

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE is by and between Borrower, as the mortgagor, and Lender as the mortgagee. The terms used herein shall have the meanings ascribed to them as follows, unless the context requires a different meaning:

- a. **Borrower** shall refer to the mortgagor, WEATHERLY LANDS, L.L.C., an Alabama limited liability company, and shall include any subsequent owner or owners of any mortgaged property.
- b. **Borrower's Notice Address** shall mean 1855 Data Drive, Suite 100, Hoover, AL 35244.
- c. **Lender** shall refer to the mortgagee, AmSouth Bank of Alabama, and shall include any future owner or holder of the Note or any interest therein, including pledgees, assignees and participants.
- d. **Lender's Notice Address** shall mean Post Office Box 11007, Birmingham, Alabama 35288, Attention: Commercial Real Estate Loan Department.
- e. **Loan** shall refer to that certain construction loan made by Lender to Borrower this date in an amount equal to the Loan Amount.
- f. **Loan Amount** shall mean \$300,000.00.
- g. **Note** shall refer to that future advance note (the "Note") of even date herewith made by Borrower to Lender in the Loan Amount to evidence the Loan, and to all replacements, extensions, substitutions, and modifications to the Note.
- h. **Loan Documents** shall refer to this Mortgage and Security Agreement (the "Mortgage"), the Note, the construction loan agreement (the "Construction Loan Agreement"), the guarantees (the "Guarantees") executed by Thomas J. Thornton, Patrick A. Thornton, and Jack H. Harrison, the UCC-1 financing statements (the "UCC1s"), and all other documents and instruments which evidence the debt to Lender or secure the Note or which are related thereto now or hereafter given by or on behalf of Borrower to Lender.

Lender is making a construction loan to Borrower evidenced by the Note. The Mortgage secures future advances ("Future Advances") made pursuant to the Note and Construction Loan Agreement. In consideration of the Loan, to induce Lender to make the Loan, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of the Loan, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, Borrower has this day executed this Mortgage and the other Loan Documents in favor of Lender; and Borrower hereby does irrevocably grant, bargain, sell, alien, remise, release,

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SHELBY COUNTY JUDGE OF PROBATE
020 MCD 506.00

Inst # 1995-33414

confirm and convey to Lender, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, the following described property (all of which as described in (A) through (H) below, is referred to herein as the "Mortgaged Property"):

(A) The real property (the "Property") described in the attached Exhibit A which is incorporated into this Mortgage by reference, and to the extent owned by Borrower, all minerals, oil, gas and other hydrocarbon substances on the Property, as well as all development rights, air rights, water, water rights, and water stock relating to the Property, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Property, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of Borrower of, in and to the same, including but not limited to the other rights herein enumerated.

(B) All present and future structures, building, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the Property, whether now owned or hereafter acquired by Borrower, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the Property, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, garbage disposal, recreation or other services on the Property, including without limitation, all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the Property, it being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by the Mortgage, whether or not attached or affixed to the Property (the "Improvements").

(C) All appurtenances to the Property and all rights of Borrower in and to any streets, roads, or public places, easements or rights of way, relating to the Property, including but not limited to, all rights of Borrower to any septic system, sewer line, agreements, permits, easements, equipment, licenses, resolutions, and related rights pertaining to any sewer and septic system constructed on the Property.

(D) All of the rents, royalties, profits and income of the Property, and all rights of Borrower under all present and future leases affecting the Property, including but not limited to any security deposits.

(E) All proceeds and claims arising on account of any damage to or taking of the Property or any Improvements thereon or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Property or any Improvements.

(F) All building materials, equipment, cranes, fixtures and fitting of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the Property, whether such material, equipment, cranes, fixtures and fittings are actually located on or adjacent to the Property or not, and whether in storage or otherwise, wheresoever located. Property herein

conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, and in general all building materials and equipment of every kind and character used or useful in connection with the Improvements.

(G) All general intangibles relating to the development or use of the Property, including but not limited to, all governmental permits relating to construction on the Property, all names under or by which the Property or any Improvements on the Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Property.

(H) All rights of Borrower in and to contracts relating to the construction of improvements to the Property.

This instrument secures:

(1) Payment and performance of Borrower's indebtedness and obligations under the Note evidencing the Loan, including all extensions, renewals, substitutions and modifications of and to the Note.

(2) The payment and performance of Borrower's obligations under this Mortgage and under all of the other Loan Documents.

(3) The payment of all sums advanced or paid out by Lender under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) The payment and performance of Borrower's obligations under all other present and future agreements executed by Borrower in favor of Lender and relating to the Note or any one or more of the Loan Documents, and the payment of any and all other indebtedness owing by Borrower to Lender.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall pay all other indebtedness due from Borrower to Lender, and shall keep, perform and observe all and singular the covenants and promises in the Note, this Mortgage, and in all of the other Loan Documents, and any renewal, extension or modification thereof, expressed to be kept, performed, and observed by

and on the part of Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect.

ARTICLE 1

COVENANTS OF BORROWER

In addition to covenants contained elsewhere herein, Borrower covenants and agrees with Lender as follows:

1.1 Payment and Performance. To pay and perform all indebtedness and obligations that are secured by this Mortgage and the other Loan Documents in accordance with the terms thereof.

1.2 Loan Documentation/Further Assurances. Borrower covenants and represents that all of the Loan Documents have been duly executed and delivered and are valid and enforceable obligations of Borrower in accordance with the terms thereof. Borrower agrees to execute and deliver to Lender on demand and at Borrower's cost and expense any documents, further required mortgages, and instruments of further assurance required or desired by Lender to effectuate, complete, enlarge, or perfect, or to continue and preserve (a) the obligations of Borrower under the Note, this Mortgage, all of the other Loan Documents, and (b) the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure of Borrower to do so, Lender may execute and record any such instruments for and in the name of Borrower and Borrower irrevocably appoints Lender the agent and the attorney-in-fact of Borrower to do so. The lien hereof will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property.

1.3 Leases and Rents. (a) All of the existing and future rents, royalties, income and profits of the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to Lender. Upon any default by Borrower, Lender may in its discretion at any time without notice to Borrower collect the rents, royalties, income and profits itself or by an agent or receiver. No action taken by Lender to collect any rents, royalties, income or profits will make Lender a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by Lender. All rents, royalties, income and profits collected by Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order Lender directs in its absolute discretion and without regard to the adequacy of its security.

(b) Borrower will not execute any leases, management or leasing agreements, or occupancy agreements affecting any of the Mortgaged Property without first having received the

prior written approval from Lender of the form and content. Without limiting the foregoing, any managing, leasing, or similar fee shall be subordinated to the lien of this instrument.

(c) Without the prior written consent of Lender, Borrower shall not accept prepayments of rent exceeding one month under any leases or occupancy agreements affecting any of the Mortgaged Property, nor modify or amend any such leases or occupancy agreements, nor in any manner impair Borrower's interest in the rents, royalties, income and profits of the Mortgaged Property. Borrower will perform all covenants of the lessor under any such leases or occupancy agreements. Upon Lender's request, Borrower will execute and deliver to Lender for recordation an Assignment of Leases on Lender's form.

(d) If required by Lender, each lease or occupancy agreement affecting any of the Mortgaged Property must provide, in a manner approved by Lender, that the lease or occupancy agreement is junior and subordinate to the lien of this Mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of Borrower upon any foreclosure of this Mortgage.

(e) Nothing herein shall render Lender liable under any existing or future lease, regardless of the collection of rents thereunder, for any of the covenants or agreements of Borrower under such leases.

1.4 Prohibited Transfers. Without the prior written consent of Lender, (a) Borrower shall not encumber any interest of the Mortgaged Property or sell, contract to sell, lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property; (b) no member of Borrower shall contract to sell, lease with option to purchase, or otherwise transfer any interest in Borrower as a member of Borrower; and (c) Borrower shall not sell, assign or otherwise dispose of or permit the sale, assignment or other disposition of, any legal or beneficial interest in the stock of Borrower. Lender shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer [all said encumbrances, sales, contracts, leases and other transfers described above being collectively referred to as a "Prohibited Transfer"], and Lender's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Lender's security or whether it may or may not generally be considered reasonable (commercially or otherwise) for Lender to consent to any Prohibited Transfer. Without limiting the foregoing, Lender's consent may, if given in Lender's sole unfettered discretion, be conditioned upon (by way of illustration only, and not limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Lender with a manager acceptable to Lender, an assignment to Lender of any security given to Borrower in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or in any of the related Loan Documents. Any prohibited Transfer made without the written consent of Lender shall be void.

1.5 Maintenance of Property/Zoning. (a) Borrower will not commit any waste on the Mortgaged Property or take any actions that might invalidate any insurance carried on the

Mortgaged Property. Borrower will maintain the Mortgaged Property in good condition and repair. No Improvements may be removed, demolished or materially altered without the prior written consent of Lender. No personal property in which Lender has a security interest may be removed from the Mortgaged Property unless it is immediately replaced by similar property of at least equivalent value on which Lender will immediately have a valid first lien and security interest.

(b) Without the prior written consent of Lender, Borrower will not seek, make or consent to any change in the zoning or conditions of use of the Mortgaged Property. Borrower will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property. Borrower will comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property.

1.6 Financial Records. Borrower will keep at all times full, true, and accurate books and records of account of the Mortgaged Property and its own financial affairs sufficient to reflect correctly the results of all operations, and other income-producing activities by Borrower on the Mortgaged Property, and to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender will have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. Borrower will deliver to Lender, no fewer than sixty (60) days after the end of every calendar year from date hereof, whether or not requested by Lender, annual balance sheets and statements of income and expenses for the preceding year for the Mortgaged Property which have been prepared in accordance with generally accepted accounting principles and as soon as available each year annual consolidated balance sheets and statements of income and expenses for Borrower for the preceding year which have been prepared in accordance with generally accepted accounting principles. Such statements and information shall be prepared in accordance with generally accepted accounting principles, by Borrower or, at Lender's option, by an independent certified public accountant approved by Lender in advance of delivery of such statements and information.

1.7 Actions or Proceedings. Borrower will, at its own expense, appear in and defend any action or proceeding that might affect Lender's security or the rights or powers of Lender or that purports to affect any of the Mortgaged Property. If Borrower fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect Lender's interest in the Mortgaged Property or Lender's right to enforce its security, then Lender may, at its option, make any appearances, disburse any sums or take any actions as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Borrower to perform its covenants (without, however, waiving any default of Borrower). Borrower agrees to pay all reasonable expenses of Lender thus incurred (including but not limited to fees and disbursements of counsel). Any sums disbursed by Lender will be additional indebtedness of Borrower secured by this Mortgage, will bear interest at the After-Maturity Rate required by the Note, and will

be payable by Borrower upon demand. This paragraph will not be construed to require Lender to incur any expenses, make any appearances, or take any actions.

1.8 Security Interest. This Mortgage constitutes a SECURITY AGREEMENT with respect to all personal property in which Lender is granted a security interest thereunder, and Lender shall have all of the rights and remedies of a secured party under the ALABAMA UNIFORM COMMERCIAL CODE as well as all other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower, to execute, deliver and, if appropriate, to file with the appropriate filing officer such security agreements, financing statements, continuation statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Lender shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Lender shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including both Borrower and Lender, shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Lender's attorneys' fees and legal expenses. Borrower, upon demand of Lender, shall assemble such personal property and make it available to Lender at the Property, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. Lender shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

1.9 Title. Borrower covenants that it is lawfully seized of an indefeasible estate in fee simple in the Property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, including as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the claims of all persons.

1.10 Costs. Borrower will pay or reimburse Lender for all attorneys' fees, costs and expenses incurred by Lender in connection with the closing of this loan (whether or not collected at closing and including without limitation all title, recording, survey, and legal fees and

expenses), in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is involved or is made a party, or appears as party plaintiff or defendant, affecting the Note, Mortgage, and other Loan Documents, Borrower or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof and in any situation where Lender employs an attorney to protect Lender's rights hereunder, whether or not legal proceedings are commenced or involved; and any such amounts paid by Lender shall be added to the indebtedness and secured by the lien of this Mortgage.

1.11 Sewer. Borrower understands that any sewage treatment facility or sewer line on the Property or to be constructed from the Property to a public sewer line and all personal property and rights therein are conveyed to Lender hereunder as part of the Mortgaged Property, whether located on the property described as Exhibit A or adjacent to or connected with the same. Borrower covenants not to allow any tie-ons or connections to any such sewer facility or sewer line or to allow any person to use the sewer facility or sewer line or to make any modifications in the plans and specifications or construction contract for the construction of any such sewer facility or sewer line without the written consent of Lender. Borrower understands that such consent may be withheld and/or conditioned upon receipt of documentation and assurances acceptable to Lender, and that Lender will have the first right and lien as secured hereby to any monies or revenues arising from any such tie-ons, connections, or use.

ARTICLE II

EVENTS OF DEFAULT

Borrower will be in default under this Mortgage if:

(a) Borrower fails to make any payment required by the Note or by the other Loan Documents and does not cure that failure within ten (10) days after written notice of such default mailed by Lender to Borrower, provided however, that any Late Charge or After-Maturity Interest reserved under the Note or other amounts due and payable as a result of such default shall be due and payable as part of any cure of such default; or

(b) Borrower fails to perform any other covenant or agreement contained in this Mortgage, or in the other Loan Documents, and does not cure that failure within thirty (30) days after written notice of such default mailed by Lender to Borrower; or

(c) Borrower terminates or suspends its business, or permits an attachment or judicial seizure of any substantial part of its assets; or

(d) Borrower or any shareholder of Borrower files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor-relief under any present or future law relating to bankruptcy or debtor-relief, or such a petition is filed against Borrower or against such shareholder of Borrower, and Borrower or such shareholder does not oppose that filing,

or the petition is not dismissed within sixty (60) days after filing, or Borrower or any such shareholder makes an assignment for the benefit of its creditors; or

(e) There has occurred a breach of, or default under, or failure of, any term, covenant, agreement, condition, provision, representation, or warranty contained in any Loan Document or under any agreement which guarantees any part of the indebtedness or obligations secured by this Mortgage; or

(f) Any representation or disclosure made to Lender by Borrower proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Mortgage or in any of the other Loan Documents, or in the loan application; or

(g) Any other event occurs which, under the Note or under any other Loan Document, constitutes a default by Borrower or gives the right to accelerate the maturity of any part of the indebtedness secured by this Mortgage.

ARTICLE III

REMEDIES

3.1 Remedies. If Borrower is in default, Lender may, at its continuing option, and without notice to or demand upon Borrower:

(a) Declare any or all indebtedness secured by this Mortgage to be due and payable immediately;

(b) Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in Lender's judgment to manage and operate the Mortgaged Property, and Lender may apply any rents, royalties, income or profits collected against the indebtedness secured by this Mortgage without in any way curing or waiving any default to Borrower;

(c) Bring a court action of law or in equity (1) to foreclose this Mortgage (2) or to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain the other, provided that Lender shall have only one payment and satisfaction of the indebtedness;

(d) Cause any or all of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

(e) Exercise any other right or remedy available under law or in equity;

(f) Sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Courthouse door in the county where said Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale, the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion.

3.2 Proceeds. The proceeds of any sale under this Mortgage will be applied in the following manner:

FIRST: Payment of the costs and expenses of the sale, including but not limited to, Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of Lender, together with interest at the rate provided under the Note made by Lender.

SECOND: Payment of all sums expended by Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided under the Note.

THIRD: Payment of the indebtedness and obligations of Borrower secured by this Mortgage of the premises at the time of such sale.

FOURTH: The remainder, if any, to the person or persons appearing of record to be the owner of the premises at the time of such sale.

3.3 Waiver. Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale. Lender may in its discretion sell all the personal and real property together or in parts, in one or more sales, and in any sequence Lender selects.

3.4 Remedies Cumulative. All remedies contained in this Mortgage are cumulative, and Lender also has all other remedies provided by law or in any other agreement between Borrower and Lender. No delay or failure by Lender to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or of any default by Borrower. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.5 Costs. Borrower will pay all of Lender's expenses incurred in any efforts to enforce any terms of this Mortgage, whether or not any lawsuit is filed, including but not limited to legal fees and disbursements, foreclosure costs and title charges.

ARTICLE IV

GENERAL PROVISIONS

4.1 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

4.2 Monthly Tax Deposits. Upon Lender's request, Borrower will pay to Lender on the first day of each month together with and in addition to the regular installment of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12th) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Such amounts shall be used by Lender to pay ad valorem taxes and assessments when due, or before they become delinquent. Upon demand to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, any of the terms, covenants or conditions in the Note or Mortgage, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount under this Paragraph remaining to Borrower's credit.

4.3 Other Taxes, Utilities and Liens.

(a) Borrower will pay promptly, when and as due, and will promptly exhibit to Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) Borrower shall promptly pay and will not suffer any mechanics', laborers', statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely Lender with respect to the Loan, the entire balance of the principal sum secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Lender.

4.4 Insurance. Borrower will procure for, deliver to, and maintain for the benefit of, Lender during the life of this Mortgage, insurance policies, in such amounts as Lender shall require, but in no event less than the greater of (a) the aggregate amount of the Note or (b) the full replacement cost of the Mortgaged Property, and with no more than \$1,000 deductible from the loss payable for any casualty, insuring the Mortgaged Property against fire, extended coverage, flood, liability, vandalism and malicious mischief, tornado, war damage (if available), collapse, loss of rents or rental value (with coverage in an amount to cover a minimum of twelve (12) months of fair rental value or projected gross annual rentals at 100% occupancy of the Mortgaged Property), business interruption, and such other insurable hazards, casualties and contingencies as Lender may reasonably require. If the Property is located in a flood hazard area, flood insurance in an amount acceptable to Lender shall also be provided by Borrower. The policies shall include without being limited to, a "Replacement Cost" endorsement, a "Difference in Conditions" endorsement, boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment, and insurance against loss of occupancy or use arising from any such breakdown. The form of such policies and the companies issuing them shall be acceptable to Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to Lender, instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the

Mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be paid over to Borrower to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

Upon Lender's request, Borrower will pay to Lender on the first day of each month, together with and in addition to the regular installment of principal and interest and monthly tax deposit until the Note is fully paid, an amount equal to one-twelfth (1/12th) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such insurance premiums. In the event of a default by Borrower in the performance of any of the terms, covenants and conditions in the Note or Mortgage, Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount paid in accordance herewith remaining to Borrower's credit.

4.5 Condemnation. If all or any part of the Mortgaged Property in excess of fifteen per cent (15%) of the real property or ten per cent (10%) of the total square feet of buildings constructed on the real property, shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, who, after deducting therefrom all of its expenses, including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the sums secured hereby, and any balance of such monies then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, award, damages, claims, rights of action and proceeds as Lender may require.

4.6 Care of the Property.

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Fifteen Thousand Dollars (\$15,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice of the same to Lender.

(d) Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

4.7 Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Property; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then Lender, at its option, may perform or observe the same, and all payments made for costs paid or incurred by Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at the After-Maturity Rate set forth in the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower.

4.8 Estoppel Affidavits. Borrower within ten (10) days after written request from Lender shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same.

4.9 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this paragraph and all such expenses shall be secured by this Mortgage.

4.10 Lender's Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event Lender's attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.11 Waivers. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the indebtedness secured hereby. Borrower further waives, to the extent permitted by any law (now or at any future time enacted) in the state where the Property is located, any rights of redemption, appraisement, valuation, stay or extension.

4.12 Delay or Omission No Waiver. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

4.13 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon. If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement

thereon; (g) makes or consents to any agreement subordinating the lien or change hereof; or (h) enters into any agreement with Borrower or shareholder thereof changing any term of the Note or documents relating to the Loan or releasing any shareholder of Borrower or any security or respecting any matter whatsoever, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, this Mortgage or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, or, except as otherwise expressly provided in an instrument or instruments executed by Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice to any person or entity is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured thereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.14 Discontinuance of Proceedings - Position of Parties, Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding has been taken.

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

4.16 Notices. All notices given under this Mortgage and the other Loan Documents (unless otherwise expressly provided therein) must be in writing and will be effectively served upon personal delivery, or by overnight courier service with guaranteed next day delivery or by mailing in certified United States Mail, postage prepaid, sent to Lender at Lender's Notice Address and sent to Borrower at Borrower's Notice Address, or to such other address as either Borrower or Lender shall have designated by written notice to the other sent in accordance herewith. Such notices shall be deemed given in the case of personal delivery, when received; in case of delivery by courier service with guaranteed next day delivery, said notice shall be deemed given on the next day or the day designated for delivery, and in case of delivery by certified United States Mail, said notice shall be deemed given two (2) business days after deposit therein. No notice to or demand on Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances.

4.17 Entries.

(a) Lender and its respective agents and representatives will have the right at any reasonable time to enter the Property and inspect all parts thereof. Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of Borrower relating to the Mortgaged Property.

(b) Lender is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender.

4.18 Status and Authority.

(a) Borrower warrants that (i) it is duly organized and validly existing, in good standing under the laws of the state where the Property is located, (ii) it is duly qualified to do business and is in good standing in said state, (iii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of Borrower.

(b) Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not make any changes in its structure or in the beneficial ownership of Borrower or dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge any other partnership, corporation, or other entity, without the prior express written consent of Lender.

(c) Borrower agrees that it will keep proper books and records of account in accordance with generally accepted accounting principles and will furnish to Lender such information respecting the business, affairs, operations and financial condition of Borrower as may be reasonably requested.

4.19 Miscellaneous. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of the Mortgage are for convenience only and do not limit its provisions.

4.20 Successors. The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of Borrower and Lender.

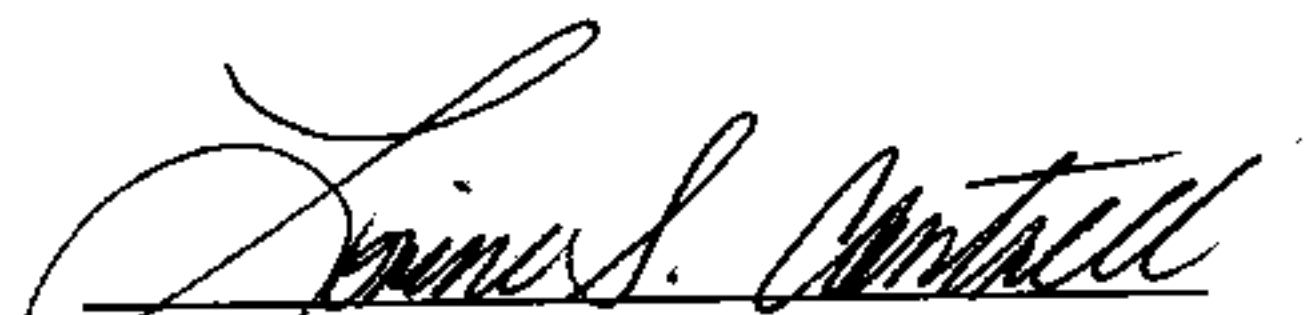
4.21 Purpose of Loan. Borrower hereby warrants and certifies to Lender that all of the proceeds of the loan secured by this Mortgage will be used strictly for business and commercial purposes, and no part of said proceeds is or will be used, directly or indirectly, for purposes other than business and commercial purposes.

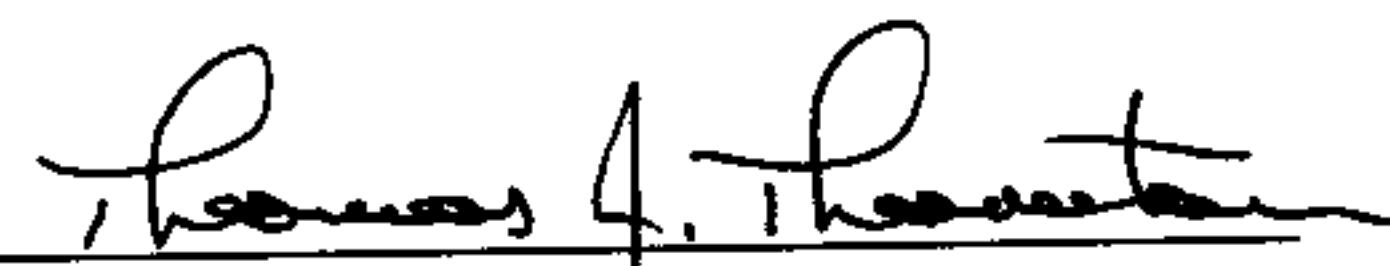
Borrower agrees that any default under any one or more of the Loan Documents shall, at the option of Lender, constitute a default under any one or more of the other Loan Documents.

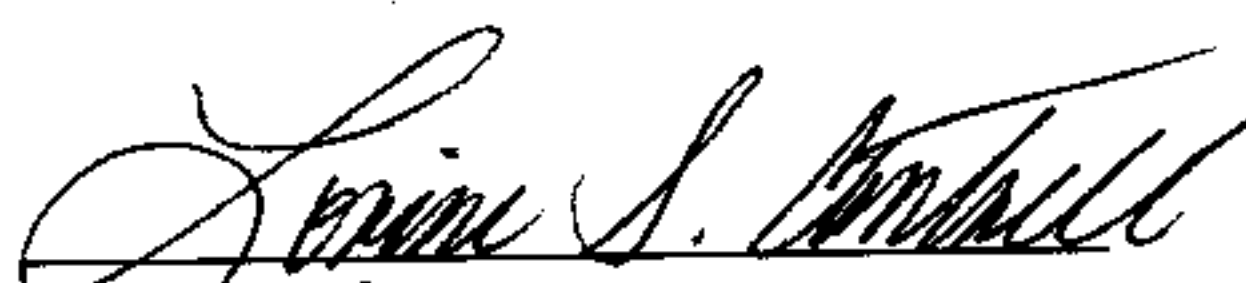
IN WITNESS WHEREOF, this instrument has been executed by the undersigned under seal on this 16th day of November, 1995.

BORROWER

**WEATHERLY LANDS, L.L.C., an
Alabama limited liability company**


Witness

By: 
Thomas J. Thornton
As Managing Member


Witness

By: 
Jack H. Harrison
As Managing Member

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Thomas J. Thornton and Jack H. Harrison, whose names as Managing Members of Weatherly Lands, L.L.C., an Alabama limited liability company, are signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that, being informed the contents of the conveyance, they, in their capacity as such Managing Members, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of November, 1995.


Notary Public

My commission expires: _____

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

THIS INSTRUMENT WAS PREPARED BY:

James J. Odom, Jr.

Post Office Box 11244

Birmingham, Alabama 35202-1244

EXHIBIT "A"

Part of the Southwest 1/4 of Section 31, Township 20 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at the most Southerly corner of Lot 116, Weatherly Brentwood Sector 15-Phase II, as recorded in the Office of the Judge of Probate, Shelby County, Alabama in Map Book 20, Page 08, run in a Northeasterly direction along the Southeast line of Lot 116 and its Northeasterly extension thereof for a distance of 388.56 feet to an existing iron pin being on the curved Southwest right of way line of Weatherly Club Drive said Southwesterly right of way line of Weatherly Club Drive being concave in a Southwest direction and having a central angle of 26 degrees 55' 54" and radius of 1050.0 feet; thence turn an angle to the right (98 degrees 30' 30" to the chord of said curve) and run in a Southeasterly direction along the arc of said curve and Southwesterly right of way line for a distance of 493.55 feet to an existing iron rebar being at a point of intersection with the Northwest right of way line of Wembley Way; thence turn an angle to the right (112 degrees 27' 23" from last mentioned chord line) and run in a Southwesterly direction along the Northwest right of way line of said Wembley Way for a distance of 184.92 feet to an existing iron pin being the point of beginning of a curve, said curve being concave in a Southeasterly direction and having a central angle of 36 degrees 39' 09" and a radius of 349.28 feet; thence turn an angle to the left and run in a Southwesterly direction along the Northwest right of way line Wembley Way for a distance of 223.44 feet to the point of ending of said curve; thence continue in a Southwesterly direction along the Northwest right of way line of said Wembley Way and along the line tangent to the end of said curve for a distance of 37.71 feet to an existing iron pin; thence turn an angle to the right of 90 degrees 00' 39" and run in a Northwesterly direction for a distance of 50.0 feet to an existing iron pin; thence turn an angle to the right of 19 degrees 55' 37" and run in a Northerly direction for a distance of 249.99 feet to an existing iron pin; thence turn an angle to the right of 17 degrees 48' 27" and run in a Northerly direction for a distance of 61.50 feet to an existing iron pin, said iron pin being a corner on Lot 115 of said Weatherly Brentwood Sector 15-Phase II, thence turn an angle to the right of 57 degrees 56' 33" and run in a Northeasterly direction along the Southeast line of said Lot 115 for a distance of 5.0 feet, more or less, to the point of beginning.

Inst # 1995-33414

11/20/1995-33414
03:44 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
020 MCD 506.00