

**SECOND MORTGAGE AND SECURITY AGREEMENT**

THIS SECOND MORTGAGE is made and entered into this 7<sup>th</sup> day of July, 1994, by and between CHRISTI H. READ and ROGER C. READ (collectively, the "Mortgagor") and PETE M. HANNA, AS TRUSTEE OF THE CHRISTI HANNA READ TRUST DATED SEPTEMBER 18, 1991 (the "Mortgagee").

**R E C I T A L S:**

A. Mortgagee has previously loaned sums to Mortgagor to pay for improvements to certain real property owned by Mortgagor comprising Mortgagor's principal residence. Such loan is evidenced by a Promissory Note of even date herewith in the principal amount of One Hundred Thousand Dollars (\$100,000.00) which has been executed by Mortgagor in favor of Mortgagee (the "Note").

B. As security for Mortgagor's repayment of the Note and as inducement to Mortgagee to make the loan evidenced thereby, Mortgagor hereby agrees to execute in favor of Mortgagee this Second Mortgage and Security Agreement on Mortgagor's residence, subject and subordinate only to a prior mortgage described herein.

NOW, THEREFORE, the undersigned Mortgagor, in consideration of Mortgagee's loan to Mortgagor evidenced by the Note, and to secure the prompt payment of the following:

- (a) the Note, and all renewals thereto and amendments, replacements or modifications thereof;
- (b) all future advances made by Mortgagee for taxes, levies, insurance, and repairs to or maintenance of the "Mortgaged Property" (as hereinafter defined); and
- (c) all other present or future liabilities or indebtedness of Mortgagor to Mortgagee, either direct or indirect, however incurred, together with interest on all of the foregoing;

and further, to secure the performance of the covenants, conditions and agreements hereinafter set forth, Mortgagor does hereby GRANT, BARGAIN, SELL and CONVEY unto the Mortgagee, its successors and assigns, the following described property and interests in property and does hereby grant unto the Mortgagee a security interest in said property and interests in property (which, together with any additional property or interests in property hereafter acquired by the Mortgagor and subject to the lien of this Second Mortgage and Security Agreement, or intended to be so, as the same may from time to time be constituted, is hereinafter referred to as the "Mortgaged Property"):

- A. The real estate located at 4514 Old Tavern Road, Birmingham, Alabama, which is more particularly described on Exhibit A attached hereto and incorporated by reference herein

*Berkowitz*

07/28/1994-23700  
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SHELBY COUNTY JUDGE OF PROBATE  
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(the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements");

B. All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements;

C. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate or the Improvements with respect to which the Mortgagor is the lessor, any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate or the Improvements (all such leases, subleases, agreements and tenancies heretofore mentioned are hereinafter collectively referred to as the "Leases");

(ii) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases;

(iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate or any of the Improvements, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or the Improvements, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate or any of the Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no "Event of Default" (as defined in Article II hereof) has occurred, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof); and

(iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the Mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment;

D. All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, furnaces, tanks, generators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, hot water heaters, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements; and

E. All other personal property of the Mortgagor, now or hereafter acquired;

SUBJECT TO that certain Mortgage executed on \_\_\_\_\_ by the Mortgagor in favor of AmSouth Bank, N.A. and recorded in Real Volume \_\_\_\_\_, Page \_\_\_\_\_, in the Office of the Judge of Probate, Shelby County, Alabama (the "Prior Mortgage");

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

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

#### ARTICLE 1

#### COVENANTS OF MORTGAGOR

1.01. Warranty of Title: The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the Real Estate, subject to the Prior Mortgage, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges and encumbrances whatsoever, except as reflected herein.

1.02. Performance of Note and Mortgage: The Mortgagor shall perform, observe and comply with all provisions hereof and of the Note, and shall duly and punctually (a) pay to the Mortgagee the sum of money expressed in the Note, with interest thereon, and (b) pay all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage and the Prior Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

1.03. Covenants to Pay Taxes, Etc.: The Mortgagor, shall pay and discharge, from time to time when the same shall become due, all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, all charges for public utilities, and all other public charges whether of a like or different nature, ordinary or extraordinary, foreseen or unforeseen, imposed upon or assessed against it or the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof.

1.04. Insurance:

(a) The Mortgagor shall at all times keep the Mortgaged Property insured, for the mutual benefit of the Mortgagee and the Mortgagor, as their respective interests may appear, with insurance against loss or damage by fire and other casualty with extended coverage and vandalism, malicious mischief and flood insurance covering the Mortgaged Property, together with all replacements thereof, additions and improvements thereto, and all fixtures therein, in an amount sufficient to cover all indebtedness to Mortgagee (including, without limitation, the debt evidenced by the Note) and the indebtedness secured by the Prior Mortgage, which amount, in any event, shall not be less than the full insurable value thereof. Subject to the rights of the holder of the Prior Mortgage (the "Prior Mortgagee"), any amounts payable on account of a loss, shall be payable to the Mortgagee.

(b) Such insurance shall be evidenced by a valid and enforceable policy in form and substance, and issued by and distributed among insurers of recognized responsibility, in all respects reasonably satisfactory to the Mortgagee. All such policies shall be delivered to the Mortgagee concurrently with the execution and delivery hereof and, thereafter, all renewal or replacement policies shall be so delivered to the Mortgagee not less than ten (10) days prior to the expiration date of the policy to be renewed or replaced, accompanied, if requested by the Mortgagee, by evidence satisfactory to the Mortgagee that all premiums payable with respect to such policies have been paid; and such policies shall contain (i) no endorsement permitting cancellation for

default in payment of a loan whereby the premium has been financed and (ii) a provision for fifteen (15) days notice to Mortgagee before cancellation. The Mortgagee, in its sole discretion, may accept duplicate original policies. All such policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Mortgagee.

(c) If any portion of the Mortgaged Property or any improvements, fixtures or equipment thereof, thereon or therein or appurtenant thereto are damaged or destroyed by fire or other casualty, Mortgagor shall forthwith give notice thereof to Mortgagee, and shall make prompt proof of loss to the applicable insurance companies. Subject to the rights of the Prior Mortgagee, all insurance proceeds shall be made available to Mortgagee for the purpose of paying for the cost of restoration and repair of the damage. Any excess over the cost of restoration shall be applied to the indebtedness represented by the Note.

1.05. Condemnation: In the event that the Mortgaged Property, or any part thereof, is taken under the power of eminent domain or by condemnation, or sold at private sale in lieu thereof, the Mortgagee, its successors and assigns, shall as a matter of right be entitled to the entire proceeds of the award which is hereby assigned to the Mortgagee, its successors and assigns. In the event that (i) there is a total taking of the Mortgaged Property; (ii) twenty-five percent (25%) or more of the buildings on the Mortgaged Property shall be taken; or (iii) all reasonable means of egress to and from the Mortgaged Property are permanently eliminated by reason of a taking, then except as hereinafter provided, the proceeds of the awards shall be applied to the payment of the indebtedness secured hereby; and if such proceeds shall exceed the amount required under the terms and provisions of the Note and this Mortgage to release the Mortgaged Property, then the excess shall be paid to the Mortgagor. In the event of a partial taking, provided that no "Event of Default" (as defined in Article II hereof) then exists hereunder, the award shall be used first to restore the damaged building or buildings in accordance with plans and specifications to be submitted by Mortgagor and approved by the Mortgagee (which approval shall not be unreasonably withheld or delayed), provided that in the reasonable judgment of the Mortgagee such restoration is practicable, and provided further, that such award is sufficient to cover the cost of such restoration. If the amount of the award shall exceed the cost of such restoration, the surplus shall be applied upon the indebtedness secured hereby to the payment last falling due under the Note secured hereby. If any Event of Default shall have occurred hereunder at the time of the taking by eminent domain or by condemnation, the entire award shall be applied to the indebtedness secured hereby or to restoration, as the Mortgagee may elect in its sole discretion. Mortgagor shall be permitted to negotiate a settlement with the condemning authority in connection with the amount of the award to be paid by reason of the taking by

power of eminent domain or by condemnation of the Mortgaged Property or any part thereof, provided, however, that no agreement as to the amount of any such award shall become final or binding upon the Mortgagee until consent thereto in writing by the Mortgagee, provided further, that Mortgagee shall not unreasonably withhold or delay such consent, and provided that any award, whether paid as a result of a negotiated settlement or judgment, shall be paid to the Mortgagee; and the Mortgagee is hereby appointed attorney-in-fact for this purpose and as such is duly authorized and empowered to accept receipt for, discharge and satisfy any such award and judgment, whether joint or several, on behalf of Mortgagor, its successors and assigns, which said receipt, discharge and satisfaction shall be as legally effective and binding as if given directly to Mortgagor, or its successors in interest.

1.06. Care of the Property: The Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire, or other hazard to the Mortgaged Property or any part thereof; shall not permit nor perform any act which would in any way impair the value of the Mortgaged Property; and shall not demolish any building or improvement located on the Real Estate without the prior written consent of Mortgagee.

1.07. Inspection: The Mortgagee or its duly authorized representative is hereby authorized to enter upon and inspect the Mortgaged Property at any reasonable time.

1.08. Compliance: The Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

1.09. Mortgagee's Cure of Mortgagor's Defaults: If the Mortgagor shall default in (a) the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, (b) the payment of any utility charge, whether public or private, (c) the payment of any insurance premium, (d) the procurement of insurance coverage and the delivery of the insurance policies required hereunder, or (e) the performance or observance of any other covenant, condition or term of this Mortgage, and the period applicable thereto within which Mortgagor may correct the same has expired (provided that in the event of an emergency or where in Mortgagee's reasonable judgment its rights or security hereunder would be impaired by delay, Mortgagee may act without notice or delay of any kind), then the Mortgagee, at its option, may perform or observe the same, and all payments made or incurred by the Mortgagee, with interest thereon at the rate provided in the Note, shall be added to the indebtedness secured by this Mortgage and shall be immediately due and payable by Mortgagor to Mortgagee.

The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereto becoming liable to the Mortgagor, or any person in possession holding under the Mortgagor.

1.10. Assignment of Rents: The Mortgagor hereby assigns unto the Mortgagee, its successors and assigns, the rents, if any, accrued and to accrue from all tenants in occupancy of the Mortgaged Property, or any part thereof, during the lifetime of this Mortgage, it being understood that as long as there is no default in the performance or observance of any of the covenants or agreements herein contained, Mortgagor shall have the privilege of collecting and receiving all rents accruing under leases or contracts of tenancy for the Mortgaged Property, or any part thereof.

1.11. Security Agreement: This Second Mortgage and Security Agreement is also intended to constitute a security agreement within the meaning of the Uniform Commercial Code as in effect in the State of Alabama, with respect to all those parts of the Mortgaged Property which constitute personal property,

1.12. Liens: Mortgagor will not permit any liens, encumbrances, mechanics', laborer's, statutory or other liens and charges upon the Mortgaged Property, and shall pay and promptly discharge, at Mortgagor's cost and expense, all such liens, encumbrances and charges upon the Mortgaged Property or any part thereof or interest therein. Mortgagor shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided Mortgagor shall first deposit acceptable security with the court of competent jurisdiction sufficient to eliminate the lien as a lien upon the Mortgaged Property. If Mortgagor shall fail to transfer the lien to a bond or otherwise discharge any such lien, encumbrance or charge, then in addition to any other right or remedy of Mortgagee, Mortgagee may, but is not obligated to, discharge same either by paying the amount claimed to be due or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law.

1.13. Hazardous Waste: Mortgagor expressly represents to Mortgagee that the Mortgaged Property or any part thereof has not in the past been used, is not now being used, nor will in the future be used for handling, storage, transportation, or disposal of hazardous substances or materials or toxic materials or petroleum products. Mortgagor shall not use, generate, manufacture, store or dispose of, on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any flammable explosives, radioactive materials, including any substances defined or included in the definition of "hazardous substances, hazardous waste, hazardous materials, and toxic

substances" under any applicable federal or state laws or regulations in effect during the term of this Mortgage (collectively, the "Hazardous Materials"). The Mortgagor covenants that Mortgagor is in compliance with and maintains compliance with all the provisions of the Federal Water and Pollution Control Act, Comprehensive Environmental Response, Compensation and Liability ("Superfund") Act of 1980, and Solid Waste Disposal Act, Florida Statutes Chapter 376, and other similar federal, state and local statutory schemes imposing liability on Mortgagor.

Mortgagor hereby agrees to indemnify Mortgagee and hold Mortgagee harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including but not limited to attorney's fees, paralegal charges and expenses), arising directly or indirectly, whole or in part, out of (a) the presence on or under the Mortgaged Property of any Hazardous Materials or releases or discharges of Hazardous Materials on, under or from the Mortgaged Property, (b) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to or during the term of the Mortgage, and whether by Mortgagor or any predecessor in title or any employees, agents, contractors or subcontractors of Mortgagor or any predecessor in title, or third persons at any time occupying or present on the Mortgaged Property in connection with the treatment, decontamination, handling, removal, storage, clean-up, transport or disposal of any Hazardous Materials at any time located or present on or under the Mortgaged Property; and (c) any breach of the covenants contained in this Section 1.13. The foregoing indemnity shall further apply to any residual contamination on or under the Mortgaged Property or affecting any natural resources, any contamination of any property or natural resources arising in connection with the generation, use, handling, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any such activities were or will be undertaken in accordance with applicable laws, regulations, codes and ordinances. The obligation of Mortgagor to indemnify and hold harmless under this Section 1.13 shall survive release of the lien of this Mortgage or any foreclosure of this Mortgage or any transfer of the Mortgaged Property by deed in lieu of foreclosure.

1.14. Covenant with Respect to Prior Mortgage: This is a second mortgage, which as of the date hereof is subject and subordinate only to the Prior Mortgage, and subsequent to the date hereof shall be subject and subordinate only to such Prior Mortgage or to any other mortgage or security interest issued to the Prior Mortgagee or to any other secured lender, as a successor to the Prior Mortgagee through assignment or otherwise, in connection with all presently existing debt of the Mortgagor to the Prior Mortgagee and any renewals, extensions, substitutions, refundings, refinancings, replacements or additions to such indebtedness. The

Mortgagor shall perform, observe and comply with all provisions of the Prior Mortgage and the note which such Mortgage secures (the "Prior Note"). If any default occurs in the performance, observance or compliance with any provision of the Prior Mortgage, or the Prior Note, such default shall constitute an "Event of Default" hereunder, as such term is defined in Section 2.01, and in such event, the entire balance of the Note shall at once become due and payable without notice at the option of Mortgagee. The Mortgagor shall, immediately upon receiving any knowledge or notice of any default under the Prior Mortgage, give to the Mortgagee (a) written notice thereof, and (b) immediately upon receipt thereof, a true copy of each and every notice, summons, legal process, or other communication relating in any way to the Prior Mortgage or the performance of enforcement thereof, or to any default thereunder. It is specifically agreed that in the event default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of said Prior Mortgage or Prior Note, the Mortgagee shall have the right, without notice to anyone, to cure such default by paying whatever amounts may be due under the terms of the Prior Note or Prior Mortgage so as to put the same in good standing, and any and all payment, including reasonable attorney's fees, shall be added to the indebtedness secured by this Mortgage, and the same, with interest thereon, shall be immediately due and payable by Mortgagor to Mortgagee, and this Mortgage shall be subject to foreclosure in all respects as provided by law and by the provisions hereof.

## ARTICLE II

### EVENTS OF DEFAULT; REMEDIES OF MORTGAGEE

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

- (a) If the Mortgagor fails to pay when due any installments of principal or interest pursuant to the provisions of the Note;
- (b) If the Mortgagor breaches, violates or fails to comply with or observe any warranty, covenant, condition, agreement or other provision contained in this Mortgage or in the Note, and fails to cure such breach, violation or failure to comply within fifteen (15) days after Mortgagee's written notice thereof;
- (c) The filing by the Mortgagor of a voluntary petition in bankruptcy, or the Mortgagor's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or the Mortgagor's seeking, consenting

to or acquiescing in the appointment of any trustee, receiver or liquidator of all or any substantial part of the Mortgaged Property or any or all of the rents, revenues, issues, earnings, profits or income thereof, if any; or the making of any general assignment for the benefit of its creditors or the admission in writing of Mortgagor's inability to pay its debts generally as they become due;

(d) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof; or the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Mortgagor, which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive);

(e) The occurrence of any act or condition whereby the interest of Mortgagee in the Mortgaged Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon (including, but not limited to, foreclosure or other enforcement of the Prior Mortgage); and

(f) The occurrence of a default under the Prior Note or Prior Mortgage pursuant to Section 1.14 hereof.

2.02. Acceleration of Maturity: If any Event of Default shall have occurred, then the entire principal amount of the indebtedness under the Note, with interest accrued thereon shall, at the option of the Mortgagee, become due and payable without further notice to the Mortgagor.

2.03. Right of Mortgagee to Enter and Take Possession: If an Event of Default shall have occurred, the Mortgagor, upon demand by the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property; and if and to the extent permitted by law, the Mortgagee may enter and take possession of all the Mortgaged Property, and may exclude the Mortgagor and his agents and employees wholly therefrom.

2.04. Mortgagee's Power of Enforcement: If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy: (a) to enforce payment of

the Note or the performance of any term thereof or any other right thereunder; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as the Mortgagee shall deem most effectual for such purposes. The Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Mortgagee may determine.

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

2.06. Application of Foreclosure Proceeds: The proceeds of any foreclosure sale pursuant to Section 2.05 of this Article II shall be applied as follows:

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

(b) Second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the Note with interest to date of sale;

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

2.07. Expenses: Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees, incurred or paid by Mortgagee in any action, proceeding or dispute in which Mortgagee is made a party or appears as a party

plaintiff or party defendant because of the failure of the Mortgagor to promptly and fully perform and comply with all conditions and covenants of the Prior Mortgage, this Mortgage or the Note secured hereby, including but not limited to, the foreclosure of the Prior Mortgage or this Mortgage, condemnation of all or part of the Mortgaged Property, or any action to protect the security thereof. All costs, charges and expenses so incurred by Mortgagee shall become immediately due and payable whether or not there be notice, demand, attempt to collect or suit pending together with interest thereon at the same rate as provided in the Note from the date incurred until paid in full by Mortgagor. The amounts so paid or incurred by Mortgagee shall be secured by the lien of this Mortgage.

2.08. Delay or Omission - No Waiver: No delay or omission of the Mortgagee to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

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

### ARTICLE III

#### MISCELLANEOUS

3.01. Condition: This Mortgage is given upon the condition that if the Mortgagor shall pay in full or cause to be paid to the Mortgagee the principal and interest payable in respect of the Note, at the times and in the manner stipulated therein and herein, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, and shall have no further force or effect.

3.02. Successors and Assigns Included in Parties: Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, devisees, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, devisees, administrators, executors, successors and assigns, whether so expressed or not.

3.03. Captions: The captions of the articles, sections, subparagraphs and subdivisions of this Mortgage are for convenience

of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

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

3.05 Waiver: The Mortgagee's acceptance of partial or delinquent payments or the failure of the Mortgagee to exercise any right shall not be deemed to waive any obligation of the Mortgagor or right of the Mortgagee or to modify this Mortgage or to waive any other similar default.

3.06 Time of Essence: Time is of the essence.

3.07 Construction: The laws of the State of Alabama shall govern the construction of this Mortgage and the rights and duties of the parties hereto.

3.08 Notice: Any notice required or permitted to be given, made or sent hereunder shall be in writing, signed by the party giving and making the same, and shall be deemed to have been duly given when personally delivered or deposited in the United States mail, by registered or certified mail, return receipt requested, postage prepaid, and addressed to the respective party to whom such notice relates at the following addresses:

IF TO MORTGAGOR: Roger and Christi Read  
4514 Old Tavern Road  
Birmingham, Alabama 35242

with a copy to: Maxwell H. Pulliam, Esq.  
Redden, Mills & Clark  
940 First Alabama Bank Building  
417 North 20th Street  
Birmingham, Alabama 35203

IF TO MORTGAGEE: Mr. Pete M. Hanna, Trustee  
The Christi Hanna Read Trust  
Dated September 18, 1991  
3812 Commerce Avenue  
Fairfield, Alabama 35064

with a copy to: Harold B. Kushner, Esq.  
Berkowitz, Lefkovits, Isom & Kushner,  
A Professional Corporation  
1600 SouthTrust Tower  
Birmingham, Alabama 35203

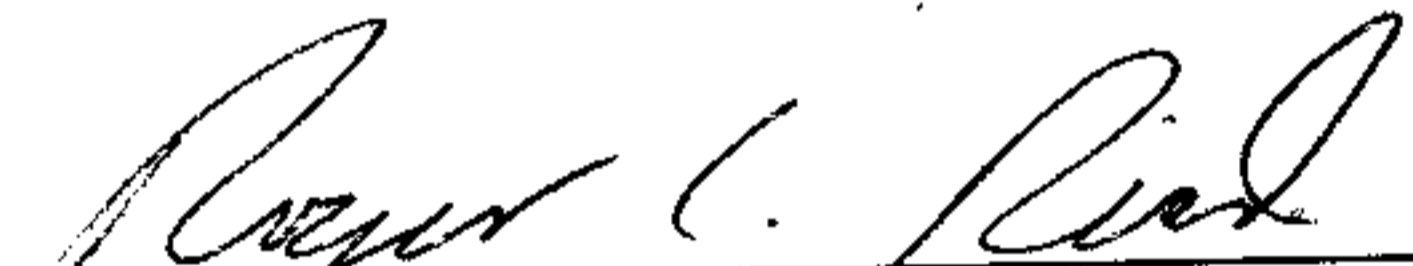
or at such other addresses as the parties shall designate by written notice given in the manner herein provided.

3.09 Entire Agreement: This Mortgage contains the entire agreement between the Mortgagee and the Mortgagor with respect to the Mortgaged Property. It may not be changed or terminated orally, but may only be changed or terminated by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, discharge or termination is sought.

IN WITNESS WHEREOF, the undersigned have executed this Second Mortgage and Security Agreement on the date first above written.

**MORTGAGOR:**

  
CHRISTI H. READ

  
ROGER C. READ

STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Christi H. Read, whose name is signed to the foregoing Second Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Second Mortgage and Security Agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand this 7<sup>th</sup> day of July, 1994.

Mary A. Brakefield  
Notary Public  
My Commission Expires: 11/3/97

STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Roger C. Read, whose name is signed to the foregoing Second Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Second Mortgage and Security Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand this 7<sup>th</sup> day of July, 1994.

Mary A. Brakefield  
Notary Public  
My Commission Expires: 11/3/97

**EXHIBIT A**

Lot 2, according to the Survey of Old Virginia, as recorded in Map Book 7, page 117, in the Probate Office of Shelby County, Alabama.

Inst # 1994-23700

07/28/1994-23700  
04:01 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MCD 197.00