STATE OF ALABAMA)
COUNTY OF SHELBY)

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of this 27th day of September, 1993, between COLONIAL PROPERTIES, INC., an Alabama corporation (hereinafter called "Colonial"), Mortgagor, whose address is Energen Plaza, Suite 750, 2101 Sixth Avenue North, Birmingham, Alabama 35202, Attention: Thomas H. Lowder, SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association (hereinafter called the "Lender"), Mortgagee, whose address is P.O. Box 2554, Birmingham, Alabama 35290, Attention: Commercial Real Estate Department.

WITNESSETH:

- A. Lender has made or has agreed to make a loan in the principal sum of \$8,400,000 (the "Loan") to Colonial, Thomas H. Lowder, James K. Lowder, Robert E. Lowder, The Macon Mall, an Alabama general partnership, Equity Partners Joint Venture, an Alabama general partnership, and The Village Mall, an Alabama general partnership (collectively, the "Initial Borrowers"), which Loan is evidenced by that certain Promissory Note in said principal sum, payable to Lender with interest thereon dated September 27, 1993 (as the same may hereafter be renewed, modified, or amended, the "Initial Note"); and
- B. It is contemplated that Colonial will sell, subject to the terms of this mortgage, the Property (as hereinafter defined) to Colonial Realty Limited Partnership, a Delaware limited partnership ("CRLP"). CRLP, Colonial Properties Trust, a Maryland real estate investment trust ("CPT"), and Colonial Properties Holding Company, Inc., an Alabama corporation ("CPHC") will assume the obligations of the Initial Borrowers under, the Initial Note, and the Initial Note will be amended and restated to reflect such assumption (the "Restated Note"). The date of closing of the sale to CRLP and the assumption of the Initial Note by CRLP, CPT, and CPHC is referred to herein as the "Transfer Date." After the Transfer Date, the Initial Borrowers will be released from, and have no further liability under the Initial Note or this Mortgage, except to the extent that any of the Initial Borrowers or their general partners have guaranteed the Loan.

THIS MORTGAGE SECURES AN INDEBTEDNESS IN THE AMOUNT OF \$8,400,000. THE VALUE OF THE COLLATERAL LOCATED IN SHELBY COUNTY, ALABAMA, IS \$ _ | , 03 + 8 | + . THIS VALUATION IS ONLY FOR DETERMINING THE AMOUNT OF MORTGAGE TAX DUE, AND SHALL NOT BE DEEMED AS A LIMITATION UPON THE AMOUNT WHICH MAY BE REALIZED UPON FORECLOSURE OF SUCH COLLATERAL.

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- C. CRLP, CPT, CPHC, and Lender have entered into a Loan Agreement to be effective as of the Transfer Date which will govern the Restated Note (as the same may hereafter be modified or amended, the "Loan Agreement).
- D. As used herein, "Mortgagor" shall mean Colonial prior to the Transfer Date, and CRLP after the Transfer Date, "Borrowers" shall mean the Initial Borrowers prior to the Transfer Date, and CRLP, CPT, and CPHC after the Transfer Date and "Note" shall mean the Initial Note prior to the Transfer Date, and the Restated Note after the Transfer Date. All other capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement. Such Loan Agreement also governs the Line of Credit Loan, which Line of Credit Loan is intended to be cross-defaulted, but not cross-collateralized with the Land Loan. Accordingly, any reference herein to compliance with, or observance of, any obligation, covenant, or agreement contained in the Loan Documents shall only apply to those obligations, covenants, or agreements which are applicable to the Land Loan.
- NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements as set forth in the Note, and in the Loan Documents, has 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 Mortgagor and subject to the lien of this mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:
- (a) All the tract(s) or parcel(s) of land particularly described in Exhibit A attached hereto and made a part hereof (the "Property").
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Property, and all fixtures, machinery, equipment, furniture, furnishings, inventory and personal property of every nature whatsoever now or hereafter owned by the Mortgagor 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 Mortgagor for the purpose of being used or useful in connection with the improvements located or to be located on the property described in Exhibit A, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said property 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.

(d) Proceeds and products of all of the foregoing real and personal property.

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

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

- (a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and
- (b) . All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the Mortgaged Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Mortgaged Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers 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 Note, this mortgage, and the other Loan Documents 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 Borrowers, and shall keep,

perform, and observe all and singular the covenants and promises in the Note, in the Loan Documents and in this mortgage expressed to be kept, performed, and observed by and on the part of the Borrowers, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, but shall otherwise remain in full force and effect.

AND the Mortgagor covenants and agrees with the Lender and represents and warrants unto Lender as follows:

ARTICLE I

- 1.01. Performance of Loan Documents. The Mortgagor will perform, observe and comply with all provisions hereof, and of each of the other Loan Documents, and duly and punctually will pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Mortgagor pursuant to the provisions of this mortgage or any other Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.
- 1.02. Warranty of Title. The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged and has good and absolute title to all existing personal property in which a security interest is herein granted 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 B hereto, the same are 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 Mortgagor shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.
- 1.03. Monthly Tax Deposits. If required by the Lender, following an Event of Default, the Mortgagor 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 Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges when due.

1.04. Other Taxes, Utilities and Liens.

- (a) The Mortgagor will pay promptly, when and as due, and will exhibit promptly to the Lender, upon its request, 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), this mortgage or the Note, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) The Mortgagor will pay promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.
- (c) The Mortgagor shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.
- (d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, and Mortgagor refuses to reimburse Lender within ten (10) days of Lender's written request for payment of the increased costs incurred by 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, or if the Mortgagor is not permitted to reimburse Lender under applicable law, or such reimbursement would make the loan transaction usurious, the entire balance of the principal sum secured by this mortgage and all interest accrued thereon shall become due and payable at the option of Lender six (6) months following notice to Mortgagor.
- 1.05. Insurance. Prior to the Transfer Date, Mortgagor will maintain insurance policies in such form and with such insurers as required by Lender. After the Transfer Date, Mortgagor will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this mortgage, the insurance policies as will be required by the Loan Agreement.

If required by the Lender, following an Event of Default, the Mortgagor 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 Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the

general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Mortgagor's credit.

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

1.07. Care of the Property.

- (a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair (ordinary wear and tear excepted), 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. The Mortgagor 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, 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 Mortgagor 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 Mortgagor 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 Mortgagor will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters, and with all present and future restrictive covenants affecting the Mortgaged Property.
- (f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will restore promptly the Mortgaged Property to the equivalent of its original condition, provided Lender agrees to make any proceeds of insurance available for such purpose but regardless of whether or not there shall be sufficient insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender.
- 1.08. Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, the Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of the Borrowers under the Note and this mortgage, and the lien of this mortgage as a lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.
- 1.09. Leases Affecting Mortgaged Property. The Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Mortgagor will furnish Lender with executed copies of all leases now or hereafter created 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 Mortgagor becoming obligated upon any such leases. Mortgagor 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 Mortgagor 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. Appraisals. At the Lender's request, Mortgagor will permit the Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and Mortgagor will cooperate with and provide any information requested in connection with such appraisals. Mortgagor will reimburse Lender for the cost of any such appraisals, not to exceed the cost of one appraisal in any twelve month period.
- 1.11. Expenses. The Mortgagor will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this mortgage, Mortgagor, or the Mortgaged Property, including but not limited to the foreclosure of this mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at a rate equal to two percent (2%) in excess of the interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this mortgage.
- 1.12. Performance by Lender of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of this mortgage, then the Lender, at its option, may perform or observe the same after giving ten (10) days prior written notice to Mortgagor, provided, however, that Lender shall not be required to give such notice if an Event of Default exists, or if immediate action is necessary to protect the Mortgaged Property, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.
- 1.13. Books and Records. The Mortgagor 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.

1.14. Estoppel Affidavits. The Mortgagor 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 Note and whether or not any offsets or defenses exist against such principal and interest.

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 Borrowers to pay as and when due and payable and within applicable cure periods, if any, any principal, interest or other sums due under the Note or any of the Loan Documents; or
- (b) Failure by the Borrowers duly to observe any other covenant, condition, or agreement of the Note, this mortgage, or any of the Loan Documents, and such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to Borrowers by Lender; provided, however, that if such failure cannot, with reasonable diligence, be fully cured within such thirty (30) day period, the period for cure shall be extended for up to an additional sixty (60) days, as long as (1) within the initial thirty (30) days, Borrowers commence the cure and provide Lender with written notice that such failure cannot be fully cured within such initial thirty (30) day period and (2) Borrowers proceed to complete such cure with due diligence and as soon as practicable within the additional sixty (60) day period; or
- (c) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein (except the sale to CRLP, and except as may be permitted by the Loan Agreement); or
- (d) The creation or suffering to exist by the Mortgagor of any lien or encumbrance on the Mortgaged Property, other than the lien of this mortgage, the lien for ad valorem taxes not then delinquent, and matters 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.

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

2.04. 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 Mortgagor 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 Note or the performance of any term thereof or any other right, (b) to foreclose this mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to 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. Borrowers will remain liable for any deficiency following foreclosure or exercise of other remedies to the full extent permitted by applicable law.
- 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 two percent (2%) in excess of the rate borne by the Note, 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 may elect; and
- (d) Fourth, to the payment and satisfaction of any other indebtedness owing from Borrowers to the Lender; and
- (e) Fifth, 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 Mortgagor, 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 Appraisement, Valuation, Etc. Mortgagor agrees, to the full extent permitted by law, that in case of a default on the part of Mortgagor hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this mortgage marshaled upon any foreclosure or sale under the power herein granted.
- 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. Mortgagor to Pay the Note on Any Default in Payment; Application of Moneys by Lender. If an Event of Default occurs, then, upon demand of the Lender, the Mortgagor will pay to the Lender the whole amount due and payable under the Note; and in case the Mortgagor shall fail to pay the same forthwith upon such demand, the Lender shall be entitled

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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 the Note to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.
- 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 the Note; (d) releases any part of the Mortgaged Property from the lien of this mortgage or otherwise changes any of the terms of the 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 Note, this mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, cosigner, endorser, surety, or guarantor; nor shall any such act or omission preclude the Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, 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 Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers, and remedies of the Lender shall continue as if no such proceeding has been taken.

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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 Mortgagor or by or on behalf of Lender shall bind and inure to the benefit of its respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.
- 3.02. Headings, etc. The headings of the articles, sections, paragraphs, and subdivisions of this mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.
- 3.03. Invalid Provisions to Affect No Others. In case any one or more of the covenants, agreements, terms, or provisions contained in this mortgage or in the 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 Note 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 Mortgagor 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. Mortgagor 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 Mortgagor 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. Notices. Any and all notices, elections or demands permitted or required to be made under this mortgage, shall be given in the manner specified in the Loan Agreement.
- 3.06. Release. Provided that no Event of Default then exists, Lender agrees to release this mortgage on the terms and conditions stated therefor in the Loan Agreement.

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3.07 Waiver of Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. MORTGAGOR AGREES THAT LENDER MAY FILE A COPY OF THIS WAIVER WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF MORTGAGOR IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN Mortgagor AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, the Mortgagor has caused this mortgage to be executed by its duly authorized officers on the day and year first above written.

COLONIAL PROPERTIES, INC., an Alabama

corporation

Thomas H. Lowder

Its President

STATE OF	OF	COLUM	BIA
STATE OF)
COUNTYOF)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Thomas H. Lowder**, whose name as President of Colonial 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 23¹ day of September, 1993.

NOTARY PUBLIC

My Commission Expires:

This instrument prepared by: Jill Verdeyen Deer, Esq. BURR & FORMAN Suite 3000, SouthTrust Tower 420 North 20th Street Birmingham, Alabama 35203 (205)251-3000

REBECCA W. KILLION
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires February 28, 1998

Heatherbrooke

EXHIBIT A

Parcel I:

Lots 3 and 4, according to the Survey of Heatherbrooke Office Park, as recorded in Map Book 12, Page 2, in the Probate Office of Shelby County, Alabama.

Parcel II:

Lots 2-B, according to a Resurvey of Lot 2, Heatherbrooke Office Park, recorded in Map Book 12, Page 36, in the Probate Office of Shelby County, Alabama.

Parcel III:

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

EXHIBIT B

Permitted Encumbrances

Those matters listed in Schedule B, Section 1, of the Title Insurance Policy in favor of, and delivered to, the Lender relating to the Property.

Inst # 1993-30302

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10/01/1993-30302 11:17 AM CERTIFIED SHELBY COUNTY JUDGE OF PROBATE 52.00