

THIS INSTRUMENT PREPARED BY:

James J. Odom, Jr., Esquire
625 South 38th Street
Birmingham, AL 35222

STATE OF ALABAMA)

COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS INSTRUMENT is made as of the 16th day of November, 1993, by Jack Whitson Kidd ("Kidd") and M. Miller Gorrie ("Gorrie") (Kidd and Gorrie are sometimes referred to as "Borrowers") in favor of AMSOUTH BANK, N.A., a national banking association (hereinafter "Lender").

ARTICLE I - SECURITY INTEREST

1.01 Premises. For and in consideration of the sum of Ten and No/100 Dollars (\$10.00), the release of Gorrie from personal obligation to repay the indebtedness evidenced by the Consolidated Note, as described in Section 1.03 herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrowers hereinafter set forth, Borrowers do hereby grant, bargain, sell, convey, mortgage, assign, transfer, pledge and set over unto Lender the following described property (collectively, the "Premises"): (a) that certain tract of land more particularly described in Exhibit "A" hereto (the "Land"); and (b) all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land; and all right, title and interest of Borrowers in all furnishings, furniture, fixtures, machinery, apparatus, equipment, fittings, appliances, vehicles, building supplies and materials, warranties, chattels, chattel paper, documents, inventory, accounts, farm products, goods, consumer goods, general intangibles, trade names, trademarks, servicemarks, logos and goodwill related thereto, and all other articles of personal property of every kind and nature whatsoever, now or hereafter acquired with proceeds of any loan secured by this Instrument or located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises; and all extensions, additions, improvements, betterments, renewals, and replacements, substitutions, or proceeds of any of the foregoing; all of which foregoing items are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Instrument, a portion of the above-described collateral being located upon the Land; and (c) all easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, water rights, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or

Inst # 1993-37081

11/22/1993-37081
10:37 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
579.50
023 MCD

appertaining to the Premises, or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrowers; and (d) all right, title and interest of Borrowers in any and all leases and rental agreements now or hereafter affecting the Premises or any portion thereof (the "Leases"); provided that this assignment shall not be construed as a consent by Lender to any one or more of the Leases or any tenants thereunder (the "Tenants"); and (e) all income, rents, issues, profits and revenues of the Premises from time to time accruing, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrowers of, in and to the same; reserving only the right to Borrowers to collect rent (but not more than one month prior to accrual) so long as Borrowers are not in default hereunder; and (f) all right, title and interest of Borrowers in all franchise agreements, management contracts, service contracts, utility contracts, leases of equipment, documents relating to the construction of any improvements on the Premises and all other contracts, licenses and permits now or hereafter affecting the Premises or any part thereof (the "Contracts"); provided that this assignment shall not be construed as a consent by Lender to any one or more of the Contracts; and (g) all right, title and interest of Borrowers in any insurance policies or binders now or hereafter relating to the Premises, including any unearned premiums thereon; and (h) all right, title and interest of Borrowers in any and all awards, payments, proceeds and the right to receive the same, either before or after any foreclosure hereunder, as a result of any temporary or permanent injury or damage to, taking of or decrease in the value of the Premises by reason of casualty, condemnation or otherwise; and (i) all right, title and interest of Borrowers in all cash funds, deposit accounts and utility, escrow and all other deposits, relating to the Premises or the construction or operation thereof; (j) all right, title and interest of Borrowers in all cash funds, deposit accounts, escrow or other deposits, certificates of deposit, negotiable instruments and other evidence of rights to cash held by Lender and relating to the "Indebtedness" (as hereinafter defined) or pursuant to any documents to or of which Lender is a part or beneficiary now or hereafter evidencing, securing or otherwise relating to the Indebtedness or the Premises (all such documents, including this Instrument and the Consolidated Note referred to hereinbelow being herein called collectively the "Loan Documents"); (k) all claims and causes of action arising from or otherwise related to any of the foregoing; and (l) all proceeds of any of the property described above.

1.02 Habendum. Lender is intended to have and to hold the Premises and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, in fee simple forever; and Borrowers covenant that Borrowers are lawfully seized and possessed of the Premises as aforesaid, and has good right to convey and mortgage the same, that the same are not encumbered except for those matters (the "Permitted Encumbrances") expressly set forth in Exhibit "B" hereto, and Borrowers do warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to the Permitted Encumbrances.

1.03 Indebtedness. This Instrument is given to secure the payment of the debt evidenced by that certain promissory note (the "Consolidated Note") of even date, made by Borrowers to the order of Lender in the principal amount of Three Hundred Forty-three Five Hundred Seventy-two and 81/100 Dollars (\$343,572.81), together with any and all renewals,

modifications, consolidations, replacements and extensions of the Consolidated Note and any and all additional disbursements made or costs or expenses incurred by Lender for taxes, levies or insurance premiums as hereinafter provided (the "Indebtedness").

1.04 Cancellation. It is the true intent and meaning of the parties to these presents that when Borrowers, their heirs or assigns, shall pay or cause to be paid to Lender, its successors or assigns, the Indebtedness according to the conditions and agreements of the Consolidated Note and of this Instrument, then this Instrument shall cease to have effect and be null and void; otherwise this Instrument shall remain in full force and effect.

ARTICLE II - COVENANTS AND AGREEMENTS

2.01 Taxes, Liens and Other Charges

(a) Borrowers shall pay, on or before the due date thereof, all (i) taxes, assessments, and other charges of every character whatsoever, now or hereafter levied upon, assessed, placed or made against the Indebtedness, the Premises, this Instrument or any other Loan Document or any interest of Lender in the Indebtedness, the Premises or the Loan Documents; (ii) premiums on policies of insurance now or hereafter covering the Premises and any and all other insurance policies now or hereafter collaterally pledged to Lender; (iii) ground rentals and any other rentals and other sums owing by Borrowers and becoming due under any lease affecting the Premises; (iv) utility charges, whether public or private; and (v) penalties and interest on any of the foregoing. Borrowers will promptly pay any tax arising out of the passage of any applicable 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 security agreements, or debts secured thereby, or the manner of collection thereof. If, in the opinion of the Lender, any such law, order, rule or regulation prohibits Borrowers from making such payment or if the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Indebtedness and all interest accrued thereon shall, at the option of Lender, become immediately due and payable. Borrowers shall promptly deliver to Lender upon demand receipts showing timely payment in full of all of the above items.

(b) At the option of Lender, and further to secure the Indebtedness and the obligations of Borrowers hereunder, including the payment of the taxes and assessments referred to in subsection 2.01(a) hereof and the premiums on the insurance referred to in Section 2.02 hereof, Borrowers shall deposit with Lender, on the due date of each installment under the note, such amounts as, in the estimation of Lender, shall be necessary to pay such charges as they become due; said deposits to be held by Lender, free of interest, and free of any liens or claims on the part of creditors of Borrowers and as part of the security of Lender. Payment from said sums for current taxes and assessments and insurance premiums on the Premises may be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds

but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments and insurance premiums in full as the same become payable, Borrowers will deposit with Lender such additional sums or sums as may be required in order to pay such taxes and assessments and insurance premiums in full. Upon any default in the provisions of this Instrument or the Consolidated Note, or any instrument evidencing, securing or in any way relating to the Indebtedness, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect. The collection of such deposits by Lender shall not relieve Borrowers of any of the obligations of Borrowers under subsection 2.01(a), Section 2.02 or any other provision of this Instrument; and under no circumstances shall Lender be liable for failure to make any payment on behalf of Borrowers, including, without limitation, payments of taxes, assessments or insurance premiums.

2.02 Insurance and Condemnation.

(a) Borrowers shall procure for, deliver to and maintain for the benefit of Lender during the term of this Instrument, original, fully paid insurance policies issued by such insurance companies, in such amounts, form and substance, (including Borrowers) and with such expiration dates as are acceptable to Lender, providing "all risk" permanent real and personal property, comprehensive general (including completed operations coverage) liability, rent loss, and such other coverage as Lender may from time to time require, naming Lender as mortgagee and loss payee with respect to all property insurance and as an additional insured with respect to all liability insurance. At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this section, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender, together with receipts evidencing the payment thereof. At the request of Lender, Borrowers shall provide evidence satisfactory to Lender that all such insurance is in effect. If the Premises or any part thereof is damaged by fire or other cause, Borrowers will give immediate written notice thereof to Lender.

(b) Borrowers shall notify Lender immediately upon obtaining knowledge of the institution, or the proposed, contemplated or threatened institution, of any action for the taking through condemnation (which term when used in this Instrument shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof) of the Premises or any part thereof.

(c) Lender shall be entitled to all compensation, awards and other payments arising from any casualty or condemnation and to give receipts and acquittances therefor, and is hereby authorized, at its option, to adjust or compromise any casualty or condemnation loss, to commence, appear in and prosecute, in its own or in Borrowers' names, any action or proceeding relating to any insurance or condemnation loss, and to settle or compromise any claim in connection therewith. Each insurance company and condemning authority is hereby authorized and directed to make payment for all such losses directly to Lender, instead of to Borrowers and Lender jointly. In the event any insurance company or condemning authority fails to disburse directly and solely to Lender but disburses instead either

solely to Borrowers or to Borrowers and Lender jointly, Borrowers agree immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrowers to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrowers and Borrowers hereby irrevocably appoint Lender as Borrowers' agent and attorney-in-fact so to do. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy, or to collect any condemnation award, regardless of the cause of such failure. After deducting from any condemnation or insurance proceeds received by Lender all expenses of Lender incurred in the collection and administration of such sums, including attorney's fees, Lender may apply the net proceeds or any part thereof, at its option, to any one or more of the following: (i) the payment of the Indebtedness, whether or not due and in whatever order Lender elects, (ii) the repair, replacement or restoration of the Premises or any part thereof, and (iii) any other purposes for which Lender is entitled to advance funds under this Instrument, all without affecting the security interest created by this Instrument; and any balance of such moneys not applied by Lender as aforesaid shall be paid to Borrowers or the person or entity lawfully entitled thereto. In the event of the foreclosure of this Instrument or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Indebtedness, all right, title and interest of Borrowers in and to all insurance policies then in force and all condemnation proceeds and awards shall pass to the purchaser or Lender, and such purchaser or Lender shall have the right to receive such award or proceeds to the extent of any unpaid Indebtedness following such sale, with legal interest thereon, whether or not a deficiency judgment on this Instrument or the Consolidated Note shall have been sought or recovered, and to the extent of reasonable counsel fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

2.03 Care of Premises; Inspection by Lender.

(a) Borrowers shall operate the Premises at all times for such purposes as may be approved by Lender in writing. Borrowers shall maintain the Premises in a neat and orderly condition and in good repair, shall not commit or suffer any waste to the Premises or do or suffer to be done anything which would increase the risk of casualty to the Premises or any part thereof or which would result in the cancellation of any insurance policy carried with respect to the Premises. Notwithstanding anything to the contrary herein, no part of the Premises now or hereafter conveyed as security under this Instrument shall be removed, demolished, or materially altered without the prior written consent of Lender. Lender and any persons authorized by Lender shall have the right at all reasonable times to enter upon and inspect the Premises, any improvements existing or being constructed thereon, and all materials used or to be used in such improvements. Nothing contained herein shall be deemed to impose upon Lender any obligation to undertake such inspections or any liability for the failure to detect or failure to act with respect to any defect which was or might have been disclosed by such inspections. Borrowers shall promptly comply with all applicable easements and restrictive covenants and all applicable laws, ordinances, rules and regulations affecting the Premises or any part thereof (the "Requirements"), and shall at all times operate the Premises, and perform any construction of any portion thereof, in accordance with the Requirements. Borrowers will promptly restore, repair or replace, to the extent and in a manner satisfactory to Lender, any

part of the Premises which may be damaged by fire or other casualty or which may be affected by any condemnation proceeding, provided that Lender agrees to make available to Borrowers (pursuant to a procedure satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration, repair or replacement; provided, however, that the insufficiency of any such net proceeds shall in no way relieve Borrowers of their obligation to restore, repair or replace.

(b) In the event that Borrowers shall default under the provisions of Subsection 2.03(a) above by failure to maintain the Premises in a neat and orderly condition and in good repair, then Lender may at its option require that Borrowers establish a maintenance reserve in an amount which is appropriate in light of the nature and condition of the Premises. To create such reserve, Borrowers shall deposit with Lender, on the due date of each installment under the Consolidated Note, such amounts as, in the estimation of Lender, shall be necessary to pay maintenance costs; and said deposits shall be held by Lender, free of interest, and free of any liens or claims on the part of creditors of Borrowers and as part of the security of Lender. Lender may cause such maintenance to be performed from time to time and make payments from said sums for maintenance all at the discretion of Lender, and such payment may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. If said deposits are insufficient to pay the costs of maintenance in full as the same become payable, Borrowers will deposit with Lender such additional sum or sums as may be required in order to pay such costs in full. Upon any default in the provisions of this Instrument or the Consolidated Note, or any instrument evidencing, securing or in any way relating to the Indebtedness, Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Indebtedness in such manner as it may elect. The collection of such deposits by Lender shall not relieve Borrowers of any of the obligations of Borrowers under Section 2.03 or any other provision of this Instrument; and under no circumstances shall Lender be liable for failure to make any payment on behalf of Borrowers or to cause any maintenance to be performed. As used in this provision, the term "maintenance" shall mean work intended to cause the condition of the Premises to be more neat and orderly and/or in better repair.

2.04 Security Agreement. This Instrument is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the jurisdiction applicable thereto (the "Code"). The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Instrument shall be as prescribed herein, or as prescribed by general law, or as prescribed by the Code, all at Lender's election in the discretion of Lender. Upon request or demand by Lender, Borrowers shall at their expense assemble all personal property which is a part of the Premises, and with respect to which such request or demand is made, and make the same available to Lender at a convenient place upon the Land (or within an improvement upon the Land, as may be appropriate for the protection of such personal property) acceptable to Lender. Any notice of

sale, disposition or other action by Lender with respect to personal property which is a part of the Premises sent to Borrowers in accordance with the provisions hereof relating to communications at least five (5) days prior to such action shall constitute adequate and reasonable notice to Borrowers of such action. Borrowers agree that all property used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Instrument, is, and at all times and for all purposes and in all proceedings, legal or equitable, shall be, regarded as part of the real estate conveyed hereby and that the filing of any financing statement or statements in the records normally having to do with personal property shall not in any way affect such agreement; provided, however, that Lender may determine in its discretion that certain items of such property constitute personal property and are subject to remedies available with respect to personal property. The mention in any financing statement or statements of rights in and to (a) the proceeds of any insurance policy, or (b) any award in eminent domain proceedings for a taking or for loss of value, or (c) Borrowers' interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Premises, whether pursuant to a Lease or otherwise, shall not in any way limit any of the rights of Lender as determined by this Instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement or statements is solely for the protection of Lender in the event any court shall at any time hold with respect thereto, that notice of Lender's priority of interest, to be effective against all persons or against a particular class of persons, must be filed in the Code records. The names of the "Debtor" and the "Secured Party" (which are Borrowers and Lender, respectively), the address of the "Secured Party" from which information concerning the security interest may be obtained, and the address of "Debtor", are as set forth in Section 4.03, hereof; and a statement indicating the types, or describing the items, of collateral is set forth hereinabove. Borrowers agree to furnish Lender with notice of any change in the name, identity, corporate structure, residence, principal place of business or mailing address of Borrowers within ten (10) days of the effective date of any such change.

2.05 Further Assurances; After-Acquired Property. Upon request by Lender, Borrowers will execute and deliver, or cause to be executed and delivered, to Lender, and pay the costs of preparation and recording thereof, any further instrument or instruments so as to evidence, reaffirm, correct, perfect, continue or preserve the obligations of Borrowers under the Consolidated Note or the other Loan Documents, the collateral at any time securing or intended to secure the Consolidated Note, and the first and prior legal security title and interest of Lender to all or any part of the Premises, whether now owned or hereafter acquired by Borrowers. Upon any failure by Borrowers so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such instruments for and in the name of Borrowers, and Borrowers hereby irrevocably appoint Lender the agent and attorney-in-fact of Borrowers to do so. The security title of this Instrument and the security interest created hereby will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

2.06 Expenses. Borrowers will pay or reimburse Lender, upon demand, for all costs and expenses (including fees of attorneys actually incurred at the standard hourly rate of Lender's counsel, auditors, appraisers and inspectors) paid or incurred by Lender in connection with the commitment, negotiation, documentation, preparation, closing, disbursement, administration, enforcement, collection (including foreclosure or other realization upon collateral) or transfer (in connection with repayment or after default) of the Indebtedness or any one or more of the Loan Documents, and for any expenses incurred by Lender in connection with the collection of any insurance or other proceeds or enforcement of any rights of Lender under this Instrument, including the costs of any suits or proceedings or disputes of any kind in which Lender is made or appears as a party plaintiff or defendant or which are, in the judgment of Lender, expedient to preserve or protect its interest in the Premises (including condemnation, insolvency or bankruptcy proceedings, administrative proceedings and appeals at all levels of appeal, whether before or after entry of judgment or other determination), and any such amounts paid by Lender shall be added to the Indebtedness and shall be secured by this Instrument. Borrowers will pay any and all interest and penalties owing on account of the Indebtedness of any one or more of the Loan Documents, including any interest or penalties arising on account of failure or delay in payment of any of the items listed herein.

2.07 Books, Records, Accounts and Reports. Borrowers shall keep and maintain or shall cause to be kept and maintained, at Borrowers' cost and expense and in accordance with sound accounting practices and principles consistently applied, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Premises and all items of cost in connection with the construction of any improvements which are now or hereafter a portion of the Premises, and Lender and any persons authorized by Lender shall have the right at all reasonable times to inspect such books, records and accounts and to make copies thereof. As soon as practicable but in any event within forty-five (45) days after the end of each quarter of each calendar year and within sixty (60) days after the end of each calendar year, Borrowers shall deliver to Lender unaudited statements of the income, expenses and capital expenditures arising out of the conduct of any business on the Premises, or any part thereof or the construction of any improvements thereon, for such quarter, or for such year, as the case may be, prepared in such detail and containing such supporting documentation, as Lender may request; and, in connection therewith, Borrowers shall furnish to Lender within forty-five (45) days after the end of each quarter of each calendar year a rent roll of the Premises setting forth the Tenants and the current rentals, date of commencement of rentals and expiration date of each of the Leases and such other information concerning the Tenants and the Leases as Lender may request. All unaudited statements referred to in this section shall be prepared in accordance with generally accepted accounting practices and principles consistently applied and shall be certified by Borrowers. Borrowers shall also promptly deliver to Lender copies of any audited general financial statements prepared for Borrowers or any Guarantor and copies of any audited reports available to Borrowers relating to the conduct of any business on the Premises or the construction of any improvements thereon. In the event of a Default hereunder or if Lender suspects that inaccurate information has been provided by Borrowers under this section, Borrowers shall deliver to Lender within thirty (30) days after demand by Lender, statements of the income and expense of the Premises or of the

cost of construction of any improvements thereon, for the period designated by Lender, prepared in accordance with generally accepted accounting principles and certified by a certified public accountant. Borrowers, upon ten (10) days' prior written notice, shall furnish Lender a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Indebtedness and stating whether or not any offsets or defenses exist against the Indebtedness, or any portion thereof and the specific facts relating to any such offset or defense.

2.08 Conveyance or Encumbrance of Premises. Borrowers hereby covenant and agree with Lender, as part of the consideration for the extending of the Indebtedness to Borrowers, that Borrowers shall not encumber, pledge, convey, transfer or assign any or all of its interest in the Premises or execute or consent to any instrument or matter which might affect the title to the Premises or which might effect a change in any one or more of the Requirements.

2.09 Payment of Indebtedness; Exculpation of Gorrie. Borrower shall pay the Note according to the tenor thereof and the remainder of the Indebtedness promptly as the same shall become due; provided, however, that nothing herein shall impose upon M. Miller Gorrie the personal obligation to pay a deficiency judgment in the event of default under the Consolidated Note.

ARTICLE III - DEFAULT AND REMEDIES

3.01 Default. The term "Default", wherever used in this Instrument, shall mean any one or more of the following events: (a) failure by Borrowers to pay when due any portion of the Indebtedness; or (b) the breach or failure by Borrowers or any Guarantor duly to satisfy, observe and perform all other terms, covenants, conditions and agreements contained in this Instrument or in any of the other Loan Documents; or (c) any warranty or representation of Borrowers or any endorser or Guarantor contained in this Instrument, or in any other of the Loan Documents, or any material information relating to the Indebtedness or the Loan Documents given to Lender by Borrowers or any partner or officer of Borrowers, or by any other party on behalf of or at the request of Borrowers, being untrue or misleading in any material respect; or (d) a levy shall be made under any process on the Premises or any part thereof or any other property of Borrowers; or (e) the admission in writing by Borrowers of the inability to pay debts generally as they become due; or (f) Borrowers or any Guarantor, pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or any other present or future federal, state or other common law, case law, statute or regulation relating to bankruptcy, insolvency, appointment of receivers or custodians, dissolution, or other relief for debtors (i) commences a voluntary case, or (ii) consents to or suffers the entry of any order for relief against it in an involuntary case, or (iii) remains a debtor in an involuntary case for sixty (60) days after the commencement of such case, or (iv) consents to or suffers the appointment of a receiver, trustee, liquidator or custodian for the Premises or any other property of Borrowers or any Guarantor, or (v) makes a general assignment for the benefit of the creditors, or (vi) becomes insolvent, or (vii) suffers the entry of an order for the liquidation of Borrowers; or (g) the assertion of any claim of priority to this Instrument, by title, lien or otherwise in any legal

or equitable proceeding, which is not dismissed within ninety (90) days of the commencement of such proceeding; or (h) Borrowers dies; or (i) the subjection of the Premises to actual or threatened waste, or the removal, demolition, or alteration of any part thereof without the prior written consent of Lender; or (j) any mechanic's, materialmen's, laborer's, statutory or other lien is filed against the Premises or any portion thereof and not totally released or removed as a lien against the Premises and every part thereof (by bonding, payment or otherwise) within five (5) days after the date of filing thereof; or (k) any suit shall be filed against Borrowers which, if adversely determined, could reasonably be expected substantially to impair the ability of Borrowers to perform each and every one of its respective obligations under the Loan Documents, which is not dismissed within ninety (90) days of the commencement of such suit; or (l) any default (for which no cure period is provided, or with respect to which the applicable cure period has expired without cure having been accepted) shall exist under any document evidencing, securing or otherwise relating to any other indebtedness owing, in whole or in part, to Lender, for which Borrowers are liable; or (m) all or any substantial portion of the Premises shall be taken through condemnation, or any portion of the Premises shall be damaged by or taken through condemnation and the value thereof shall, in the discretion of Lender, be materially diminished, either temporarily or permanently; or (n) the failure of this Instrument to grant to Lender a valid, binding and enforceable first lien on and/or security title in and to the Premises, including the personal property of Borrowers referred to herein, or the failure of any one or more of the Loan Documents to be legal, valid, binding upon and enforceable against all parties thereto (other than Lender), or the claim by any party (other than Lender) to any one or more of the Loan Documents that any one or more of the Loan Documents is not legal, valid, binding upon and enforceable against all parties thereto (other than Lender).

3.02 Rights of Lender Upon Default. If a Default shall have occurred, then the entire Indebtedness shall, at the option of Lender, immediately become due and payable without notice or demand, time being of the essence, and Lender, at its option, may do any one or more of the following, all without regard to the adequacy or value of the security for the Indebtedness:

(a) Enter upon and take possession of the Premises without the appointment of a receiver, or an application therefor; at its option, operate the Premises; at its option, exclude Borrowers and their agents and employees wholly therefrom; at its option, employ a managing agent of the Premises; and at its option, exercise any one or more of the rights and powers of Borrowers to the same extent as Borrowers could, either in its own name, or in the name of Borrowers; and receive the rents, income, issues and profits of the Premises.

(b) Apply, as a matter of strict right, without notice and without regard to the solvency of any party bound by its payment for the appointment of a receiver to take possession of and operate the Premises and to collect and apply the incomes, rents, issues, profits and revenues thereof.

(c) Pay, perform or observe any term, covenant or condition of this Instrument and any of the other Loan Documents and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without

demand, immediately repaid by Borrowers to Lender with interest thereon at the default rate provided in the Consolidated Note. The necessity for any such actions and of the amounts to be paid shall be determined by Lender in its discretion. 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 term, covenant or condition without thereby becoming liable to Borrowers or any person in possession holding under Borrowers. Borrowers hereby acknowledge and agree that the remedies set forth in this Paragraph 3.02(c) shall be exercisable by Lender, and any and all payments made or costs or expenses incurred by Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Borrowers with interest thereon at the default rate, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Lender after the filing by Borrowers of a voluntary case or the filing against Borrowers of an involuntary case pursuant to or within the meaning of the Bankruptcy Code, Title 11 U.S.C., or any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable.

(d) Institute legal proceedings for the foreclosure of this Instrument. Lender may, at its option, sell the Premises subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any foreclosure proceedings and to foreclose their rights will not be asserted by Borrowers to be a defense to any proceedings instituted by Lender to collect the Indebtedness. If the Indebtedness is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Lender may at its option exhaust the remedies granted under any of said security either concurrently or independently, and in such order as Lender may determine in its discretion. Upon any foreclosure sale, Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Indebtedness as a credit to the purchase price. In the event of any such foreclosure sale by Lender, Borrowers shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. In case Lender shall have proceeded to enforce any right, power or remedy under this Instrument by foreclosure, entry or otherwise, and such proceeding shall have been withdrawn, discontinued or abandoned for any reason, then in every such case (i) Borrowers and Lender shall be restored to their former positions and rights, (ii) all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken, (iii) each and every Default declared or occurring prior or subsequent to such withdrawal, discontinuance or abandonment shall be deemed to be a continuing Default, and (iv) neither this Instrument, nor the Consolidated Note, nor the Indebtedness, nor any other Loan Document shall be or shall be deemed to have been reinstated or otherwise affected by such withdrawal, discontinuance or abandonment; and Borrowers hereby expressly waive the benefit of any statute or rule of law now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with this sentence.

(e) Enforce any legal or equitable remedy against Borrowers, without regard to whether or not all of the Indebtedness shall then be due, and without prejudice to the right of Lender thereafter to enforce any other remedy, including without limitation an action

of foreclosure, whether or not such other remedy be based upon a Default which existed at the time of commencement of an earlier or pending action, and whether or not such other remedy be based upon the same Default upon which an earlier or pending action is based.

(f) Lender may apply any moneys and proceeds received by Lender as a result of the exercise by Lender of any right conferred under this Section 3.02 in such order as Lender in its discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees actually incurred at the standard hourly rate of Lender's counsel, incurred in connection with the operation of the Premises, the performance of Borrowers' obligations under the Leases and the collection of the rents thereunder; (ii) all costs and expenses, including reasonable attorneys' fees actually incurred at the standard hourly rate of Lender's counsel, incurred in the collection of any or all of the Indebtedness, including those incurred in seeking to realize on or to protect or preserve Lender's interest in any other collateral securing any or all of the Indebtedness; (iii) any or all unpaid principal on the Indebtedness; (iv) any other amounts owing under the Loan Documents; and (v) accrued interest and charges on any or all of the foregoing. The remainder, if any, shall be paid to Borrowers or any person or entity lawfully entitled thereto.

ARTICLE IV - GENERAL CONDITIONS

4.01 No Waiver; Remedies Cumulative. No delay or omission by Lender 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 instrument to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any Default shall be deemed or construed to be a consent or waiver to or of any other Default. No delay, indulgence, departure, act or omission by Lender or any holder of the Consolidated Note shall release, discharge, modify, change or otherwise affect the original liability under the Consolidated Note or any other obligation of Borrowers or any subsequent purchaser of the Premises or any part thereof, or any maker, cosigner, endorser, surety or guarantor, or preclude Lender from exercising any right, privilege or power granted herein or alter the security title, security interest or lien hereof. Lender may at any time, without notice to or further consent from Borrowers, surrender or substitute any property or other security of any kind or nature whatsoever securing the Indebtedness or release any Guarantor, and no such action will release Borrowers' obligations hereunder or alter the effect hereof. No right, power or remedy conferred upon or reserved to Lender hereunder is intended to be exclusive of any other 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 under the other Loan Documents or now or hereafter existing at law, in equity or statute.

4.02 No Obligation to Third Parties. The Loan Documents are made solely for the benefit of Lender. No tenant or any party involved with the construction of any

improvements on any part of the Premises or any other party whatsoever shall have standing to bring any action against Lender as the result of the Loan Documents, or to assume that Lender will exercise any remedies provided herein, and no party other than Lender shall be deemed to be a beneficiary of any provision of the Loan Documents, any and all of which may be freely waived in whole or in part by Lender in its discretion at any time. Nothing contained in the Loan Documents shall be deemed to impose upon Lender any liability for the performance of any obligation of Borrowers under any of the Leases or Contracts. Nothing contained in this Section 4.02 is intended to deprive Borrowers of the benefit of any covenant by Lender in favor of Borrowers contained in the Loan Documents.

4.03 Communications. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under the Loan Documents shall be in writing, signed by or on behalf of the party giving the same, and shall be deemed to have been properly given and shall be effective (unless otherwise specifically provided herein) upon being personally delivered, or upon being deposited in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no notice of change of address shall be effective until the date of receipt thereof. Personal delivery to a party or to any officer, partner, agent or employee of such party at said address shall constitute receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any Communication, if given to Lender, shall be addressed as follows:

AmSouth Bank, N.A.
Commercial Real Estate Department
Post Office Box 11007
Birmingham, Alabama 35288
ATTN: R. Scott Pulliam

and, if given to Borrowers, shall be addressed as follows:

Jack Whitson Kidd
2513 Rocky Ridge Road
Birmingham, Alabama 35243

M. Miller Gorrie
729 South 30th Street
Birmingham, Alabama 35233

4.04 Survival of Certain Agreements. Notwithstanding the repayment of the Indebtedness and the cancellation or transfer of the Loan Documents, or any foreclosure of, or sale under power contained in, this Instrument, or the acquisition by Lender of title to the Premises in lieu of foreclosure, or any other realization upon collateral securing the Indebtedness, all agreements of Borrowers contained herein or in any of the other Loan Documents to pay the costs and expenses of Lender in connection with the loan contemplated by the Loan Documents and all agreements of Borrowers contained herein or in any of the other Loan Documents to indemnify and/or hold harmless Lender shall continue in full force and effect so long as there exists any possibility of expense or liability on the part of Lender.

4.05 Miscellaneous. The Loan Documents shall inure to the benefit of and be binding upon Borrowers and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, subject to all restrictions on transfer herein or in the other Loan Documents. All personal pronouns used in the Loan Documents whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles of articles and sections in the Loan Documents are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions thereof. If more than one person or entity constitutes, collectively, Borrowers or Guarantor, all of the provisions of the Loan Documents referring to Borrowers or Guarantor shall be construed to refer to each such person or entity individually as well as collectively; and if Borrowers or Guarantor is a partnership, all of the provisions of the Loan Documents referring to Borrowers or Guarantor shall be construed to apply to each of the general partners thereof. When anything is described in the Loan Documents in general terms and one or more examples or components of what has been described generally is associated with that description (whether or not following the word "including"), the examples or components shall be deemed illustrative only and shall not be construed as limiting the generality of the description in any way. If any provisions of the Loan Documents or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of each of the Loan Documents and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. The Loan and the Loan Documents (and any interest therein) are assignable by Lender, and any assignment of the Loan Documents by Lender shall operate to vest in the assignee all rights and powers conferred upon and granted to Lender by the Loan Documents; and in the event of any such assignment of the entire interest of Lender in the Loan Documents, Lender shall be relieved of all obligations and liabilities under the Loan Documents. Neither the Loan Documents nor the proceeds of the Loan may be assigned by Borrowers without the prior consent of Lender, which may be given or withheld at the discretion of Lender. Time is of the essence with respect to each and every covenant, agreement and obligation of Borrowers under the Loan Documents. The Loan Documents may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against whom enforcement of such change, waiver, discharge or termination is sought. The Loan Documents contain the entire agreement between Borrowers and Lender relating to the loan transaction contemplated thereby. Nothing contained in the Loan Documents shall be construed to create an agency, partnership or joint venture between Borrowers and Lender. Wherever in the Loan Documents the approval or consent of Lender

is required or permitted, or wherever a requirement of Lender or the standard of acceptability or satisfaction of Lender must be determined, such approval, consent or determination of Lender shall not be unreasonably exercised; provided, however, that wherever it is indicated that such approval, consent or determination is to be given or made at the option or in the discretion or judgment of Lender, then Lender may grant or withhold such approval or consent or make such determination without restriction in its sole and absolute discretion. All exhibits referred to in the Loan Documents are by such reference incorporated into the Loan Documents as if fully set forth herein.

4.06 Indemnity. Borrowers shall protect, defend, indemnify and save harmless Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including attorneys' fees and expenses actually incurred at the standard hourly rate of Lender's counsel) imposed upon or incurred by Lender by reason of (a) any claim for brokerage fees or other such commissions relating to the Premises or the Indebtedness, or (b) the condition of the Premises, or (c) the Loan Documents or any claim or demand whatsoever which may be asserted against Lender by reason of any alleged action, obligation or undertaking of Lender relating in any way to the Indebtedness or to any matter contemplated by the Loan Documents. In the event Lender incurs any liability, loss or damage arising out of or in any way relating to the loan transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such liability, loss or damage shall be added to the Indebtedness, shall bear interest at the interest rate specified in the Consolidated Note from the date incurred until paid and shall be payable on demand.

4.07 Replacement of Consolidated Note. Upon receipt of evidence reasonably satisfactory to Borrowers of the loss, theft, destruction, total or partial obliteration, mutilation or inappropriate cancellation of the Consolidated Note, Borrowers will execute and deliver, in lieu thereof, a replacement Consolidated Note, identical in form and substance to the Consolidated Note and dated as of the date of the Consolidated Note.

4.08 Greater Estate. In the event that Borrowers are the owner of a leasehold estate with respect to any portion of the Premises and Borrowers obtain a fee estate in such portion of the Premises, then, such fee estate shall automatically, and without further action of any kind on the part of Borrowers, be and become subject to the security title and lien hereof.

4.09 Attorneys' Fees. The meaning of the terms "legal fees" or "attorneys' fees" or any other reference to the fees of attorneys or counsel, wherever used in this Instrument, shall be deemed to include, without limitation, all legal fees relating to litigation or appeals at any and all levels of courts and administrative tribunals.

4.10 Further Stipulations. The additional covenants, agreements and provisions set forth in Exhibit "C" shall, in the event of any conflict between such further stipulations and any of the other provisions of this Instrument, be deemed to control.

IN WITNESS WHEREOF, Borrowers have executed this Instrument under seal,
as of the day and year first above written.

Jack Whitson Kidd (SEAL)
Jack Whitson Kidd
M. Miller Gorrie (SEAL)
M. Miller Gorrie

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned authority in and for this County and State, hereby certify that Jack Whitson Kidd, a married man, whose name 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 this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of November, 1993.

Sharon K. Price
Notary Public

My commission expires: MY COMMISSION EXPIRES SEPTEMBER 25, 1995

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned authority in and for this County and State, hereby certify that M. Miller Gorrie, a married man, whose name 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 this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of November, 1993.



Notary Public

My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE.
MY COMMISSION EXPIRES: June 21, 1997.
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

EXHIBIT "A"

PARCEL I:

Commence at the N.W. corner of the N.W. 1/4 of the N.E. 1/4 of Section 5, T.S. 19S, R1W, Shelby County, Alabama and run thence Easterly along the North line of said quarter-quarter a distance of 333.60' to a point; thence turn an angle of 22° 00' to the right and run a distance of 100.0 feet to the point of beginning of the property being described; thence continue along last described course a distance of 524.0 feet to a point; thence turn an angle of 95° 25' 58" to the right and run Southwesterly a distance of 275.98 feet to a point; thence turn an angle of 84° 34' 02" to the right and run Northwesterly a distance of 262.0 feet to a point; thence turn an angle of 95° 25' 58" to the right and run Northerly a distance of 15.0 feet to a point; thence turn an angle of 95° 25' 58" to the left and run Northwesterly a distance of 262.0 feet to a point; thence turn an angle of 95° 25' 58" to the right and run Northeasterly a distance of 260.98 feet to the point of beginning.

PARCEL II - NON-EXCLUSIVE EASEMENT:

Commence at the N.W. corner of the N.W. 1/4 of the N.E. 1/4 of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama, and run thence Easterly along the North line of said quarter quarter a distance of 333.60 feet to a point; thence turn an angle of 22 degrees 00 minutes 00 seconds right and run a distance of 100.0 feet to a point, said point being the northwesterly corner of the said 3.215 acre parcel; thence turn an angle of 95 degrees 25 minutes 58 seconds right and run Southwesterly a distance of 260.98 feet to the Southwesterly corner of said same parcel; thence turn an angle of 95 degrees 25 minutes 58 seconds left and run a distance of 12.50 feet to the centerline point of beginning of the easement being described, said easement being 25.0 feet in width, 12.50 feet each side of centerline; thence turn an angle of 95 degrees 25 minutes 58 seconds right and run Southwesterly along said centerline of said proposed easement a distance of 83.54 feet to a point; thence turn an angle of 14 degrees 44 minutes 02 seconds right and run southwesterly along centerline of same said proposed easement a distance of 170.95 feet to P.C. (Point of curvature) of a curve to the right having a central angle of 29 degrees 18 minutes 00 seconds and a radius on centerline of 115.0 feet; thence continue along the arc of said curve on the centerline of same an arc distance of 58.81 feet to the P.T. (Point of Tangency); thence continue last describe course along tangent of said curve a distance of 7.07 feet to the centerline intersection of the Robert Smith property line and the beginning of a 15.0 foot wide strip of land awarded to Robert Smith by Court decree as access to Highway 280, said centerline of easement being 7.50 feet each line of said 15.0 foot strip; thence continue along last described course a distance of 13.71 feet to the intersection of centerline of easement with the East right of way line of U. S. 280 Highway and the end of easement.

PARCEL III:

Commence at the Northwest corner of the Northwest Quarter of the Northeast Quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama and run thence North 86 degrees 45 minutes East along the North line of said Quarter-Quarter a distance of 333.60 feet to a point; thence South 30 degrees 30 minutes West a distance of 239.40 feet to a point on the Northeasterly bank of a branch; thence South 12 degrees 30 minutes East along said Northeasterly bank a distance of 97.30 feet to a point; thence South 23 degrees 00 minutes West continuing along said Northeasterly bank a distance of 108.00 feet to the POINT OF BEGINNING of the property herein described; thence South 53 degrees 00 minutes West continuing along said Northeasterly bank of said branch a distance of 98.50 feet to a point; thence South 23 degrees 30 minutes West a distance of 50.76 feet to a point on the Northwesterly line of a 25 foot access easement; thence North 72 degrees 12 minutes 02 seconds East along said Northwesterly line of said Access Easement a distance of 17.48 feet to the P.C. of a curve to the left having a central angle of 33 degrees, 52 minutes, 14 seconds, a radius of 69.60 feet an arc distance of 41.14 feet to the P.T. of said curve; thence North 38 degrees, 19 minutes, 48 seconds East continuing along said Northwesterly line of said 25 foot access Easement a distance of 39.52 feet to a point; thence North 19 degrees 05 minutes 25 seconds West a distance of 49.08 feet to the POINT OF BEGINNING.

EXHIBIT "B"

1. Ad valorem taxes for the year 1994, which said taxes are not due and payable until October 1, 1994.
2. Right of way granted to Alabama Power Company by instrument recorded in Deed Volume 222, Page 739; and Deed Volume 173, Page 186.
3. Terms and conditions in that certain easement as recorded in Deed 56, Page 366.
4. Mortgage, Security Agreement and Assignment of Rents and Leases executed by M. Miller Gorrie, and Jack Whitson Kidd to AmSouth Bank N.A., recorded in Book 241, Page 341, and modified in Instrument #1992-15551 and further modified in Instrument #1992-23407.
5. Ad valorem taxes for the year 1993, which are now due and payable.

EXHIBIT "C"

FURTHER STIPULATIONS

C-1. Cure of Defaults. Anything herein contained to the contrary notwithstanding, the provisions of this section shall not pertain to Defaults arising as a result of the events set forth in Subsections 3.01(d) (as the same applies to the Premises or any part thereof), 3.01(e), 3.01(f), 3.01(h), 3.01(l) or 3.01(m) hereof, to any Default consisting of a failure to provide insurance as required by Section 2.02 hereof, to any Default consisting of a failure to give a required notice to Lender, to any Default consisting of a failure to repay the Indebtedness at maturity, or to any Default excluded from any provision for cure of defaults contained in any Default excluded from any provision for cure of defaults contained in any other of the Loan Documents. In the event of the occurrence of a Default which consists solely of the first failure, during the period of 365 days ending on the date of such occurrence of Default, to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness, if, within ten (10) days of the date of mailing by Lender of notice of said Default to Borrowers at Borrowers' address provided in Section 4.03 hereof, Borrowers make such payment to Lender, and, if Borrowers make such payment within said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. In the event of the occurrence of a Default, other than a Default consisting of a failure to make a payment to Lender required by any one or more of the Loan Documents, Lender will not, on account of said Default, institute any court action under any of the Loan Documents or actually seize or sell any property with respect to which a security interest has been granted to Lender as security for the Indebtedness, if, within twenty-five (25) days of the date of mailing by Lender of notice of said Default to Borrowers at Borrowers' address provided in Section 4.03 hereof, Borrowers fully cure said Default to the satisfaction of Lender; and, if Borrowers so cure said Default within the said period, to the extent the Indebtedness has been accelerated by said Default, the Indebtedness shall, absent any other default, be reinstated by Lender so as to be payable upon the same terms and conditions in effect prior to said Default. The provisions of this section to the effect that the cure periods described herein shall commence on the date of mailing by Lender of notice of said Default shall apply notwithstanding any provision of Section 4.03 hereof to the contrary concerning the measurement of time periods for response to notices; provided, however, that all other terms of Section 4.03 hereof shall apply to the notice to be provided by Lender pursuant to this section.

C-2. Contest of Taxes and Assessments. Notwithstanding the provisions of Section 2.01 hereinabove, Borrowers, at their own expense, after prior written notice to Lender, by an appropriate proceeding conducted in good faith and with due diligence, may contest the amount or validity or application, in whole or in part, of any tax or assessment against the Premises, provided that (a) such proceeding shall suspend the collection thereof from the Premises or any portion thereof or any interest therein, and (b) neither the Premises nor any

portion thereof nor any interest therein would be in any danger of sale, forfeiture or loss by reason of such proceeding, and (c) Borrowers shall provide such security for the payment of all such taxes and assessments so contested by Borrowers as Lender may require.

C-3. Proceeds of Casualty or Condemnation. In the event that Lender collects, or there is deposited with Lender, the proceeds of casualty insurance following damage to or destruction of the Premises or proceeds of a partial condemnation of the Premises, then Lender shall make available to Borrowers, pursuant to disbursement procedures prescribed by Lender in Lender's discretion, funds for repair or restoration as contemplated by Section 2.03 hereof up to the amount of net proceeds of such insurance or condemnation held by Lender after deducting from such proceeds all of Lender's expenses incurred in the collection and administration of such sums, including reasonable attorney's fees actually incurred at the standard hourly rate of Lender's counsel, provided that no Default exists under any of the Loan Documents, and provided further that, within the earlier of ninety (90) days after the casualty or taking or twenty (20) days after such proceeds become available to Lender, and before any disbursement of such proceeds by Lender:

(a) Lender approves the plans and specifications for repair or restoration of the Premises, determines that such repair or restoration will be completed prior to one hundred eighty (180) days from the date of such damage or destruction, and determines that the repaired or restored Premises will provide Lender with adequate security for the Indebtedness; and

(b) Any insurer under any policy of insurance the proceeds of which are proposed to be disbursed under this section shall waive or have waived any right it may have (i) to be subrogated, in whole or in part, to any right of Lender under this Instrument or any other Loan Document or (ii) to make any claim against Borrowers on account of the payment of such proceeds to Lender; and

(c) Borrowers provide to Lender additional cash security in an amount equal to the difference between (i) the total cost of such repair or restoration plus any increase, on account of such repair or restoration or the time required therefor, in interest or other sums due or to become due under the Loan Documents or otherwise payable by Borrowers to any party in connection with the Premises and (ii) the amount of such net insurance or condemnation proceeds.

In no event shall the provisions of this section be construed to extend the maturity date of the Consolidated Note or to limit in any way any right or remedy of Lender in the event of a Default under the Loan Documents. Any excess of net proceeds over the amount necessary to complete such repair and restoration shall be applied, in the discretion of Lender, to the payment of the Indebtedness, whether or not due and in whatever order Lender elects, or to any other purposes for which Lender is entitled to advance funds under this Instrument.

C-4. Land Not Subject to Homestead Laws. No part of the Land constitutes the homestead of either of the Borrowers.

Inst. # 1993-37081
11/22/1993-37081
10:37 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
023 MCD 579.50