

THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED RETURN TO:

Inst # 1996-38782

J. Scott Sims, Esq.  
Sirote & Permutt, P.C.  
2222 Arlington Avenue  
Birmingham, Alabama 35205

11/22/1996-38782  
03:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MCD 683.50

STATE OF ALABAMA )  
:  
COUNTY OF SHELBY )

SPACE ABOVE LINE FOR  
RECORDER'S USE

**MORTGAGE WITH ASSIGNMENT OF  
RENTS, SECURITY AGREEMENT AND FIXTURE FILING**

This **MORTGAGE WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING** ("Mortgage"), dated this 19th day of November, 1996, is made by **WPH PROPERTIES, INC.**, an Alabama corporation whose address is 5428 Hickory Ridge Drive, Birmingham, Alabama 35242 ("Mortgagor"), in favor of **SOUTHTRUST BANK OF ALABAMA, N.A.**, a national banking association whose address is P.O. Box 2554, Birmingham, Alabama 35290 ("Mortgagee"), and is executed to secure a loan from Mortgagee to Mortgagor as evidenced by that certain Promissory Note of eventdate herewith (the "Loan")

THIS INSTRUMENT IS INTENDED TO BE A MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT OF BOTH REAL AND PERSONAL PROPERTY, INCLUDING GOODS THAT ARE TO BECOME FIXTURES ON REAL PROPERTY DESCRIBED HEREIN AND IS TO BE FILED FOR RECORD IN THE RECORDS WHERE MORTGAGES OF REAL ESTATE ARE FILED AND SHOULD ALSO BE INDEXED AS A FINANCING STATEMENT FOR GOODS THAT ARE OR TO BECOME FIXTURES ON THE REAL PROPERTY DESCRIBED HEREIN.

1. Grant and Security Agreement.

1.1 Grant and Security Agreement. For valuable consideration, Mortgagor irrevocably grants, transfers and assigns to Mortgagee, with power of sale, the following property (the "Mortgaged Property"):

683.50

(a) that certain parcel of land more fully described in Exhibit "A" attached to this Mortgage and incorporated in this Mortgage by reference (the "Land");

(b) all buildings, structures and other improvements now or in the future located or to be constructed on the Land (the "Improvements");

(c) all tenements, hereditaments, appurtenances, privileges and other rights and interests now or in the future benefitting or otherwise relating to the Land or the Improvements, including easements, rights-of-way, development rights, mineral rights, water rights and water stock (the "Appurtenances," and together with the Land and the Improvements, the "Real Property");

(d) all rents, issues, income, revenues, royalties and profits now or in the future payable with respect to or otherwise derived from the Real Property or the ownership, use, management, operation, leasing or occupancy of the Real Property, including those past due and unpaid (the "Rents");

(e) all present and future right, title and interest of Mortgagor in and to all inventory, equipment, fixtures and other goods (as those terms are defined in Article 9 of the Alabama Uniform Commercial Code (the "UCC"), and whether existing now or in the future) now or in the future located at, upon or about, or affixed or attached to or installed in, the Real Property, or used or to be used in connection with or otherwise relating to the Real Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing or occupancy of the Real Property, including furniture, furnishings, machinery, appliances, building materials and supplies, generators, boilers, furnaces, water tanks, heating, ventilating and air conditioning equipment and all other types of tangible personal property of any kind or nature, and all accessories, additions, attachments, parts, proceeds, products, repairs, replacements and substitutions of or to any of such property (the "Goods," and together with the Real Property, the "Property"); and

(f) all present and future right, title and interest of Mortgagor in and to all accounts, general intangibles, chattel paper, deposit accounts, money, instruments and documents (as those terms are defined in the UCC) and all other agreements, obligations, rights and written materials (in each case whether existing now or in the future) now or in the future relating to or otherwise arising in connection with or derived from the Property or any other part of the Mortgaged Property or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing of the Property or any other part of the Mortgaged Property, including (i) permits, approvals and other governmental authorizations, (ii) Improvement plans and specifications and architectural drawings, (iii) agreements with

contractors, subcontractors, suppliers, project managers and supervisors, designers, architects, engineers, sales agents, leasing agents, consultants and property managers, (iv) takeout, refinancing and permanent loan commitments, (v) warranties, guaranties, indemnities and insurance policies, together with insurance payments and unearned insurance premiums, (vi) claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to any insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property, (vii) any cash collateral account maintained pursuant to any loan document between the parties relating to Mortgagee's loan to Mortgagor as secured by this Mortgage (hereafter such loan documents collectively being referred to as the "Loan Documents"), and any of Mortgagor's funds or other amounts deposited by Mortgagor with Mortgagee which are to be held in any such cash collateral account, (viii) leases, rental agreements, license agreements, service and maintenance agreements, purchase and sale agreements and purchase options, together with advance payments, security deposits and other amounts paid to or deposited with Mortgagor under any such agreements, (ix) reserves, deposits, bonds, deferred payments, refunds, rebates, discounts, cost savings, escrow proceeds, sale proceeds and other rights to the payment of money, trade names, trademarks, goodwill and all other types of intangible personal property of any kind or nature, and (x) all supplements, modifications, amendments, renewals, extensions, proceeds, replacements and substitutions of or to any of such property (the "Intangibles," and together with the Appurtenances and the Rents," the "Rights").

1.2 Mortgage as a Lien Upon Property. The parties acknowledge and agree that this Mortgage constitutes a first lien upon the Land, as recorded in the Office of the Judge of Probate of Shelby County.

**TO HAVE AND TO HOLD** all the same with all privileges and appurtenances hereby and hereafter conveyed and assigned or agreed or intended so to be, to Mortgagee and its successors and assigns forever, upon the terms and conditions herein set forth;

**PROVIDED, HOWEVER,** that if Mortgagor shall well and truly pay, or cause to be paid, the principal of and interest due or to become due on the Note (and all extensions and renewals of same), at the times and in the manner set forth in the Note according to the true intent and meaning thereof, and Mortgagor shall well and truly keep, perform and observe all of the covenants and conditions contained in the Loan Documents by and between Mortgagor and Mortgagee in connection with this mortgage loan to Mortgagor, including but not limited to the Note, to be kept, performed and observed by Mortgagor, and shall pay or cause to be paid to Mortgagee all sums of money due or to become due to Mortgagee in accordance with the terms and provisions hereof and of any other Loan Document, then, upon such final payment this Mortgage and the rights hereby granted shall cease, terminate and be void; otherwise this Mortgage shall remain in full force and effect, and Mortgagee shall not be required to cause any



property to be released from this Mortgage until final payment and performance in full of all Secured Obligations (as hereinafter defined) and termination of all obligations of Mortgagor under or in connection with the Loan.

Mortgagor further grants to Mortgagee, pursuant to the UCC, a security interest in all present and future right, title and interest of Mortgagor in and to all Goods and Intangibles in which a security interest may be created under the UCC (the "Personal Property").

2. **Obligations Secured.** This Mortgage is given for the purpose of securing payment and performance of the following (the "Secured Obligations"): (a) all present and future indebtedness evidenced by that certain promissory note dated the date of this Mortgage by and between WPH Properties, Inc., an Alabama corporation, in the face principal amount of Four Hundred Twenty Five Thousand Dollars (\$425,000.00) executed by Mortgagor in favor of Mortgagee (hereafter referred to as the "Note"), including principal, interest and all other amounts payable under the terms of the Note; (b) all present and future obligations of Mortgagor under this Mortgage; (c) all other present and future obligations of Mortgagor to Mortgagee under the Loan Documents; and (d) all additional present and future obligations of Mortgagor to Mortgagee under any other agreement or instrument (whether existing now or in the future) which states that it is, or such obligations are, secured by this Mortgage; in each case as such indebtedness and other obligations may from time to time be supplemented, modified, amended, renewed and extended, whether evidenced by new or additional Documents or resulting in a change in the interest rate on any indebtedness or otherwise.

3. **Mortgagor's Covenants.** To protect the security of this Mortgage, Mortgagor agrees as follows:

3.1 **Payment and Performance of Secured Obligations.** Mortgagor shall pay and perform all Secured Obligations in accordance with the respective terms of such Secured Obligations, whether evidenced by or arising under this Mortgage, the Note, any of the other Loan Documents or otherwise.

3.2 **Maintenance of Mortgaged Property.** Unless Mortgagee otherwise consents in writing, Mortgagor shall (a) keep the Property in good condition and repair, and promptly and in a good and workmanlike manner (and with new materials of good quality) complete any Improvements to be constructed on the Land, repair or restore any part of the Real Property that may be injured, damaged or destroyed, and repair, restore or replace any Goods that may be injured, damaged, destroyed or lost or that may be or become obsolete, defective or worn out (except that Mortgagor shall not be required to repair, restore or replace any such Goods of insignificant value which are not reasonably necessary or appropriate to the efficient operation of the Real Property or the completion of the Project), and in each case pay when due all valid claims for labor, service, equipment and material and any other costs incurred in connection with any such action, (b) not remove, demolish or materially alter any Improvements, (c) not construct any Improvements on the Land or undertake any site development work unless

contemplated by the Loan Documents or otherwise approved by Mortgagee, (d) not commit or permit any waste of any part of the Property, (e) not permit or consent to any restriction that would prevent or otherwise impair the current use of the Real Property, (f) comply in all material respects with all applicable laws, ordinances, rules and regulations (hereafter referred to as "Laws and Other Requirements"), and not commit or permit any material violation of any Laws or Other Requirements, which affect any part of the Mortgaged Property or require any alterations or improvements to be made to any part of the Property, (g) take such action from time to time as may be reasonably necessary or appropriate, or as Mortgagee may reasonably require, to protect the physical security of the Property, (h) except as specifically approved by Mortgagee, not part with possession of or abandon any part of the Mortgaged Property or cause or permit any interest in any part of the Mortgaged Property to be sold, transferred, leased, encumbered, released, relinquished, terminated or otherwise disposed of (whether voluntarily, by operation of law or otherwise), and (i) take all other action which may be reasonably necessary or appropriate to preserve, maintain and protect the Mortgaged Property, including the enforcement or performance of any rights or obligations of Mortgagor or any conditions with respect to any Rights.

Without limitation on any obligations of Mortgagor under the preceding paragraph, in the event that (i) all or a substantial or material portion of the Property is injured, damaged or destroyed by fire or other casualty, or (ii) any of the Property is damaged, destroyed or lost and any Damage Proceeds (as defined in § 3.3) are payable as a result of such occurrence or the cost of the repair, restoration or replacement is reasonably expected to exceed \$50,000.00, or (iii) any part (but less than all) of the Property is condemned, seized or appropriated by any Governmental Agency (or conveyed, with Mortgagee's consent, in lieu of any such action), the following additional provisions shall apply:

(a) within 30 days (or such longer period as Mortgagee may approve in writing) after the date of such injury, damage, destruction, loss or other event, Mortgagor shall deliver to Mortgagee, in form and substance reasonably satisfactory to Mortgagee: (1) a written plan for the repair, restoration or replacement of the Property (any such repair, restoration or replacement being referred to as a "Restoration"), including the estimated cost of the Restoration and time of completion, (2) if requested by Mortgagee, a copy of the plans and specifications for the Restoration, and (3) such other Documents and information relating to the Restoration as Mortgagee may reasonably request;

(b) if and to the extent required by Mortgagee, any contracts entered into by Mortgagor with architects, contractors, subcontractors or suppliers in connection with the Restoration shall be in form and substance and with a Person reasonably satisfactory to Mortgagee;

(c) the Restoration shall be conducted in accordance with such procedures and requirements as Mortgagee may reasonably specify, and shall be in substantial conformity with the applicable plans and specifications and the plan



referred to in paragraph (a) above and in compliance in all material respects with all applicable Laws and Other Requirements;

(d) if Mortgagee reasonably determines at any time that any available Damage Proceeds that Mortgagee may be required to release to Mortgagor for the Restoration pursuant to § 3.3 are or may be insufficient to pay for all costs of completing the Restoration, then Mortgagor shall deposit with Mortgagee, on demand, an amount deemed reasonably necessary by Mortgagee to cover such insufficiency (any such amount to be held and disbursed by Mortgagee in accordance with paragraph (e) below); and

(e) any Damage Proceeds that Mortgagee may be required to release to Mortgagor for the Restoration pursuant to § 3.3, together with any amounts deposited by Mortgagor with Mortgagee pursuant to paragraph (d) above, shall be held by Mortgagee in a cash collateral account, shall be used solely to pay the cost of the Restoration and shall be disbursed in accordance with the terms, conditions and procedures set forth in the Loan Documents for Disbursements of the Loan and/or such other terms, conditions and procedures as Mortgagee may reasonably require (including compliance by Mortgagor with the provisions of paragraphs (a) through (d) above), provided that (1) Mortgagee shall have no obligation to disburse any such amounts if an event of default has occurred under the Note, this Mortgage or any Loan Document, and is continuing (hereafter an "Event of Default"), and (2) if the amount of any such Damage Proceeds received by Mortgagee exceeds the cost of completing the Restoration, the excess may be applied by Mortgagee to the Secured Obligations in such order and manner as Mortgagee may determine or, at the option of Mortgagee, may be released to Mortgagor.

Any application or release of Damage Proceeds or additional amounts deposited with Mortgagee pursuant to paragraph (d) above (whether under this § 3.2 or § 3.3) shall not cure or waive any Event of Default or notice of default or invalidate any act done pursuant to such notice.

**3.3 \* Insurance, Condemnation and Damage Claims.** Mortgagor shall maintain fire and other insurance on the Property (i) in amounts satisfactory to Mortgagee, (ii) with an insurance company licensed to do business in Alabama and reasonably satisfactory to Mortgagee, and (iii) containing such terms and provisions as Mortgagee may require, including but not limited to Mortgagee's being a named insured and requiring notice to Mortgagee of any lapse or termination of such policy or policies. All proceeds of any claim, demand, award, settlement or other payment arising or resulting from or otherwise relating to any such insurance or any loss or destruction of, injury or damage to, trespass on or taking, condemnation (or conveyance in lieu of condemnation) or public use of any of the Property (a "Damage Claim") are assigned and shall be payable and delivered to Mortgagee (any such proceeds of any Damage Claim being referred to in this Mortgage as "Damage Proceeds"). Mortgagor shall take

all action reasonably necessary or required by Mortgagee in order to protect Mortgagor's and Mortgagee's rights and interests with respect to any Damage Claim, including the commencement of, appearance in and prosecution of any appropriate action or other proceeding, and Mortgagee may in its discretion participate in any such action or proceeding at the expense of Mortgagor.

So long as no Event of Default has occurred and is continuing, Mortgagor may settle, compromise or adjust any Damage Claim with the prior written consent of Mortgagee (which shall not be unreasonably withheld). Upon the occurrence and during the continuance of any Event of Default, Mortgagee shall have the sole right to settle, compromise or adjust any Damage Claim in such manner as Mortgagee may determine, and for this purpose Mortgagee may, in its own name or in the name of Mortgagor, take such action as Mortgagee deems appropriate to realize on any such Damage Claim. In either case, all Damage Proceeds payable in connection with any such Damage Claim shall be delivered directly to Mortgagee as provided in the preceding paragraph.

Any Damage Proceeds received by Mortgagee may be applied by Mortgagee in payment of the Secured Obligations in such order and manner as Mortgagee may determine, provided that so long as no Event of Default has occurred and is continuing, Mortgagee shall release such Damage Proceeds to Mortgagor for the Restoration of the Property in the manner set forth in § 3.2, except that Mortgagee shall not be required to release such Damage Proceeds (and may apply such Damage Proceeds to the Secured Obligations as set forth above) to the extent that such Damage Proceeds relate to any condemnation, seizure or other appropriation by any Governmental Agency of all or any portion of the Property (including Damage Proceeds payable in lieu of any such action), or if Mortgagee has reasonably determined that the security of this Mortgage has been impaired, or will be impaired upon release of Damage Proceeds to Mortgagor.

3.4 Liens and Taxes. Subject to the right of Mortgagor to contest any such payments, (a) Mortgagor shall pay, prior to delinquency, all taxes which are or may become a lien affecting any part of the Mortgaged Property, and (b) Mortgagor shall pay and perform when due all other obligations secured by or constituting a lien affecting any part of the Mortgaged Property.

3.5 Actions. Mortgagor shall appear in and defend any claim or any action or other proceeding purporting to affect title or other interests relating to any part of the Mortgaged Property, the security of this Mortgage or the rights or powers of Mortgagee, and give Mortgagee prompt written notice of any such claim, action or proceeding. Mortgagee may, at the expense of Mortgagor, appear in and defend any such claim, action or proceeding and any claim, action or other proceeding asserted or brought against Mortgagee in connection with or relating to any part of the Mortgaged Property or this Mortgage.

3.6 Action by Mortgagee. If Mortgagor fails to perform any of its obligations under this Mortgage, Mortgagee may, but without any obligation to do so and



without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligations under this Mortgage, and at the expense of Mortgagor: (a) perform such obligations in such manner and to such extent and make such payments and take such other action as Mortgagee may deem necessary in order to protect the security of this Mortgage, Mortgagee being authorized to enter upon the Real Property for such purposes, (b) appear in and defend any claim or any action or other proceeding purporting to affect title or other interests relating to any part of the Mortgaged Property, the security of this Mortgage or the rights or powers of Mortgagee, and (c) pay, purchase, contest or compromise any lien or right of others which in the reasonable judgment of Mortgagee is or appears to be or may for any reason become prior or superior to this Mortgage. If Mortgagee shall elect to pay any such lien or right of others or any taxes which are or may become a lien affecting any part of the Mortgaged Property or make any other payments to protect the security of this Mortgage, Mortgagee may do so without inquiring into the validity or enforceability of any apparent or threatened lien, right of others or taxes, and may pay any such taxes in reliance on information from the appropriate taxing authority or public office without further inquiry.

3.7 Compliance with Environmental Laws. The Mortgaged Property is in compliance, and Mortgagor shall in the future comply and cause the Mortgaged Property to comply, with all applicable federal, state and local environmental laws, ordinances, and regulations (collectively, the "Environmental Laws"). There are no pending claims or threats of pending claims against Mortgagor or the Mortgaged Property by private, governmental or administrative authorities relating to environmental impairment, or Environmental Laws. Mortgagor shall not use the Mortgaged Property in a manner which will result in any non-complying disposal or release of any solid waste, hazardous waste, hazardous substance, or other contaminant (all as defined in the Environmental Laws) (collectively, "Hazardous Materials") in, on or under the Mortgaged Property, and covenants and agrees to keep, or cause the Mortgaged Property to be kept, free of any non-complying Hazardous Materials. The Mortgagee from time to time may inspect, test and sample the Mortgaged Property for compliance with Environmental Laws and may add the cost of same to the principal balance of the indebtedness secured hereby. Mortgagor agrees that Mortgagee, in its sole discretion, may submit a copy of any environmental report or test results to federal and state environmental agencies, or any other governmental agency having regulatory control over the Mortgaged Property. In response to the presence of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property at any time, Mortgagor shall immediately take, at Mortgagor's sole expense, all remedial action required by the Environmental Laws or any judgment, consent decree, settlement or compromise with respect to any claims in connection therewith. If Mortgagor fails to take such remedial action, Mortgagee, in its sole discretion, may take such remedial action and add any and all costs in connection therewith to the principal balance of the indebtedness secured hereby. Mortgagor shall immediately notify Mortgagee in writing of: (i) the discovery of any such non-complying Hazardous Materials in, on, or under the Mortgaged Property; (ii) any knowledge by Mortgagor that the Mortgaged Property does not comply with any Environmental Laws; (iii) any Hazardous Materials claims or conditions; and (iv) the discovery by Mortgagor of any occurrence or condition on any real property adjoining the Mortgaged Property that is likely to cause the breach of the Environmental Laws as to the



Mortgaged Property or any part thereof Mortgagor shall defend, indemnify and hold Mortgagee and its directors, officers, agents and employees harmless from and against all claims, demands, causes of action, liabilities, losses, costs and expenses (including, without limitation, costs of suit, reasonable attorney's fees, fees of expert witnesses, engineering fees, and costs of any environmental inspections, inquiries, audits, evaluations, assessments or other expenses) arising from or in connection with (i) the presence in, on or under the Mortgaged Property of any Hazardous Materials, or any releases or discharges of any Hazardous Materials in, on, under or from the Mortgaged Property; (ii) any activity carried on or undertaken on or off the Mortgaged Property, whether prior to, during, or after the term hereof, and whether by Mortgagor or any predecessor in title or any officers, employees, agents, contractors or subcontractors of Mortgagor or any predecessor in title, or any third persons at any time occupying or present on the Mortgaged Property, in connection with the generation, manufacture, handling, use, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time in, on or under the Mortgaged Property, or (iii) any breach of any representation, warranty or covenant under the terms of this Mortgage. The foregoing indemnity extends to the contamination of any property or natural resources arising in connection with Hazardous Materials, irrespective of whether activities were or will be undertaken in compliance with Environmental Laws or other applicable laws, regulations, codes and ordinances. Mortgagor shall not place any underground storage tanks or aboveground storage tanks on the Mortgaged Property without the prior written consent of Mortgagee. Mortgagor covenants and agrees to provide Mortgagee with a copy of any and all correspondence, plans, specifications, reports, filings, and other documents relating to the Mortgaged Property submitted by Mortgagor to any federal or state environmental agency, or any other governmental agency having regulatory control over the Mortgaged Property, and further covenants and agrees to provide Mortgagee with notice and a copy of any and all environmental inspections and test results conducted in, on, or under the Mortgaged Property. Any action taken by Mortgagee pursuant hereto shall be solely for Mortgagee's benefit.

3.8 Obligations With Respect to Mortgaged Property. Mortgagee shall be under no obligation to preserve, maintain or protect the Mortgaged Property or any of Mortgagor's rights or interests in the Mortgaged Property, or make or give any presentments, demands for performance, protests, notices of nonperformance, protest or dishonor or other notices of any kind in connection with any Rights, or take any other action with respect to any other matters relating to the Mortgaged Property. Mortgagee does not assume and shall have no liability for, and shall not be obligated to perform, any of Mortgagor's obligations with respect to any Rights or any other matters relating to the Mortgaged Property, and nothing contained in this Mortgage shall release Mortgagor from any such obligations.

3.9 Assignment of Rents. Mortgagor irrevocably grants, transfers and assigns to Mortgagee, during the continuance of this Mortgage, all of Mortgagor's right, title and interest in and to the Rents. Notwithstanding such assignment, so long as no Event of Default has occurred and is continuing, Mortgagor shall have the right to collect, receive, hold and dispose of the Rents as the same become due and payable, provided that unless Mortgagee otherwise consents in writing: (a) any such Rents paid more than 30 days in advance of the date

when due shall be delivered to Mortgagee and held by Mortgagee in a cash collateral account, to be released and applied on the date when due (or, if an Event of Default has occurred and is continuing, at such other time or times and in such manner as Mortgagee may determine), and (b) if an Event of Default has occurred and is continuing, Mortgagor's right to collect and receive the Rents shall cease and Mortgagee shall have the sole right, with or without taking possession of the Real Property, to collect all Rents, including those past due and unpaid. Any such collection of Rents by Mortgagee shall not cure or waive any Event of Default or notice of default or invalidate any act done pursuant to such notice. Failure or discontinuance of Mortgagee at any time, or from time to time, to collect the Rents shall not in any manner affect the subsequent enforcement by Mortgagee of the right to collect the same. Nothing contained in this Mortgage, nor the exercise of the right by Mortgagee to collect the Rents, shall be deemed to make Mortgagee a "mortgagee in possession" or shall be, or be construed to be, an affirmation by Mortgagee of, or an assumption of liability by Mortgagee under, or a subordination of the lien of this Mortgage to, any tenancy, lease or option.

3.10 Default. Upon the occurrence of any Event of Default: (a) Mortgagor shall be in default under this Mortgage, and all Secured Obligations shall immediately become due and payable without further notice to Mortgagor; (b) upon demand by Mortgagee, Mortgagor shall pay to Mortgagee, in addition to all other payments specifically required under the Loan Documents, in monthly installments, at the times and in the amounts required by Mortgagee from time to time, sums which when cumulated will be sufficient to pay one month prior to the time the same become delinquent, all taxes which are or may become a lien affecting the Mortgaged Property and the premiums for any policies of insurance to be obtained and maintained in connection with the Loan (all such payments to be held in a cash collateral account as additional security for the Secured Obligations); and (c) Mortgagee may, without notice to or demand upon Mortgagor, which are expressly waived by Mortgagor (except for notices or demands otherwise required by applicable Laws to the extent not effectively waived by Mortgagor and any notices or demands specified below), and without releasing Mortgagor from any of its Obligations, exercise any one or more of the following remedies as Mortgagee may determine:

(a) Mortgagee may, either directly or through an agent or court appointed receiver, and without regard to the adequacy of any security for the Secured Obligations:

(i) enter, take possession of, manage, operate, protect, preserve and maintain, and exercise any other rights of an owner of, the Mortgaged Property, and use any other properties or facilities of Mortgagor relating to the Mortgaged Property, all without payment of rent or other compensation to Mortgagor;

(ii) enter into such contracts and take such other action as Mortgagee deems appropriate to complete all or any part of the Project or any other construction on the Land, subject to such modifications and



other changes in the Project or the plan of development as Mortgagee may deem appropriate;

(iii) make, cancel, enforce or modify leases, obtain and evict tenants, fix or modify rents and, in its own name or in the name of Mortgagor, otherwise conduct any business of Mortgagor in relation to the Mortgaged Property and deal with Mortgagor's creditors, debtors, tenants, agents and employees and any other Persons having any relationship with Mortgagor in relation to the Mortgaged Property, and amend any contracts between them, in any manner Mortgagee may determine;

(iv) either with or without taking possession of the Mortgaged Property, notify obligors on any Rights that all payments and other performance are to be made and rendered directly and exclusively to Mortgagee, and in its own name supplement, modify, amend, renew, extend, accelerate, accept partial payments or performance on, make allowances and adjustments and issue credits with respect to, give approvals, waivers and consents under, release, settle, compromise, compound, sue for, collect or otherwise liquidate, enforce or deal with any Rights, including collection of amounts past due and unpaid (Mortgagor agreeing not to take any such action after the occurrence of an Event of Default without prior written authorization from Mortgagee);

(v) endorse, in the name of Mortgagor, all checks, drafts and other evidences of payment relating to the Mortgaged Property, and receive, open and dispose of all mail addressed to Mortgagor and notify the postal authorities to change the address for delivery of such mail to such address as Mortgagee may designate; and

(vi) take such other action as Mortgagee deems appropriate to protect the security of this Mortgage.

(b) Mortgagee may foreclose this Mortgage either by sale at public outcry or by proceedings in law or equity, and Mortgagee may become the purchaser at any foreclosure sale if the highest bidder, and, in the event of sale at public outcry, Mortgagee may sell or cause to be sold, all and singular, the Mortgaged Property and all the estate, right, title and interest, claim and demand therein, such sale or sales to be made at public outcry at the North door of the courthouse of the county in which the Real Property is located at such time or times and upon such terms as may be required by law or as Mortgagee may determine, after having first given notice of the time, place and terms of sale, together with the description of the property to be sold, by publication once a week for three consecutive weeks prior to said sale in any newspaper then published in the county in Alabama in which the Real Property is located, and

after giving such other notice of the time, place and terms of sale as may be required by law. In the event of a sale hereunder, Mortgagee or owners of the debt and Mortgage, or the auctioneer, shall execute to the purchaser for and in the name of Mortgagor, a good and sufficient deed to the Mortgaged Property. Mortgagee may sell such property either as a whole or in separate parcels and in such order as Mortgagee may direct (Mortgagor waiving any right to direct the order of sale), at public auction to the highest bidder for cash in lawful money of the United States (or cash equivalents acceptable to Mortgagee to the extent permitted by applicable law), payable at the time of sale. Mortgagee may postpone the sale of all or any part of the Mortgaged Property by public announcement at such time and place of sale, and from time to time after any such postponement may postpone such sale by public announcement at the time fixed by the preceding postponement. Mortgagee shall deliver to the purchaser at such sale its deed conveying the property so sold, but without any covenant or warranty, express or implied, and the recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Mortgagee, may purchase at such sale, and any bid by Mortgagee may be, in whole or in part, in the form of cancellation of all or any part of the Secured Obligations.

(c) With respect to any Personal Property, Mortgagee shall have in any jurisdiction where enforcement of this Mortgage is sought all Remedies of a secured party under the UCC and may require Mortgagor, on demand, to assemble all Personal Property and make it available to Mortgagee at places that Mortgagee may select that are reasonably convenient for both parties, whether at the premises of Mortgagor or elsewhere.

(d) Mortgagee may proceed to protect, exercise and enforce any and all other Remedies provided under the Loan Documents or by applicable Laws.

All proceeds of collection, sale or other liquidation of the Mortgaged Property shall be applied first to all costs, fees, expenses and other amounts (including interest) payable by Mortgagor under § 3.11 of this Mortgage and to all other Secured Obligations not otherwise repaid in such order and manner as Mortgagee may determine, and the remainder, if any, to the person or persons legally entitled thereto.

Each of the Remedies provided in this Mortgage is cumulative and not exclusive of, and shall not prejudice, any other Remedy provided in this Mortgage or by applicable Laws or under any other Loan Document. Each Remedy may be exercised from time to time as often as deemed necessary by Mortgagee, and in such order and manner as Mortgagee may determine. This Mortgage is independent of any other security for the Secured Obligations, and upon the occurrence of an Event of Default, Mortgagee may proceed in the enforcement of this Mortgage independently of any other remedy that Mortgagee may at any time hold with respect to the Mortgaged Property or the Secured Obligations or any other security. Mortgagor, for itself and



for any other person claiming by or through Mortgagor, waives, to the fullest extent permitted by applicable Laws, all rights to require a marshalling of assets by Mortgagee or to require Mortgagee to first resort to any particular portion of the Mortgaged Property or any other security (whether such portion shall have been retained or conveyed by Mortgagor) before resorting to any other portion, and all rights of redemption, stay and appraisal.

3.11 Costs, Fees and Expenses. Mortgagor shall pay, on demand, all costs, fees, expenses, advances, charges, losses and liabilities of Mortgagee under or in connection with this Mortgage or the enforcement of, or the exercise of any Remedy or any other action taken by Mortgagee under, this Mortgage or the collection of the Secured Obligations, in each case including (a) reconveyance and foreclosure fees of Mortgagee, (b) costs and expenses of Mortgagee or any receiver appointed under this Mortgage in connection with the operation, maintenance, management, protection, preservation, collection, sale or other liquidation of the Mortgaged Property or foreclosure of this Mortgage, (c) advances made by Mortgagee to complete or partially construct all or any part of the Project or any other construction on the Land or otherwise to protect the security of this Mortgage, (d) cost of evidence of title, and (e) the reasonable fees and disbursements of Mortgagee's legal counsel and other out-of-pocket expenses, and the reasonable charges of Mortgagee's internal legal counsel; together with interest on all such amounts until paid at the default rate set forth in the Note.

3.12 Late Payments. By accepting payment of any part of the Secured Obligations after its due date, Mortgagee does not waive its right either to require prompt payment when due of all other Secured Obligations or to declare a default for failure to so pay.

3.13 Attorney-in-Fact. Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact, with full authority in the place of Mortgagor and in the name of Mortgagor or Mortgagee, to take such action and execute such documents as Mortgagee may reasonably deem necessary or advisable in connection with the exercise of any Remedies or any other action taken by Mortgagee under this Mortgage.

3.14 Successors and Assigns. This Mortgage applies to and shall be binding on and inure to the benefit of all parties to this Mortgage and their respective successors and assigns.

3.15 Mortgagee's Statements. For any statement regarding the Secured Obligations, Mortgagee may charge the maximum amount permitted by law at the time of the request for such statement.

3.16 Acquisition Mortgage. This Mortgage is intended to be an acquisition mortgage made by Mortgagor, as the owner of the Land, in favor of Mortgagee, as the lender (the addresses of each of which are set forth in the first paragraph of this Mortgage) for the purpose of acquiring the Land. Mortgagor represents that a complete legal description of the Land and, if indicated, the proper street address, is set forth in Exhibit "A".

3.17 Fixture Filing. This Mortgage covers certain Goods which are or are to become fixtures related to the Land and constitutes a "fixture filing" with respect to such Goods executed by Mortgagor (as "debtor") in favor of Mortgagee (as "secured party").


3.18 Governing Law. This Mortgage shall be governed by, and construed and enforced in accordance with, the Laws of Alabama.

3.19 Request for Notice. Mortgagor requests that a copy of any notice of default and a copy of any notice of sale be mailed to Mortgagor at Mortgagor's address set forth above.

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

**MORTGAGOR:**

WPH PROPERTIES, INC.  
an Alabama corporation

By:   
William Paul Henke,  
President



STATE OF ALABAMA )

Jefferson COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that William Paul Henke, the President of WPH Properties, Inc., an Alabama corporation, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, he, as such officer and with full authority executed the same voluntarily on the day the same bears date.

Given under my hand, this 19th day of November, 1996.

Gail A Wheat  
Notary Public  
My Commission Expires: 8/2/2000

**EXHIBIT "A"**

A PARCEL OF LAND SITUATED IN THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 22 SOUTH, RANGE 3 WEST AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE NORTHEAST CORNER OF SAID QUARTER - QUARTER SECTION AND RUN SOUTHERLY ALONG THE EAST LINE OF SAID QUARTER - QUARTER SECTION FOR A DISTANCE OF 430.54 FEET; THENCE TURN 91°30'30" RIGHT AND RUN WESTERLY FOR A DISTANCE OF 149.47 FEET TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE CONTINUE ALONG THE LAST DESCRIBED COURSE FOR A DISTANCE OF 392.16 FEET; THENCE TURN 89°43'43" LEFT AND RUN SOUTHERLY FOR A DISTANCE OF 107.61 FEET; THENCE TURN 89°28'08" LEFT AND RUN EASTERLY FOR A DISTANCE OF 396.52 FEET; THENCE TURN 92°43'54" LEFT AND RUN NORTHERLY FOR A DISTANCE OF 113.23 FEET TO THE POINT OF BEGINNING.

CONTAINING 43,522.75 SQUARE FEET.

Street Address: 255 Overland Road, Montevallo, Alabama.

Inst # 1996-38782

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11/22/1996-38782  
03:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
016 MCD 683.50