

RESTATED AND AMENDED
MORTGAGE

That certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement dated May 27, 1992, and recorded in Inst. #1992-09486, amended by First Amendment to Loan Documents dated August 6, 1992, and recorded in Inst. # 1992-16999, and further amended by Second Amendment to Loan Documents dated September 2, 1992, and recorded in Inst. # 1992-19000, is hereby restated and amended as follows:

STATE OF ALABAMA)
 :
SHELBY COUNTY)

KNOW ALL MEN BY THESE PRESENTS, That, whereas, on this 9th day of July, 1993, the undersigned, **VALLEYDALE ASSOCIATES, LTD.**, an Alabama Limited Partnership, hereinafter called "Mortgagor," is justly indebted to **SOUTHLAND LIFE INSURANCE COMPANY**, a Texas corporation having its principal office in Atlanta, Georgia, hereinafter called "Mortgagee," in the sum of Three Million Nine Hundred Thousand and 00/100 (\$3,900,000.00) Dollars borrowed money, to evidence the payment of which Mortgagor has executed one Promissory Note dated May 27, 1992, amended by First Amendment to Loan Documents dated August 6, 1992, and further amended and restated by Restated and Amended Promissory Note of even date herewith, payable to the order of Mortgagee at the offices of Mortgage and Capital Investors, Inc., 3512 Old Montgomery Highway, Birmingham, Alabama, 35259, or at such other place as the holder thereof may designate in writing, said principal sum being payable as set forth in said Note, with interest at the rate set forth therein, the balance of said principal sum with interest thereon maturing and being due and payable on the first day of August, 2016, to which Note reference is hereby made. Said Note also provides, and it is made a part of this contract, that in case said Note is placed in the hands of an attorney for collection, by suit or otherwise, or to enforce its collection, or to protect the security for its payment, Mortgagor will pay all costs of collection and litigation, together with a reasonable attorney's fee, and the same shall be a lien on the premises herein conveyed, and enforced by a sale of the property as herein provided.

NOW, THEREFORE, in consideration of the said indebtedness, and to secure the prompt payment of the same at maturity, the undersigned, **VALLEYDALE ASSOCIATES, LTD.**, an Alabama Limited Partnership, does hereby **GRANT, BARGAIN, SELL** and **CONVEY** to the said Mortgagee, real property situated in Shelby County, Alabama, a more particular description of which appears on Exhibit "A" attached hereto and made a part hereof, subject to the exceptions as set forth on Exhibit "B" attached hereto and made a part hereof.

Together with all rights, privileges, interest, easements, improvements, tenements, hereditaments and appurtenances thereunto belonging or pertaining, and all fixtures, equipment and appliances now or subsequently attached to or used in connection with said premises, and all the rents, issues and profits thereof (all said property being herein referred to as "the premises").

TO HAVE AND TO HOLD the same, unto Mortgagee, its successors and assigns, **FOREVER**.

As further security for payment of the indebtedness and performance of the obligations, covenants and agreements secured hereby, Mortgagor hereby transfers, sets over and assigns to Mortgagee:

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

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such rents, issues and profits.

b. All judgments, awards of damages and settlements hereafter made as a result of or in lieu of any 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. Mortgagee is authorized and empowered (but not required) to collect and receive any such amounts and is authorized to apply them in whole or in part in reduction of the then outstanding debt secured by this Mortgage, notwithstanding the fact that the same may not then be due and payable. Any amounts so applied to principal shall be applied to the principal last maturing hereon.

c. All personal property owned by Mortgagor and used in connection with the premises and general intangibles as more specifically set forth in that certain Security Agreement of even date herewith.

Mortgagor covenants and agrees with Mortgagee as follows:

1. Mortgagor is lawfully seized of an indefeasible estate in fee simple, except as herein noted, free from encumbrances, except as set forth on Exhibit "B" attached hereto and made a part hereof, has good right and power to convey the premises, and does hereby warrant and will forever defend it against the lawful claims of all persons whomsoever.

2. To pay all sums secured hereby when due.

3. To pay, when due, all taxes and assessments of every type or nature levied or assessed against the premises and any claim, lien or encumbrance against the premises, except as set forth on Exhibit "B" attached hereto, which may be or become prior to this Mortgage.

4. To make monthly deposits with Mortgagee, in a noninterest-bearing account, together with and in addition to interest and principal, of a sum equal to one-twelfth of the yearly taxes and assessments which may be levied against the premises, and one-twelfth of the yearly premiums for insurance thereon. The amount of such taxes, assessments and premiums, when unknown, shall be estimated by Mortgagee. Such deposits shall be used by Mortgagee to pay such taxes, assessments and premiums when due. Any insufficiency of such account to pay such charges when due shall be paid by Mortgagor to Mortgagee on demand. If, by reason of any default by Mortgagor under any provision of this Mortgage, Mortgagee declares all sums secured hereby to be due and payable, Mortgagee may then apply any funds in said account against the entire indebtedness secured hereby. The enforceability of the covenants relating to taxes, assessments and insurance premiums herein otherwise provided shall not be affected except insofar as those obligations have been met by compliance with this paragraph. Mortgagee may from time to time at its option waive, and after such waiver reinstate, any or all provisions hereof requiring such deposits, by notice to Mortgagor in writing. While any such waiver is in effect, Mortgagor shall pay taxes, assessments and insurance premiums as herein elsewhere provided.

5. To promptly pay all taxes and assessments assessed or levied under and by virtue of any state, federal or municipal law or regulation hereafter passed, against Mortgagee upon this Mortgage or the debt hereby secured, or upon its interest under this Mortgage, provided, however, that the total amount so paid for any such taxes pursuant to this paragraph, together with the interest payable on said indebtedness, shall not exceed the highest lawful rate of interest in Alabama and provided, further, that in the event of the passage of any such law or regulation and the taxes or assessments cannot be passed on to Mortgagor to be paid by it, the entire indebtedness secured by this Mortgage shall thereupon become immediately due and payable at the option of Mortgagee. Mortgagee shall give Mortgagor written notice of its exercise of said option and Mortgagor shall have a period of not more than six (6) months from the date of receipt of said notice to pay Mortgagee in full. It is not the intent of this Paragraph 5 that Mortgagor shall pay any taxes on the interest which is payable on the debt evidenced by the Note and secured by this

Mortgage.

6. To keep the premises, including all equipment, fixtures and personalty owned by Mortgagor, insured against loss or damage by fire, windstorm, flood (if in a flood hazard zone) and such other hazards as may be required by Mortgagee, in form and amounts satisfactory to, and in insurance companies approved by Mortgagee, the policies for which insurance shall be payable to Mortgagee. However, if flood insurance is required by Mortgagee, it shall be provided in the lesser of either the principal balance of the indebtedness or the maximum flood insurance coverage available. Such policies shall be delivered to and held by Mortgagee without liability. In event of loss, Mortgagor will give immediate notice by mail to the Mortgagee, who may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the insurance proceeds, or any part thereof, will be held by the Mortgagee and, at the option of Mortgagee, be applied to reduce the balance of the Note or to be held by Mortgagee to pay the cost of repairing or rebuilding any damage as a result of the casualty, and disbursed as determined appropriate by Mortgagee. In the event any proceeds are applied on the mortgage indebtedness, no penalty or fee shall be charged with respect to such prepayment, and the indebtedness shall be reamortized at the interest rate in effect over the balance of the remaining amortization term but with no extension of maturity date.

Mortgagor will provide loss of rent insurance in an amount not less than nine (9) months' gross rental.

7. That Mortgagor (i) will not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the premises, nor remove or permit the removal of any fixtures, equipment or appliances owned by Mortgagor therefrom, unless it replaces those items removed with items of equal utility and value, unless Mortgagee shall first consent thereto in writing; (ii) will maintain the premises in good condition and repair; (iii) will not commit or suffer waste thereof; (iv) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the premises, and will not suffer or permit any violation thereof. Mortgagor may construct additional improvements without consent of Mortgagee provided all new construction: is in compliance with all applicable building and zoning codes and ordinances, is in compliance with all tenant leases, is in compliance with all laws, regulations, covenants and restrictions affecting the property and the construction, is in architectural conformity with existing improvements, does not result in the filing of any mechanics' or materialmen's liens or any other encumbrance against the property, is located completely within the boundaries of the subject property, and does not entail any structural alterations of any existing improvements.

8. If Mortgagor fails to pay or to bond and discharge any claim, lien or encumbrance, other than described on Exhibit "B" attached hereto, or, when due, any tax or assessment or insurance premium, or to keep the premises in repair, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the premises or the title thereto, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may procure such insurance, or insurance covering the Mortgagee's interest only, and may procure such abstracts or other evidence of title as it deems necessary, may make such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and for any of said purposes Mortgagee may advance such sums of money as it deems necessary. Provided, however, Mortgagor shall have the right to validly contest any such claim, lien, tax assessment and premium and diligently pursue the removal thereof. Mortgagee may require Mortgagor to post a bond to cover said claim, lien, tax assessment and premium, within thirty (30) days after notice of said claim, lien or assessment.

9. Mortgagor will pay to Mortgagee immediately and without demand, all sums of money advanced by Mortgagee pursuant to this Mortgage, including but not limited to

attorney fees, costs of foreclosure, taxes and insurance premiums, together with interest on each such advancement at the rate of 9.875% per annum, and all sums of money shall be secured by this Mortgage until paid.

10. Mortgagor agrees to furnish Mortgagee with a certified itemized statement of annual (effective) income and expenses on the property covered by this loan, within ninety (90) days following the end of each fiscal or calendar year, such certification to be by a general partner of Mortgagor.

11. The term "Default" or "Event of Default", whenever used in this Mortgage, shall mean the occurrence or existence of one or more of the following events or circumstances:

- (a) Failure by the Mortgagor to pay as and when due and payable any installment of principal, interest or escrow deposit, or other charge payable under the Note, this Mortgage or under any other loan documents, or
- (b) Failure by the Mortgagor to duly observe any other covenant, condition or agreement of this Mortgage, or the Note, of any of the loan documents, or
- (c) The filing by the Mortgagor of a voluntary petition in bankruptcy or the Mortgagor's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor of 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 the Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Mortgagor of all or any substantial part of the mortgaged property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, or the making of any general assignment for the benefit of creditors or the admission in writing of its liability to pay its debts generally as they become due; or
- (d) The entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against the Mortgagor or of any of Mortgagor's obligations hereunder, seeking any reorganization, arrangement, composition, readjustment, liquidation, 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, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor of all or any substantial part of the mortgaged property or of any or all of the rents, revenues, issues, earnings, profits or income thereof or of any interest or estate therein, without the consent or acquiescence of the Mortgagor which appointment shall remain unvacated or unstayed for an aggregate of thirty (30) days (whether not nor consecutive); or
- (e) Proof that any representation made herein or any other document given in connection herewith is untrue in any

material respect.

- (f) There has occurred a default by Lessor or Landlord under the leases which are assigned as security for the loan by the Assignment of Rents and Leases and said default has not been cured within the time provided in said lease or if no time is provided, then within thirty (30) days from the date of default.

12. Upon the occurrence of an Event of Default or in the performance of any of Mortgagor's obligations, covenants or agreements hereunder, or under the terms of the Assignment of Rents and Leases or Security Agreement, or in any other documents executed in connection with this loan which further secure the Note:

- (a) All of the indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee, without notice or demand which are hereby expressly waived, and this Mortgage may be foreclosed, at the option of Mortgagee, and Mortgagee shall have the right and is hereby authorized to enter upon and take possession of said property, and, after or without taking possession, to sell the same before the County courthouse door in Jefferson County (Birmingham Division) in which the above described premises or a part thereof are situated, at public outcry, for cash, after first giving twenty-one (21) days' notice of the time, place and terms of such sale by publication once a week for three successive weeks, immediately prior to said sale, in some newspaper published in the County in which the above described premises or a part thereof is situated, all in compliance with the laws of Alabama, and upon the payment of the purchase money shall execute to the purchaser at such sale a deed to the property so purchased. The proceeds of said sale Mortgagee shall apply first to the expenses incurred hereunder, including a reasonable attorney's fee, or such services as may be necessary for the collection of said indebtedness and the foreclosure of this Mortgage; then to the payment of whatever sum or sums Mortgagee may have paid or become liable to pay in carrying out the terms and stipulations of this Mortgage, together with interest thereon; and, finally, to the payment and satisfaction of said Note together with the interest due thereon. The balance (if any) shall be paid over to Mortgagor. In the event of a sale under the power contained herein Mortgagee may purchase said property at such sale, and in that case the auctioneer is hereby authorized and empowered to execute a deed to the purchaser in the name and on behalf of Mortgagor herein, or
- (b) This Mortgage may be foreclosed by suit in equity, in which case a reasonable attorney's fee shall, among other expenses and costs, be first allowed and paid out of the proceeds of the sale of said property.
- (c) Irrespective of whether Mortgagee accelerates the maturity of all indebtedness secured hereby, or institutes foreclosure proceedings, Mortgagee may collect the rents, issues and profits of the premises, and may enter and take possession thereof and manage and operate the same and take any action which, in Mortgagee's judgment, is necessary or proper to conserve the value of the premises, or Mortgagee at its option may have a receiver appointed to take possession of the premises, to manage, operate and conserve the value thereof and to collect

rents, issues and profits thereof. Either Mortgagee or such receiver may also take possession of, and for these purposes use, any and all personal property contained in the premises and used by the Mortgagor in the rental or leasing thereof or any part thereof. The right to enter and take possession of the premises and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be in addition to all other rights and remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. After paying costs of collection and any other expenses incurred, the proceeds shall be applied to the payment of the indebtedness secured hereby in such order as Mortgagee shall elect, and Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee.

13. If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, pledges, security agreements, contracts or guaranty, assignment of leases, or other securities, Mortgagee may at its option exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine.

14. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured, no forbearance by Mortgagee after the exercise of such option and no withdrawal or abandonment of foreclosure proceedings by Mortgagee after the exercise of such option shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and, in like manner, the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

15. Without affecting the liability of Mortgagor for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of said Note, and without notice or consent:

- (a) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation.
- (b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordination, modifying or otherwise dealing with the lien or charge hereof.
- (c) Exercise or refrain from exercising or waive any right Mortgagee may have.
- (d) Accept additional security of any kind.
- (e) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property mortgaged hereby.

16. Any agreement made by Mortgagor and Mortgagee pursuant to this Mortgage

shall be superior to the rights of the holder of any intervening lien or encumbrance.

17. When all indebtedness secured hereby has been paid, this Mortgage and all assignments herein contained shall be void and this Mortgage and the Assignment of Rents and UCC-1 Financing Statement shall be released by Mortgagee at the cost and expense of Mortgagor; otherwise to remain in full force and effect.

18. This Mortgage shall inure to and bind the successors and assigns of the parties hereto. Wherever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

19. If the real property described in this Mortgage, or any part thereof, is sold, transferred, conveyed or encumbered in any manner, voluntarily or involuntarily, including but not limited to the transfer of any general partnership interests in the Mortgagor, without Mortgagee's prior written consent, then such sale, transfer, conveyance or encumbrance shall constitute a Default under this Mortgage. Transfers of interests by limited partners are not prohibited by this provision. Notwithstanding the above, Southland Life Insurance Company and any participating lender, if any, in its sole discretion, may agree to allow a one-time transfer of ownership and assumption of this loan by a qualified mortgagor as determined by Mortgagee's sole judgment, and said qualified mortgagor must be of financial strength, credit standing and management expertise equal to or greater than Mortgagor. As consideration for this transfer and assumption, the Mortgagee will receive a nonrefundable one percent (1%) fee based on the then outstanding balance, payable at the time of transfer, plus any costs incurred.

20. Mortgagor covenants and agrees that no financing secured by a mortgage which is inferior to this Mortgage, nor any other inferior lien against the premises, shall be permitted without Mortgagee's prior written consent, and a violation of this covenant shall constitute a Default hereunder.

21. In the event any covenant or condition of this Mortgage is found or held to be void or unenforceable, such shall not be deemed to render any other covenant or condition hereof to be void or unenforceable.

22. This Mortgage is subject to the exceptions appearing on Exhibit "B" attached hereto and made a part hereof.

23. Application of any judgments, awards, damages and settlements of any takings under the power of eminent domain or of any insurance proceeds to the reduction of the indebtedness secured hereby will not incur any prepayment penalty as provided in the Note.

24. Mortgagor, its successors and assigns, and Mortgagor's guarantors, if any, (collectively referred to in this Paragraph 24 as "Mortgagor") agrees to defend, indemnify and hold harmless Mortgagee, its directors, officers, employees, agents, contractors, sub-contractors, licensees, successors and assigns (collectively referred to in this Paragraph 24 as "Mortgagee"), from and against any and all claims, demands, judgments, settlements, damages, actions, causes of action, injuries, administrative orders, consent agreement and orders, liabilities, penalties, costs, including but not limited to any cleanup costs, and all expenses of any kind whatsoever, including claims arising out of loss of life, injury to persons, property, or business or damage to natural resources in connection with the activities of Mortgagor, its predecessors in interest, third parties who have trespassed on the premises, or parties in a contractual relationship with Mortgagor, or any of them, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Mortgagee, which:

(a) Arises out of the actual, alleged or threatened discharge, dispersal release, storage, treatment, generation, disposal or escape of pollutants or other toxic or hazardous substances, including any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste (including materials

to be recycled, reconditioned or reclaimed); or

(b) Actually or allegedly arises out of the use, specification, or inclusion of any product, material or process containing chemicals, the failure to detect the existence or proportion of chemicals in the soil, air, surface water or groundwater, or the performance or failure to perform the abatement of any pollution source or the replacement or removal of any soil, water, surface water or groundwater containing chemicals.

25. The Mortgagor, its successors and assigns, shall bear, pay and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties or otherwise against Mortgagee described in Paragraph 24, shall hold Mortgagee harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings and negotiations of any description with any and all persons, political subdivisions or government agencies arising out of any of the occurrences set forth in Paragraph 24.

26. Mortgagor's indemnifications and representations made herein shall survive any termination or expiration of the documents securing this loan and/or the repayment of the indebtedness evidenced by the Note included but not limited to any foreclosure on this Mortgage or deed-in-lieu of foreclosure; it being understood and agreed that the indemnity given herein is independent of the secured indebtedness and the documents securing the loan.

27. Mortgagor, its successors and assigns, after reasonable inquiry, covenants, warrants and represents that:

(a) No pollutants or other toxic or hazardous substances, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9601, et seq., as amended, or any other federal or state law, including any solid, liquid, gaseous or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (collectively "substances") have been or shall be discharged, dispersed, released, stored, treated, generated, disposed of, or allowed to escape (collectively referred to as the "incident") on the property of Mortgagor.

(b) No asbestos or asbestos-containing materials have been installed, used, incorporated into, or disposed of on Mortgagor's property.

(c) No polychlorinated biphenyls ("PCBs") are located on or in Mortgagor's property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.

(d) No underground storage tanks are located on Mortgagor's property or were located on Mortgagor's property and subsequently removed or filled, except those tanks that have been identified (by size, location, age, substance contained therein, and whether in existence, removed or filled) and previously disclosed to Mortgagee.

(e) No investigation, administrative order, consent order and agreement, litigation or settlement (collectively referred to as the "action") with respect to substances is proposed, threatened, anticipated or in existence with respect to Mortgagor's property.

(f) The property and Mortgagor's operations at the property are in compliance with all applicable federal, state and local statutes, laws and regulations. No notice has been served on Mortgagor, from any entity, governmental body, or individual claiming any violation of any law, regulation, ordinance or code, or requiring compliance with any law, regulation, ordinance or code, or demanding payment or contribution for environmental damages or injury to natural resources. Copies of any such notices received after settlement shall be forwarded to Mortgagee within three (3) days of their receipt.

28. Failure to comply with any provision of Paragraph 27, including failure to fully and accurately complete any schedule or attachment described in Paragraph 27, shall be deemed to be an occurrence of default under this Mortgage.

29. Subject to the terms of the next succeeding paragraph and notwithstanding otherwise contained in this Mortgage, it is agreed that the promise of Mortgagor to pay the principal indebtedness and the interest on the Note shall be for the sole purpose of establishing the existence of said indebtedness; Mortgagee's source of satisfaction of said indebtedness and of Mortgagor's other obligations hereunder and under the Assignment of Rents and Leases, and Security Agreement and under any other loan document (Loan Documents) is limited solely to (a) the property described in this Mortgage, (b) Mortgagee's receipt of the rents, issues and profits from the property described in this Mortgage, (c) the property described in the Security Agreement, and (d) any separate agreements guaranteeing the payment of the amounts due under the Note and under the Loan Documents and Mortgagor's performance hereunder and under the Loan Documents; Mortgagee shall not seek to procure payment out of any other assets of Mortgagor or to procure any judgment against Mortgagor for any amount which is or may be payable under the Note, this Mortgage or any of the other Loan Documents or for any deficiency remaining after foreclosure of this Mortgage; provided, however, that nothing herein contained shall be deemed to be a release or impairment of said indebtedness or the security therefor intended by this Mortgage, or be deemed to preclude Mortgagee of Mortgagee's rights thereunder, or in any way or manner affecting Mortgagee's rights and privileges under any of the Loan Documents or any separate agreements guaranteeing Mortgagor's payment and performance hereunder and under the Loan Documents.

Notwithstanding the foregoing limitation of liability provision, it is expressly understood and agreed that Mortgagor shall be personally liable for the payment to the Mortgagee of:

- (i) all security deposits of tenants, any rents that are collected more than one (1) month in advance, and all income, rents, issues, profits and revenues derived from the property described in this Mortgage which are not promptly applied to payment of the indebtedness evidenced by the Note and/or to the costs of normal maintenance and operation of such property;
- (ii) any loss due to fraud or misrepresentations to Mortgagee by Mortgagor (or by any of its general partners, by any of the general partners of any of its general partner or by any of its or their agents, if applicable);
- (iii) the misapplication of (a) proceeds paid under any insurance policies by reason of damage, loss or destruction to any portion of the property described in this Mortgage to the full extent of such misapplied proceeds, or (b) proceeds of awards resulting from the condemnation or other taking in lieu of condemnation of any portion of such property, to the full extent of such misapplied proceeds or awards;
- (iv) any loss due to waste of the property described in this Mortgage or any portion thereof, and all costs, including reasonable attorneys' fees, incurred by Mortgagee to protect such property and any other security for the indebtedness evidenced by the Note or to enforce the Note, this Mortgage and any of the other Loan Documents; and
- (v) any taxes, assessments and insurance premiums for which Mortgagor is liable under the Note, this Mortgage or any of the

other Loan Documents and which are paid by Mortgagee; and

(vi) any loss arising under the hazardous substance indemnification and hold harmless provisions of this Mortgage and the Mortgagor's hazardous substances covenants, warranties and representations provisions contained in this Mortgage.

30. All notices required to be given to Mortgagee hereunder shall be sent by registered or certified mail to:

Mortgage and Capital Investors, Inc.
3512 Old Montgomery Highway
Birmingham, Alabama 35259

and to: Southland Life Insurance Company
5780 Powers Ferry Road, N.W.
Atlanta, Georgia 30327-4390

Attention: Ms. Linda R. Sessler

or to such other address as Mortgagee may direct from time to time by written notice forwarded to Mortgagor by certified or registered mail.

All notices required to be given to Mortgagor shall be sent by registered or certified mail to the Mortgagor:

Valleydale Associates, Ltd.
2117 Second Avenue North
Birmingham, Alabama 35203

Attention: Mr. William C. Hulsey

or to such other address as Mortgagor may from time to time direct by written notice forwarded to Mortgagee by registered or certified mail.

31. Notwithstanding anything to the contrary contained in this Restated and Amended Mortgage, Mortgagor's interest in the improvements which have been constructed on that certain real property covered by that lease with Big B Food Systems, Ltd. dated February 6, 1993 (the Lease), which real property is a portion of the premises described on Exhibit "A" attached hereto, is a reversionary interest only, i.e., the improvements become the property of Mortgagor upon expiration of the Lease or upon prior termination as provided in said Lease. Mortgagor is hereby mortgaging only its interest in the improvements as set forth in the Lease.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed on the 9th day of July, 1993.

VALLEYDALE ASSOCIATES, LTD.,
an Alabama Limited Partnership

By: VALLEYDALE, INC.,
Its General Partner

By: E. Paul Stremmel Jr.
Its President

Attest: John A. Whit
Its Secretary

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that E. Paul Stempel, Jr., whose name as President of Valleydale, Inc., a corporation, General Partner of Valleydale Associates, Ltd., an Alabama Limited Partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily, for and as the act of said corporation, as General Partner of Valleydale Associates, Ltd., an Alabama Limited Partnership.

Given under my hand and official seal, this 9th day of July, 1993.

Laura Lorraine Yacon
Notary Public

(SEAL)

My commission expires: 10/6/96

This instrument was prepared by:
Jesse M. Williams, III
Rushton, Stakely, Johnston & Garrett, P.A.
P. O. Box 270
Montgomery, Alabama 36101-0270

EXHIBIT "A"

Lots 2 and 3, according to the Survey of Valleydale Market Place, as recorded in Map Book 16, page 117, in the Probate Office of Shelby County, Alabama. Being more particularly described by metes and bounds as follows:

A parcel of land situated in the southeast one-quarter of the northwest one-quarter and the southwest one-quarter of the northwest one-quarter of Section 15, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the southwest corner of the north one-half of the southeast one-quarter of the northwest one-quarter of said Section and run south $89^{\circ} 10' 56''$ East along the north line of the south one-half of southeast one-quarter of the northwest one-quarter of said section for a distance of 345.00 feet to the point of beginning of herein described property; thence run south $8^{\circ} 37' 32''$ west for a distance of 100.93 feet; thence run north $89^{\circ} 10' 56''$ west for a distance of 91.29 feet; thence run south $85^{\circ} 22' 23''$ west for a distance of 105.48 feet; thence run south $86^{\circ} 46' 24''$ west for a distance of 99.25 feet; thence run north $85^{\circ} 51' 01''$ west for a distance of 34.57 feet; thence run north $0^{\circ} 04' 46''$ east for a distance of 15.00 feet; thence run north $89^{\circ} 10' 56''$ west for a distance of 120.11 feet; thence run north $44^{\circ} 19' 31''$ west for a distance of 74.56 feet to a point of commencement of a curve to the left, said curve having a central angle of $22^{\circ} 43' 08''$ and a chord bearing of north $12^{\circ} 10' 38''$ east and a radius of 231.50 feet; thence travel in a northerly direction along the arc of said curve for a distance of 91.79 feet; thence run north $0^{\circ} 49' 04''$ east for a distance of 40.00 feet to the point of commencement of a curve to the left, said curve having a central angle of $41^{\circ} 40' 00''$ and a chord bearing of north $20^{\circ} 00' 56''$ west and a radius of 254.91 feet; thence run in a northwesterly direction along the arc of said curve for a distance of 185.38 feet; thence run north $40^{\circ} 50' 56''$ west for a distance of 113.48 feet to a point on the southerly right of way line of Valleydale Road, said point also being the point of commencement of a curve to the left having a central angle of $3^{\circ} 19' 18''$ and a chord bearing of north $52^{\circ} 29' 59''$ east and a radius of 2913.72 feet; thence run in a northeasterly direction along the arc of said curve for a distance of 168.92 feet; thence run north $50^{\circ} 50' 23''$ east for a distance of 199.55 feet; thence run south $0^{\circ} 00' 32''$ east for a distance of 92.74 feet; thence run south $82^{\circ} 50' 13''$ east for a distance of 200.63 feet; thence run north $53^{\circ} 20' 43''$ east for a distance of 130.22 feet to a point on the southwest right of way line of Caldwell Mill Road; thence run south $36^{\circ} 39' 17''$ east for a distance of 672.21 feet; thence run north $89^{\circ} 10' 56''$ west for a distance of 359.83 feet to the point of beginning.

SLOPE EASEMENT NUMBER 1:

Commence at the Northwest corner of the South one-half of the Southeast one-quarter of the Northwest one-quarter of Section 15, Township 19 South, Range 2 West; thence run South $0^{\circ} 04' 46''$ West along the West line of the Southeast one-quarter of the Northwest one-quarter of said Section 15 for a distance of 100 feet to the point of beginning; thence run North $89^{\circ} 10' 56''$ West for a distance of 120.11 feet; thence run South $34^{\circ} 39' 01''$ East for a distance of 30.71 feet; thence run South $78^{\circ} 48' 57''$ East for a distance of 83.36 feet; thence run North $88^{\circ} 44' 07''$ East for a distance of 20.81 feet; thence run North $0^{\circ} 04' 46''$ East along the West line of the southeast one-quarter of the Northwest one-quarter of said Section 15 for a distance of 39.26 feet to the point of beginning. Being recorded in Instrument 1992-09484 in the Probate Office of Shelby County, Alabama.

SLOPE EASEMENT NUMBER 3:

Commence at the Northwest corner of the South one-half of the Southeast one-quarter of the Northwest one-quarter of Section 15, Township 19 South, Range 2 West; thence run south $0^{\circ} 04' 46''$ West along the West line of the Southeast one-quarter of the Northwest one-quarter of said Section 15 for a distance of 100 feet; thence run North $89^{\circ} 10' 56''$ West for a distance of 120.11 feet; thence run North $44^{\circ} 19' 31''$ West for a distance of 74.56 feet;

thence run North 16° 58' 37" East for a distance of 52.89 feet to the point of beginning, from the point of beginning thus obtained; thence run North 9° 02' 51" West for a distance of 155.91 feet; thence run North 19° 02' 51" West for a distance of 75.39 feet; thence run North 55° 12' 48" West for a distance of 84.65 feet; thence run North 78° 30' 34" West for a distance of 79.54 feet to a point on the Southeasterly right of way line of Valleydale Road, said right of way being situated in the curve, said curve curving to the left in a Northeasterly direction having a central angle of 1° 33' 12" and a radius of 2913.72 feet and a chord bearing of North 54° 56' 14" East and a chord distance of 78.99 feet; thence run along the arc of said curve in a Northeasterly direction along the Southeasterly right of way line of Valleydale Road for a distance of 79.00 feet; thence run South 40° 50' 56" East for a distance of 113.48 feet to a point of commencement of a curve to the right, said curve having a central angle of 41° 40' and a radius of 254.91 feet; thence run along the arc of said curve in a Southeasterly direction for a distance of 185.38 feet to the end of said curve; thence run South 0° 49' 04" West for a distance of 40.00 feet to a point of commencement of a curve to the right, said curve having a central angle of 9° 35' 56" and a radius of 231.50 feet; thence run along the arc of said curve to the right in a Southwesterly direction for a distance of 38.78 feet to the point of beginning. Being recorded in Instrument 1992-09484 in the Probate Office of Shelby County, Alabama.

EXHIBIT "B"

1. Taxes and assessments for the year 1993, and subsequent years, which are not yet due and payable.
2. Easement recorded in Real 360, page 911, in the Probate Office of Shelby County, Alabama.
3. Mineral and mining rights and rights incident thereto recorded in Volume 184, page 388, Volume 184, page 398 and Volume 177, page 176, in the Probate Office of Shelby County, Alabama.
4. Right of Way granted to Alabama Power Company by instrument recorded in Volume 129, page 560 and Real 248, page 779, in the Probate Office of Shelby County, Alabama.
5. Declaration of Covenants regarding ingress and egress Easements dated May 27, 1992, executed by and between Valleydale Associates, Ltd., and Shop-A-Snak Food Mart, Inc., which is recorded in Instrument #1992-09475, in the Probate Office of Shelby County, Alabama.
6. Restrictive Covenant Agreement dated May 27, 1992, executed by and between Valleydale Associates, Ltd., and Shop-A-Snak Food Mart, Inc., which is recorded in Instrument #1992-09474 in the Probate Office of Shelby County, Alabama.
7. That certain easement reservation in the Deed from Shop-A-Snak Food Mart, Inc. to Valleydale Associates, Ltd., which is recorded in Instrument #1992-09477, in the Probate Office of Shelby County, Alabama.
8. Ingress and Egress Easement dated May 27, 1992, executed by Valleydale Associates, Ltd., and B. J. Harris and Denney E. Barrow, as Trustees of Harbar Homes, Incorporated, Profit Sharing Plan and Trust f/b/o B. J. Harris and Denney E. Barrow, which is recorded in Instrument #1992-09485, in the Probate Office of Shelby County, Alabama.
9. Sign Agreement dated May 27, 1992, executed by and between Valleydale Associates, Ltd., and B. J. Harris and Denney E. Barrow, as Trustees of Harbar Homes, Incorporated, Profit Sharing Plan and Trust f/b/o B. J. Harris and Denney E. Barrow, which is recorded in Instrument #1992-09483, in the Probate Office of Shelby County, Alabama.
10. Obligations of owner of the insured property to maintain Slope Easement pursuant to that certain Slope Easement Agreement dated May 27, 1992, executed by B. J. Harris and Denney E. Barrow, as Trustees of Harbar Homes, Incorporated, Profit Sharing Plan and Trust f/b/o B. J. Harris and Denney E. Barrow, which is recorded in Instrument #1992-09484 in the Probate Office of Shelby County, Alabama.
11. Easement as shown by recorded Map Book 16, page 117, consisting of:
 - a. Ingress & egress and public utility easement along the West side of Lot 2;
 - b. Public sanitary sewer easements crossing Lot 2;
 - c. Ingress & Egress easement and sanitary sewer easement along South and West lines of Lot 3;
 - d. Storm drainage and utility easement on Northeast corner of Lot 3;

- e. Storm drainage and detention easement along Northeast side of Lot 2.
12. Encroachment of asphalt pavement over sanitary sewer easement as shown on the survey of Gay & Powell, Inc. (Jimmy A. Gay), dated June 17, 1993.

Inst # 1993-20136

07/09/1993-20136
03:46 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
015 MCD 5894.50