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Atlanta, Georgia 30303

**MORTGAGE, ASSIGNMENT,  
SECURITY AGREEMENT AND FINANCING STATEMENT  
(SECURING GUARANTY)**

STATE OF TEXAS

COUNTY OF TARRANT

THIS MORTGAGE, ASSIGNMENT, SECURITY AGREEMENT AND FINANCING STATEMENT (this "Mortgage") dated September 25, 1995, is executed and delivered by Mortgagor for good and valuable consideration, including the indebtedness herein recited, the receipt and adequacy of which are hereby acknowledged by Mortgagor.

**ARTICLE 1 - Certain Definitions; Granting Clauses; Secured Indebtedness**

Section 1.1. Certain Definitions and Reference Terms. In addition to other terms defined herein, each of the following terms shall have the meaning assigned to it:

"Administrative Agent": NationsBank of Georgia, N.A., a national banking association, as Administrative Agent for the Banks, whose address is 70 Mansell Court, Suite 205, Roswell, Georgia 30076.

"Banks": Collectively, NationsBank of Georgia, N.A., a national banking association; First American Bank, SSB; Southtrust Bank of Alabama, National Association; Comerica Bank; NBD Bank; First National Bank of Boston and Bank of America National Trust and Savings Association.

"Borrowers": Collectively, D. R. Horton, Inc., a Delaware corporation and D. R. Horton - Texas, Ltd., a Texas limited partnership.

"Guaranty": The Guaranty Agreement by Mortgagor in favor of Administrative Agent and Banks of even date herewith guaranteeing the obligations of the Borrowers with respect to the "Secured Loans" (as hereinafter defined).

MORTGAGE - ALABAMA  
Page 1

Inst # 1995-28881

10/11/1995-28881  
11:47 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 SNA 266.00

**"Loan Agreement":** The Master Loan and Inter-Creditor Agreement dated May 2, 1995, herewith by and among Borrowers and Banks.

**"Mortgagee":** NationsBank of Georgia, N.A., a national banking association, as Administrative Agent for the Banks, whose address is 70 Mansell Court, Suite 205, Roswell, Georgia 30076.

**"Mortgagor":** D. R. Horton, Inc. - Birmingham, a Delaware corporation, whose address is 1901 Ascension Boulevard, Suite 100, Arlington, Texas 76006.

**"Promissory Notes":** Collectively, the Secured Promissory Notes dated May 2, 1995, made by Borrowers payable to the order of Banks in the aggregate principal face amount of ONE HUNDRED MILLION AND 00/100 DOLLARS (\$100,000,000.00), bearing interest as therein provided, and finally maturing on April 30, 1998, which, by this reference, are made a part hereof.

**"Secured Loans":** Revolving lines of credit advanced or to be advanced by the Banks to the Borrowers pursuant to the terms of the Loan Agreement which are evidenced by the Promissory Notes.

Section 1.2. Property. Mortgagor does hereby irrevocably GRANT, BARGAIN, SELL, ALIEN, TRANSFER, ASSIGN and MORTGAGE to Mortgagee and its successors and assigns, under and subject to the terms and conditions hereinafter set forth, the following: (a) the real estate (herein called the "Land") described in Exhibit A which is attached hereto and incorporated herein by reference, and (i) all improvements now or hereafter situated or to be situated on the Land (herein together called the "Improvements"); and (ii) all right, title and interest of Mortgagor, now owned or hereafter acquired, in and to (1) all streets, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights and public places, existing or proposed, abutting, adjacent, used in connection with or pertaining to the Land or the Improvements; (2) any strips or gores between the Land and abutting or adjacent properties; (3) all options to purchase or lease the Land or the Improvements or any portion thereof or interest therein, and any greater estate in the Land or the Improvements; (4) all claims, actions and causes of action, both in law and in equity, with respect to the Property (hereinafter defined); and (5) all water and water rights, timber, crops and mineral interests on or pertaining to the Land (the Land, Improvements and other rights, titles and interests referred to in this clause (a) being herein sometimes collectively called the "Premises"); (b) all fixtures, equipment, systems, machinery, furniture, furnishings, appliances, inventory, goods, building and construction materials, supplies, and articles of personal property, of every kind and character, now owned or hereafter acquired by Mortgagor, which are now or hereafter attached to or situated in, on or about the Land or the Improvements, or solely used in or necessary to the complete and proper planning, development, use, occupancy or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use or installation in or on the Land or the Improvements, and all renewals and replacements of, substitutions for and additions



to the foregoing (the properties referred to in this clause (b) being herein sometimes collectively called the "Accessories," all of which are hereby declared to be permanent accessions to the Land); (c) all of Mortgagor's interest in (i) plans and specifications for the Improvements (provided, however, Mortgagor reserves unto itself the non-exclusive right to use such plans and specifications); (ii) Mortgagor's rights, but not liability for any breach by Mortgagor, under all commitments (including any commitment for financing to pay any of the secured indebtedness), insurance policies (to the extent applicable to the Property), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to trademarks, trade names, goodwill and symbols) related solely to the Premises or the Accessories or the operation thereof; (iii) deposits (including but not limited to Mortgagor's rights in tenants' security deposits, deposits with respect to utility services to the Premises, and any deposits or reserves hereunder or under any other Loan Document for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges, money, accounts, instruments, documents, notes and chattel paper arising from or by virtue of any transactions related to the Premises or the Accessories; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Premises or the Accessories; (v) leases, rents, royalties, bonuses, issues, profits, revenues and other benefits of the Premises and the Accessories (without derogation of Article 3 hereof); (vi) fees, charges, accounts or other payments for the use or occupancy of rooms or other public facilities of the Property and Improvements (vii) oil, gas and other hydrocarbons and other minerals produced from or allocated to the Land and all products processed or obtained therefrom, and the proceeds thereof; and (viii) engineering, accounting, title, legal, and other technical or business data solely concerning the Property which are in the possession of Mortgagor or in which Mortgagor can otherwise grant a security interest; and (d) all (i) proceeds of or arising from the properties, rights, titles and interests referred to above in this Section 1.2, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; and (ii) other interests of every kind and character which Mortgagor now has or hereafter acquires solely in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section 1.2 and all property used or useful solely in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Mortgagor in any of the property referred to above in this Section 1.2 is a leasehold estate, this conveyance shall include, and the lien and interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Mortgagor in or to the property demised under the lease creating the leasehold estate; TO HAVE AND TO HOLD the foregoing Premises, Accessories and other rights, interests and properties together with all privileges hereditaments, easements and appurtenances thereunto belonging (herein collectively called the "Property"), to Mortgagee.

Section 1.3. Security Interest. Mortgagor hereby grants to Mortgagee a security interest in all of the Property which constitutes personal property or fixtures (herein sometimes collectively called the "Collateral"). In addition to its rights hereunder or otherwise, Mortgagee shall have all of the rights of a secured party under the Uniform Commercial Code of Alabama, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law.

Section 1.4. Promissory Notes, Loan Documents, Other Obligations. This Mortgage is made to secure and enforce the payment and performance of the following guaranty, obligations, indebtedness and liabilities and all renewals, extensions, supplements, increases, and modifications thereof in whole or in part from time to time: (a) the Guaranty and all other guaranties given in substitution therefor or in modification, supplement, increase, renewal or extension thereof, in whole or in part (such Guaranty, as from time to time renewed, extended, supplemented, increased or modified and all other guaranties given in substitution therefor, or in modification, renewal or extension thereof, in whole or in part, being hereinafter called the "Guaranty"); (b) all indebtedness and other obligations owed by Mortgagor to Administrative Agent and/or Banks, now or hereafter incurred or arising pursuant to or permitted by the provisions of the Guaranty, this Mortgage, or any other document now or hereafter evidencing, governing, guaranteeing, securing or otherwise executed in connection with the obligations evidenced by the Guaranty and this Mortgage. The Promissory Notes, this Mortgage, the Loan Agreement and such other documents, as they or any of them may have been or may be from time to time renewed, extended, supplemented, increased or modified, being herein sometimes collectively called the "Loan Documents". The indebtedness referred to in this Section 1.4 is hereinafter sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby."

## **ARTICLE 2 - Representations, Warranties and Covenants**

Section 2.1. Mortgagor represents, warrants, and covenants as follows:

(a) Payment and Performance. Mortgagor will make due and punctual payment of the secured indebtedness. Mortgagor will timely and properly perform and comply with all of the covenants, agreements, and conditions imposed upon it by this Mortgage, the Guaranty and the other Loan Documents and will not permit a Default (as hereinafter defined) to occur hereunder. Time shall be of the essence in this Mortgage.

(b) Title and Permitted Encumbrances. Mortgagor has, in Mortgagor's own right, and Mortgagor covenants to maintain, lawful, good and marketable fee simple title to the Property, is lawfully seized and possessed of the Property and every part thereof, and has the right to convey the same, free and clear of all liens, charges, claims, interests, and encumbrances except for (i) the "Permitted Encumbrances" (as that term is defined in the Loan Agreement) only to the extent the same are valid and subsisting and affect the Property, (ii) the liens and security interests evidenced by this Mortgage, (iii) other liens and security interests (if



any) in favor of Mortgagee (the matters described in the foregoing clauses (i), (ii) and (iii) being herein called the "Permitted Encumbrances"). Mortgagor, and Mortgagor's successors and assigns, will warrant and forever defend title to the Property, subject as aforesaid, to Mortgagee and its successors and assigns, against the claims and demands of all persons claiming or to claim the same or any part thereof. Mortgagor will punctually pay, perform, observe and keep all covenants, obligations and conditions in or pursuant to any Permitted Encumbrance and will not modify or permit modification of any Permitted Encumbrance without the prior written consent of Mortgagee; provided, however, Mortgagor may, without the prior consent of Mortgagee, (x) grant easements in connection with the development of the Property provided that such easements do not adversely affect the use or marketability of the Property for its intended use, and (y) take such other actions as are expressly permitted under the terms of the Loan Agreement. Inclusion of any matter as a Permitted Encumbrance does not constitute approval or waiver by Mortgagee of any existing or future violation or other breach thereof by Mortgagor, by the Property or otherwise. If any right or interest of Mortgagee in the Property or any part thereof shall be endangered or questioned or shall be attacked directly or indirectly, Mortgagee (whether or not named as the party to legal proceedings with respect thereto) is hereby authorized and empowered to take such steps as in its discretion may be proper for the defense of any such legal proceedings or the protection of such right or interest of Mortgagee, including but not limited to the employment of independent counsel, the prosecution or defense of litigation, and the compromise or discharge of adverse claims. All expenditures so made of every kind and character shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee, and Mortgagee shall be subrogated to all rights of the person receiving such payment.

(c) Taxes and Other Impositions. Mortgagor will pay, or cause to be paid, all taxes, assessments and other charges or levies imposed upon or against or with respect to the Property or the ownership, use, occupancy or enjoyment of any portion thereof, or any utility service thereto, as the same become due and payable, including but not limited to all ad valorem taxes assessed against the Property or any part thereof, and shall deliver promptly to Mortgagee such evidence of the payment thereof as Mortgagee may require.

(d) No Other Liens. Mortgagor will not, without the prior written consent of Mortgagee, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any deed to secure debt, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security title, interest, encumbrance or charge, or conditional sale or other title retention document, against or covering the Property, or any part thereof, other than the Permitted Encumbrances and inchoate unperfected liens which arise by operation of law in connection with the development of and construction upon the Property, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Mortgage, and should any of the foregoing become attached hereafter in any manner to any part of the Property without the prior written consent of Mortgagee, Mortgagor will cause the same to be promptly discharged and released. Mortgagor will own all parts of the Property and will not acquire any fixtures,

equipment or other property forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Mortgagee. If Mortgagee consents to the voluntary grant by Mortgagor of any deed to secure debt, lien, security interest, or other encumbrance (hereinafter called "Subordinate Lien") conveying or encumbering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Mortgage and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Mortgagee; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the secured indebtedness then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Mortgagee may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Mortgagee with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Mortgagor's rights hereunder without the prior written consent of Mortgagee.

(e) Further Assurances. Mortgagor will, promptly on request of Mortgagee, (i) correct any defect, error or omission which may be discovered in the contents, execution or acknowledgment of this Mortgage, the Guaranty or any other Loan Document; (ii) execute, acknowledge, deliver, procure and record and/or file such further documents (including, without limitation, further mortgages, security agreements, financing statements, continuation statements, and assignments of rents or leases) and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of this Mortgage and the other Loan Documents, to more fully identify and subject to the liens and interests hereof any property intended to be covered hereby (including specifically, but without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Property) or as deemed advisable by Mortgagee to protect the lien or the interest hereunder against the rights or interests of third persons; and (iii) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts as may be necessary, desirable or proper in the reasonable determination of Mortgagee to enable Mortgagee to comply with the requirements or requests of any agency having jurisdiction over Mortgagee or any examiners of such agencies with respect to the indebtedness secured hereby, Mortgagor or the Property. Mortgagor shall pay all costs connected with any of the foregoing, which shall be a demand obligation owing by Mortgagor (which Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage.



(f) Fees and Expenses. To the extent not prohibited by applicable law, Mortgagor will pay, and will reimburse to Mortgagee on demand to the extent paid by Mortgagee all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the enforcement of any obligation of Mortgagor, hereunder or under any other Loan Document.

(g) Taxes on Promissory Notes, Guaranty or Mortgage. Subject to Mortgagor's right to contest the same as hereinafter provided, Mortgagor will promptly pay all income, franchise and other taxes owing by Mortgagor and any stamp taxes or other taxes (unless such payment by Mortgagor is prohibited by law) which may be required to be paid with respect to the Guaranty, Promissory Notes, this Mortgage or any other instrument evidencing or securing any of the secured indebtedness. Mortgagor may, at its sole cost and expense and in compliance with all applicable laws and requirements, contest the imposition of the aforesaid taxes which are reasonably determined by Mortgagor to be improper, illegal or excessive provided that Mortgagee's rights and remedies under the Guaranty, Promissory Notes, this Mortgage or any other instrument evidencing or securing any of the secured indebtedness are not diminished, prejudiced or otherwise detrimentally affected thereby. All such taxes, if contested and adjudged to be valid, shall be paid by Mortgagor within the period required by applicable law. In the event of the enactment after this date of any law of any governmental entity applicable to the secured indebtedness, Mortgagee, the Guaranty, the Property or this Mortgage deducting from the value of property for the purpose of taxation any lien or interest thereon, or imposing upon Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Mortgagor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to affect this Mortgage or the indebtedness secured hereby or Mortgagee, then, and in any such event, Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens, or reimburse Mortgagee therefor; provided, however, that if in the opinion of counsel for Mortgagee (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in such event, Mortgagee may elect, by notice in writing given to Mortgagor, to (x) declare all of the indebtedness secured hereby to be and become due and payable one hundred eighty (180) days from the giving of such notice, or (y) cause all or a portion of the Property to be released herefrom.

Section 2.2. Performance by Mortgagee on Mortgagor's Behalf. From and after the occurrence of a Default, Mortgagor agrees that, if Mortgagor has failed or fails to perform any act or to take any action which under any Loan Document Mortgagor is required to perform or take, or to pay any money which under any Loan Document Mortgagor is required to pay, and whether or not the failure then constitutes a Default or Event of Default hereunder, Mortgagee, in Mortgagor's name or its own name, may, but shall not be obligated to, perform or cause to be performed such act or take such action or pay such money, and any expenses so incurred by

Mortgagee and any money so paid by Mortgagee shall be a demand obligation owing by Mortgagor to Mortgagee (which obligation Mortgagor hereby promises to pay), shall be a part of the indebtedness secured hereby, and Mortgagee, upon making such payment, shall be subrogated to all of the rights of the person, entity or body politic receiving such payment. Mortgagee and its designees shall have the right to enter upon the Property at any time and from time to time for any such purposes. No such payment or performance by Mortgagee shall waive or cure any Default or Event of Default hereunder or under the other Loan Documents or waive any right, remedy or recourse of Mortgagee. Any such payment may be made by Mortgagee in its good faith reliance on any statement, invoice or claim without inquiry into the validity or accuracy thereof. Each amount due and owing by Mortgagor to Mortgagee pursuant to this Mortgage shall bear interest, from the date such amount becomes due until paid, at the rate per annum provided in the Promissory Notes for interest on past due principal owed on the Promissory Notes but never in excess of the maximum nonusurious amount permitted by applicable law, which interest shall be payable to Mortgagee on demand; and all such amounts, together with such interest thereon, shall automatically and without notice be a part of the indebtedness secured hereby. The amount and nature of any expense by Mortgagee hereunder and the time when paid shall be fully established by the certificate of Mortgagee or any of Mortgagee's officers or agents.

Section 2.3. Absence of Obligations of Mortgagee with Respect to Property. Notwithstanding anything in this Mortgage to the contrary, including, without limitation, the definition of "Property" and/or the provisions of Article 3 hereof, (i) to the extent permitted by applicable law, the Property is composed of Mortgagor's rights, title and interests therein but not Mortgagor's obligations, duties or liabilities pertaining thereto, (ii) Mortgagee neither assumes nor shall have any obligations, duties or liabilities in connection with any portion of the items described in the definition of "Property" herein, either prior to or after obtaining title to such Property, whether by foreclosure sale, the granting of a deed in lieu of foreclosure or otherwise, and (iii) Mortgagee may, at any time prior to or after the acquisition of title to any portion of the Property as above described, advise any party in writing as to the extent of Mortgagee's interest therein and/or expressly disaffirm in writing any rights, interests, obligations, duties and/or liabilities with respect to such Property or matters related thereto. Without limiting the generality of the foregoing, it is understood and agreed that Mortgagee shall have no obligations, duties or liabilities prior to or after acquisition of title to any portion of the Property, as lessee under any lease or purchaser or seller under any contract or option unless Mortgagee elects otherwise by written notification.

Section 2.4. Abandonment. Mortgagor shall not abandon the Property.

Section 2.5. Notice and Right to Cure. Mortgagor's failure to perform any of the covenants set forth in this Article 2 shall not constitute a Default (as hereinafter defined) unless such failure is not cured within the applicable grace or cure period, if any, set forth in the Loan Agreement.



### **ARTICLE 3 - Collateral Assignment of Leases and Rents**

Section 3.1. Assignment. As additional security for the indebtedness secured hereby, Mortgagor hereby assigns to Mortgagee all Rents (hereinafter defined) and all of Mortgagor's rights in and under all Leases (hereinafter defined). Upon the occurrence of a Default (as hereinafter defined), Mortgagee shall have the right, power and privilege (but shall be under no duty) to demand possession of the Rents, which demand shall to the fullest extent permitted by applicable law be sufficient action by Mortgagee to entitle Mortgagee to immediate and direct payment of the Rents (including delivery to Mortgagee of Rents collected for the period in which the demand occurs and for any subsequent period), for application as provided in this Mortgage, all without the necessity of any further action by Mortgagee, including, without limitation, any action to obtain possession of the Land, Improvements or any other portion of the Property. Mortgagor hereby authorizes and directs the tenants under the Leases to pay Rents to Mortgagee upon written demand by Mortgagee, without further consent of Mortgagor, without any obligation to determine whether a Default has in fact occurred and regardless of whether Mortgagee has taken possession of any portion of the Property, and the tenants may rely upon any written statement delivered by Mortgagee to the tenants. Any such payment to Mortgagee shall constitute payment to Mortgagor under the Leases, and Mortgagor hereby appoints Mortgagee as Mortgagor's lawful attorney-in-fact for giving, and Mortgagee is hereby empowered to give, acquittances to any tenants for such payments to Mortgagee after a Default. The assignment contained in this Section shall become null and void upon the release of this Mortgage. As used herein: (i) "Lease" means each existing or future lease, sublease (to the extent of Mortgagor's rights thereunder), usufruct or other agreement under the terms of which any person has or acquires any right to occupy or use the Property, or any part thereof, or interest therein, and each existing or future guaranty of payment or performance thereunder, and all extensions, renewals, modifications and replacements of each such lease, sublease, usufruct, agreement or guaranty; and (ii) "Rents" means all of the rents, revenue, income, profits and proceeds derived and to be derived from the Property or arising from the use or enjoyment of any portion thereof or from any Lease, including but not limited to liquidated damages following default under any such Lease, all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by damage to any part of the Property, all of Mortgagor's rights to recover monetary amounts from any tenant in bankruptcy including, without limitation, rights of recovery for use and occupancy and damage claims arising out of Lease defaults, including rejections, under any applicable Debtor Relief Law (as hereinafter defined), together with any sums of money that may now or at any time hereafter be or become due and payable to Mortgagor by virtue of any and all royalties, overriding royalties, bonuses, delay rentals and any other amount of any kind or character arising under any and all present and all future oil, gas, mineral and mining leases covering the Property or any part thereof, and all proceeds and other amounts paid or owing to Mortgagor under or pursuant to any and all contracts and bonds relating to the construction or renovation of the Property.

Section 3.2. No Liability of Mortgagee. Mortgagee's acceptance of this assignment shall not be deemed to constitute Mortgagee a "mortgagee in possession," nor obligate

Mortgagee to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability under any Lease, or assume any obligation for any deposit delivered to Mortgagor by any tenant and not as such delivered to and accepted by Mortgagee. Mortgagee shall not be liable for any injury or damage to person or property in or about the Property, or for Mortgagee's failure to collect or to exercise diligence in collecting Rents, but shall be accountable only for Rents that it shall actually receive. Neither the assignment of Leases and Rents nor enforcement of Mortgagee's rights regarding Leases and Rents (including collection of Rents) nor possession of the Property by Mortgagee nor Mortgagee's consent to or approval of any Lease (nor all of the same), shall render Mortgagee liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Mortgagee seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Mortgagee neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Mortgagee under this Article 3 shall be cumulative of all other rights of Mortgagee under the Loan Documents or otherwise.

#### **ARTICLE 4 - Default**

Section 4.1. Default. The occurrence of any one of the following shall be a default under this Mortgage ("Default"):

(a) Nonperformance of Covenants. Any covenant, agreement, condition or obligation of Mortgagor herein or in any other Loan Document (other than covenants otherwise addressed in another paragraph of this Section) is not fully and timely performed, observed or kept, and such failure is not cured within any applicable grace or cure period provided for in the Loan Agreement.

(b) Default Under Loan Agreement. A "Default" (as defined in the Loan Agreement) occurs under the Loan Agreement.

#### **ARTICLE 5 - Remedies**

Section 5.1. Certain Remedies. If a Default shall occur, Mortgagee in addition to any rights and remedies that Mortgagee may have under the Loan Documents (including, without limitation, the right to declare the secured indebtedness immediately due and payable), shall at the request, or may (but shall have no obligation to) with the consent of the "Super-Majority Banks" (as that term is defined in the Loan Agreement) exercise any one or more of the following remedies, without further notice (unless notice is required by applicable statute):



(a) Enforcement of Assignment of Rents. Prior or subsequent to taking possession of any portion of the Property or taking any action with respect to such possession, Mortgagee may during the continuance of a Default: (1) collect and/or sue for the Rents in Mortgagee's own name, give receipts and releases therefor, and after deducting all expenses of collection, including attorneys' fees and expenses, apply the net proceeds thereof to the secured indebtedness in such manner and order as Mortgagee may elect and/or to the operation and management of the Property, including the payment of management, brokerage and attorney's fees and expenses; and (2) require Mortgagor to transfer all security deposits and records thereof to Mortgagee together with original counterparts of the Leases.

(b) Foreclosure. Upon failure to pay the secured indebtedness in full at any stated or accelerated maturity, Mortgagee may foreclose the lien of this Mortgage and sell, as an entirety or in separate lots or parcels, the Property at public outcry to the highest bidder for cash in front of the Courthouse door in the County where the Property is located, either in person or by auctioneer, having first given notice of the time, place and terms of sale by publication once a week for three 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 Property so purchased.

(c) Uniform Commercial Code. Without limitation of Mortgagee's rights of enforcement with respect to the Collateral or any part thereof in accordance with the procedures for foreclosure of real estate, Mortgagee may exercise its rights of enforcement with respect to the Collateral or any part thereof under the Alabama Uniform Commercial Code (or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law) and in conjunction with, in addition to or in substitution for those rights and remedies: (1) Mortgagee may enter upon Mortgagor's premises to take possession of, assemble and collect the Collateral or, to the extent and for those items of the Collateral permitted under applicable law, to render it unusable; (2) Mortgagee may require Mortgagor to assemble the Collateral and make it available at a place Mortgagee designates which is mutually convenient to allow Mortgagee to take possession or dispose of the Collateral; (3) written notice mailed to Mortgagor as provided herein at least five (5) days prior to the date of public sale of the Collateral or prior to the date after which private sale of the Collateral will be made shall constitute reasonable notice; (4) any sale made pursuant to the provisions of this paragraph shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with and upon the same notice as required for the sale of the Property under power of sale as provided in paragraph (c) above in this Section 5.1; (5) in the event of a foreclosure sale, whether made by Mortgagee under the terms hereof, or under judgment of a court, the Collateral and the other Property may, at the option of Mortgagee, be sold as a whole; (6) it shall not be necessary that Mortgagee take possession of the Collateral or any part thereof prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that the Collateral or any part thereof be present at the location of such sale; (7) with respect to application of proceeds of disposition of the Collateral under Section 5.3 hereof, the costs and

expenses incident to disposition shall include the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and the reasonable attorneys' fees and legal expenses incurred by Mortgagee; (8) any and all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder as to nonpayment of the secured indebtedness or as to the occurrence of any default, or as to Mortgagee having declared all of such indebtedness to be due and payable, or as to notice of time, place and terms of sale and of the properties to be sold having been duly given, or as to any other act or thing having been duly done by Mortgagee, shall be taken as prima facie evidence of the truth of the facts so stated and recited; and (9) Mortgagee may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Mortgagee, including the sending of notices and the conduct of the sale, but in the name and on behalf of Mortgagee.

(d) Lawsuits. Mortgagee may proceed by a suit or suits in equity or at law, whether for collection of the indebtedness secured hereby, the specific performance of any covenant or agreement herein contained or in aid of the execution of any power herein granted, or for any foreclosure hereunder or for the sale of the Property under the judgment or decree of any court or courts of competent jurisdiction.

(e) Entry on Property. Mortgagee is authorized, prior or subsequent to the institution of any foreclosure proceedings, to the fullest extent permitted by applicable law, to enter upon the Property, or any part thereof, and to take possession of the Property and all books and records relating solely thereto, and to exercise without interference from Mortgagor any and all rights which Mortgagor has with respect to the management, possession, operation, protection or preservation of the Property. Mortgagee shall not be deemed to have taken possession of the Property or any part thereof except upon the exercise of its right to do so, and then only to the extent evidenced by its demand and overt act specifically for such purpose. All costs, expenses and liabilities of every character incurred by Mortgagee in managing, operating, maintaining, protecting or preserving the Property shall constitute a demand obligation of Mortgagor (which obligation Mortgagor hereby promises to pay) to Mortgagee pursuant to this Mortgage. In connection with any action taken by Mortgagee pursuant to this Section, Mortgagee shall not be liable for any loss sustained by Mortgagor resulting from any failure to let the Property or any part thereof, or from any act or omission of Mortgagee in managing the Property unless such loss is caused by the willful misconduct and bad faith of Mortgagee, nor shall Mortgagee be obligated to perform or discharge any obligation, duty or liability of Mortgagor arising under any lease or other agreement relating to the Property or arising under any Permitted Encumbrance or otherwise arising. Mortgagor hereby assents to, ratifies and confirms any and all actions of Mortgagee with respect to the Property taken under this Section.

(f) Receiver. Mortgagee shall as a matter of right be entitled to the appointment of a receiver or receivers for all or any part of the Property, whether such receivership be incident to a proposed foreclosure of such property or otherwise, and without regard to the value of the Property or the solvency of any person or persons liable for the payment of the indebtedness



secured hereby, and Mortgagor does hereby irrevocably consent to the appointment of such receiver or receivers, waives any and all defenses to such appointment, agrees not to oppose any application therefor by Mortgagee, and agrees that such appointment shall in no manner impair, prejudice or otherwise affect the rights of Mortgagee to application of Rents as provided in this Mortgage. Nothing herein is to be construed to deprive Mortgagee of any other right, remedy or privilege it may have under the law to have a receiver appointed. Any money advanced by Mortgagee in connection with any such receivership shall be a demand obligation (which obligation Mortgagor hereby promises to pay) owing by Mortgagor to Mortgagee pursuant to this Mortgage.

(g) Other Rights and Remedies. In addition to the foregoing, Mortgagee may exercise any and all other rights and remedies which Mortgagee may have under the Loan Documents, or at law or in equity or otherwise.

Section 5.2. Proceeds of Foreclosure. The proceeds of any sale held by Mortgagee or any receiver of the liens and interests evidenced hereby shall be applied: FIRST, to the payment of all necessary costs and expenses incident to such foreclosure sale, including but not limited to all reasonable attorneys' fees and legal expenses, all court costs and charges of every character, and publication fees and costs, and to the payment of the other secured indebtedness, including specifically without limitation the principal, accrued interest and attorneys' fees due and unpaid on the Guaranty and the amounts due and unpaid and owed to Mortgagee under this Mortgage, the order and manner of application to the items in this clause FIRST to be in Mortgagee's sole discretion; and SECOND, the remainder, if any there shall be, shall be paid to Mortgagor, or to Mortgagor's heirs, devisees, representatives, successors or assigns, or such other persons (including the holder or beneficiary of any inferior lien) as may be entitled thereto by law; provided, however, that if Mortgagee is uncertain which person or persons are so entitled, Mortgagee may interplead such remainder in any court of competent jurisdiction, and the amount of any attorneys' fees, court costs and expenses incurred in such action shall be a part of the secured indebtedness and shall be reimbursable (without limitation) from such remainder.

Section 5.3. Mortgagee as Purchaser. Mortgagee shall have the right to become the purchaser at any sale held by Mortgagee or substitute or successor or by any receiver or at any public sale, and Mortgagee shall have the right to credit upon the amount of Mortgagee's successful bid, to the extent necessary to satisfy such bid, all or any part of the secured indebtedness in such manner and order as Mortgagee may elect.

Section 5.4. Remedies Cumulative. All rights and remedies provided for herein and in any other Loan Document are cumulative of each other and of any and all other rights and remedies existing at law or in equity, and Mortgagee shall, in addition to the rights and remedies provided herein or in any other Loan Document, be entitled to avail itself of all such other rights and remedies as may now or hereafter exist at law or in equity for the collection of the secured indebtedness and the enforcement of the covenants herein and the foreclosure of the liens and

interests evidenced hereby, and the resort to any right or remedy provided for hereunder or under any such other Loan Document or provided for by law or in equity shall not prevent the concurrent or subsequent employment of any other appropriate right or rights or remedy or remedies.

Section 5.5. Mortgagee's Discretion as to Security. Mortgagee may resort to any security given by this Mortgage or to any other security now existing or hereafter given to secure the payment of the secured indebtedness, in whole or in part, and in such portions and in such order as may seem best to Mortgagee in its sole and uncontrolled discretion, and any such action shall not in any way be considered as a waiver of any of the rights, benefits, liens or interests evidenced by this Mortgage.

Section 5.6. Mortgagor's Waiver of Certain Rights. To the full extent Mortgagor may do so and except as otherwise provided herein or in the Loan Agreement, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisement, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshalling or forbearance, and Mortgagor, for Mortgagor, Mortgagor's successors and assigns, and for any and all persons ever claiming any interest in the Property, to the extent permitted by applicable law, hereby waives and releases all rights of redemption, valuation, appraisement, stay of execution, reinstatement, notice of intention to mature or declare due the whole of the secured indebtedness, notice of election to mature or declare due the whole of the secured indebtedness and all rights to a marshaling of assets of Mortgagor, including the Property, or to a sale in inverse order of alienation in the event of foreclosure of the liens and/or security interests hereby created. Mortgagor shall not have or assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, the exemption of homestead, the administration of estates of decedents, or other matters whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage to a sale of the Property for the collection of the secured indebtedness without any prior or different resort for collection, or the right of Mortgagee under the terms of this Mortgage to the payment of the secured indebtedness out of the proceeds of sale of the Property in preference to every other claimant whatever. Mortgagor waives any right or remedy which Mortgagor may have or be able to assert, pursuant to any provision of applicable law, pertaining to the rights and remedies of sureties. If any law referred to in this Section and now in force, of which Mortgagor or Mortgagor's successors or assigns or any other persons claiming any interest in the Property might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section.

## **ARTICLE 6 - Miscellaneous**

Section 6.1. Scope of Mortgage. This Mortgage is a mortgage, a security agreement, a financing statement and a collateral assignment, and also covers proceeds and fixtures.



Section 6.2. Effective as a Financing Statement. This Mortgage shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property and is to be filed for record in the real estate records of each county where any part of the Property (including said fixtures) is situated. This Mortgage shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts and is to be filed for record in the real estate records of each county where any part of the Property is situated. This Mortgage shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. The mailing address of Mortgagor is the address of Mortgagor set forth at the end of this Mortgage and the address of Mortgagee from which information concerning the security interests hereunder may be obtained is the address of Mortgagee set forth at the end of this Mortgage. A carbon, photographic or other reproduction of this Mortgage or of any financing statement relating to this Mortgage shall be sufficient as a financing statement for any of the purposes referred to in this Section.

Section 6.3. Notice to Account Debtors. In addition to the rights granted elsewhere in this Mortgage, Mortgagee may at any time after the occurrence of a Default and while such Default is continuing notify the account debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness included in the Collateral to pay Mortgagee directly.

Section 6.4. Waiver by Mortgagee. Mortgagee may at any time and from time to time by a specific writing intended for the purpose: (a) waive compliance by Mortgagor with any covenant herein made by Mortgagor to the extent and in the manner specified in such writing; (b) release any part of the Property or any interest therein from the lien and security interest of this Mortgage; or (c) release any party liable, either directly or indirectly, for the secured indebtedness or for any covenant herein or in any other Loan Document, without impairing or releasing the liability of any other party. No such act shall in any way affect the rights or powers of Mortgagee hereunder except to the extent specifically agreed to by Mortgagee in such writing. Mortgagee may waive any Default or Event of Default without waiving any other prior or subsequent Default or Event of Default. Mortgagee may remedy any Default or Event of Default without waiving the Default or Event of Default remedied. Neither failure by Mortgagee to exercise, nor delay by Mortgagee in exercising, nor discontinuance of the exercise of, any right, power or remedy (including but not limited to the right to accelerate the maturity of the secured indebtedness or any part thereof) upon or after any Default shall be construed as a waiver of such Default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Mortgagee of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No notice or demand on Mortgagor in any case shall of itself entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceptance by Mortgagee of any payment in an amount less than the amount then due on any secured indebtedness shall

be deemed an acceptance on account only and shall not in any way excuse the existence of a Default hereunder.

Section 6.5. No Impairment of Security. The lien, interest and other security rights of Mortgagee hereunder or under any other Loan Document shall not be impaired by any indulgence, moratorium or release granted by Mortgagee including, but not limited to, any renewal, extension or modification which Mortgagee may grant with respect to any secured indebtedness, or any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant in respect of the Property, or any part thereof or any interest therein, or any release or indulgence granted to any endorser, guarantor or surety of any secured indebtedness. The taking of additional security by Mortgagee shall not release or impair the lien, interest or other security rights of Mortgagee hereunder or affect the liability of Mortgagor or of any endorser, guarantor or surety, or improve the right of any junior lienholder in the Property (without implying hereby Mortgagee's consent to any junior lien).

Section 6.6. Mortgagor's Successors. If the ownership of the Property or any part thereof becomes vested in a person other than Mortgagor, Mortgagee may, without notice to Mortgagor, deal with such successor or successors in interest with reference to this Mortgage and to the indebtedness secured hereby in the same manner as with Mortgagor, without in any way vitiating or discharging Mortgagor's liability hereunder or for the payment of the indebtedness or performance of the obligations secured hereby. No transfer of the Property, no forbearance on the part of Mortgagee, and no extension of the time for the payment of the indebtedness secured hereby given by Mortgagee shall operate to release, discharge, modify, change or affect, in whole or in part, the liability of Mortgagor hereunder for the payment of the indebtedness or performance of the obligations secured hereby or the liability of any other person hereunder for the payment of the indebtedness secured hereby. Mortgagor agrees that it shall be bound by any modification of this Mortgage or any of the other Loan Documents made by Mortgagee and any subsequent owner of the Property, with or without notice to such Mortgagor, and no such modifications shall impair the obligations of such Mortgagor under this Mortgage or any other Loan Document. Nothing in this Section or elsewhere in this Mortgage shall be construed to imply Mortgagee's consent to any transfer of the Property.

Section 6.7. Forum. Mortgagor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the non-exclusive jurisdiction of any state or United States federal court sitting in the county in which the secured indebtedness is payable, and to the non-exclusive jurisdiction of any state or United States federal court sitting in the state in which any of the Property is located, over any suit, action or proceeding arising out of or relating to this Mortgage or the secured indebtedness. Mortgagor hereby agrees and consents that, in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any state or United States federal court sitting in the county in which the secured indebtedness is payable may be made by certified or registered mail, return receipt requested, directed to Mortgagor at its address stated in this Mortgage, or at a subsequent address of Mortgagor of which Mortgagee received actual



notice from Mortgagor in accordance with this Mortgage, and service so made shall be complete five (5) days after the same shall have been so mailed.

Section 6.8. Subrogation to Existing Liens; Vendor's Lien. To the extent that proceeds of the Promissory Notes are used to pay indebtedness secured by any outstanding lien, interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Mortgagee at Mortgagor's request, and Mortgagee shall be subrogated to any and all rights, interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, however remote, irrespective of whether said liens, interests, charges or encumbrances are released, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the secured indebtedness, but the terms and provisions of this Mortgage shall govern and control the manner and terms of enforcement of the liens, security interests, charges and encumbrances to which Mortgagee is subrogated hereunder. It is expressly understood that, in consideration of the payment of such indebtedness by Mortgagee, Mortgagor hereby waives and releases all demands and causes of action for offsets and payments in connection with the said indebtedness. If all or any portion of the proceeds of the loans evidenced by the Promissory Notes or of any other secured indebtedness has been advanced for the purpose of paying the purchase price for all or a part of the Property, no vendor's lien is waived; and Mortgagee shall have, and is hereby granted, a vendor's lien on the Property as cumulative additional security for the secured indebtedness. Mortgagee may foreclose under this Mortgage or under the vendor's lien without waiving the other or may foreclose under both.

Section 6.9. Application of Payments to Certain Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Mortgage or if any part of the Property cannot be lawfully subject to the lien and interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is not secured by this Mortgage.

Section 6.10. Compliance with Usury Laws. It is the intent of Mortgagor and Mortgagee and all other parties to the Loan Documents to conform to and contract in strict compliance with applicable usury law from time to time in effect. All agreements between Mortgagee and Mortgagor (or any other party liable with respect to any indebtedness under the Loan Documents) are hereby limited by the provisions of this Section which shall override and control all such agreements, whether now existing or hereafter arising. In no way, nor in any event or contingency (including but not limited to prepayment, default, demand for payment, or acceleration of the maturity of any obligation), shall the interest taken, reserved, contracted for, charged, chargeable, or received under this Mortgage, the Guaranty or any other Loan Document or otherwise, exceed the maximum nonusurious amount permitted by applicable law (the "Maximum Amount"). If, from any possible construction of any document, interest would otherwise be payable in excess of the Maximum Amount, any such construction shall be subject to the provisions of this Section and such document shall ipso facto be automatically reformed and the interest payable shall be automatically reduced to the Maximum Amount, without the

necessity of execution of any amendment or new document. If Mortgagee shall ever receive anything of value which is characterized as interest under applicable law and which would apart from this provision be in excess of the Maximum Amount, an amount equal to the amount which would have been excessive interest shall, without penalty, be applied to the reduction of the principal amount owing on the secured indebtedness in the inverse order of its maturity and not to the payment of interest, or refunded to Mortgagor or the other payor thereof if and to the extent such amount which would have been excessive exceeds such unpaid principal. The right to accelerate maturity of the Promissory Notes or any other secured indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to charge or receive any unearned interest in the event of acceleration. All interest paid or agreed to be paid to Mortgagee shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full stated term (including any renewal or extension) of such indebtedness so that the amount of interest on account of such indebtedness does not exceed the Maximum Amount. As used in this Section, the term "applicable law" shall mean applicable laws or the federal laws of the United States applicable to this transaction, whichever laws allow the greater interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 6.11. Cancellation of Mortgage. If all of the secured indebtedness be paid as the same becomes due and payable and all of the covenants, warranties, undertakings and agreements made in this Mortgage are kept and performed, and all obligations, if any, of Mortgagee for further advances have been terminated, then, and in that event only, this Mortgage shall be cancelled by Mortgagee in due form at Mortgagor's cost. Without limitation, all provisions herein for indemnity of Mortgagee shall survive discharge of the secured indebtedness and any foreclosure, release or termination of this Mortgage.

Section 6.12. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give hereunder or under any other Loan Document shall be in writing and, unless otherwise specifically provided in such other Loan Document, shall be deemed sufficiently given or furnished if (a) in writing and delivered by personal delivery, by courier, or by registered or certified United States mail, postage prepaid, addressed to the party to whom directed at the addresses specified at the end of this Mortgage (unless changed by similar notice in writing given by the particular party whose address is to be changed) (b) by telex with confirmation thereof in writing by sender pursuant to subsection (a) above, (c) by facsimile to the facsimile number specified at the end of this Mortgage with confirmation thereof in writing by sender pursuant to subsection (a) above, or (d) by oral communication with confirmation thereof in writing by the notifying party pursuant to subsection (a) above within three (3) business days after such oral communication. Any such notice or communication shall be deemed to have been given and to be effective either at the time of personal delivery or, in the case of courier or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telex, when transmitted (answer-back confirmed), in the case of facsimile, upon receipt, or in the case of oral communication, upon the effectiveness of written confirmation, as hereinafter provided.



Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Section shall not be construed in any way to affect or impair any waiver of notice or demand provided in any Loan Document or to require giving of notice or demand to or upon any person in any situation or for any reason.

Section 6.13. Invalidity of Certain Provisions. A determination that any provision of this Mortgage is unenforceable or invalid shall not affect the enforceability or validity of any other provision and the determination that the application of any provision of this Mortgage to any person or circumstance is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

Section 6.14. Gender; Titles; Construction. Within this Mortgage, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. The use of the words "herein," "hereof," "hereunder" and other similar compounds of the word "here" shall refer to this entire Mortgage and not to any particular Article, Section, paragraph or provision. The term "person" and words importing persons as used in this Mortgage shall include firms, associations, partnerships (including limited partnerships), joint ventures, trusts, corporations and other legal entities, including public or governmental bodies, agencies or instrumentalities, as well as natural persons.

Section 6.15. Reporting Compliance. Mortgagor agrees to comply with any and all reporting requirements applicable to the transaction evidenced and secured by the Loan Documents which are set forth in any law, statute, ordinance, rule, regulation, order or determination of any governmental authority, including but not limited to The International Investment Survey Act of 1976, The Agricultural Foreign Investment Disclosure Act of 1978, The Foreign Investment in Real Property Tax Act of 1980 and the Tax Reform Act of 1984 and further agrees upon request of Mortgagee to furnish Mortgagee with evidence of such compliance. Mortgagor further agrees that, if applicable, the marketing, offering, leasing and sale of every subdivision lot comprising the Property has been and shall be made in compliance with and subject to, or in accordance with the applicable exemptions from the Interstate Land Sales Full Disclosure Act and any regulations set forth in Chapter IX of Title 24 of the Code of Federal Regulations, all as now enacted or as may be hereinafter enacted. Any breach of the foregoing covenant, agreement, representation or warranty shall constitute a Default hereunder.

Section 6.16. Mortgagee's Consent. Except where otherwise expressly provided herein or in the Loan Agreement, in any instance hereunder where the approval, consent or the exercise of judgment of Mortgagee is required or requested, (i) the granting or denial of such approval or consent and the exercise of such judgment shall be within the reasonable discretion of Mortgagee, and Mortgagee shall not, for any reason or to any extent, be required to grant such approval or consent or exercise such judgment in any particular manner, regardless of the

reasonableness of either the request or Mortgagee's judgment, and (ii) no approval or consent of Mortgagee shall be deemed to have been given except by a specific writing intended for the purpose and executed by an authorized representative of Mortgagee.

Section 6.17. Mortgagor. Unless the context clearly indicates otherwise, as used in this Mortgage, "Mortgagor" means the Mortgagor named in Section 1.1 hereof. Mortgagor represents and warrants to Mortgagee that this instrument is executed, acknowledged and delivered by Mortgagor's duly authorized representatives.

Section 6.18. Execution; Recording. This Mortgage has been executed in several counterparts, all of which are identical, and all of which counterparts together shall constitute one and the same instrument. The date or dates reflected in the acknowledgments hereto indicate the date or dates of actual execution of this Mortgage, but such execution is as of the date shown on the first page hereof, and for purposes of identification and reference the date of this Mortgage shall be deemed to be the date reflected on the first page hereof. Mortgagor will cause this Mortgage and all amendments and supplements thereto and substitutions therefor and all financing statements and continuation statements relating thereto to be recorded, filed, re-recorded and refiled in such manner and in such places as Mortgagee shall reasonably request and will pay all such recording, filing, re-recording and refiling taxes, fees and other charges.

Section 6.19. Successors and Assigns. The terms, provisions, covenants and conditions hereof shall be binding upon Mortgagor, and the successors and assigns of Mortgagor, and shall inure to the benefit of Mortgagee and the successors and assigns of Mortgagee and shall constitute covenants running with the Land. All references in this Mortgage to Mortgagor shall be deemed to include all such successors and assigns of Mortgagor, and all references in this Mortgage to Mortgagee shall be deemed to include all such successors and assigns of Mortgagee.

Section 6.20. Applicable Law. THE ENFORCEMENT OF THIS MORTGAGE SHALL BE GOVERNED BY THE LAWS OF THE STATE OF ALABAMA.

Section 6.21. Entire Agreement. The Loan Documents constitute the entire understanding and agreement between Mortgagor and Mortgagee with respect to the transactions arising in connection with the indebtedness secured hereby and supersede all prior written or oral understandings and agreements between Mortgagor and Mortgagee with respect to the matters addressed in the Loan Documents. Mortgagor hereby acknowledges that, except as incorporated in writing in the Loan Documents, there are not, and were not, and no persons are or were authorized by Mortgagee to make, any representations, understandings, stipulations, agreements or promises, oral or written, with respect to the matters addressed in the Loan Documents.

Section 6.22. Limitation on Liability of Mortgagor. Notwithstanding anything to the contrary contained in this Mortgage, Administrative Agent and Banks agree, by their acceptance of this Mortgage, that Administrative Agent and Banks will satisfy any judgment obtained against Mortgagor with respect to the obligations of Mortgagor under this Mortgage and the



other Loan Documents other than any recourse guaranty, if any, solely against the interests of the Mortgagor in the Property. No other property or assets of the Mortgagor shall be subject to levy, execution or other enforcement procedures for the satisfaction of the obligations of the Mortgagor under this Mortgage or any of the other Loan Documents. Administrative Agent and Banks shall not seek a deficiency judgment against the Mortgagor. Nothing contained herein, however, shall (i) constitute a waiver of any obligation evidenced by the Guaranty or secured by this Mortgage, or in any way be construed to release or impair the lien and interest of this Mortgage or the indebtedness secured by this Mortgage; (ii) limit, impair or adversely affect in any manner whatsoever the liabilities and obligations of a Borrower, Borrowers or guarantor other than Mortgagor (individually, "Other Guarantor" and collectively, "Other Guarantors") under the other Loan Documents or limit, impair or adversely affect the right of Administrative Agent and Banks to exercise any or all of their rights and to enforce any judgment obtained against Mortgagor against the Property; (iii) limit, impair or adversely affect the right of Administrative Agent and Banks to bring an action judicially to foreclose the lien and interest of this Mortgage or to confirm any foreclosure or sale pursuant to the power of sale contained in this Mortgage or to seek a deficiency judgment against a Borrower, Borrowers or Other Guarantor; or (iv) limit, impair or adversely affect the right of Administrative Agent and Banks to exercise any or all of its rights against a Borrower, Borrowers or Other Guarantors under the Loan Agreement or other Loan Documents and to enforce any judgment obtained against a Borrower, Borrowers or Other Guarantors against any or all of the assets of such Borrower, Borrowers or Other Guarantor. Notwithstanding the foregoing, the Mortgagor shall remain and be fully liable to Administrative Agent and Banks for damages suffered by Administrative Agent and Banks as a result of: (i) the intentional or willful fraud or misrepresentation, willful damage or waste to the Property, by or on behalf of Mortgagor; (ii) Mortgagor's retention of rents or other income arising with respect to the Property which rents or income are collected by Mortgagor after the occurrence of a Default (to the full extent of any such rents or other income retained and collected by Mortgagor in violation of the terms of this Mortgage); (iii) the removal or disposal by Mortgagor of any equipment, personal property, appliances, fixtures, building materials or other property or improvements described in this Mortgage, in violation of this Mortgage, to the extent of the fair market value thereof as of the time of the occurrence of a Default; (iv) any claims, liabilities, damages, costs and expense resulting from a violation or breach under the Environmental Indemnity Agreement dated May 2, 1995, by and between Borrowers, Administrative Agent and Banks which violation relates to the Property; (v) Mortgagor's misapplication or misappropriation of any proceeds received by Mortgagor pursuant to any insurance policies or condemnation proceeds or awards, in violation of the terms of a this Mortgage; (vi) any sale or transfer of the Property, or any portion thereof or any interest therein, which is in violation of the terms of the Loan Documents; (vii) any failure by Mortgagor to pay any real estate taxes, assessments or other governmental impositions due with respect to the Property; or (viii) any failure to maintain any insurance required under this Security Deed or other Loan Documents to the full extent of all losses and damages (including those resulting from diminution in value of security) incurred by Administrative Agent and Banks as a result of such failure.

Section 6.23. Certain Alabama Collateral. Mortgagor is wholly-owned by D.R. Horton, Inc., a Delaware corporation. Mortgagor owns and operates the Property. Holder, Mortgagor and D.R. Horton, Inc. agree that all references to "Borrowers" in the Loan Documents which pertain to the ownership and operation of the Property are deemed to be references to the Mortgagor to the extent that the Mortgagor, and not D. R. Horton, Inc., owns and operates the Property. Administrative Agent, Mortgagor and D. R. Horton, Inc. further acknowledge and agree that the financial information for the Mortgagor and D. R. Horton, Inc. is consolidated into D. R. Horton, Inc.'s financial statements and that all references to financial statements of Borrowers are to such consolidated statements. Mortgagor and D. R. Horton, Inc. are executing this Mortgage for the purpose of binding the Mortgagor to the terms of this Mortgage including, without limitation, creating liens and security interests against and making assignments of the Property. Notwithstanding the foregoing, Mortgagor and D. R. Horton, Inc. agree to cause the Mortgagor to perform each of its obligations under the Loan Agreement and this Mortgage. All provisions of the Loan Documents are hereby deemed modified to reflect the foregoing.

THE WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.



THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, this Mortgage has been executed and sealed by Mortgagor as of the date first written on page 1 hereof.

Mortgagor:

**D. R. HORTON, INC. - BIRMINGHAM,**  
a Delaware corporation

By: David J. Keller  
Name: David J. Keller  
Title: Vice President

Attest: Ted I. Harbour  
Name: Ted I. Harbour  
Title: Assistant Secretary



[CORPORATE SEAL]

The address facsimile number, telephone number and federal tax identification number of Mortgagor are:

1901 Ascension Boulevard, Suite 100  
Arlington, Texas 76006  
Attn: David J. Keller  
Facsimile: (817) 856-8249  
Telephone: (817) 856-8200

[With copy to Ted I. Harbour, Real Estate Counsel, at the above address]

Federal Tax I.D. No. [REDACTED]

The address facsimile number and telephone number of Mortgagee is:

NationsBank of Georgia, N.A.  
70 Mansell Court, Suite 205  
Roswell, Fulton County, Georgia 30076

Facsimile: (404) 642-1261  
Telephone: (404) 993-0010

21712921.W51



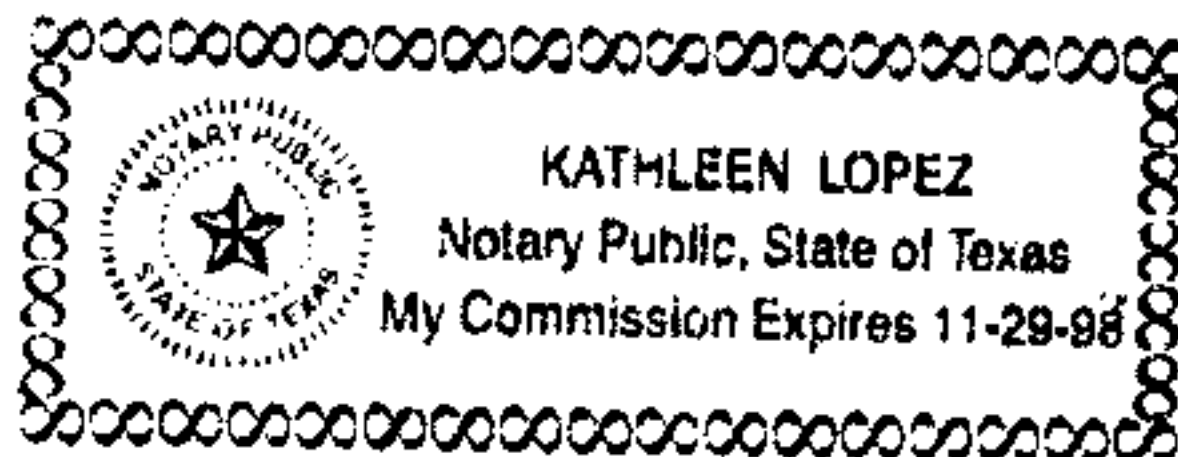
ACKNOWLEDGEMENT OF MORTGAGOR

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, the undersigned, a notary public in and for said County in said State, do hereby certify that David J. Keller, who is the Vice President of D.R. HORTON, INC. - BIRMINGHAM, a Delaware corporation (the "Mortgagor"), whose name is signed to the foregoing instrument, and who is known by me and is known by me to be such Vice President, acknowledged before me on this day, being informed of the contents of said instrument, that he, in his capacity as aforesaid, and with full authority, executed the same voluntarily for and as the act of the Mortgagor.

Given under my hand and seal of office, this 25 day of September, 1995.



Kathleen Lopez  
Notary Public

My Commission Expires:

21712921.W51

**EXHIBIT A**  
to  
**Mortgage, Assignment, Security Agreement  
and Financing Statement**

**Land**

Lot 31 according to the Survey of Brynleigh Estates, as recorded in Map Book 19, page 139, in the Probate Office of Shelby County, Alabama.

Inst # 1995-28881

21712921.W51

10/11/1995-28881  
11:47 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 SNA 266.00