leases affecting any of the Mortgaged Property. Borrower will not enter into any lease of any of the Mortgaged Property without the prior written consent of Lender. The Borrower will then furnish Lender with executed copies of all leases with respect to all or any part of the Mortgaged Property; and all leases now or hereafter entered into must be approved by Lender in advance of Borrower becoming obligated upon any such lease. Borrower will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Borrower will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by the Lender, the Borrower will separately assign to the Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the premises from time to time accruing,



and will not cancel, surrender, or modify any lease so assigned without the written consent of the Lender.

1.10. **Expenses.** The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting any Note, this mortgage, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to three percent (3%) in excess of the Base Rate of Lender shall be payable upon demand, and shall be secured by the lien of this mortgage.

1.11. **Performance by Lender of Defaults by Borrower.** If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with interest thereon at a rate equal to three percent (3%) in excess of the Base Rate of Lender. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

1.12. **Books and Records.** The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. The Borrower will furnish to the Lender within ninety (90) days after the end of the Borrower's fiscal year (or calendar year with respect to any Borrower that is a natural person), and within forty-five (45) days after the end of each of Borrower's fiscal year quarters (or calendar year quarters with respect to any Borrower that is a natural person), a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by the Borrower (or an officer thereof), or if required by the

Lender, a certified public accountant satisfactory to the Lender. Borrower will also furnish Lender as requested from time to time by Lender a current personal financial statement of each guarantor of any Notes, certified by such guarantor and in form and content satisfactory to Lender.

1.13. **Estoppel Affidavits.** The Borrower within ten (10) days after written request from the Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Notes and whether or not any offsets or defenses exist against such principal and interest.

1.14. **Release of Individual Lots.** The Borrower and Lender have entered into a separate Agreement Regarding Release of Individual Lots of even date herewith (as the same may hereafter be amended, the "Release Agreement") whereby, subject to the conditions stated therein, upon payment to Lender of certain sums, Borrower shall be permitted to sell individual lots comprising part of the Mortgaged Property and simultaneously therewith the Lender will release such lots so sold from this mortgage, with the mortgage to remain in effect as to the remainder of lots not so released. The provisions of the Release Agreement are incorporated herein by this reference.

## ARTICLE II

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

(a) Failure by the Borrower or other obligated person to pay as and when due and payable under any Note or this mortgage any principal, interest or other sums due; or

(b) Failure by the Borrower or other obligated person duly to observe any other covenant, condition, or agreement of any Note, this mortgage, or any other document or instrument evidencing, securing or guaranteeing the indebtedness secured hereby, which failure continues for thirty (30) days or more after written notice to Borrower in the manner set forth herein, or the occurrence of an Event of Default under any such document or instrument; or

(c) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein, except as permitted by the Release Agreement; or

(d) The creation or suffering to exist by the Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage, the lien for ad valorem taxes not then delinquent, and matters set forth on Exhibit A, if any, unless the

written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

(e) The sale or other transfer by any shareholder of any interest in Borrower, unless the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion; or

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

Notwithstanding anything herein, any requirement of notice specified above shall be deemed deleted if Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period shall be measured from the date of the event or failure rather than from the date of notice. Nothing herein shall require notice except where expressly set forth.

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

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

(a) If an Event of Default shall have occurred, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession, of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the

powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

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

#### 2.04. Receiver.

(a) If an Event of Default shall have occurred, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all expenses, including receiver's fees, attorney's fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this mortgage.

2.05. Lender's Power of Enforcement. If an Event of Default shall have occurred, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Notes or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety

or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

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

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

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

(b) Second, to the repayment of any money, with interest thereon at a rate equal to three percent (3%) in excess of the Base Rate of Lender, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale, in such order as Lender shall elect; and

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

2.08. **Lender's Option on Foreclosure.** At the option of the Lender, this mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds



of the sale. In the event Lender exercises its option to foreclose the mortgage in equity, Lender may, at its option, foreclose this mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose its rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

2.09. **Waiver of Exemption.** Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

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

2.11. **Borrower to Pay the Notes on Any Default in Payment; Application of Moneys by Lender.** If an Event of Default occurs, then, upon demand of the Lender, the Borrower will pay or cause to be paid to the Lender the whole amount due and payable under the Notes; and in case the Borrower shall fail to pay or cause to be paid the same forthwith upon such demand, the Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of the Lender's agents and attorneys.

2.12. **Delay or Omission No Waiver.** No delay or omission of the Lender or of any holder of any 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.

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

If the Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in any Note; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of any Note or this mortgage; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or change hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Notes, this mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.14. **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.

2.15. **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Lender by this mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

### ARTICLE III

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

3.02. **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

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

3.04. **Lien on Personal Property.** This mortgage creates a lien on and grants a security interest in the personal property of the Borrower described herein which constitutes part of the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code with Borrower as the "debtor" and Lender as the "secured party," and their respective addresses are set forth in the heading to this instrument. If an Event of Default occurs, the Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.05 **Environmental Matters.** Borrower represents and warrants to Lender that neither the Mortgaged Property nor Borrower is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended ("RCRA"), and Borrower further represents and warrants that there

are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Borrower represents and warrants that it has not obtained and is not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property or improvements constructed or to be constructed by reason of any environmental laws, rules or regulations. Borrower represents and warrants that no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property, and Borrower agrees that it will not in its use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal," "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Borrower shall indemnify and hold Lender harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Lender in the event the Borrower or the Mortgaged Property (whether or not due to any fault of Borrower) is hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure or payment of the indebtedness secured hereby.

3.06. **Representations and Warranties.** Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) Borrower is a duly organized and existing Alabama corporation having full power and authority to consummate the transactions contemplated by this mortgage.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any guarantor of any Note or which might impair the value of any collateral taken or to be taken by Lender in connection with this loan transaction. Neither Borrower nor any guarantor of any Note is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or guarantor's business or assets, and neither Borrower nor any guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or any guarantor is subject. Neither the execution and performance of this mortgage, the Notes, or any other document executed in connection herewith by Borrower or any guarantor of



any Note will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any guarantor.

(c) All financial statements of Borrower, any guarantor of any Note and other business enterprises in which Borrower or any guarantor has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of its respective dates and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(d) All utility and sanitary sewage services necessary for the use of the Mortgaged Property and all roads or rights of way necessary for access to the Mortgaged Property are available pursuant to permanent private or public easements which are not subject to the rights of any other persons which could interfere with Borrower's use thereof, although such utility, sanitary sewage services and roads have not been fully installed on the Mortgaged Property.

(e) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

(f) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the loan application or pursuant to the commitment letter issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

3.07. Notices. Any and all notices, elections or demands permitted or required to be made under this mortgage, the Note, or any other agreement executed in connection with or relating to the Note or this mortgage, or by applicable law, shall be given and be deemed effective upon being (a) delivered in person, or (b) deposited with the U.S. Mail, certified or registered, postage prepaid, return receipt requested, and addressed in each such case to the parties at their respective addresses set forth in the heading of this instrument or such other single address as either party may designate in a written notice given as herein provided (except that a change of address notice shall not be effective until actual receipt).



IN WITNESS WHEREOF, the Borrower has executed this mortgage, or has caused this mortgage to be executed, on the day and year first above written.

BORROWER:

EDDLEMAN PROPERTIES, INC.,  
an Alabama corporation

BY: Billy D. Eddleman  
Its President

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Billy D. Eddleman, whose name as President of Eddleman Properties, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that being informed of the contents of the instrument, he, 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 16<sup>th</sup> day of October, 1991.

Dwight L. Mixson, Jr.  
NOTARY PUBLIC

My Commission Expires:  
12-1-91

This instrument prepared by:

Dwight L. Mixson, Jr.  
Burr & Forman  
3000 SouthTrust Tower  
Birmingham, Alabama 35203  
Telephone: (205) 251-3000

EXHIBIT A

Lots 28 and 29, according to the survey of Brook Highland, 1st Sector, as recorded in Map Book 12 page 62 A & B in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lot 59, according to the Survey of Brook Highland, 2nd Sector, as recorded in Map Book 12 page 63 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lots 77, 78, 80, 81, 87, 90, 93, 100 and 103, according to the survey of Brook Highland, 3rd Sector, as recorded in Map Book 12 page 64 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lots 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134 and 135, according to the Survey of Brook Highland, 4th Sector, as recorded in Map Book 13 page 12 A & B in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lots 139, 142, 147, 156, 157 and 161, according to the survey of Brook Highland, an Eddleman Community, 5th Sector, as recorded in Map Book 13 page 36 A & B in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lots 140, 141, 171, 227, 229, 230, 231, 232, 236, 237, 240, 276, 277 282 and 283, according to the survey of Brook Highland, an Eddleman Community, 6th Sector, 2nd Phase, as recorded in Map Book 15 page 50 A & B in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Lot 303, according to the survey of Brook Highland, an Eddleman Community, 7th Sector, as recorded in Map Book 13 page 99 A & B in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

A parcel of land to be known as Brook Highland 6th Sector 3rd Phase, said parcel being situated in the west half of Section 29 and the east half of Section 30, Township 18 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

From the northwest corner of said Section 29, run thence along the west line of said section for a distance of 2121.34 feet to the point of beginning of the parcel herein described; thence turn an angle to the right of 93° 14' 37" and run in a westerly direction along the south line of Lots 279 & 278 of Brook Highland 6th Sector 2nd Phase, as recorded in Map Book 15, Page 50, in the Office of the Judge of Probate, Shelby County, Alabama, for a distance of 89.01 feet to the southwest corner of said Lot

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278; thence turn an angle to the left of 53° 23' 30" and run in a southwesterly direction along the east line of Lots 277 & 276 and a part of the east line of Lot 275 for a distance of 159.28 feet; thence turn an angle to the left of 14° 44' 43" and run along the east line of Lots 275 & 274 for a distance of 150.00 feet; thence turn an angle to the left of 67° 54' 49" and run in a southeasterly direction along the northeast line of Lots 273, 272 & 271 for a distance of 121.17 feet; thence turn an angle to the left of 38° 26' 42" and run in an easterly direction along the north line of Lot 271 for a distance of 64.16 feet to the northeast corner of said Lot 271; thence turn an angle to the right of 90° 00' 00" and run in a southerly direction for a distance of 158.14 feet along the east line of said Lot 271 to the southeast corner of said Lot 271; thence turn an angle to the left of 32° 08' 33" and run in a southeasterly direction for a distance of 70.86 feet to the northeast corner of Lot 248 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the right of 32° 08' 33" and run along the east line of said Lot 248 for a distance of 226.85 feet to the southeast corner of said Lot 248; thence turn an angle to the left of 103° 20' 45" and run in an easterly direction along the north line of Lot 290 of Brook Highland 7th Sector as recorded in Map Book 13, Page 99, in the Office of the Judge of Probate, Shelby County, Alabama, for a distance of 276.22 feet; thence turn an angle to the left of 34° 32' 08" and run in a northeasterly direction along the northwest line of Lot 182 of said Brook Highland 6th Sector 1st Phase as recorded in Map Book 14, Page 83, in the Office of the Judge of Probate, Shelby County, Alabama, for a distance of 173.45 feet to the northernmost corner of said Lot 182; thence turn an angle to the right of 00° 27' 38" and run in a northeasterly direction along the northwest line of Lots 181 & 180 for a distance of 173.17 feet; thence turn an angle to the left of 19° 42' 52" and run in a northeasterly direction along the northwest line of Lots 179, 178, 177, 176, 175 & 174 to the northernmost corner of said Lot 174 for a distance of 650.00 feet; thence turn an angle to the left of 77° 39' 13" and run in a northwesterly direction along the southwest line of Lot 285 of said Brook Highland 6th Sector 2nd Phase for a distance of 126.12 feet to the southwest corner of said Lot 285; thence turn an angle to the left of 51° 44' 29" and run in westerly direction along the south line of Lots 284 & 283 for a distance of 302.65 feet; thence turn an angle to the left of 38° 29' 22" and run in a southwesterly direction for a distance of 103.66 feet along the southeasterly line of Lot 282 of said Brook Highland 6th Sector 2nd Phase to the southwest corner of said Lot 282; thence turn and angle to the right of 57° 32' 20" and run along the south line of Lot 281 for a distance of 115.40 feet to the southwest corner of said Lot 281; thence turn an angle to the left of 08° 01' 25" and run in a westerly direction along the south line of Lots 280 & 279 of said Brook Highland 6th Sector 2nd Phase for a distance of 171.34 feet to the point of beginning. Said parcel contains 12.0 acres, more or less.

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A parcel of land to be known as Brook Highland 6th Sector 4th Phase, said parcel being situated in the east half of Section 30 and the west half of Section 29, Township 18 South, Range 1 West, Shelby County, Alabama, said parcel being more particularly described as follows:

From the southwest corner of the said Section 29, run thence in a northerly direction along the west line of said section for a distance of 3,969.25 feet to the point of beginning of the parcel herein described: from the point of beginning thus obtained turn an angle to the right of 56° 14' 44" and run in a northeasterly direction for a distance of 156.33 feet along the south line of Lots 146 and 147 of Brook Highland 5th Sector as recorded in Map Book 13, Page 36 A & B, in the Office of the Judge of Probate, Shelby County, Alabama; thence turn an angle to the right of 18° 42' 03" and run in a northeasterly direction for a distance of 177.34 feet along the south line of Lots 148 and 149 of said Brook Highland 5th Sector; thence turn an angle to the right of 18° 34' 44" and run in an easterly direction for a distance of 177.34 feet along the south line of Lots 150 and 151 of said Brook Highland 5th Sector; thence turn an angle to the right of 18° 34' 44" and run in a southeasterly direction for a distance of 88.67 feet to the southeast corner of Lot 152 of said Brook Highland 5th Sector; thence turn an angle to the left of 90° 00' 00" and run in a northeasterly direction for a distance of 167.20 feet along the east line of said Lot 152 to the northeast corner of said Lot and a point on the south right of way line of Brook Highland Drive; thence turn an angle to the right of 101° 20' 34" to the chord of a curve bearing southeast in the southerly right of way of said Brook Highland Drive, said curve having a radius of 709.30 feet and a central angle of 22° 41' 08"; thence run in a southeasterly direction along the arc of said right of way for a distance of 280.84 feet to the end of said curve; thence run southeasterly and tangent to said curve along said southerly right of way of Brook Highland Drive for a distance of 186.82 feet to the northernmost corner of Lot 156 of said Brook Highland 5th Sector; thence turn an angle to the right of 90° 00' 00" and run from said right of way in a southwesterly direction, along the northwesterly line of said Lot 156 for a distance of 180.00 feet: thence turn an angle to the left of 92° 36' 09" and run in a southeasterly direction along the southwest line of said Lot 156 for a distance of 64.17 feet to a point on the north line of Lot 169, Brook Highland 6th Sector 2nd Phase as recorded in Map Book 15, Page 50, in the Office of the Judge of Probate, Shelby County, Alabama; thence turn an angle to the right of 117° 12' 56" and run in a southwesterly direction for a distance of 265.84 feet along the north line of Lots 169, 227 and 228 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the right of 12° 45' 02" and run in a southwesterly direction for a distance of 335.19 feet along the north line of Lots 228, 229, 230 and 231 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the right of 12° 15' 11" and run in a westerly direction for a distance of 145.07 feet along the north line of Lots 231 and 232 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the left of 13° 40' 16" and run in a southwesterly direction for a distance of 184.22 feet along the north line of Lots 233 and 234 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the right

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of 12° 52' 38" and run in a westerly direction for a distance of 292.99 feet along the north line of Lots 234, 235 and 236 of said Brook Highland 6th Sector 2nd Phase; thence turn an angle to the right of 33° 37' 32" and run in a northwesterly direction along the northeast line of Lot 142 of said Brook Highland 5th Sector for a distance of 225.00 feet to the northernmost corner of said Lot 142 and a point that is located on the south right of way line of Brook Highland Drive; thence turn an angle to the right of 95° 44' 11" to the chord of a curve to the right in said south line of said right of way, said curve having a radius of 788.51 feet and a central angle of 11° 28' 22"; thence run in a northeasterly direction along the arc of said curve for a distance of 157.89 feet to the end of said curve; thence run tangent to said curve along said south right of way line of Brook Highland Drive for a distance of 198.00 feet to the westernmost corner of Lot 145 of said Brook Highland 5th Sector; thence turn an angle to the right of 90° 00' 00" and run in a southeasterly direction along the southwest line of said Lot 145 for a distance of 163.42 feet to the southernmost corner of said Lot 145; thence turn an angle to the left of 91° 42' 08" and run in a northeasterly direction along the southeast line of said Lot 145 for a distance of 115.05 feet; thence turn an angle to the right of 9° 14' 14" and run in a northeasterly direction along the south line of Lot 146, Brook Highland 5th Sector for a distance of 25.56 feet to the point of beginning. Said parcel contains 12.1 acres more or less.

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SUBJECT TO:

1. Current year's taxes and assessments not yet overdue.
2. Building setback lines as shown by plats referred to above.
3. Public utility easements as shown by recorded plats referred to above.
4. Declaration of Protective Covenants for the "Watershed Property," instrument recorded in Real 194 page 54 in Probate Office.
5. Declaration of Protective Covenants, Agreements, Easements, Charges and Liens for Brook Highland, as set out in instrument recorded in Real 194 page 254 in Probate Office, along with Articles of Incorporation as recorded in Real 194 page 281 and By-Laws recorded in Real 194 page 287-A in Probate Office. Along with Supplemental Covenants as recorded in Real 228 page 882; Real 228 page 886, Real 353 page 969, Real 255 page 131, Real 263 page 604, Map Book 12 page 62 A & B, Map Book 12, page 63, Map Book 12, page 64 A & B, Map Book 13, page 12 A & B, Map Book 13 page 36 A & B, Map Book 15 page 50 A & B, and Map Book 13, page 99 A & B in said Probate Office.
6. A non-exclusive easement and agreement between Eddleman and Associates and The Water Works and Sewer Board of the City of Birmingham dated July 11, 1988, and recorded in Real 194 page 20 and Real 194 page 43 in Probate Office, the easements having the location as shown by plats referred to above.
7. Easement and Agreements between AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio and The Water Works and Sewer Board of the City of Birmingham, as set out in instrument recorded in Real 194 page 1 and Real 194 page 40 in Probate Office, the easements having the location as shown by the plats referred to in Schedule A, Item 4.
8. Drainage Agreement between AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee of the Public Employees Retirement System of Ohio and Eddleman and Associates as set in Real 125 page 238 dated April 14, 1987 in Probate Office.
9. Reciprocal Easement Agreement between AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina as Trustee for the Public Employees Retirement System of Ohio and Eddleman and Associates, as set out in instrument dated April 14, 1987 and recorded in Real 125 page 249 and Real 199 page

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18 in Probate Office, the easements having the location as shown by plats referred to above.

10. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, as set out in Deed book 32 page 48 and Deed book 127 page 140 in Probate Office.

11. Restrictive covenants with regard to underground transmission installation by Alabama Power Company as recorded in Real 181 page 995.

12. Covenants releasing predecessors in title from any liability arising from sinkholes, limestone formations, soil conditions or any other known or unknown surface or subsurface conditions that may now or hereafter exist or occur or cause damage to subject property, as shown by survey of said subdivision, recorded in Map Book 12 page 62 A & B, Map Book 12 page 63, Map Book 12 page 64 A & B, Map Book 13 page 12 A & B, Map Book 13 page 36 A & B, Map Book 15 page 50 A & B and Map Book 13 Page 99 A & B, in Probate Office.

13. Subdivision restrictions shown on recorded plat in Map Book 12 page 62 A & B, Map Book 12 page 63, Map Book 12 page 64 A & B, Map Book 13 page 12 A & B, Map Book 13 page 36 A & B, Map Book 15 page 50 A & B and Map Book 13 page 99 A & B, for construction of single family residences only.

14. Easement(s) to Birmingham Water Works & Sewer Board as shown by instrument recorded in Real 252 page 210 in Probate Office, the easements having the location as shown by plats referred to above.

15. Agreement with Alabama Power Company as to underground cables recorded in Real 298 page 936 in Probate Office, the easements having the location as shown by plats referred to above.

16. Covenants with Alabama Power Company as to underground cables recorded in Real 364 page 399 in Probate Office.

1. Deed Tax	_____	\$ 1170.00
2. Mfg. Tax	_____	_____
3. Recording Fee	_____	62.50
4. Indexing Fee	_____	3.00
5. No Tax Fee	_____	_____
6. Certified Fee	_____	1.00
Total	_____	\$ 1856.50

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

91 OCT 17 AM 9:32

JUDGE OF PROBATE