

MORTGAGE AND
SECURITY AGREEMENT

Dated as of March 22, 1994

between

FPI BIRMINGHAM, LTD.,
an Alabama limited partnership

("Mortgagor")

and

GENERAL ELECTRIC CAPITAL CORPORATION,
a New York corporation

("Mortgagee")

LOCATION OF PREMISES

Shelby County, Alabama

After recording, please return to:

Susan L. Bassett, Esquire
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303

This instrument was prepared by the above named attorney.

THIS INSTRUMENT IS ALSO TO BE CROSS-INDEXED IN THE INDEX OF
UNIFORM COMMERCIAL CODE FINANCING STATEMENTS.

NOTE TO JUDGE OF PROBATE: THIS MORTGAGE AND SECURITY AGREEMENT IS
SUBJECT TO TAX, CALCULATED AT THE RATE OF \$1.50 PER \$1,000 OF
INDEBTEDNESS SECURED, IN THE AMOUNT OF \$2,823.00.

Inst # 1994-09696

03/24/1994-09696
03:08 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
047 MCD 2946.20

MORTGAGE AND
SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made and given as of March 22, 1994, by FPI BIRMINGHAM, LTD., an Alabama limited partnership, having an address c/o Fogelman Properties, Inc., 5400 Poplar Avenue, Memphis, Tennessee 38119 (herein called "Mortgagor"); to GENERAL ELECTRIC CAPITAL CORPORATION, a New York corporation, having an address at Suite 900, One Georgia Center, 600 West Peachtree Street, Atlanta, Georgia 30308, Attn: Commercial Real Estate Financing (herein called the "Mortgagee").

W I T N E S S E T H : THAT,

FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure (i) the indebtedness of Mortgagor hereinafter set forth, (ii) all amounts, sums and expenses paid hereunder by Mortgagee according to the terms hereof and (iii) all other obligations and liabilities of Mortgagor hereunder, together with interest on the said indebtedness, obligations, liabilities, amounts, sums and expenses (all of the aforesaid are hereinafter collectively referred to as the "Indebtedness"), Mortgagor hereby grants, bargains, sells, warrants, conveys, aliens, remises, releases, assigns, sets over and confirms to Mortgagee:

ALL THOSE CERTAIN lot(s), piece(s) or parcel(s) of land described in Exhibit "A", attached hereto and by this reference incorporated herein and made a part hereof;

TOGETHER WITH the buildings, structures and improvements now or hereafter located on said land and all right, title and interest, if any, of Mortgagor in and to the streets and roads abutting said land to the center lines thereof, the strips and gores within or adjoining said land, the air space and right to use said air space above said land, all rights of ingress and egress by pedestrians and motor vehicles to parking facilities on or within said land, and all easements now or hereafter affecting said land, royalties and all rights appertaining to the use and enjoyment of said land, including, without limitation, alley, drainage, sewer, mineral, water, oil and gas rights, rights-of-way, vaults, ways, passages, 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 the land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor and the reversion and reversions, remainder and remainders (said land, together with said buildings and improvements, the property and other rights, privileges and

interests encumbered and conveyed hereby, are hereinafter collectively referred to as the "Premises");

TOGETHER WITH all right, title, and interest now held or hereafter acquired by Mortgagor in and to all fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements thereof, now or hereafter attached to, contained in, used or intended to be incorporated in or used in connection with the Premises or placed on any part thereof, though not attached thereto, including, but not limited to, all building materials, screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator plants, stoves, ovens (microwave, convection and others), refrigerators, freezers, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, equipment, fittings, fixtures and articles of personal property all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold 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 secured by this Mortgage, and all trade names, trademarks, tradestyles, service marks (specifically excluding, however, the name "Fogelman" and the Fogelman logo), copyrights, service contracts, computers and computer software, telephone equipment and systems, warranties, guarantees, business and building licenses and permits, architects' and engineers' plans, blueprints and drawings, good will and books and records relating to the business operated on the Premises; together with all proceeds of all of the foregoing; together with all of Mortgagor's present and future "equipment," "contract rights," "accounts" and "general intangibles" (as said quoted terms are defined in the Alabama Uniform Commercial Code) (the Premises and said fixtures and articles of personal property and said "equipment," "contract rights," "accounts" and "general intangibles" and proceeds encumbered and conveyed hereby are hereinafter sometimes called the "Secured Property") and Mortgagee shall have, in addition to all rights and remedies provided herein, and in any other agreements, commitments and undertakings made by Mortgagor to Mortgagee, all of the rights and remedies of a "secured party" under the said Uniform Commercial Code; and if the lien of this Mortgage is subject to a security interest or lease covering any such personal property, then together with all of the right, title and interest of Mortgagor in and to any and all such property, together with the benefits of all deposits and payments now or hereafter made thereon by Mortgagor; provided, however, there shall be excluded from this granting clause any personal property, inventory, and trade fixtures, accounts, contract rights and general intangibles owned by any tenant (other than by Mortgagor or an affiliate of Mortgagor and other than any

personal property, inventory or fixtures leased to any such tenant by Mortgagor or an affiliate of Mortgagor as lessor) occupying the Premises and sold or used by such tenant, to the extent that the same does not become the property of Mortgagor as landlord under the lease with such tenant or pursuant to applicable law;

TOGETHER WITH all leases, lettings and licenses of the Premises or any part thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder, and the rents, issues, profits, accounts receivable and revenues of the Premises from time to time accruing (including without limitation all payments under leases or tenancies, tenant security deposits and escrow funds), and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same and including, without limitation, the right to receive and collect the rents, issues and profits payable thereunder;

TOGETHER WITH all unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained by Mortgagor and all proceeds of the conversion, voluntary or involuntary, of the Secured Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of hazard and title insurance and all awards and compensation heretofore and hereafter made to the present and all subsequent owners of the Secured Property by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part of the Secured Property or any easement therein, including awards for any change of grade of streets;

TOGETHER WITH all right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Secured Property, hereafter acquired by, or released to, Mortgagor, or constructed, assembled or placed by Mortgagor or by others for Mortgagor's benefit on the Secured Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described herein.

TO HAVE AND TO HOLD the Secured Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Mortgagee, its successors and assigns, IN FEE SIMPLE forever.

THIS CONVEYANCE is given to secure the following described indebtedness:

(a) The debt evidenced by that certain Promissory Note (the "Note") dated as of March 22, 1994, made by Mortgagor to the order of Mortgagee, in the principal face amount of ONE MILLION EIGHT HUNDRED EIGHTY-ONE THOUSAND SEVEN HUNDRED SIXTY-ONE AND 79/100 DOLLARS (\$1,881,761.79), with the final payment being due on March 22, 2004, to evidence a loan (the "Loan") made by Mortgagee to Mortgagor, together with any and all renewal or renewals and extension or extensions of the indebtedness evidenced by the Note, and together with any and all interest thereon;

(b) Any and all additional advances made by Mortgagee to protect or preserve the Secured Property or the lien hereof on the Secured Property, or to pay taxes, to pay premiums on insurance on the Secured Property or to repair or maintain the Secured Property, or to complete improvements on the Secured Property (whether or not the original Mortgagor remains the owner of the Secured Property at the time of such advances and whether or not the original Mortgagee remains the owner of the Indebtedness and this instrument);

(c) Any and all expenses incident to the collection of the Indebtedness secured hereby and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained; and

(d) The full and prompt payment and performance of any and all obligations or covenants of Mortgagor to Mortgagee under the terms of any other agreements, assignments or other instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note, including, without limitation, any assignment of rents and leases given by Mortgagor to Mortgagee (any and all such other agreements, assignments and other instruments, together with the Note and this Mortgage, are herein collectively called the "Loan Documents").

Should the Indebtedness secured by this Mortgage be paid according to the tenor and effect thereof when the same shall become due and payable, and should Mortgagor perform all covenants herein contained in a timely manner, then this Mortgage shall be canceled and surrendered.

AND Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE I

Covenants of Mortgagor

Section 1.01. Payment of the Indebtedness. Mortgagor shall punctually pay the Indebtedness in immediately available funds as provided herein and in the Note, all in the coin and currency of

the United States of America which is legal tender for the payment of public and private debts.

Section 1.02. Title to the Secured Property. Mortgagor warrants that: (i) it has title to the Secured Property subject only to the matters enumerated on Exhibit "B", attached hereto and by this reference incorporated herein and made a part hereof; (ii) it has full power and lawful authority to encumber the Secured Property in the manner and form herein set forth; (iii) it owns or will own all fixtures and articles of personal property now or hereafter affixed and/or used in connection with the Premises (other than any personal property, inventory, and trade fixtures, accounts, contract rights and general intangibles owned by any tenant, other than any affiliate of Mortgagor), including any substitutions or replacements thereof, free and clear of liens, security interests and claims, subject only to the matters enumerated on Exhibit "B" hereto; (iv) this Mortgage is and will remain a valid and enforceable security title, security interest and lien on the Secured Property; and (v) it will preserve such title, and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever, except only for the matters set forth on Exhibit "B" hereto.

Section 1.03. Maintenance of the Secured Property.

(a) Mortgagor shall maintain the Secured Property in good repair, and, subject to the Mortgagor's right to contest as provided in this Section 1.03, shall comply with the requirements of any governmental authority claiming jurisdiction over the Secured Property within (i) thirty (30) days after an order containing such requirement has been issued by any such authority if no time limit is specified therein or (ii) the time period permitted for such compliance by such order.

(b) Mortgagor shall permit Mortgagee to enter upon the Premises and inspect the Secured Property at all reasonable hours and without prior notice. Mortgagor shall not, without the prior written consent of the Mortgagee, threaten, commit, permit or suffer to occur any waste, material alteration, demolition or removal of the Secured Property or any part thereof; provided, however, that fixtures and articles of personal property constituting Secured Property may be removed from the Premises if Mortgagor concurrently therewith replaces the same with similar items of equal or greater value, free of any lien, security interest, charge or claim of superior title, except for the matters enumerated on Exhibit "B" hereto.

(c) Notwithstanding the requirements of subsection (a) of this Section 1.03, Mortgagor shall have the right, in good faith and at its own expense, to contest the imposition of a

governmental requirement relating to the Secured Property by appropriate legal proceedings so long as (i) such proceedings operate to prevent the collection or imposition of any obligation imposed upon Mortgagor or other realization on the Secured Property and the sale or forfeiture of the Secured Property or any part thereof to satisfy the same, (ii) the contested requirement does not involve the health, safety or welfare of the occupants or invitees of the Premises, and (iii) and during such contest Mortgagor shall, at the option of Mortgagee, provide security satisfactory to Mortgagee, assuring the discharge of Mortgagor's obligation under subsection (a) of this Section 1.03 and of any additional interest, charge, penalty or expense arising from or incurred as a result of such contest; and provided, further, that if at any time payment of any obligation imposed upon Mortgagor by subsection (a) of this Section 1.03 shall become necessary to prevent a lien foreclosure sale of the Secured Property or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent the foreclosure sale.

Section 1.04. Insurance; Restoration.

(a) Mortgagee has reviewed and approved the types and kinds of insurance carried by Mortgagor on the date hereof with respect to the Secured Property. Notwithstanding the foregoing, until the Indebtedness shall have been paid in full and until Mortgagor shall have performed all covenants herein contained, Mortgagor shall maintain and keep in full force and effect the following types and kinds of insurance with respect to the Secured Property (as now or hereafter constituted) and Mortgagor's ownership, operation and management thereof: (i) casualty insurance against all risks of physical loss for the full insurable value thereof without deduction for depreciation or coinsurance, but in no event less than the principal amount of the Indebtedness; (ii) use and occupancy insurance covering either rental income or business interruption with coverage in an amount not less than twelve (12) months' anticipated gross rental income or twelve (12) months' gross business earnings whichever may be applicable; and (iii) commercial general liability insurance providing for limits of liability of not less than \$5,000,000.00 for both injury to or death of a person and for property damage per occurrence and an umbrella liability policy having a limit of liability of not less than \$10,000,000.00. Such policies may provide for deductible amounts from the coverages afforded thereby in amounts of no more than \$5,000.00. In addition, Mortgagee may require Mortgagor to carry such other insurance on the buildings and improvements now or hereafter located within the Premises, in such amounts as may from time to time be reasonably required by institutional lenders, against insurable casualties (including risks of war, nuclear explosion, earthquake, including subsidence, and contingent liability from operation of any building laws or codes pertaining to non-conforming property) which at the time are commonly insured against in the case of premises similarly

situated, due regard being given to the site and the type of the building, the construction, location, utilities and occupancy or any replacements or substitutions therefor. Mortgagor shall additionally keep the buildings, improvements and equipment located therein and thereon now or hereafter located on the Premises insured against loss by flood (including surface waters) if the Premises are located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount at least equal to the outstanding Indebtedness or the maximum limit of coverage available with respect to the buildings under said Act, whichever is less. In addition, from time to time, upon the occurrence of any change in the use, operation or value of the Premises, or in the availability of insurance in the area in which the Premises are located, Mortgagor shall, within ten (10) business days after demand by Mortgagee, take out such additional amounts and/or such other kinds of insurance as Mortgagee may reasonably require. Mortgagor shall assign and, unless otherwise agreed by Mortgagee, shall deliver the policy or policies of such insurance to Mortgagee, and Mortgagee and its successors and assigns shall at all times have and hold the said original policy or policies as collateral and further security for the payment of the Indebtedness until the full payment of the Indebtedness. Otherwise, Mortgagor shall not take out any separate or additional insurance which is contributing in the event of loss unless it is properly endorsed and otherwise satisfactory to Mortgagee in all respects. The proceeds of insurance paid on account of any damage or destruction to the Premises or any part thereof shall be paid over to Mortgagee to be applied as hereinafter provided.

(b) Mortgagee shall have the option in its sole discretion to apply any insurance proceeds it may receive pursuant to this Section 1.04 to the payment of the Indebtedness or to allow all or a portion of such proceeds to be used for the restoration of the Premises. Notwithstanding the foregoing provision of this subsection 1.04(b), Mortgagee shall make available to Mortgagor for restoration of the Premises pursuant to clauses (1) through (6) of this subsection 1.04(b), any net insurance proceeds received by Mortgagee under this Mortgage as a result of any casualty loss, provided (i) in the opinion of an independent engineer or architect approved by Mortgagee, the damage or destruction can be repaired and restored within the earliest to occur of (A) the maturity date of the Indebtedness, or (B) one hundred eighty (180) days after commencement of repair but in no event later than one year after the date of such damage or destruction, (ii) the damage or destruction can be repaired and restored at a cost not exceeding ten percent (10%) of the principal balance outstanding under the Note on the date of such damage or destruction, (iii) the ownership and control of the Premises remains in the Mortgagor named on the first page hereof,

and (iv) no Event of Default and no event or condition which with notice or lapse of time or both would constitute an Event of Default shall have occurred or exist and be continuing. In the event that any portion of such proceeds shall be used to reduce the Indebtedness, the same shall be applied (i) first to the payment of delinquency or late charges, if any, (ii) then to accrued and unpaid interest then due and owing, (iii) then to advances made pursuant to this Mortgage, and (iv) finally to the then unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner; provided, however, that the provisions of the Note shall govern the application of such proceeds in the event of any conflict between this provision and the provisions of the Note. In the event that such proceeds are to be used for the restoration of the Premises and are actually made available to Mortgagor by Mortgagee as provided above, then such use of the proceeds shall be governed as hereinafter provided:

(1) In the event of damage or destruction to the Premises, Mortgagor shall give prompt written notice thereof to Mortgagee and, provided Mortgagee shall make the net proceeds of any insurance available to Mortgagor, shall promptly commence and diligently continue to perform repair, restoration and rebuilding of the Premises so damaged or destroyed (hereinafter referred to as the "Work") to restore the Premises in full compliance with all legal requirements and so that the Premises shall be substantially equal to the value, condition, character and general utility as they were prior to the damage or destruction, and if the Work to be done is structural or if the cost of the Work as estimated by Mortgagee shall exceed ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) (hereinafter referred to as "Major Work"), then Mortgagor shall, prior to the commencement of the Work, furnish to Mortgagee: (A) complete plans and specifications for the Work (approved by all governmental authorities whose approval is required), for Mortgagee's approval, which approval shall not be unreasonably withheld or delayed; said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Mortgagee (hereinafter referred to as the "Architect") and shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the Work; (B) certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Work; and (C) if required by Mortgagee, a surety bond for and/or guaranty of the payment for and completion of, the Work, which bond or guaranty shall be in form satisfactory to Mortgagee and shall be signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and in an amount not less than the Architect's estimate of the entire cost of

completing the Work, less the amount of insurance proceeds, if any, then held by Mortgagee for application toward the cost of the Work.

(2) Mortgagor shall not commence any of the Work until Mortgagor shall have complied with the applicable requirements referred to in subsection 1.04(b)(1) above, and after commencing the Work Mortgagor shall perform the Work diligently and in good faith in accordance with the plans and specifications referred to in subsection 1.04(b)(1)(A) above, if applicable.

(3) All insurance proceeds recovered by Mortgagee on account of damage or destruction to the Premises less the cost, if any, to Mortgagee of such recovery and of paying out such proceeds (including attorneys' fees and costs allocable to inspecting the Work and the plans and specifications therefor), shall, upon the written request of Mortgagor and with the written approval of the Mortgagee, be applied by Mortgagee to the payment of the cost of the Work referred to in subsection 1.04(b)(1) above and shall be paid out from time to time to Mortgagor and/or, at Mortgagee's option exercised from time to time, directly to the contractor, subcontractors, materialmen, laborers, engineers, architects and other persons rendering services or materials for the Work, as said Work progresses except as otherwise hereinafter provided, but subject to the following conditions, any of which Mortgagee may waive:

(A) If the Work to be done is structural or if it is Major Work, as determined by Mortgagee, the Architect shall supervise the Work;

(B) Each request for payment shall be made on seven (7) days' prior written notice to Mortgagee and shall be accompanied by a certificate of the Architect if one is required pursuant to subsection 1.04(b)(1) above, otherwise by a general partner of Mortgagor, stating (i) that all of the Work completed has been done in compliance with the approved plans and specifications, if any are required pursuant to said subsection 1.04(b)(1), and in accordance with all provisions of law; (ii) that the sum requested is justly required to reimburse Mortgagor for payments by Mortgagor to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons rendering services or materials for the Work (giving a brief description of such services and materials), and that when added to all sums, if any, previously paid out by Mortgagee, the sum requested does not exceed the value of the Work done to the date of such certificate; and (iii) that the amount

of such proceeds remaining in the hands of Mortgagee will be sufficient on completion of the Work to pay for the same in full (giving in such reasonable detail as Mortgagee may require an estimate of the cost of such completion);

(C) Each request shall be accompanied by waivers of liens satisfactory to Mortgagee covering that part of the Work previously paid for, if any (and upon completion of the Work and payment in full therefor, an affidavit from the general contractor sufficient to dissolve any statutory liens), and by a search prepared by a title company or licensed abstractor or by other evidence satisfactory to Mortgagee, showing that there has not been filed with respect to the Premises any mechanic's lien or claim thereof, or other lien, claim thereof or instrument for the retention of title in respect of any part of the Work not discharged of record and that there exist no encumbrances on or affecting the Premises other than encumbrances, if any, which are set forth in the title policy issued to Mortgagee insuring the lien of this Mortgage or otherwise consented to by Mortgagee;

(D) No Event of Default and no event or condition which with notice or lapse of time or both would constitute an Event of Default shall have occurred or exist and be continuing under this Mortgage or under any other instrument evidencing, securing or in any way relating to the Indebtedness;

(E) The request for any payment after the Work has been completed shall be accompanied by a copy of any certificate or certificates required by law to render occupancy of the Premises legal; and

(F) Under no circumstance shall damage or destruction of the Premises or restoration or repair thereof be deemed to extend the stated maturity of the Note or relieve Mortgagor of its obligations to make monthly or other periodic payments of interest and/or principal specified in the Note.

(4) Upon completion of the Work and payment in full therefor, or upon failure on the part of Mortgagor promptly to commence or diligently to continue the Work, or at any time upon request by Mortgagor, Mortgagee may apply the amount of any such proceeds then or thereafter in the hands of Mortgagee to the payment of the Indebtedness; provided, however, that nothing herein contained shall prevent Mortgagee from applying at any time the whole or any part of

such proceeds to the curing of any default under this Mortgage or the Note.

(5) Subject at all times to the provisions of the foregoing subsections 1.04(b)(1), (2) and (3), and in accordance therewith excepting only those provisions which are applicable only if the Work to be done is structural or it is Major Work as determined by Mortgagee, in the event the Work to be done is not structural or it is not Major Work as determined by Mortgagee but the cost of the Work as estimated by Mortgagee shall exceed Twenty-Five Thousand Dollars (\$25,000), then the net insurance proceeds held by Mortgagee for application thereto shall be paid to Mortgagor by Mortgagee no more frequently than once a month and then only in \$25,000 increments (or part thereof upon completion of the Work), and only upon request by Mortgagor which request shall be accompanied by such documentation as may be required by Mortgagee.

(6) If, within one hundred twenty (120) days after the occurrence of any damage or destruction to the Premises requiring structural Work or Major Work in order to restore the Premises, Mortgagor shall not have submitted to Mortgagee and received Mortgagee's approval of plans and specifications for the repair, restoration and rebuilding of the Premises so damaged or destroyed (approved by the Architect and by all governmental authorities whose approval is required; such 120 days may be extended for an additional 30 days to obtain all required governmental approvals so long as Mortgagor is diligently pursuing the same to Mortgagee's satisfaction), or if, after such plans and specifications are approved by the Architect, all such governmental authorities and Mortgagee, Mortgagor shall fail to commence promptly such repair, restoration and rebuilding, or if thereafter Mortgagor fails diligently to continue such repair, restoration and rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such Work, or, in the case of any damage or destruction requiring neither structural Work nor Major Work, as determined by Mortgagee in order to restore the Premises, if Mortgagor shall fail to commence promptly such repair, restoration and rebuilding to completion of the Premises so damaged or destroyed, then, in addition to all other rights herein set forth, and after giving Mortgagor five (5) days' written notice of the nonfulfillment of one or more of the foregoing conditions, Mortgagee, or any lawfully appointed receiver of the Premises, may at their respective options, perform or cause to be performed such repair, restoration and rebuilding, and may take such other steps as they deem advisable to perform such repair, restoration and rebuilding, and Mortgagor hereby waives, for Mortgagor and all others holding under Mortgagor, any claim against Mortgagee and such

receiver arising out of anything done by Mortgagee or such receiver, for all amounts expended or incurred by them, respectively, in connection with the performance of such Work, and any excess costs shall be secured by this Mortgage and shall be paid by Mortgagor to Mortgagee upon demand.

(c) All hazard, casualty, business interruption or rental and flood insurance policies required pursuant to this Section 1.04 shall be endorsed to name Mortgagee as a mortgagee thereunder, with loss payable to Mortgagee, without contribution, under a standard New York (or local equivalent) mortgagee clause. All liability coverage shall include Mortgagee's name only as a certificate holder. All such insurance policies and endorsements shall be fully paid for and contain such provisions and expiration dates and be in such form and issued by such insurance companies licensed to do business in the State of Alabama, with a rating of "A-VI" or better as established by Best's Rating Guide or an equivalent rating with such other publication of a similar nature as shall be in current use, as shall be approved by Mortgagee. Without limiting the foregoing, each policy shall provide that such policy may not be canceled or materially changed except upon thirty (30) days' prior written notice of intention of nonrenewal, cancellation or material change to Mortgagee [five (5) days in event of cancellation or nonrenewal resulting solely from nonpayment of premium] and that no act or thing done by Mortgagor shall invalidate the policy as against Mortgagee. In the event Mortgagor fails to maintain insurance in compliance with this Section 1.04, Mortgagee may, but shall not be obligated to, obtain such insurance and pay the premium therefor and Mortgagor shall, on demand, reimburse Mortgagee for all sums, advances and expenses incurred in connection therewith. All such sums, advances and expenses incurred by Mortgagee shall be secured by this Mortgage. Mortgagor shall deliver copies of all original policies, or if Mortgagee consents, certificates of insurance, certified by the insurance company or authorized agent as being true copies, to Mortgagee together with the endorsements thereto required hereunder or with Mortgagee's prior consent, other valid Evidence of Property Insurance (Form ACORD 27(2/88) or its equivalent), all subject to Mortgagee's satisfaction in its sole discretion. Notwithstanding anything to the contrary contained herein or in any provision of applicable law of the State of Alabama, the proceeds of insurance policies coming into the possession of Mortgagee shall not be deemed trust funds, may be held by it without interest and may be commingled by Mortgagee with its general funds; Mortgagee shall be entitled to dispose of such proceeds as herein provided; and Mortgagee shall not be obligated to see to the proper application of any such proceeds paid over to Mortgagor.

(d) Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any hazard insurance policies maintained pursuant to this Section 1.04, and

to collect and receive the proceeds from any such policy or policies; provided, however, so long as there is no Default or Event of Default hereunder and so long as no event has occurred which with the passage of time or notice or both would constitute a Default or Event of Default hereunder, Mortgagor shall be entitled to adjust or compromise any loss under any hazard insurance policy maintained pursuant to this Section 1.04, and Mortgagee shall have the right to participate, at its option, in any such adjustment or compromise. Each insurance company is hereby authorized and directed to make payment for all losses directly to Mortgagee, instead of to Mortgagor and Mortgagee, jointly. In the event any insurance company fails to disburse directly and solely to Mortgagee but disburses instead either solely to Mortgagor or to Mortgagor and Mortgagee, jointly, Mortgagor shall immediately endorse and transfer such proceeds to Mortgagee. Upon Mortgagor's failure to do so, Mortgagee may execute such endorsements or transfers for and in the name of Mortgagor and Mortgagee hereby irrevocably appoints Mortgagee as Mortgagor's agent and attorney in fact so to do. Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

(e) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.04, a renewal or replacement thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment for all such insurance policies and renewals and replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in full or partial extinguishment of the Indebtedness, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

(f) Notwithstanding anything to the contrary contained in this Mortgage, including, without limitation, this Section 1.04 and Section 1.08 hereof, in the event of any damage or destruction to the Premises or in the event of any condemnation or taking of all or any part of or any interest in the Premises, and in the event Mortgagee allows Mortgagor to use the proceeds thereof for repairs or rebuilding, then Mortgagor shall, prior to receiving or using any proceeds in connection with the Work, deposit with Mortgagee in cash an amount which, when added to such proceeds, will be sufficient to cover all costs reasonably anticipated to be incurred in the repair, restoration and rebuilding of the Premises so damaged, destroyed or condemned, or, with Mortgagee's prior consent, provide other evidence that such funds will be available which evidence shall be satisfactory to Mortgagee in its sole discretion. In the event Mortgagor fails to pay such amount to Mortgagee or provide such satisfactory evidence in accordance with

the preceding sentence, then Mortgagee may declare the entire unpaid Indebtedness secured hereby to be immediately due and payable and Mortgagor shall pay to Mortgagee in full and upon demand the Indebtedness secured hereby, and upon Mortgagor's failure so to pay the Indebtedness secured hereby in accordance with this subparagraph 1.04(f), Mortgagee shall and may exercise any and all of its rights and remedies provided under Article II in case of the occurrence of an Event of Default.

Section 1.05. Maintenance of Existence. Mortgagor shall, so long as it is the owner of the Secured Property, do all things necessary to preserve and keep in full force and effect its existence, franchises, rights and privileges under the laws of the State of Alabama and comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Mortgagor or to the Secured Property or any part thereof.

Section 1.06. Taxes and Other Charges.

(a) Mortgagor shall pay and discharge when due all taxes of every kind and nature, water rates, sewer rents and assessments, levies, permits, inspection and license fees and all other charges imposed upon or assessed against the Secured Property or any part thereof or upon the revenues, rents, issues, income and profits of the Premises or arising in respect of the occupancy, uses or possession thereof and, unless Mortgagor is making monthly deposits with Mortgagee in accordance with Section 1.14 hereof, Mortgagor shall exhibit to Mortgagee within five (5) days after the same shall have become due, validated receipts showing the payment of such taxes, assessments, water rates, sewer rents, levies, fees and other charges which may be or become a prior lien on the Secured Property. Should Mortgagor default in the payment of any of the foregoing taxes, assessments, water rates, sewer rents, or other charges, Mortgagee may, but shall not be obligated to, pay the same or any part thereof, and amounts so paid shall be secured by this Mortgage, and Mortgagor shall, on demand, reimburse Mortgagee for all amounts so paid.

(b) Nothing in this Section 1.06 shall require the payment or discharge of any obligation imposed upon Mortgagor by subparagraph (a) of this Section 1.06 so long as Mortgagor shall in good faith and at its own expense contest the same or the validity thereof by appropriate legal proceedings, which proceedings must operate to prevent the collection thereof or other realization thereon and the sale or forfeiture of the Secured Property or any part thereof to satisfy the same; provided that during such contest the Mortgagor shall, at the option of the Mortgagee, provide security satisfactory to the Mortgagee, assuring the discharge of the Mortgagor's obligation under subparagraph (a) of this Section 1.06 and of any additional interest, charge, penalty or expense arising from or incurred as a

result of such contest; and provided, further, that if at any time payment of any obligation imposed upon Mortgagor by subsection (a) of this Section 1.06 shall become necessary to prevent a lien foreclosure sale of the Secured Property or any portion thereof because of nonpayment, then Mortgagor shall pay the same in sufficient time to prevent the foreclosure sale.

Section 1.07. Mechanics' and Other Liens. Mortgagor shall pay or otherwise satisfy or bond in a manner approved in writing by Mortgagee, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien or claim of lien on the Secured Property or any part thereof, or on the revenues, rents, issues, income or profits arising therefrom and, in general, Mortgagor shall do, or cause to be done, at the cost of Mortgagor and without expense to Mortgagee, everything necessary to fully preserve the lien of this Mortgage. In the event Mortgagor fails to make payment of such claims and demands, Mortgagee may, but shall not be obligated to, make payment thereof, all sums so expended shall be secured by this Mortgage, and Mortgagor shall, on demand, reimburse Mortgagee for all sums so expended.

Section 1.08. Condemnation Awards. Mortgagor, immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Premises or any portion thereof, will notify Mortgagee of the pendency of such proceedings. Mortgagee may participate in any such proceedings and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. All awards and compensation for condemnation or other taking or purchase in lieu thereof, of the Premises or any part thereof, are hereby assigned to and shall be paid to Mortgagee. Mortgagor hereby authorizes Mortgagee to collect and receive such awards and compensation, to give proper receipts and acquittances therefor, and, in Mortgagee's sole discretion, to apply the same toward the payment of the Indebtedness, notwithstanding the fact that the Indebtedness may not then be due and payable, or to the restoration of the Premises. In the event that any portion of the condemnation awards or compensation shall be used to reduce the Indebtedness, the same shall be applied (i) first to the payment of delinquency or late charges, if any, (ii) then to accrued and unpaid interest then due and owing, (iii) then to advances made pursuant to this Mortgage, and (iv) finally to the then unpaid installments of principal due under the Note in the inverse order of their maturity, such that the regular payments under the Note shall not be reduced or altered in any manner; provided, however, that the provisions of the Note shall govern the application of such proceeds in the event of any conflict between this provision and the provisions of the Note. Mortgagor, upon request by Mortgagee, shall make, execute and deliver any and all instruments requested for the purpose of confirming the assignment of the aforesaid

awards and compensation to Mortgagee free and clear of any liens, charges or encumbrances of any kind or nature whatsoever. Mortgagee shall be entitled to the payment by Mortgagor of interest at the applicable rate provided for herein or in the Note on the outstanding principal balance of the Note unless and until such awards and compensation have been received by Mortgagee and applied by Mortgagee to reduce such balance, and Mortgagee shall not be limited to the interest paid on any such award or compensation by the party seeking the condemnation.

Section 1.09. Mortgage Authorized. Mortgagor hereby warrants and represents that: the execution and delivery of this Mortgage and the Note have been duly authorized and that there is no provision in its partnership agreement, as same may have been amended, requiring further consent for such action by any other entity or person; it is duly organized, validly existing and in good standing under the laws of the State of Alabama and has (a) all necessary licenses, authorizations, registrations and approvals and (b) full power and authority to own its properties and carry on its business as presently conducted; and the execution and delivery by and performance of its obligations under this Mortgage and the Note will not result in Mortgagor being in default under any provision of its articles or certificate of incorporation or by-laws (if Mortgagor is a corporation) or its partnership agreement (if Mortgagor is a partnership), as the same may have been amended, or of any other note, security deed, mortgage, deed of trust or security, credit or other agreement to which it is a party.

Section 1.10. Costs of Defending and Upholding the Lien. If any action or proceeding is commenced to which action or proceeding Mortgagee is made a party or in which it becomes necessary to defend or uphold the lien of this Mortgage, Mortgagor shall, on demand, reimburse Mortgagee for all expenses (including, without limitation, reasonable attorneys' fees and appellate attorneys' fees) incurred by Mortgagee in any such action or proceeding and all such expenses shall be secured by this Mortgage. In any action or proceeding to foreclose this Mortgage or to recover or collect the Indebtedness, the provisions of law relating to the recovering of costs, disbursements and allowances shall prevail unaffected by this covenant.

Section 1.11. Additional Advances and Disbursements. Mortgagor shall pay when due all payments and charges on all security deeds, mortgages, deeds of trust, deeds to secure debt, security agreements, liens, encumbrances, ground and other leases, and security interests which may be or become superior or inferior to the lien of this Mortgage, and in default thereof, Mortgagee shall have the right, but shall not be obligated, to pay, without notice to Mortgagor, such payments and charges and Mortgagor shall, on demand, reimburse Mortgagee for amounts so paid. In addition, upon default of Mortgagor in the performance of any

other terms, covenants, conditions or obligations by it to be performed under any such prior or subordinate lien, encumbrance, lease or security interest, Mortgagee shall have the right, but shall not be obligated, to cure such default in the name and on behalf of Mortgagor. All sums advanced and reasonable expenses incurred at any time by Mortgagee pursuant to this Section 1.11 or as otherwise provided under the terms and provisions of this Mortgage or under applicable law shall bear interest at the lesser of the rate provided in the Note or the maximum rate allowed by law, and all such sums, together with interest thereon, shall be secured by this Mortgage.

Section 1.12. Costs of Enforcement. Mortgagor agrees to bear and pay all expenses (including reasonable attorneys' fees and appellate attorneys' fees) of or incidental to the perfection and enforcement of any provision hereof, or the enforcement, compromise or settlement of this Mortgage or the Indebtedness, and for the curing thereof, or for defending or asserting the rights and claims of Mortgagee in respect thereof, by litigation or otherwise. All rights and remedies of Mortgagee shall be cumulative and may be exercised singly or concurrently. Notwithstanding anything herein contained to the contrary, Mortgagor, to the extent permitted by law: (a) will not (i) at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Secured Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor (ii) claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Secured Property, or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction, nor (iii) after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof; (b) hereby expressly waives all benefit or advantage of any such law or laws; and (c) covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under it, waives, to the extent that it lawfully may, all right to have the Secured Property marshalled upon any foreclosure hereof.

Section 1.13. Mortgage Taxes. Mortgagor shall pay any and all taxes, charges, filing, registration and recording fees, excises and levies imposed upon Mortgagee by reason of its ownership of the Note, this Mortgage, any assignment of rents and leases securing the Note, or by reason of the recording or filing thereof, or any security instrument supplemental hereto, any

security instrument or Uniform Commercial Code financing statement with respect to any fixtures or personal property owned by Mortgagor at the Premises and any instrument of further assurance (other than income, franchise and doing business taxes), and shall pay all stamp or intangible taxes and other taxes required to be paid on the Note. In the event Mortgagor fails to make such payment within five (5) days after written notice thereof from Mortgagee, then Mortgagee shall have the right, but shall not be obligated, to pay the amount due, and Mortgagor shall, on demand, reimburse Mortgagee for said amount, and until so paid said amount shall become part of the Indebtedness secured hereby. The provisions of this Section shall survive the repayment of the Indebtedness.

Section 1.14. Escrow Deposits. To the extent not required by the Prior Mortgage (as hereinafter defined), Mortgagor shall deposit with Mortgagee, monthly, one-twelfth (1/12th) of the annual charges for real estate taxes, assessments, and other charges which might become a lien upon the Secured Property, and Mortgagor shall, accordingly, make such deposits. In addition, if required by Mortgagee, Mortgagor shall simultaneously therewith deposit with Mortgagee a sum of money which together with the monthly installments aforementioned will be sufficient to make each of the payments aforementioned at least thirty (30) days prior to the date such payments are due (without payment of any interest or past due charges), and in time to take full advantage of any discount offered by the taxing authority. Should said charges not be ascertainable at the time any deposit is required to be made with Mortgagee, the deposit shall be made on the basis of the charges for the prior year, and when the charges are fixed for the then current year, Mortgagor shall deposit any deficiency with Mortgagee. All funds so deposited with Mortgagee shall be held by it without interest, may be commingled by Mortgagee with its general funds, and provided that no Event of Default shall have occurred, shall be applied in payment of the charges aforementioned when and as payable, to the extent Mortgagee shall have such funds on hand. Should an Event of Default occur, the funds deposited with Mortgagee, as aforementioned, may be applied in payment of the charges for which such funds shall have been deposited or to the payment of the Indebtedness or any other charges affecting the security of Mortgagee, as Mortgagee sees fit, but no such application shall be deemed to have been made by operation of law or otherwise until actually made by Mortgagee as herein provided. If deposits are being made with Mortgagee, Mortgagor shall furnish Mortgagee with bills for the charges for which such deposits are required to be made hereunder and/or such other documents necessary for the payment of same, at least fifteen (15) business days prior to the date such payments are due (without payment of any interest or past due charges), and in time to take full advantage of any discount offered by the taxing authority, unless otherwise agreed by Mortgagee. In the event Mortgagor fails to pay any such amount, Mortgagee may, but shall

not be obligated to, make payment thereof, and Mortgagor shall, on demand, reimburse Mortgagee for all sums so expended, and until Mortgagee has been so reimbursed, such amount shall be added to the Indebtedness secured hereby.

Section 1.15. Late Charges. In the event any payment provided for herein or in the Note shall become overdue for five (5) days after the same shall become due, whether by acceleration or otherwise, Mortgagee may impose a late charge on Mortgagor, payable on demand, equal to five percent (5%) of such past due installment. Late charges shall be payable with the next installment of the principal and/or interest due under the Note, and shall be added to the Indebtedness secured hereby.

Section 1.16. [Intentionally omitted].

Section 1.17. Additional Covenants.

(a) Without the prior written consent of Mortgagee, Mortgagor shall not: (i) execute or permit to exist any lease of all or any portion of the Premises except in accordance with subsection 1.17(c) hereof; (ii) modify or vary, surrender or terminate, either orally or in writing, any lease affecting the Premises except in the ordinary course of business or in the case of the tenant's default thereunder and in either case, only in accordance with sound business judgment or except in accordance with subsection 1.17(c) hereof; (iii) collect any rents for a period of more than one month in advance, except for security or damage deposits which are handled by Mortgagor in accordance with Section 1.19 hereof; (iv) execute any conditional bill of sale, chattel mortgage, security agreement or other security instruments covering any furniture, furnishings, fixtures and equipment, intended to be incorporated in the Premises or the appurtenances thereto, or covering articles of personal property placed in the Premises, or purchase any of such furniture, furnishings, fixtures and equipment so that ownership of the same will not vest unconditionally in Mortgagor, free from encumbrances on delivery to the Premises; (v) further assign the leases and rents affecting the Premises; (vi) further encumber, alienate, hypothecate, grant a security interest in or grant any other interest whatsoever in the Secured Property, or any part thereof; or (vii) enter into any agreement whereby the holder of any prior or subordinate mortgage, deed of trust, deed to secure debt or security agreement, waives, extends or modifies any of the terms of the prior or subordinate security instrument.

(b) Without the prior written consent of Mortgagee and except for any leases of space within the Premises for occupancy by a tenant and made in accordance with subsection 1.17(c) hereof), and except as may be otherwise permitted in subsection 1.17(d) hereof with respect to Fogelman (as hereinafter defined), Mortgagor shall not, and shall not permit any person or entity

(herein called an "Owning Entity") owning ten percent (10%) or more of any stock, equity, partnership, ownership or other beneficial interest in Mortgagor (if Mortgagor is a corporation, partnership, joint venture, trust or other type of business association or legal entity) to, do any of the following (herein collectively called a "Disposition"): (i) sell, lease, exchange, assign, convey, transfer or otherwise dispose of, the Secured Property or any part thereof or any interest therein, including, without limitation, the leases, rents or income thereof, or (ii) grant or permit to exist any other mortgage, deed to secure debt, deed of trust, security agreement or other lien, security interest, charge or encumbrance against the Secured Property or any part thereof or any interest therein, including, without limitation, the leases, rents or income thereof, whether superior or inferior to this Mortgage, or (iii) sell, lease, exchange, assign, convey, transfer, mortgage, encumber or otherwise dispose of, whether absolutely or to secure a debt, all or any portion of such Owning Entity's stock, partnership, ownership or other beneficial interest in Mortgagor (if Mortgagor is a corporation, partnership, joint venture, trust or other type of business association or legal entity).

(c) With respect to clauses (i) and (ii) of subsection 1.17(a) hereof, Mortgagor has delivered to Mortgagee the form of lease under and pursuant to which Mortgagor has leased and proposes to lease or rent space within the Premises. Mortgagee has advised Mortgagor that the lease form is acceptable to Mortgagee (such approved lease form is herein called the "Leasing Form"). Any leases or other occupancy agreements, expansions, extensions, renewals, modifications or other actions made or taken by Mortgagor in accordance with the Leasing Form, and made in the context of an arm's length transaction at the then prevailing market rates and terms, shall be deemed to have been consented to by Mortgagee within the meaning of this Section 1.17. No material deviation from the Leasing Form shall be made without Mortgagee's prior written approval.

(d) Until the Indebtedness is paid in full or unless otherwise agreed by Mortgagee, Avron B. Fogelman (herein called "Fogelman") shall be and remain the President of the general partner of the general partner of the sole general partner of Mortgagor and the owner of not less than the same percentage ownership interest in Mortgagor as he has on the date hereof; provided, however, changes in the composition of Mortgagor, the general partner of Mortgagor, or the general partner of the general partner of Mortgagor, shall be permitted if (i) such changes result from the death of a limited partner or estate planning for a partner or other transfer between or by the limited partners or withdrawals of limited partners, or (ii) such changes result from the admission of new limited partners, so long as at all times the actual beneficial control of Mortgagor, the general partner of Mortgagor and the general partner of the general

partner of Mortgagor, with respect to the ownership, operation, management, financing and disposition of the Secured Property remains with the full time officers, directors or partners of Fogelman Enterprises, L.P. and Fogelman. Without the prior written consent of Mortgagee, Fogelman may not sell, transfer, assign, pledge or encumber his direct or indirect ownership interest in Mortgagor.

(e) Until the Indebtedness is paid in full or unless otherwise agreed by Mortgagee, Fogelman Management Co. or a management company controlled by Fogelman (the "Manager") shall be and remain the person or entity responsible for the day to day management of the Premises and Mortgagor shall not terminate Manager except in case of the Manager's default and then only in accordance with sound business judgment and with the prior written consent of Mortgagee. Mortgagor shall have the right during the term hereof, with the prior written consent of Mortgagee (which consent shall not be unreasonably withheld), to replace the Manager with another Manager of good reputation with equal or greater competence and experience in the management of properties of comparable type, size and location to the Premises so long as such replacement Manager is affiliated with Fogelman. Without the prior written consent of Mortgagee, Mortgagor shall not permit Manager or any replacement Manager to assign, transfer or delegate its duties and responsibilities with respect to the Premises.

(f) In determining whether to grant or withhold its consent under subsections 1.17(b) or 1.17(d) hereof, Mortgagee may (but is not obligated to), among other things, (1) consider the creditworthiness of the party to whom such Disposition or other transfer will be made and its management ability with respect to the Secured Property, (2) consider whether or not the security for repayment of the Indebtedness and the performance of the obligations secured hereby, or Mortgagee's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition or other transfer, (3) require as a condition to granting such consent an increase in the rate of interest payable under the Note or any other change in terms and provisions of the Note and other Loan Documents, (4) require that Mortgagee be reimbursed for all costs and expenses reasonably incurred by Mortgagee in investigating the creditworthiness and management ability of the party to whom such Disposition or other transfer will be made and in determining whether Mortgagee's security will be impaired by the proposed Disposition or other disposition, (5) require the payment to Mortgagee of a transfer fee to cover the reasonable cost of documenting the Disposition or other transfer in its records, (6) require the payment of its reasonable attorneys' fees in connection with such Disposition or other transfer, (7) require the express assumption of payment of the Indebtedness and performance of the obligations secured hereby by the party to whom such Disposition or other transfer will be made (with or without

the release of Mortgagor or any Guarantor from liability for such Indebtedness), (8) require the execution of assumption agreements, modification agreements, supplemental security documents and financing statements, satisfactory in form and substance to Mortgagee, (9) require endorsements (to the extent available under applicable law) to any existing mortgagee title insurance policies or construction binders insuring Mortgagee's liens and security interests covering the Secured Property, and (10) require additional security for the payment of the Indebtedness and performance of the obligations secured hereby.

Section 1.18. Estoppel Certificates. Mortgagor, within three (3) days upon request in person or within five (5) days upon request by mail, shall furnish to Mortgagee a written statement, duly acknowledged, setting forth the amount due under this Mortgage, the terms of payment and maturity date of the Note, the date to which interest has been paid, whether any offsets or defenses exist against the Indebtedness and, if any are alleged to exist, the nature thereof shall be set forth in detail.

Section 1.19. Security Deposits. All security deposits of tenants of the Premises shall be treated as trust funds not to be commingled with any other funds of Mortgagor. Within ten (10) days after request by Mortgagee, Mortgagor shall furnish or cause to be furnished to Mortgagee satisfactory evidence of compliance with this Section 1.19, together with a statement of all security deposits deposited by the tenants and copies of all leases not theretofore delivered to Mortgagee, certified by Mortgagor.

Section 1.20. Assignment of Rents. Mortgagor hereby assigns to Mortgagee, as further security for the payment of the Indebtedness, the rents, issues and profits of the Premises, together with all leases and other documents evidencing such rents, issues and profits now or hereafter in effect and any and all deposits held as security under said leases to the extent permitted by applicable state law. Nothing contained in the foregoing sentence shall be construed to bind Mortgagee to the performance of any of the covenants, conditions or provisions contained in any such lease or other document or otherwise to impose any obligation on Mortgagee (including, without limitation, any liability under the covenant of quiet enjoyment contained in any lease or in any law of any applicable state in the event that any tenant shall have been joined as a party defendant in any action to foreclose this Mortgage and shall have been barred and foreclosed thereby of all right, title and interest and equity of redemption in the Premises), except that Mortgagee shall be accountable for any money actually received pursuant to such assignment. Mortgagor hereby further grants to Mortgagee the right, upon the occurrence of an Event of Default (i) to enter upon and take possession of the Premises for the purpose of collecting the said rents, issues and profits, (ii) to dispossess by the usual summary proceedings any tenant defaulting in the

payment thereof to Mortgagee, (iii) to let the Premises, or any part thereof, and (iv) to apply said rents, issues and profits, after payment of all necessary charges and expenses, on account of said Indebtedness. Such assignment and grant shall continue in effect until the Indebtedness is paid, the execution of this Mortgage constituting and evidencing the irrevocable consent of Mortgagor, upon the occurrence of an Event of Default, to the entry upon and taking possession of the Premises by Mortgagee pursuant to such grant, whether foreclosure has been instituted or not and without applying for a receiver. Until the occurrence of an Event of Default, Mortgagor shall be entitled to collect and receive said rents, issues and profits. Mortgagor agrees to use said rents, issues and profits in payment of principal and interest becoming due under this Mortgage and in payment of taxes, assessments, water rates, sewer rents and carrying charges becoming due against the Premises. Such right of Mortgagor to collect and receive such rents, issues and profits may be revoked by Mortgagee upon the occurrence of an Event of Default by giving written notice of such revocation, served personally upon or sent by registered or certified mail to the record owner of the Premises. In the event Mortgagor has executed a separate assignment of rents and leases, then the provisions of such separate assignment shall supersede the provisions of this Section.

Section 1.21. Leases and Other Agreements Affecting Property. Mortgagor will duly and punctually perform all terms, covenants, conditions and agreements binding upon it under any lease or any other agreement of any nature whatsoever which involves or affects the Secured Property or any part thereof. Mortgagor will, at the request of Mortgagee, furnish Mortgagee with executed copies of all leases now or hereafter created upon the Secured Property or any part thereof. All present and future lease forms used by the Mortgagor with respect to the tenants of the Premises shall be approved by Mortgagee in accordance with subsection 1.17(c) hereof, and no substantive modifications shall be made thereto without Mortgagee's consent.

Section 1.22. Indemnity. Mortgagor shall indemnify and hold Mortgagee, and its directors, officers, commissioners, employees, and agents (collectively, the "Indemnified Parties", and individually, an "Indemnified Party"), harmless from and against any and all suits, actions, claims, proceedings (including third party proceedings) damages, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and disbursements) which may be incurred by or asserted against any Indemnified Party as the result of its having made a loan to Mortgagor or having committed to extend credit to Mortgagor, including, but not limited to, claims for brokerage commissions or finder's fees for arranging the loan secured by this Mortgage, claims of persons claiming mechanics' or similar liens, claims of tenants of the Premises and claims for recording taxes, filing

fees, transfer taxes and similar claims relating to this Mortgage. The provisions of this Section shall survive the repayment of the Indebtedness secured hereby.

Section 1.23. Security Agreement.

(a) Insofar as the machinery, apparatus, equipment, fittings, fixtures, building supplies and materials, articles of personal property, contract rights, accounts and general intangibles either referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Secured Property is concerned, this Mortgage is hereby made and declared to be a security agreement, encumbering each and every item of personal property included herein, in compliance with the provisions of the Uniform Commercial Code as enacted in the State of Alabama. A financing statement or statements reciting this Mortgage to be a security agreement, affecting all of said personal property aforementioned, shall be executed by Mortgagor and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement herein contained shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such financing statement(s) in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of Mortgagor and Mortgagee that everything used in connection with the production of income from the Secured Property and/or adapted for use therein and/or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable shall be, regarded as part of the real estate irrespective of whether (a) any such item is physically attached to the Premises, (b) serial numbers are used for the better identification of certain items capable of being thus identified in a recital contained herein, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any fire, casualty and/or hazard insurance policy, or (bb) any award in condemnation proceedings for a taking or for loss of value, or (cc) Mortgagor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Secured Property, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of Mortgagee's lien granted hereby or by any other recorded document, but such mention in such financing statement(s) is declared to be for the protection of Mortgagee in the event any court shall at any time hold with respect to the foregoing (aa), (bb) or (cc), that notice of

Mortgagee's priority of interest to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records.

(b) Mortgagor shall execute and deliver to Mortgagee, in form and substance satisfactory to Mortgagee, such "financing statements" and such further assurances as Mortgagee may from time to time reasonably consider necessary to create, perfect and preserve Mortgagee's security interest herein granted, and Mortgagee may cause such statements and assurances to be recorded and filed at such times and places as may be required or permitted by law to so create, perfect and preserve such security interest.

(c) The assignment and security interest herein granted shall not be deemed or construed to constitute Mortgagee as a "mortgagee in possession" of the Secured Property, to obligate Mortgagee to lease the Secured Property or attempt to do same, or to take any action, incur any expense or perform or discharge any obligation, duty or liability whatsoever under any of the leases or otherwise.

Section 1.24. Conditions of Funding. It is a condition to Mortgagee's making the Loan or any future advances of portions of the Loan, that no Event of Default as defined herein, and no event or condition which with notice or passage of time or both would constitute such an Event of Default has occurred or exists and remains uncured to Mortgagee's satisfaction and there shall have been no material adverse change in the net income of the Premises or in the business or financial condition or management of Mortgagor or any Guarantor, and the Premises shall not have suffered any significant damage by fire or other casualty and no condemnation or adverse zoning or usage change proceedings shall have been commenced or threatened, and no law, regulation, ordinance, moratorium, injunctive proceeding, restriction or similar matter shall have been enacted, adopted or threatened by any federal, state or local government or any board, authority, commission, agency or department of any thereof asserting jurisdiction over the Premises if the result of such law, regulation, ordinance, moratorium, injunctive proceeding, restriction or like matter would have the effect, in Mortgagee's reasonable judgment, of materially and adversely affecting the collateral value of the Secured Property.

Section 1.25 Environmental Matters.

(a) Mortgagor represents and covenants that (i) Mortgagor has not caused or suffered to occur and Mortgagor will not hereafter cause or suffer to occur, a discharge, spillage, uncontrolled loss, seepage or filtration of oil or petroleum or chemical liquids or solids, liquid or gaseous products or hazardous waste (a "spill"), or hazardous substance as those terms are used in the Comprehensive Environmental Response, Compensation

and Liability Act of 1980, as the same may be amended from time to time (the "Act"), at, upon, under or within the Premises or any contiguous real estate which has been included in the property description of the Premises within the preceding three years; (ii) neither Mortgagor nor any other party has been, is or will be involved in operations at or near the Premises which could lead to the imposition on Mortgagor or any other owner of the Premises of liability or the creation of a lien on the Premises, under the Act or under similar applicable laws or regulations; and (iii) Mortgagor has not permitted and will not permit any tenant or occupant of the Premises to engage in any activity that could lead to the imposition of liability on such tenant or occupant, Mortgagor or any other owner of any of the Premises, or the creation of a lien on the Premises, under the Act or any similar applicable laws or regulations.

(b) Mortgagor shall comply strictly and in all respects with the requirements of the Act and related regulations and with all similar applicable laws and regulations and shall notify Mortgagee promptly in the event of any spill of a hazardous substance upon the Premises, and shall promptly forward to Mortgagee copies of all orders, notices, permits, applications or other communications and reports in connection with any such spill or any other matters relating to the Act or related regulations or any similar applicable laws or regulations, as they may affect the Premises.

(c) Mortgagor, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content satisfactory to Mortgagee.

(d) Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by Mortgagee, whether as a holder of the Mortgage, as mortgagee in possession or as successor in interest to Mortgagor as owner of the Premises by virtue of foreclosure or acceptance of a deed in lieu of foreclosure (i) under or on account of the Act or related regulations or any similar applicable laws or regulations, including the assertion of any lien thereunder; (ii) with respect to any spill or hazardous substance affecting the Premises whether or not the same originates or emanates from the Premises or any other contiguous real estate, including any loss of value of the Premises as a result of a spill or hazardous substance; and (iii) with respect to any other matter affecting the premises within the jurisdiction of the Environmental Protection Agency or any similar state, federal or local agency or any successor to any thereof.

(e) In the event of any spill of a hazardous substance affecting the Premises, whether or not the same originates or

emanates from the Premises or any such contiguous real estate, and/or if Mortgagor shall fail to comply with any of the requirements of the Act or related regulations or any other environmental law or regulation, Mortgagee may at its election, but without the obligation so to do, give such notices and/or cause such work to be performed at the Premises and/or take any and all other actions as Mortgagee shall deem necessary or advisable to remedy said spill or hazardous substance or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the rate of interest set forth in Section 1.11 hereof from the date of payment by Mortgagee, shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof.

ARTICLE II

Default and Remedies

Section 2.01. Events of Default. Any one or more of the following events or conditions shall constitute Events of Default under this Mortgage:

(a) if any representation or warranty contained herein or in any other Loan Documents or in any certificate or other document furnished to Mortgagee in connection with the Loan or in furtherance of the requirement of any of the Loan Documents shall be incorrect in any material respect at the time when made; or

(b) if a lien for the performance of work or the supply of materials or any other lien, charge or encumbrance, whether for federal, state or local taxes or otherwise is filed against the Secured Property or any part thereof and remains unsatisfied or unbonded in a manner approved in writing by the Mortgagee for a period of thirty (30) days after the date of filing thereof; or

(c) subject to Mortgagor's right to contest in accordance with subsection 1.06(b) hereof, failure by Mortgagor to pay or cause to be paid, before any fine, penalty, interest or cost may be added thereto, all franchise taxes and charges and other governmental charges, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind and nature whatsoever, including but not limited to, assessments for public improvements or benefits which are assessed, levied, confirmed, imposed or become a lien upon the Secured Property or any part thereof during the term of the Indebtedness, or if Mortgagor enters into any agreement which has the effect of deferring the payment of any taxes or other charges which are or can be assessed, levied, confirmed or imposed or become a lien upon the Secured Property or become payable during the term of the Indebtedness; or

(d) unless permitted in accordance with Section 1.17 hereof, if any Disposition is made by Mortgagor of the Secured Property or any part thereof or any interest therein or if any Disposition or other transfer is made by an Owning Entity or Fogelman of any of its or his interest in Mortgagor; or

(e) if a receiver, liquidator or trustee of Mortgagor or of any substantial portion of its other properties, shall be appointed; or

(f) if a petition in bankruptcy or for reorganization or for protection under Title 11 of the United States Code or under any other federal or state debtor relief laws shall have been filed against any one of Mortgagor, the general partner of Mortgagor, or Fogelman, without the consent of Mortgagor, the general partner of Mortgagor, or Fogelman, as the case may be, and the same is not withdrawn, dismissed, canceled or terminated within sixty (60) days; or

(g) if any one of Mortgagor, the general partner of Mortgagor, or Fogelman makes an assignment for the benefit of creditors or files or consents to the filing of a petition in bankruptcy or commences or consents to the commencement of any proceeding under Title 11 of the United States Code or under any other federal or state law, now or hereafter in effect, relating to the reorganization or liquidation of Mortgagor or the arrangement or rearrangement or readjustment of the debts of Mortgagor having the effect of enjoining or staying the exercise of rights or remedies by creditors, it being understood that the filing against Mortgagor, or the general partner of Mortgagor, of such a petition by a partner, officer or stockholder of Mortgagor, shall be deemed to be a filing with the consent of Mortgagor, or the general partner; or

(h) if there is an attachment or sequestration of or relating to the Secured Property or of or to any other substantial portion of any other assets of any one of Mortgagor, the general partner of Mortgagor, or Fogelman, and the same is not promptly discharged or bonded in a manner approved in writing by Mortgagee; or

(i) if Mortgagor or any of its partners or shareholders institute or fail to contest any proceeding for the dissolution or termination of Mortgagor; or

(j) if Mortgagor or Manager ceases to do business or terminates its business as presently conducted for any reason whatsoever; or

(k) if Mortgagor is in default under leases under which tenants are occupying in the aggregate more than fifteen percent (15%) of the space in the Premises; or

(l) if any condemnation, eminent domain or other taking proceeding shall have been commenced and, in fact, occurs, against all or any material portion of the Premises (for purposes of this clause (l), a "material" portion of the Premises shall be a taking of (i) more than ten percent (10%) of the land constituting the Premises, (ii) more than ten percent (10%) of the parking for the buildings on the Premises unless such parking can be replaced, and, in fact, is replaced, (iii) any part of the buildings on the Premises, (iv) a means of access to the Premises unless alternative means of access exist which in Mortgagee's judgment are adequate to serve the Premises, or (v) any part of the Premises which would materially adversely affect the use or value of the Premises); or

(m) if Mortgagor shall fail to provide or to maintain insurance in accordance with the requirements of this Mortgage, or shall fail to pay the premiums therefor in a timely manner as required by this Mortgage or if there shall occur any material uninsured damage to or loss, theft or destruction to the Secured Property or to any other collateral furnished to Mortgagee as security for the Loan; or

(n) if a default or an event of default shall occur under any deed to secure debt, deed of trust or mortgage on the Secured Property or any part thereof or any interest therein which is superior or inferior to this Mortgage or if an event, state of facts or other condition should occur or exist which, with the passage of time or the giving of notice or both, would constitute a default or event of default under any deed to secure debt, deed of trust or mortgage on the Secured Property or any part thereof or any interest therein which is superior or inferior to this Mortgage; provided, however, that this provision shall not be deemed to be a consent by Mortgagee for the creation or imposition of any such other deed to secure debt, deed of trust or mortgage; or

(o) if Mortgagor defaults under any other agreement that it has with Mortgagee, and after the expiration of the notice grace or cure periods, if any, specifically provided for such default therein; or

(p) failure of Mortgagor to pay, for more than five (5) days after the same shall have become due, whether by maturity, acceleration or otherwise, (i) any payment of interest and/or principal on the Note, (ii) any payment hereunder, or under the other Loan Documents, and after the expiration of the notice, grace or cure periods, if any, specifically provided for such default therein.

Section 2.02. Remedies.

(a) Upon the occurrence of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Secured Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee: (1) declare the entire unpaid Indebtedness to be immediately due and payable; or (2) notify all tenants of the Premises and all others obligated on leases of any part of the Premises that all rents and other sums owing on leases have been assigned to Mortgagee and are to be paid directly to Mortgagee, and to enforce payment of all obligations owing on leases, by suit, ejectment, cancellation, releasing, reletting or otherwise, whether or not Mortgagee has taken possession of the Premises, and to exercise whatever rights and remedies Mortgagee may have under any assignment of rents and leases; or (3) enter into or upon the Premises, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and servants therefrom, and thereupon Mortgagee may (i) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with all and every part of the Premises and conduct the business thereat; (ii) complete any construction on the Premises in such manner and form as Mortgagee deems advisable; (iii) make alterations, additions, renewals, replacements and improvements to or on the Secured Property; (iv) exercise all rights and power of Mortgagor with respect to the Premises, whether in the name of Mortgagor, or otherwise, including, without limitation, the right to make, cancel, enforce or modify leases, obtain and evict tenants, and demand, sue for, collect and receive all earnings, revenues, rents, issues, profits and other income of the Premises and every part thereof, which rights shall not be in limitation of Mortgagee's rights under any assignment of rents and leases securing the Loan; and (v) apply the receipts from the Premises to the payment of the Indebtedness, after deducting therefrom all expenses (including reasonable attorneys' fees) incurred in connection with the aforesaid operations and all amounts necessary to pay the taxes, assessments, insurance and other charges in connection with the Secured Property, as well as just and reasonable compensation for the services of Mortgagee, its counsel, agents and employees; or (4) institute proceedings for the complete foreclosure of this Mortgage either at law, in equity or pursuant to Section 2.02(b) herein, in which case the Secured Property may be sold for cash or upon credit as a whole or in parcels; or (5) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Indebtedness then due and payable (if Mortgagee

shall have elected not to declare the entire Indebtedness to be immediately due and owing), subject to the continuing lien of this Mortgage for the balance of the Indebtedness not then due; or (6) sell for cash or upon credit the Secured Property or any part thereof and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to power of sale or otherwise, at one or more sales, as a whole or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law, and in the event of a sale, by foreclosure or otherwise, of less than all of the Secured Property, this Mortgage shall continue as a lien on the remaining portion of the Secured Property; or (7) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in the Note; or (8) recover judgment on the Note either before, during or after any proceedings for the enforcement of this Mortgage; or (9) obtain from any court of competent jurisdiction the appointment of a trustee, receiver, liquidator or conservator of the Secured Property, without regard for the adequacy of the security for the Indebtedness and without regard for the solvency of Mortgagor, or any other person, firm or other entity liable for the payment of the Indebtedness, and without regard for any other statutory or common law requirements otherwise applicable to the appointment of a trustee, receiver, liquidator or conservator; or (10) pay or perform any default in the payment, performance or observance of any term, covenant or condition of this Mortgage, and all payments made or costs or expenses incurred by Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Mortgagor to Mortgagee with interest thereon as provided in Section 1.11 hereof, the necessity for any such actions and of the amounts to be paid to be in the sole judgment of Mortgagee, and Mortgagee may enter and authorize others to enter upon the Secured Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor; or (11) pursue such other remedies as Mortgagee may have under applicable law, in equity or under the Note, this Mortgage or any of the other Loan Documents.

(b) If an Event of Default shall have occurred, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Secured Property is taken, to sell the Secured Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Premises to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time,

place and terms of such sale, together with a description of the Secured Property to be sold, by publication in some newspaper published in the county or counties in which the Premises to be sold is located. If there is Premises to be sold in more than one county, publication shall be made in all counties where the Premises to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Mortgage and may purchase the Secured Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Secured Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Secured Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Secured Property not previously sold shall have been sold or all the Indebtedness shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(c) If an Event of Default shall have occurred, the Mortgagee shall have with respect to the Secured Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the Secured Property or its value and without the necessity of a court order. At the Mortgagee's request, the Mortgagor shall assemble the Secured Property and make it available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives notice and other formalities prescribed by law with respect to any sale or other disposition of the Secured Property or exercise of any other right or remedy upon default. The Mortgagor agrees that the Mortgagee may sell or dispose of both the Premises and the Secured Property in accordance with the rights and remedies granted under this Mortgage with respect to the Premises.

(d) The purchase money proceeds or avails of any sale made under or by virtue of this Article II, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this Article II or otherwise, shall be applied as follows:

First: To the payment of the costs and expenses of any such sale, including reasonable compensation to Mortgagee, its agents and counsel, and of any judicial proceedings wherein the same may be made, and of all expenses, liabilities and advances made or incurred by Mortgagee under this Mortgage, together with interest as provided herein on all advances made by Mortgagee and all taxes or assessments, except any taxes, assessments or other charges subject to which the Secured Property shall have been sold.

Second: To the payment of the whole amount then due, owing or unpaid upon the Note for principal, together with any and all applicable interest and late charges.

Third: To the payment of any other sums required to be paid by Mortgagor pursuant to any provision of this Mortgage or of the Note or other Loan Documents.

Fourth: To the payment of the surplus, if any after the payment of all the Indebtedness, to whomsoever may be lawfully entitled to receive the same. Mortgagee and any receiver of the Secured Property, or any part thereof, shall be liable to account for only those rents, issues and profits actually received by it.

(e) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable provision of law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(f) Upon the completion of any sale or sales made by Mortgagee under or by virtue of this Article II, Mortgagee, or the auctioneer at any foreclosure sale hereunder, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Secured Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any such sale or sales made under or by virtue of this Article II, whether made under the power of sale herein granted or under or by

virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof from, through or under Mortgagor.

(g) In the event of any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale) the entire Indebtedness, if not previously due and payable, immediately thereupon shall, anything in the Note or in this Mortgage to the contrary notwithstanding, become due and payable.

(h) Upon any sale made under or by virtue of this Article II (whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale), Mortgagee may bid for and acquire the Secured Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Indebtedness the net sales price after deducting therefrom the expenses of the sale and the costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage.

(i) No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Secured Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien and title of this Mortgage upon the Secured Property or any part thereof, or any liens, titles, rights, powers or remedies of Mortgagee hereunder, but such liens, titles, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(j) Mortgagor agrees, to the fullest extent permitted by law, that upon the occurrence of an Event of Default, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension, homestead, exemption or redemption 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 Secured Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, 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 comprised in the security intended to be created hereby marshalled upon any foreclosure of the lien or title hereof.

(k) Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Premises, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby.

Section 2.03. Payment of Indebtedness After Default. Upon the occurrence of any Event of Default and the acceleration of the maturity of the Note, if, at any time prior to foreclosure sale, Mortgagor or any other person tenders payment of the amount necessary to satisfy the Indebtedness, the same shall constitute an evasion of the payment terms of the Note and shall be deemed to be a voluntary prepayment thereunder, in which case such payment must include the premium required under the prepayment provision, if any, contained in the Loan Documents. This provision shall be of no force or effect if, at the time that such tender of payment is made, Mortgagor has the right under the Loan Documents to prepay the Indebtedness without penalty or premium.

Section 2.04. Possession of the Premises. Possession of the Premises during the existence of the Indebtedness by Mortgagor, or any person claiming under Mortgagor, shall be that of a tenant under Mortgagee and its successors and assigns. Upon the occurrence of any Event of Default hereunder, it is agreed that the then owner of the Premises, if it is the occupant of the Premises or any part thereof, shall immediately surrender possession of the Premises so occupied to Mortgagee, and if such occupant remains in possession, the possession shall be as tenant of Mortgagee and, on demand, such occupant (a) shall pay to Mortgagee monthly, in advance, a reasonable rental for the space so occupied, and (b) in default thereof may be dispossessed by the usual summary proceedings. The covenants herein contained may be enforced by a receiver of the Secured Property or any part thereof. Nothing in this Section 2.04 shall be deemed to be a waiver of the provisions of this Mortgage prohibiting the sale or other disposition of the Secured Property without Mortgagee's consent.

Section 2.05. [Intentionally omitted].

Section 2.06. Mortgagor's Actions After Default. After the happening of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee to obtain judgment for the Indebtedness, or of any other nature in aid of the enforcement of the Note or of this Mortgage, Mortgagor will if required by Mortgagee, consent to the appointment of a receiver or receivers of the Secured Property and

of all the earnings, revenues, rents, issues, profits and income thereof. Nothing herein shall be deemed to require the commencement of a suit or the consent of Mortgagor as a condition precedent for Mortgagee's right to the appointment of a receiver or the exercise of any other rights or remedies available to Mortgagee.

Section 2.07. Control by Mortgagee After Default. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor as provided herein, or of any of its property, or of the Secured Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now and hereafter covered by this Mortgage.

Section 2.08. WAIVER OF MORTGAGOR'S RIGHTS. BY EXECUTION OF THIS MORTGAGE AND BY INITIALING THIS SECTION 2.08, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE INDEBTEDNESS EVIDENCED BY THE NOTE AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE SECURED PROPERTY BY NONJUDICIAL FORECLOSURE UPON DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS FOR THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED FOR LOAN TRANSACTION:

INITIALED BY MORTGAGOR:

FPI BIRMINGHAM, LTD.

By: 

Section 2.09 Jurisdiction. Mortgagor hereby submits to personal jurisdiction in the State of Alabama for the enforcement of Mortgagor's obligations hereunder and under the other Loan Documents, and waives any and all personal rights under the laws of any other state to object to jurisdiction within the State of Alabama for the purposes of litigation to enforce such obligations of Mortgagor. In the event such litigation is commenced, Mortgagor agrees that service of process may be made and personal

jurisdiction over Mortgagor obtained, by service of a copy of the summons, complaint and other pleadings required by applicable law to commence such litigation upon Mortgagor's appointed Agent for Service of Process in the State of Alabama, which Agent Mortgagor hereby designates to be: J. Fred Powell, Esq., Burr & Forman, 3000 SouthTrust Tower, 420 North 20th Street, Birmingham, Alabama 35203, or such successor Agent for Service of Process as is designated by Mortgagor from time to time with the prior written consent of Mortgagee. **MORTGAGOR AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO MORTGAGOR THAT THE EXECUTION OF THIS MORTGAGE MAY SUBJECT MORTGAGOR TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN SHELBY COUNTY, ALABAMA WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS MORTGAGE, AND THAT IT IS FORESEEABLE BY MORTGAGOR THAT MORTGAGOR MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY SUCH ACTION.**

ARTICLE III

Miscellaneous

Section 3.01. Credits Waived. Mortgagor will not claim nor demand nor be entitled to any credit or credits against the Indebtedness for so much of the taxes assessed against the Secured Property or any part thereof as is equal to the tax rate applied to the amount due on this Mortgage or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Secured Property or any part thereof by reason of this Mortgage or the Indebtedness.

Section 3.02. No Release. Mortgagor agrees, that in the event the Secured Property is sold and Mortgagee enters into any agreement with the then owner of the Secured Property extending the time of payment of the Indebtedness, or otherwise modifying the terms hereof, Mortgagor shall continue to be liable to pay the Indebtedness according to the tenor of any such agreement unless expressly released and discharged in writing by Mortgagee.

Section 3.03. Notices. All notices hereunder shall be in writing, and shall be deemed to have been sufficiently given, or served for all purposes when delivered in person or sent by express mail or by courier or by certified mail, return receipt requested, to any party hereto at its address above stated or at such other address of which it shall have notified the party giving such notice in writing as aforesaid. The provisions of this Section 3.03 do not apply to Mortgagee's monthly billings or invoices for interest and/or principal payment or to routine requests for information.

Section 3.04. Binding Obligations. The provisions and covenants of this Mortgage shall run with the land, shall be binding upon Mortgagor and shall inure to the benefit of Mortgagee, subsequent holders of this Mortgage and their respective successors and assigns. For the purpose of this Mortgage, the term "Mortgagor" shall mean Mortgagor named herein, any subsequent owner of the Secured Property, and their respective heirs, executors, legal representatives, successors and assigns. If there is more than one Mortgagor, all their undertakings hereunder shall be deemed joint and several.

Section 3.05. Captions. The captions of the Sections of this Mortgage are for the purpose of convenience only and are not intended to be a part of this Mortgage and shall not be deemed to modify, explain, enlarge or restrict any of the provisions hereof.

Section 3.06. Further Assurances. Mortgagor shall do, execute, acknowledge and deliver, at the sole cost and expense of Mortgagor, all and every such further acts, deeds, conveyances, assignments, estoppel certificates, notices of assignment, transfers and assurances as Mortgagee may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Mortgagee, the rights now or hereafter intended to be granted to Mortgagee under this Mortgage, any other instrument executed in connection with this Mortgage or any other instrument under which Mortgagor may be or may hereafter become bound to convey, transfer or assign to Mortgagee for carrying out the intention of facilitating the performance of the terms of this Mortgage.

Section 3.07. Severability. Any provision of this Mortgage which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

Section 3.08. General Conditions.

(a) All covenants hereof shall be construed as affording to Mortgagee rights additional to and not exclusive of the rights conferred under the provisions of applicable laws of the State of Alabama.

(b) This Mortgage cannot be altered, amended, modified or discharged orally and no agreement shall be effective to modify or discharge it in whole or in part, unless it is in writing and signed by the party against whom enforcement of the modification, alteration, amendment or discharge is sought.

(c) No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee in exercising any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default, or any acquiescence therein. Acceptance of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Note shall affect the obligation of Mortgagor to pay the Indebtedness in the manner and at the time and place therein respectively expressed.

(d) No waiver by Mortgagee will be effective unless it is in writing and then only to the extent specifically stated. Without limiting the generality of the foregoing, any payment made by Mortgagee for insurance premiums, taxes, assessments, water rates, sewer rentals or any other charges affecting the Secured Property, shall not constitute a waiver of Mortgagor's default in making such payments and shall not obligate Mortgagee to make any further payments.

(e) Mortgagee shall have the right to appear in and defend any action or proceeding, in the name and on behalf of Mortgagor which Mortgagee, in its discretion, reasonably believes may adversely affect the Secured Property or this Mortgage. Mortgagee shall also have the right to institute any action or proceeding which Mortgagee, in its discretion, believes should be brought to protect its interest in the Secured Property or its rights hereunder. All costs and expenses incurred by Mortgagee in connection with such actions or proceedings, including, without limitation, reasonable attorneys' fees and appellate attorneys' fees, shall be paid by Mortgagor, on demand.

(f) In the event of the passage after the date of this Mortgage of any law of any governmental authority having jurisdiction, deducting the Indebtedness from the value of the Premises for the purpose of taxation, affecting any lien thereon or changing in any way the laws of the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes, so as to adversely affect this Mortgage, Mortgagor shall promptly pay to Mortgagee, on demand, all taxes, costs and charges for which Mortgagee is or may be liable as a result thereof, provided said payment shall not be prohibited by law or render the Note usurious, in which event Mortgagee may declare the Indebtedness to be immediately due and payable.

(g) Mortgagor acknowledges that it has received a true copy of this Mortgage.

(h) For the purposes of this Mortgage, all defined terms and personal pronouns contained herein shall be construed, whenever the context of this Mortgage so requires, so that the singular shall be construed as the plural and vice versa and so that the masculine, feminine or neuter gender shall be construed to include all other genders.

(i) No provision of this Mortgage shall be construed against or interpreted to the disadvantage of Mortgagor or Mortgagee by any court or other governmental or judicial authority by reason of such party or such party's counsel having or being deemed to have drafted, prepared, structured or dictated such provision.

(j) Whenever any payment to be made hereunder or under the Note or any other Loan Document shall be stated to be due on a Saturday, Sunday or a public holiday under the laws of the State of Alabama, such payment may be made on the next succeeding business day, and such extension of time shall in such case be included in the computation of payment of interest hereunder or under the Note or such other Loan Document.

(k) Upon receipt of evidence reasonably satisfactory to Mortgagor of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Mortgagor or, in the case of any such mutilation, upon surrender and cancellation of the Note, Mortgagor shall execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage and the other Loan Documents to the Note shall be deemed to refer to such replacement Note.

(l) Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage, the Note and the other Loan Documents.

(m) Whenever this Mortgage, the Note or any other Loan Document requires the consent, determination, election, approval, waiver, acceptance, satisfaction or expression of opinion of, or the taking of any discretionary act by, Mortgagee [all of the foregoing being referred to as "Consent" in this subsection 3.08(m)], the right, power, privilege and option of Mortgagee to withhold or grant its Consent shall not be exhausted by the exercise thereof on one or more occasions, but shall be a continuing right, power, privilege and option of Mortgagee with respect to any such matters.

Section 3.09. Promotional Material. Mortgagor authorizes Mortgagee to issue press releases, advertisements and other promotional materials in connection with Mortgagee's own business promotional and marketing activities, describing the loan referred to in this Mortgage and the matters giving rise to such loan.

Section 3.10. Legal Construction. The enforcement of this Mortgage shall be governed, construed and interpreted by the laws of the State of Alabama. Nothing in this Mortgage, the Note or in any other agreement between Mortgagor and Mortgagee shall require Mortgagor to pay, or Mortgagee to accept, interest in an amount which would subject Mortgagee to any penalty under applicable law. In the event that the payment of any interest due hereunder or under the Note or any such other agreement would subject Mortgagee to any penalty under applicable law, then automatically the obligations of Mortgagor to make such payment shall be reduced to the highest rate authorized under applicable law.

Section 3.11. Waiver of Jury Trial. To the extent permitted by law, Mortgagor and Mortgagee, on behalf of themselves and their respective successors and assigns, waive all right to trial by jury in any action or proceeding to enforce or defend any rights or remedies under the Note, this Mortgage or under any of the other Loan Documents or relating thereto.

Section 3.12. No Partnership or Joint Venture. Nothing contained herein or in the Note or any other Loan Documents, nor the acts of the parties hereto, shall be construed to create a partnership or joint venture between Mortgagor and Mortgagee. The relationship between Mortgagor and Mortgagee is the relationship of "debtor" and "creditor".

Section 3.13. Exculpation. This Mortgage is subject to the provisions of the Note limiting the personal liability of the partners of Mortgagor and providing that no deficiency or other money judgment shall be taken or entered against such partners (subject to certain exceptions therein described), all as set forth in the Note, which provisions are made a part hereof as though set forth at length herein.

Section 3.14. Prior Mortgage. As used herein, the term "Prior Mortgage" shall mean that certain Mortgage and Security Agreement dated as of March 1, 1994 given by Mortgagor to the Alabama Housing Finance Authority and recorded on or about the date hereof. With regard to the Prior Mortgage:

(a) The occurrence of any default and the failure to cure such default within any applicable grace, notice and/or cure period afforded, if any under the Prior Mortgage or under the note secured thereby shall, at the option of Mortgagee, likewise constitute an Event of Default under this Mortgage. In the event the Prior Mortgage is hereafter foreclosed, Mortgagor hereby

assigns to Mortgagee any proceeds from the foreclosure sale (or the transfer in lieu thereof) in excess of the amount necessary to pay off the indebtedness then validly secured by the Prior Mortgage thus foreclosed, which excess proceeds shall be applied by Mortgagee to reduce the Indebtedness secured by this Mortgage in whatever order Mortgagee shall determine.

(b) In addition to all other rights and remedies provided hereunder or by law to Mortgagee, and not in substitution therefor, Mortgagee may, but shall not be obligated to, take any action or advance any funds deemed by Mortgagee to be necessary or desirable to prevent, cure or undertake to cure any default by Mortgagor under the Prior Mortgage or to protect the priority of the lien of this Mortgage, and any funds expended or expenses incurred by Mortgagee in so doing shall be immediately due and payable by Mortgagor, shall bear interest at the Default Rate (as defined in the Note) per annum and shall be secured by the lien of this Mortgage as part of the Indebtedness. Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of any funds thus advanced by Mortgagee.

(c) In addition to all other rights or remedies provided hereunder or by law to Mortgagee, but not in substitution therefor, Mortgagee may, but shall not be obligated to, prepay, in whole or in part, the indebtedness secured by the Prior Mortgage or purchase and obtain an assignment of the Prior Mortgage in the event of any default under the Prior Mortgage or under this Mortgage. In any such event the amounts thus expended by Mortgagee (including the amount of prepayment premium or penalty) shall be added to the Indebtedness secured hereby, at the option of Mortgagee shall be immediately due and payable by Mortgagor, and shall accrue interest at the Default Rate per annum until paid.

Section 3.15. Non-Merger. There shall be no merger of the fee estate conveyed hereby with the estate, lien or security title created by any deed to secure debt, mortgage, deed of trust or other real property security instrument encumbering the Secured Property by reason of the fact that the same person or entity may own or hold (a) the estate, lien or security title created by any such real property security instrument and (b) the fee estate in the property hereby conveyed or any interest in such fee estate; and no such merger shall occur until Mortgagee shall execute a written statement or instrument effecting such merger and shall duly record the same.

Section 3.16. Inconsistencies. In the event of any inconsistencies of the provisions of this Mortgage and any provision of the Prior Mortgage, the provisions of the Prior Mortgage shall control.

Section 3.17. Uniform Commercial Code. This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Premises. The goods are described by item or type in Section 1.23 and pages 2-4. The Mortgagor is the debtor, and the Mortgagee is the secured party. The names of the debtor (Mortgagor) and the secured party (Mortgagee) are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtor (Mortgagor) as a fixture filing. The mailing address of the Mortgagee set out on page 1 is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out on page 1 is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section and in Section 1.23 and pages 2-4. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Mortgagor is a record owner of the real estate.

[EXECUTION ON NEXT PAGE]

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered under seal as of the day and year first above written.

MORTGAGOR:

FPI BIRMINGHAM, LTD., an
Alabama limited partnership

BY:

Avron B. Fogelman (SEAL)
Avron B. Fogelman,
General Partner

BY: Fogelman Properties, Inc., a
Tennessee corporation, General
Partner

By:

Avron B. Fogelman
Avron B. Fogelman,
President

[CORPORATE SEAL]

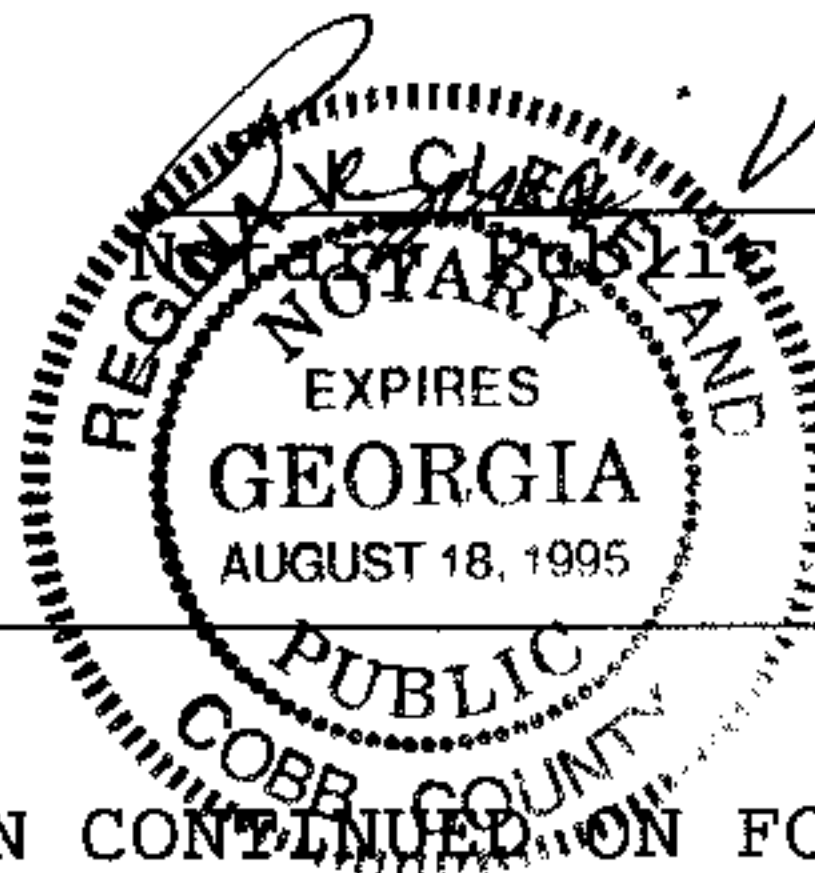
STATE OF GEORGIA
COUNTY OF FULTON

I, the undersigned, Notary Public in and for said county, in said state, hereby certify that AVRON B. FOGELMAN whose name as general partner of FPI Birmingham, Ltd., an Alabama limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he as such general partner, and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 22nd day of March, 1994.

AFFIX SEAL

My Commission expires:

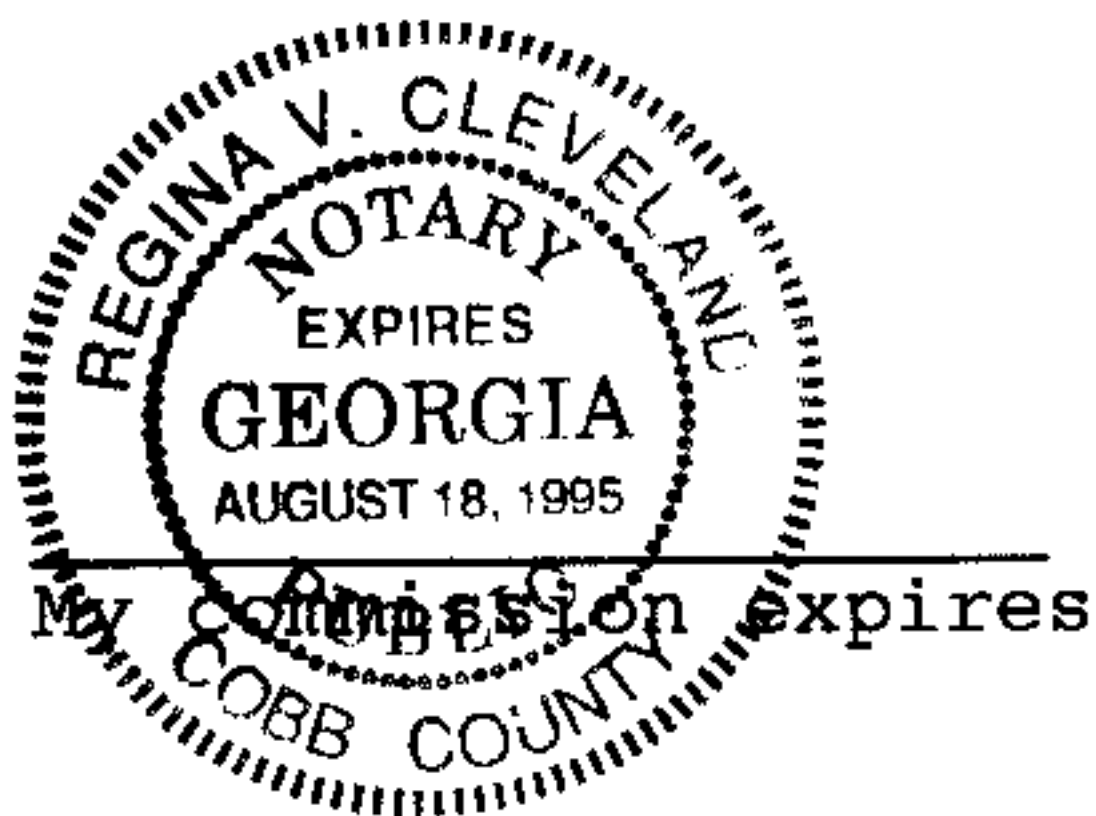


[EXECUTION CONTINUED ON FOLLOWING PAGE]

STATE OF GEORGIA
COUNTY OF FULTON

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Avron B. Fogelman, whose name as President of Fogelman Properties, Inc., a Tennessee corporation, as general partner of FPI Birmingham, Ltd., a limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as general partner of the said limited partnership.

Given under my hand and official seal this 2nd day of March, 1994.



Regina V. Cleveland
Notary Public
[SEAL]

This Instrument Prepared By:

Susan L. Bassett, Esq.
King & Spalding
191 Peachtree Street
Atlanta, Georgia 30303

EXHIBIT A

Hunter's Pointe Legal

Said land being the same land delineated on the survey prepared by Barton F. Carr, Registered Professional Land Surveyor, dated as last revised March 11, 1994, Project No. 93534-3, as follows:

A parcel of land situated in the Northeast quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commencing at the Southeast corner of said quarter section run in a Westerly direction along the South line of said quarter section for a distance of 311.91 feet to a point on the West right of way line of a public county road known as Cahaba Beach Road, said point being the Point of Beginning of the parcel herein described; from the point of beginning thus obtained run Westerly along said South line of said quarter section for a distance of 1009.39 feet to the Southwest corner of the Southeast quarter of the Northwest quarter of said section; thence turn an angle to the right of 87 degrees 52 minutes 43 seconds and run in a Northerly direction along the West line of the East half of the Northeast quarter of said Section 36 for a distance of 2687.32 feet to the Northwest corner of said East half of the Northeast quarter section; thence turn an angle to the right of 92 degrees 09 minutes 31 seconds and run in an Easterly direction along the North line of said section for a distance of 1314.78 feet to the Northeast corner of said section; thence turn an angle to the right of 87 degrees 42 minutes 06 seconds and run in a Southerly direction along the East line of said section for a distance of 2128.72 feet to a point on the West right of way line of said Cahaba Beach Road, said point lying in a curve to the left, said curve having a radius of 756.37 feet, a central angle of 15 degrees 33 minutes 20 seconds and a chord of 204.72 feet which forms an interior angle of 145 degrees 24 minutes 26 seconds with the East line of said section; thence run in a Southwesterly direction along the arc of said curve in said right of way for a distance of 205.35 feet to the end of said curve; thence run Southwesterly along said right of way and tangent to the last curve for a distance of 327.30 feet to the beginning of a curve to the right in said right of way; said curve having a central angle of 5 degrees 01 minutes 58 seconds and a radius of 1111.0 feet; thence run in a Southwesterly direction along the arc of said curve for a distance of 97.58 feet to the Point of Beginning. Said parcel contains 79.118 Acres (3,446,380.08 square feet), more or less.

EXHIBIT "B"

(Permitted Title Exceptions - Hunter's Pointe)

1. Taxes due and payable October 1, 1994.
2. Right-of-way granted Shelby County recorded in Volume 95, Page 525.
3. Right-of-way granted Alabama Power Company recorded in Volume 126, Page 188; Volume 185, Page 120; Book 105, Page 361; Book 167, Page 335.
4. Regulatory Agreement and Declaration of Restrictive Covenants as recorded in Book 54, Page 278, as amended in Book 164, Page 331.
5. Restrictions appearing of record in Book 54, Page 199.
6. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto as recorded in Book 41, Page 83.
7. Rights, if any, of the property owners abutting the Insured property in and to the waters of Lake Dixie, and in and to the bed thereof; also boating and fishing rights of property owners abutting said lake or the stream of water leading thereto or therefrom.
8. Mortgage and Security Agreement given by FPI Birmingham, Ltd. to Alabama Housing Finance Authority, as assigned to First Alabama Bank, dated as of March 1, 1994, to be recorded as of the date hereof.
9. Regulatory Agreement and Declaration of Restrictive Covenants among FPI Birmingham, Ltd., Alabama Housing Finance Authority and First Alabama Bank, dated as of March 1, 1994, to be recorded as of the date hereof.

Inst # 1994-09696

03/24/1994-09696
03:08 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
047 MCD 2946.20