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Inst # 1994-31084

10/12/1994-31084  
03:03 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
030 MCD 83.00

**MORTGAGE**

Dated October 12, 1994

from

**OXMOOR II, INC.**

to

**NIEL C. MORGAN, JR.**

and

**AMSOUTH BANK OF ALABAMA  
as Escrow Agent for  
Charles E. Morgan and Daniel G. Morgan**

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This Mortgage was prepared by Heyward C. Hosch of Walston, Stabler,  
Wells, Anderson & Bains, Financial Center, 505 North 20th Street,  
Suite 500, Birmingham, Alabama 35203

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STATE OF ALABAMA        )

SHELBY COUNTY            )

### MORTGAGE

This MORTGAGE (this "Mortgage") is made and entered into this 12th day of October, 1994 by and among OXMOOR II, INC., a California corporation (the "Mortgagor") and NIEL C. MORGAN, JR., and AMSOUTH BANK OF ALABAMA, as Escrow Agent for CHARLES E. MORGAN and DANIEL G. MORGAN, as mortgagees (collectively the "Mortgagee").

### Recitals

The Mortgagor is, or hereafter shall be, justly indebted to the Mortgagee in the principal sum of One Million Two Hundred Thousand Dollars (\$1,200,000) as evidenced by the following promissory term notes, as the same may be extended, modified, renewed or restated from time to time (collectively the "Note"):

(a) promissory term note in original principal amount of \$400,000 payable to Niel C. Morgan, Jr., and (b) promissory term note in original principal amount of \$800,000 payable to AmSouth Bank of Alabama, as Escrow Agent for Charles E. Morgan and Daniel G. Morgan under Escrow Agreement dated October 10, 1994.

To secure the Note and to induce the Mortgagee to extend credit to the Mortgagor and in satisfaction of the said conditions precedent of the Mortgagee with respect thereto, the Mortgagor has executed and delivered this Mortgage to the Mortgagee.

### Agreement

NOW, THEREFORE, in consideration of the premises, the Mortgagor and Mortgagee hereby covenant and agree as follows:

### ARTICLE 1

#### Definitions and Rules of Construction

##### SECTION 1.01 Rules of Construction.

For the purposes of this mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other



subdivision and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) The term "person" shall include any individual, corporation, partnership, joint venture, association, trust, sole proprietorship, unincorporated organization and any governmental authority.

(f) All recitals set forth in, and all Exhibits to, this mortgage are hereby incorporated in this mortgage by reference.

(g) All obligations of the Mortgagor hereunder shall be performed and satisfied by or on behalf of the Mortgagor at the sole cost and expense of the Mortgagor.

(h) No inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

#### **SECTION 1.02    Definitions.**

As used in this mortgage the following terms shall have the respective meanings attributed to them as follows:

Condemnation Awards shall have the meaning assigned in Granting Clause II.

Environmental Law shall mean and include all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority applicable to the Mortgagor or the Real Estate (including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, et seq.) relating to pollution or protection of human health or the environment, including any relating to Hazardous Substances.

Governmental Authority shall mean any federal, state, county, municipal, or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Hazardous Substances shall mean and include all pollutants, contaminants, toxic or hazardous wastes and other substances (including asbestos, urea formaldehyde, foam insulation and materials containing either petroleum or any of the substances referenced in Section 101(14) of CERCLA), the removal of which is required or the manufacture, use, maintenance and handling of which is regulated, restricted, prohibited or penalized by an Environmental Law, or, even though not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto.

Liens shall have the meaning assigned in Section 4.01.

Mortgagee shall mean collectively Niel C. Morgan, Jr., and AmSouth Bank of Alabama, as Escrow Agent for Charles E. Morgan and Daniel G. Morgan under Escrow Agreement dated October 10, 1994, and the respective heirs, administrators, executors, successors and assigns of said parties.

Mortgagor shall mean Oxmoor II, Inc., a California corporation and the successors and assigns thereof.

Note shall have the meaning assigned in the recitals hereto.

Obligations shall mean the following:

(1) the debt evidenced by the Note, and interest thereon and any and every extension, modification, renewal or restatement thereof, or of any part thereof, and all interest on all such extensions, modifications, renewals or restatements; and

(2) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this mortgage.

Obligor shall have the meaning assigned in Article 6(e).

Permitted Exceptions shall have the meaning assigned in Article 2.

Prohibited Substances shall have the meaning assigned in Section 4.05.

Property shall have the meaning assigned in Article 2.

Real Estate shall have the meaning assigned in Granting Clause

I.

## ARTICLE 2

### Granting Clauses

To secure the Obligations the Mortgagor does hereby grant, bargain, sell, convey, transfer, assign, pledge and set over unto the Mortgagee (and the respective heirs, administrators, executors, successors and assigns thereof), the property and interests in property described in the following Granting Clauses and does hereby grant to the Mortgagee security title to and a continuing security interest in said property and interests in property and all proceeds and products thereof:

#### I.

The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon, and all appurtenances, permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate.

#### II.

All right, title and interest of the Mortgagor in and to that certain Easement dated October 12, 1994 by Charles E. Morgan, Niel C. Morgan, Jr. and Daniel G. Morgan to the Mortgagor, recorded in the office of the Judge of Probate of Shelby County, Alabama (the "Easement"), which Easement covers the real property described on Exhibit C attached hereto and made a part hereof, together with all rights, privileges, powers, and other benefits of the Mortgagor contained in the Easement.

#### III.

Any and all judgments, damages, settlements, compensation, awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain or condemnation, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property (herein collectively the "Condemnation Awards").

#### IV.

Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to the Mortgagee, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the



Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

All of the property and interests in property described in the foregoing Granting Clauses are herein sometimes collectively called the "Property".

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other exceptions, if any, described on Exhibit B hereto ("Permitted Exceptions").

TO HAVE AND TO HOLD the Property unto the Mortgagee, its successors and assigns forever.

### ARTICLE 3

#### Representations and Warranties

##### SECTION 3.01 Warranties of Title.

The Mortgagor covenants with the Mortgagee: (a) that the Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Property and has a good right to sell and convey the Property as aforesaid; (b) that the Property is free of all encumbrances, unless otherwise provided hereinbefore; and (c) that the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons except those claiming under Permitted Exceptions.

##### SECTION 3.02 Maintenance of Lien Priority.

The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.



## ARTICLE 4

### Covenants of Mortgagor

#### **SECTION 4.01    Covenants To Pay Liens.**

The Mortgagor will pay all taxes, assessments, dues, charges, fines, and other impositions or liens imposed or levied on the Property or any interest therein or part thereof, or on the interest created by this mortgage, whether or not any of the same would take priority over this mortgage (hereinafter collectively called "Liens"), and upon default in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may declare an Event of Default hereunder.

#### **SECTION 4.02    Insurance and Use of Proceeds Thereof.**

(a) The Mortgagor will keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by flood (if the Property is located in a flood-prone area), and, to the extent applicable, fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to the Mortgagee) to the Mortgagee, as its interests may appear. Such insurance shall be in an amount at least equal to the full insurable value of the Property unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. Such insurance policy must provide that the insurance provided thereby, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of any Mortgagor, nor by the commencement of any proceedings by or against any Mortgagor in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. The original insurance policy and all replacements therefor, shall be delivered to, and held by, the Mortgagee until the Obligations are paid in full. The original insurance policy and all replacements therefor must provide that they may not be canceled or amended without the insurer's giving at least fifteen days' prior written notice of such cancellation to the Mortgagee.

(b) If the Mortgagor fails to keep the Property insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable

value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit.

(c) All loss proceeds and consideration with respect to any policy of insurance with respect to the Property shall be paid directly to the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Obligations in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Obligations, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor. Any amount of such proceeds in excess of the amount of the Obligations shall be returned to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

#### **SECTION 4.03    Condemnation Awards.**

All Condemnation Awards shall be paid directly to the Mortgagee, and after first applying said awards to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such awards, the Mortgagee may, at its option, apply the balance on the Obligations in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Obligations, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor. Any amount of such Condemnation Awards in excess of the amount of the Obligations shall be returned to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

#### **SECTION 4.04    Covenant Against Waste.**

The Mortgagor agrees to take good care of the Property and not to commit or permit any waste thereon, and at all times to maintain such Property in safe and good repair, working order and condition.

#### **SECTION 4.05    Environmental Compliance**

(a) The Mortgagor shall (1) not, and shall not permit any other person to, bring any Hazardous Substances onto the Real Estate except any such Hazardous Substances that are used in the ordinary course of the contemplated businesses as to be conducted on the Real Estate and that are handled, stored, used and disposed of in accordance with applicable Environmental Laws; (2) if any other Hazardous Substances are brought or found on the Real Estate, immediately remove and properly dispose of the same in accordance with applicable Environmental Laws; (3) cause the Real Estate and the operations conducted thereon (including all operations



conducted thereon by other persons) to comply with all Environmental Laws; (4) permit the Mortgagee from time to time to inspect the Real Estate and observe the operations thereon; (5) undertake any and all preventive, investigatory and remedial action (including emergency response, removal, clean up, containment and other remedial action) that is (A) required by any applicable Environmental Law or (B) necessary to prevent or minimize any property damage (including damage to any of the Real Estate), personal injury, or harm to the environment, or the threat of any such damage or injury, by releases of or exposure to Hazardous Substances in connection with the Real Estate or the operations on the Real Estate; (6) promptly give notice to the Mortgagee in writing if the User should become aware of (A) any spill, release or disposal of any Hazardous Substances, or imminent threat thereof, at the Real Estate, in connection with the operations on the Real Estate, or at any adjacent property that could migrate to, through or under the Real Estate, (B) any violation of Environmental Laws regarding the Real Estate or operations on the Real Estate, and (C) any investigation, claim or threatened claim under any Environmental Law, or any notice of violation under any Environmental Law, involving the User or the Real Estate; and (7) deliver to the Mortgagee, at the Mortgagee's request, copies of any and all documents in the Mortgagor's possession or to which the Mortgagor has access relating to Hazardous Substances or Environmental Laws and the Real Estate, and the operations on the Real Estate, including laboratory analyses, site assessments or studies, environmental audit reports and other environmental studies and reports.

(b) If the Mortgagee at any time reasonably believes that the Mortgagor is not complying with all applicable Environmental Laws or the requirements hereof regarding the same, or that a material spill, release or disposal of Hazardous Substances has occurred on or under the Real Estate, the Mortgagee may require the Mortgagor to furnish to the Mortgagee an environmental audit or site assessment reasonably satisfactory to the Mortgagee with respect to the matters of concern to the Mortgagee. Such audit or assessment shall be performed at the Mortgagor's expense by a qualified consultant approved by the Mortgagee.

(c) The Mortgagor shall defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action, judgments, damages, fines, penalties, and other losses, costs and expense, including reasonable attorneys' fees and costs of investigation and litigation, asserted against or suffered by the Mortgagee that are related to or arise out of or result from the presence of Hazardous Substances now or hereafter on or under or included in the Real Estate, and any clean up or removal of, or other remedial



action with respect to, any Hazardous Substances now or hereafter located on or under or included in the Real Estate, or any part thereof, that may be required by any Environmental Law or Governmental Authority. The provisions of this Section 4.05 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and the foreclosure of this Mortgage with respect to claims and losses asserted against or suffered by the Mortgagee.

**SECTION 4.06 Covenant Against Sale, Lease, Transfer or Encumbrance, of the Property.**

Except as provided in Section 8.11 hereof, if the Property or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagee's prior written consent, or, except as provided in Section 8.11 hereof, if the Property, or any part thereof, or any interest therein, becomes subject to any additional lien, mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagee's prior written consent, the Mortgagee may, at its sole option: (a) declare the Obligations immediately due and payable in full; or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such option to accelerate the Obligations, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Obligations or to protect the security of this mortgage.

**ARTICLE 5**

**Defeasance**

This mortgage is made upon the condition that if the Mortgagor pays the Obligations, as defined in this mortgage and reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of Liens or insurance premiums, and interest thereon, and fulfills all of its other obligations under this mortgage, this conveyance shall be null and void; otherwise this mortgage shall remain in full force and effect.

**ARTICLE 6**

**Events of Default**

The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"):  
(a) the Mortgagor shall fail to pay to the Mortgagee when due any installment or amount of the Obligations; or (b) default in the performance, or breach, of any covenant or warranty in this mortgage (other than a covenant or warranty, a default in the performance or breach of which is elsewhere in this Article specifically described), and the continuance of such default or

breach for a period of 30 days after there has been given, by registered or certified mail, to the Mortgagor by the Mortgagee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder; or (c) any representation or warranty made by the Mortgagor herein shall at any time prove to have been false or incorrect in any material respect as of the time made; or (d) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and the Mortgagor fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to the Mortgagee within 30 days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the county in which the Real Estate is located or such suit is filed in court; or (e) if the Mortgagor or any co-maker, endorser, surety, or guarantor of the Obligations (the Mortgagor and each such co-maker, endorser, surety, or guarantor all hereinafter collectively called the "Obligors" and singularly an "Obligor") shall die or fail to pay such Obligor's debts generally as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise and whether voluntary or involuntary) is filed by or against any Obligor, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; or (f) if any other event of default occurs under the Note; or (g) any law is passed imposing, or authorizing the imposition of, any specific tax upon this mortgage or the Obligations or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Obligations, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this mortgage.

## **ARTICLE 7**

### **Rights and Remedies of Mortgagee upon Default**

#### **SECTION 7.01 Acceleration of Obligations.**

Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this mortgage, the Note, or available at law or equity. The Mortgagor also waives any



and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights and remedies under this mortgage, the Note, or available at law or equity.

**SECTION 7.02     Operation of Property by Mortgagee.**

Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may enter upon and take possession of any or all of the Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Property.

**SECTION 7.03     Judicial Proceedings; Right to Receiver.**

Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

**SECTION 7.04     Foreclosure Sale.**

Upon the occurrence of an Event of Default, or at any time thereafter, 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 Property is taken, after giving twenty-one days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale together with a description of the property to be sold by publication in some newspaper published in the county wherein the Property or any part thereof is located, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, between



the hours of 11:00 A.M. and 4:00 P.M., local time, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. If the Mortgagee, in the exercise of the power of sale herein given, elects to sell the 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 Property not previously sold shall have been sold or all the Obligations secured hereby shall have been paid in full.

#### **SECTION 7.05     Application of Proceeds.**

All payments received by the Mortgagee as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this mortgage, including reasonable attorneys' fees as provided herein and in the Note, (ii) to the payment in full of any of the Obligations then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Obligations not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

#### **SECTION 7.06     Multiple Sales.**

Upon the occurrence of an Event of Default or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this mortgage, but as to such unmatured part of the Obligations this mortgage shall remain in full force and effect as though no sale had been made under the

provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

**SECTION 7.07     Waiver of Appraisement Laws.**

The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (a) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (b) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

**SECTION 7.08     Prerequisites of Sales.**

In case of any sale of the Property as authorized by this mortgage, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**SECTION 7.09     General Provisions Regarding Remedies.**

The exercise by the Mortgagee of any option given under the terms of this mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this mortgage are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this mortgage nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in



writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

#### **SECTION 7.10     Collection Costs.**

The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Obligations, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any Lien on the Property, unless this mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Obligations and shall be secured by this mortgage.

### **ARTICLE 8**

#### **Provisions of General Application**

##### **SECTION 8.01     No Obligations by Mortgagee.**

The Mortgagee shall not by virtue of this mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to the Property (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct.

##### **SECTION 8.02     Construction of Mortgage.**

This mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

##### **SECTION 8.03     Successors and Assigns.**

All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of the Mortgagee's successors and assigns.



**SECTION 8.04     Landlord-Tenant Relationship.**

Any sale of the Property under this mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

**SECTION 8.05     Enforceability.**

If any provision of this mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

**SECTION 8.06     Application of Payments.**

If the lien, assignment or security interest created by this mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Obligations which is not secured or not fully secured by said lien, assignment or security interest created hereby.

**SECTION 8.07     Advances by the Mortgagee.**

If the Mortgagor shall fail to comply with the provisions hereof the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Obligations and shall be secured hereby. The making of any such advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid.

**SECTION 8.08     Release or Extension by the Mortgagee.**

The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to

waive the prompt and full performance of any term, condition or covenant of the Note, this mortgage or any other instrument evidencing or securing the Obligations.

**SECTION 8.09     Partial Payments.**

Acceptance by the Mortgagee of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this mortgage in case of the occurrence of an Event of Default.

**SECTION 8.10     Addresses for Notices**

(a) Any request, demand, authorization, direction, notice, consent, or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, the Mortgagor or the Mortgagee shall be sufficient for every purpose hereunder if in writing and (except as otherwise provided in this Mortgage) either (i) delivered personally to the party or, if such party is not an individual, to an officer, or other legal representative of the party to whom the same is directed, or (ii) mailed by certified mail, postage prepaid and addressed as follows:

(1) if to the Mortgagor:

Oxmoor II, Inc.  
c/o Leonard Panattoni  
3626 Fair Oaks Blvd  
Suite 400  
Sacramento, California 95864

(2) if to the Mortgagee:

c/o Charles E. Morgan  
2430 15th Street East  
Tuscaloosa, AL 35404

The Mortgagor and the Mortgagee may specify a different address for the receipt of such documents by mail by giving notice of the change in address to the other parties identified in this subsection.

(b) Any such notice or other document shall be deemed to be received (i) as of the date delivered, if delivered personally in accordance with subsection (a) of this Section, or (ii) as of 3 days after the date deposited in the mail, if mailed in accordance with subsection (a) of this Section.



**SECTION 8.11    Special Agreements For Release of Property**

(a) The Mortgagee agrees to release from the lien and operation of this Mortgage any portion of the Property which has been subdivided into a separate lot, provided that each of the following requirements and conditions are met:

(1) With respect to any subdivision created after the date hereof, the Mortgagee shall have approved in writing the subdivision plan, including the size and location of all such lots, which approval shall not be unreasonably withheld. The Property remaining subject hereto after any partial release shall have frontage on a public road to be constructed by Mortgagor on the Property and have adequate access thereto and via such road, to Highway 119;

(2) If required by law, the lot has been legally created by a subdivision plat therefor approved by the Mortgagee and any Governmental Authority having jurisdiction and has been recorded in the Office of the Judge of Probate of Shelby County, Alabama;

(3) No Event of Default shall have occurred and be continuing; and

(4) The Mortgagor pays to the Mortgagee a release price in the amount of \$1.55 for each square foot of real property within the boundary lines of the lot to be released.

(b) All funds received by Mortgagee pursuant to the provisions of this Section shall be credited to the principal payments to be made by Mortgagor under and pursuant to the terms of the Note, shall not be deemed to be prepayments of the Note, and shall be applied to the payment of principal of the Note in order of maturity.

(c) Anything herein to the contrary notwithstanding, there shall be no fee or price payable by the Mortgagor for any release of any portion of the Property which is dedicated as a public road or any subordination of the lien of this mortgage in connection with the dedication of any portion of the Property as a public road.



IN WITNESS WHEREOF, Oxmoor II, Inc. has caused this Mortgage to be executed in its name and behalf by officers thereof duly authorized thereunto and, Niel C. Morgan, Jr. has executed this mortgage under seal and AmSouth Bank of Alabama, as Escrow Agent for Charles E. Morgan and Daniel G. Morgan under Escrow Agreement dated October 10, 1994, has caused this Mortgage to be executed in its name and behalf under seal by officers thereof duly authorized thereunto, all as of the date first written above.

OXMOOR II, INC.

By

Linda M. Stanley

Its

President

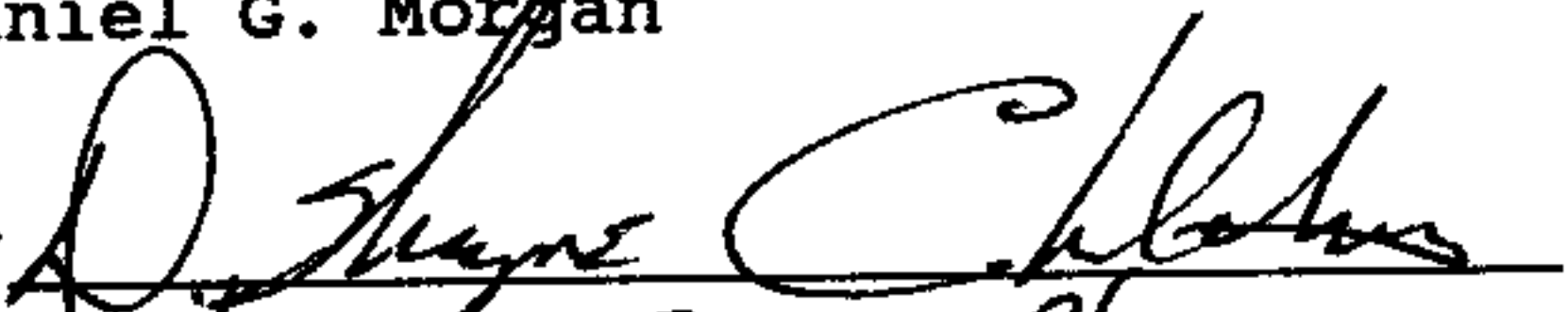
ATTEST:

By

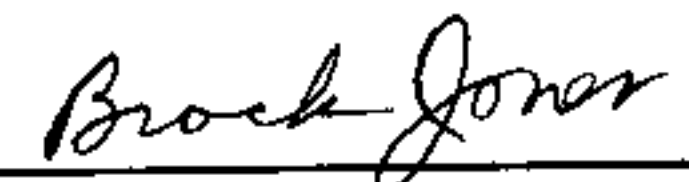
Cheryl Fusselman


Its

AMSOUTH BANK OF ALABAMA  
as Escrow Agent for  
Charles E. Morgan and  
Daniel G. Morgan

By   
Its V. P. & Trust Officer

ATTEST:

By   
Its Assistant Vice President

 (L.S.)  
Niel C. Morgan, Jr.



STATE OF <sup>California</sup> ~~ALABAMA~~ )

Sacramento COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Linda M. Stanley whose name as President of Oxmoor II, Inc., a California corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 10th day of October, 1994.

Cheryl Fusselman  
Notary Public

AFFIX SEAL

My commission expires:

NOV. 11, 1995

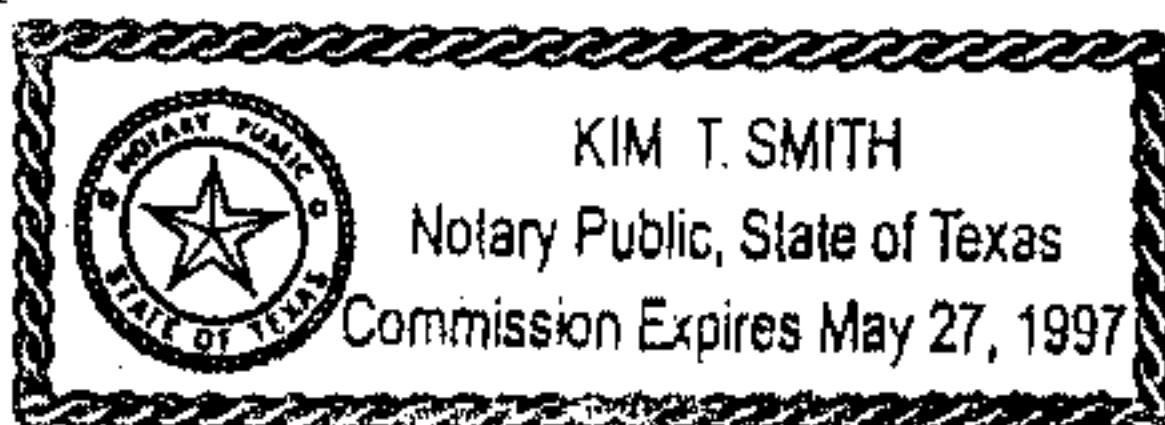


STATE OF Texas )

Harris COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Niel C. Morgan Jr. whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily.

Given under my hand and official seal this the 24th day of October, 1994.



Kim T. Smith  
Notary Public

AFFIX SEAL

My commission expires: May 27, 1997



STATE OF ALABAMA )

TUSCALOOSA COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that D. Wayne Childress, whose name as V.P. & Trust Officer of AmSouth Bank of Alabama, a state banking corporation as Escrow Agent for Charles E. Morgan and Daniel G. Morgan under Escrow Agreement dated October 10, 1994, 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 executed the same voluntarily for and as the act of AmSouth Bank of Alabama acting in its capacity as Escrow Agent for Charles E. Morgan and Daniel G. Morgan as aforesaid.

Given under my hand and official seal this the 11th day of October, 1994.

Ray A. Bell  
Notary Public

AFFIX SEAL

My commission expires: 7-7-97

**EXHIBIT A  
TO  
MORTGAGE**

**[ Legal Description ]**

The Real Estate consists of Parcels 1-A and 1-B and each of the same is described on the following pages.



### PARCEL 1A

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the North line of said 1/4 section for a distance of 301.28 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence turn a deflection angle to the left of  $51^{\circ}49'38''$  and run in a Southwesterly direction a distance of 524.87 feet to a point; thence turn an interior angle of  $195^{\circ}42'53''$  and run to the right in a Southwesterly direction a distance of 15.00 feet to a point; thence turn an interior angle of  $77^{\circ}49'02''$  and run to the left in a Southeasterly direction a distance of 195.60 feet to a point; thence turn an interior angle of  $193^{\circ}53'06''$  and run to the right in a Southeasterly direction a distance of 185.50 feet to a point; thence turn an interior angle of  $183^{\circ}06'00''$  and run to the right in a Southeasterly direction a distance of 201.40 feet to a point; thence turn an interior angle of  $183^{\circ}14'59''$  and run to the right in a Southeasterly direction a distance of 584.59 feet to a point; thence turn an interior angle of  $86^{\circ}27'28''$  and run to the left in a Northeasterly direction a distance of 406.08 feet to a point; thence turn an interior angle of  $91^{\circ}53'48''$  and run to the left in a Northwesterly direction a distance of 60.00 feet to a point; thence turn an interior angle of  $268^{\circ}06'12''$  and run to the right in a Northeasterly direction a distance of 60.04 feet to a point; thence turn an interior angle of  $91^{\circ}53'48''$  and run to the left in a Northwesterly direction a distance of 445.73 feet to a point; thence turn an interior angle of  $268^{\circ}06'12''$  and run to the right in a Northeasterly direction a distance of 517.09 feet to a point; thence turn an interior angle of  $91^{\circ}53'48''$  and run to the left in a Northwesterly direction a distance of 624.14 feet along the Southeast boundary line of Block 1 of Cahaba Valley Park North to a point; thence turn an interior angle of  $119^{\circ}45'59''$  and run to the left along said boundary line of Block 1 in a westerly direction a distance of 571.50 feet to a point; thence turn an interior angle of  $89^{\circ}56'23''$  and run to the left in a Southerly direction a distance of 104.61 feet to the POINT OF BEGINNING. Said Parcel contains 22.6873 acres, more or less.

PARCEL 1B

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the North line of said 1/4 section for a distance of 301.28 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence turn a deflection angle to the right of 90°00'00" and run in a Northeasterly direction a distance of 104.61 feet to a point; thence turn an interior angle of 90°03'37" and run to the left along the Southerly boundary line of Block 1 of Cahaba Valley Park North in a Westerly direction a distance of 548.79 feet to a point; thence turn an interior angle of 86°30'35" and run to the left in a Southerly direction a distance of 105.38 feet to a point on the North line of the Southwest 1/4 of said section; thence turn an interior angle of 93°25'48" and run to the left in an Easterly direction along said 1/4 line a distance of 542.49 feet to the POINT OF BEGINNING. Said parcel contains 1.3140 acres, more or less.



**EXHIBIT B  
TO  
MORTGAGE**

**[ Permitted Exceptions ]**

1. Any lien, or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.
2. Taxes or special assessments which are not shown as existing liens by the public record.
3. Easements, or claims or easements, not shown by the public records.
4. Right-of-way granted Alabama Power Company recorded in Deed Book 101, Page 582; Deed Book 145, Page 378 and Deed Book 154, Page 554.
5. Right-of-way granted the City of Pelham recorded in Book 98, Page 743.
6. Easement granted to Trustees of Homewood Lodge No. 1738 B.P.O. Elks recorded in Book 109, Page 74.
7. Rights and Right of way acquired by State of Alabama under Condemnation Case 19-300.
8. Declaration of easements, covenants and restrictions recorded under Instrument #1994-8120.

**EXHIBIT C  
TO  
MORTGAGE**

[Real Property Covered By Easement]

A Parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West; thence run in a Westerly direction along the North line of said 1/4 section for a distance of 301.28 feet to a point; thence turn a deflection angle to the left of 51°49'38" and run in a Southwesterly direction a distance of 524.87 feet to a point; thence turn a deflection angle to the right of 15°42'53" and run in a Southwesterly direction a distance of 15.00 feet to a point; thence turn a deflection angle to the left of 102°10'58" and run in a Southeasterly direction a distance of 195.60 feet to a point; thence turn a deflection angle to the right of 13°53'06" and run in a Southeasterly direction a distance of 185.50 feet to a point; thence turn a deflection angle to the right of 3°06'00" and run in a Southeasterly direction a distance of 201.40 feet to a point; thence turn a deflection angle to the right of 3°14'59" and run in a Southeasterly direction a distance of 584.59 feet to a point; thence turn a deflection angle to the left of 93°32'32" and run in a Northeasterly direction a distance of 466.12 feet to the a point; thence turn a deflection angle to the left of 91°53'48" and run in a Southeasterly direction a distance of 230.00 feet to the POINT OF BEGINNING; from the point of beginning thus obtained, thence continue along last described course a distance of 20.00 feet to point on the Northwesternly right-of-way of Alabama Highway #119; thence turn an interior angle of 88°06'12" and run to the left along said right-of-way in a Northeasterly direction a distance of 10.00 feet to a point; thence turn an interior angle of 91°53'48", and leaving said right-of-way, run to the left in a Northwesternly direction a distance of 20.00 feet to a point; thence turn an interior angle of 88°06'12" and run to the left in an Southwesterly direction a distance of 357.20 feet to the POINT OF BEGINNING. Said parcel contains 200 square feet, more or less.

Inst # 1994-31084

10/12/1994-31084  
03:03 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
030 MCD 83.00

Inst # 1994-31084