

THIS INSTRUMENT PREPARED BY:
J. Keith Windle
Hand Arendall, L.L.C.
900 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203

Inst # 1997-25841

STATE OF ALABAMA)

SHELBY COUNTY)

**MORTGAGE
AND SECURITY AGREEMENT**

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made as of the 13th day of August, 1997, is by and between COVINGTON PROPERTIES, L.L.C., an Alabama limited liability company (the "Borrower"), as mortgagor, whose address is 3548 Shandwick Place, Birmingham, Alabama 35242, c/o Mr. Joseph F. Covington, Jr. and SOUTHTRUST BANK, NATIONAL ASSOCIATION, a national banking association (hereinafter called "Lender"), as mortgagee, whose address is 420 North 20th Street, Birmingham, Alabama 35203, Attn: Chris Patty.

WITNESSETH:

WHEREAS, the Borrower is justly indebted to the Lender for borrowed money in the principal sum of One Million Eighty Five Thousand Dollars (\$1,085,000.00) (the "Loan"), as evidenced by one or more promissory notes of even date herewith from the Borrower, payable to the Lender in installments with interest thereon (said promissory notes, as the same may hereafter be renewed, extended or modified, being herein collectively called the "Note") (the Note, together with this Mortgage and that certain Construction Loan Agreement of even date herewith executed by the Borrower and the Lender and any amendments, modifications, and replacements thereto evidencing or securing the Note and all certificates, documents, and instruments now or hereafter executed by the Borrower in favor of the Lender with respect to the Loan, are collectively referred to herein as the "Loan Documents").

WHEREAS, as a condition precedent to making the Loan, the Lender has required that the Borrower execute this Mortgage as security for the Loan.

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1.

08/14/1997-25841
09:07 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
029 NCD 1706.00

Cabana J. H.

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt, sufficiency and delivery of which are hereby acknowledged, and in order to secure the indebtedness and other obligations of the Borrower under the Note, this Mortgage and all other Loan Documents (all of such indebtedness and obligations secured hereby, including, without limitation, future advances of principal, if any, protective advances, legal fees and related costs with respect to which Borrower has agreed to reimburse Lender, being referred to herein as the "Secured Indebtedness"), the Borrower has bargained and sold, and does hereby grant, bargain, sell, alien, and convey unto the Lender, its successors and assigns, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto, which property does not constitute the homestead of the Borrower (all such property is hereinafter referred to collectively as the "Premises"):

(a) All that certain tract or parcel of land located in Jefferson County, Alabama, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land"); and

(b) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by the Borrower and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Premises, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (individually, an "Improvement" and collectively, the "Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Land and a part of the Premises as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(c) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders to the Premises or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(d) All rents, issues, profits and revenues of the Premises from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, security deposits and escrow funds, and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Borrower of, in and to the same, reserving only the right to the Borrower to collect the same so long as an Event of Default (as defined in Article II hereof) has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(e) To the fullest extent assignable (if assignable by law) any and all licenses and permits obtained by the Borrower relating to the operation of the Premises.

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

PROVIDED, HOWEVER, that, if the Borrower shall pay to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated herein and therein, all without any deduction or credit for taxes or other similar charges paid by the Borrower, and shall keep, perform and observe all and singular the covenants and promises in the Note and in each of the Loan Documents expressed to be kept, performed, and observed by and on the part of the Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, terminate, and be void, but shall otherwise remain in full force and effect.

AND the Borrower covenants and agrees with the Lender as follows:

ARTICLE I

1.01 Performance of Note and Mortgage. The Borrower will perform, observe, and comply with all provisions hereof and of the Note secured hereby and will duly and punctually pay to the Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by the Borrower pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Borrower.

1.02 Warranty of Title. The Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged. The Borrower 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, and 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 the Borrower shall and will warrant and forever defend the title thereto unto the Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03 Taxes, Liens and Other Charges.

(a) The Borrower shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Premises, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to the Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. The Borrower shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the Borrower's covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless the Borrower has given prior written notice to the Lender of the Borrower's intent to so contest or object, and unless (i) the Borrower shall demonstrate to the Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Premises, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by the Lender, the Borrower shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Lender; and (iii) the Borrower shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings

(b) Except for income tax, gross receipts tax or similar tax imposed on the Lender by reason hereof, the Borrower shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, the Note, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to the Note or this Mortgage.

(c) The Borrower shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Premises, as required pursuant to Section 1.04 herein; and all utility charges which are incurred by the Borrower for the benefit of the Premises, or which may become a charge or lien against the Premises for gas, electricity, cable television, water and sewer services and the like furnished to the Premises, and all other public or private assessments or charges of a similar nature affecting the Premises or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. The Borrower shall submit to the Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as the Lender may require.

(d) The Borrower shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Premises; provided, however, that the Borrower may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. The Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

1.04 Insurance.

(a) Upon the request of the Lender, the Borrower shall procure for, deliver to and maintain for the benefit of the Lender during the term of this Mortgage, certificates of insurance evidencing paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to the Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable endorsement in favor of the Lender, providing the following types of insurance covering the Premises and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Premises without deduction for depreciation, and which policies of insurance shall contain satisfactory replacement cost endorsements.

(ii) comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury", including without limitation, bodily injury, death or property damage occurring on, in or about the Premises and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000.00 with respect to personal injury or death to anyone or more persons or damage to property;

(iii) worker's compensation insurance (including employer's liability insurance, if requested by the Lender) for all employees of the Borrower engaged on or with respect to the Premises, in such amount as is reasonably satisfactory to the Lender, or, if such limits are established by law, in such amounts;

(iv) business interruption or rental continuation insurance in an amount to be approved by the Lender;

(v) such other insurance on the Premises or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by the Lender against other insurable casualties which at the time are

commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

(b) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of the Borrower which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against the Borrower.

(c) The Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under this Section 1.04, and the Borrower does hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to the Lender but disburses instead either solely to the Borrower or to the Borrower and the Lender jointly, the Borrower agrees immediately to endorse and transfer such proceeds to the Lender to the extent of the Lender's interest therein. Upon the failure of the Borrower to endorse and transfer such proceeds as aforesaid, the Lender may execute such endorsements or transfers for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender as the Borrower's agent and attorney-in-fact so to do. Except as set forth in Section 1.07, after deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Lender may release any moneys so received by it for the repair or restoration of the property so damaged, without affecting the lien of this Mortgage, or the Lender may apply the same in the manner as the Lender shall determine to reduce the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Borrower.

(d) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.04, a renewal or replacement thereof satisfactory to the Lender shall be delivered to the Lender. If requested by the Lender, the Borrower shall deliver to the Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Premises in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or the Lender, and the Lender is hereby irrevocably appointed by the Borrower as attorney-in-fact for the Borrower to assign any such policy to said purchaser or to the Lender without accounting to the Borrower for any unearned premiums thereon.

(e) All policies of insurance required pursuant to the terms of this Section 1.04 shall contain a provisions that such policies will not be cancelled or materially amended, which term shall include any reduction in the scope or limits of coverage, without

at least thirty (30) days' prior written notice to the Lender. In the event the Borrower fails to provide, maintain, keep in force or deliver and furnish to the Lender evidence of policies of insurance required by this Section 1.04, the Lender may, but shall not be obligated to, procure such insurance or single-interest insurance for such risks covering the Lender's interest, and the Borrower will pay all premiums thereon promptly upon demand by the Lender. Until such payment is made by the Borrower, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.05 Monthly Deposits. If hereafter required by any applicable banking regulatory authority, or otherwise at the option of the Lender, the Borrower shall, upon request by the Lender, deposit with the Lender, on the due date of each installment under the Note, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments and insurance premiums as estimated by the Lender to be sufficient to pay such charges; said deposits to be held and to be used by the Lender to pay current taxes and assessments, insurance premiums and other charges on the Premises as the same accrue and are payable. Payment from said sums for said purposes shall be made by the Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Premises. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of the Lender and shall not earn any interest. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, the Borrower will deposit with the Lender such additional sum or sums as may be required in order or the Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any default in the provisions of this Mortgage or the Note, or any instrument evidencing, securing or in any way related to the Secured Indebtedness, the Lender may, at its option, apply any money in the fund resulting from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.06 Condemnation. If all or any part of the Premises 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 indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Borrower, immediately upon obtaining knowledge of any institution of any action or proceeding for the taking through condemnation of the Premises or any part thereof, will notify the Lender, and the Lender is hereby authorized, at its option, to commence, appear in and prosecute, through counsel selected by the Lender, in its own or in the Borrower's name, any action or proceeding relating to any condemnation. The Borrower may compromise or settle any claim for compensation but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of the Lender. All such compensation, awards, damages, claims, rights of action and proceeds and the rights thereto are hereby assigned by the Borrower to the Lender, and the Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittance therefor without any obligation to question the amount of

any such compensation, awards or damages. Except as set forth in Section 1.07, after deducting from said condemnation proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorneys' fees, the Lender shall apply the same in such manner as the Lender shall determine to reduce the sums secured hereby, and any balance of such moneys shall be paid to the Borrower.

1.07 Restoration and Repair. Notwithstanding the provisions of Sections 1.04 and 1.06 above, Lender agrees that Lender shall make the net proceeds of any casualty insurance or condemnation award with respect to the Premises (after payment of costs and expenses of Lender) available to Borrower for Borrower's repair and restoration of the Premises on the following terms and subject to Borrower's satisfaction of the following conditions:

(a) Such damage or condemnation does not result in a reduction in the fair market value of the Premises in excess of twenty-five percent (25%) based upon a comparison of the most recent prior appraisal of the Premises with a current appraisal performed by a licensed appraiser chosen by the Lender (the cost of which shall be borne by the Borrower);

(b) At the time of such damage or condemnation, and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Event of Default and no uncured event which, but for the giving of any required notice or expiration of any applicable grace period or both, would constitute an Event of Default on the part of Borrower under any Loan Document;

(c) The property, buildings, improvements and fixtures which have been damaged, or the remaining portion thereof in the case of condemnation, shall be capable of being restored to their pre-existing condition and utility with a value equal to or greater than their value prior to such damage (taking into account any reduction in the indebtedness secured hereby in the case of excess condemnation proceeds), shall be capable of being completed prior to the maturity of the Note, and shall not be such as would allow any tenant to reduce its rental payments or terminate or reduce the term of its lease, and evidence thereof satisfactory to Lender shall have been provided to Lender;

(d) Within thirty (30) days from the date of such damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;

(e) Within ninety (90) days following the date of notice under the preceding paragraph and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

(i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged to the condition and utility prior to such damage,

(ii) if loss or damage exceeds \$50,000, fixed-price or guaranteed maximum cost construction contract for completion of the repair and restoration work in accordance with such plans and specifications,

(iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgage loss-payable clause,

(iv) such additional funds as in Lender's opinion ~~are necessary~~ to complete the repair and restoration, and

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications.

(f) Lender may, at Borrower's expense, retain an independent inspection architect or engineer to review plans and specifications and completed construction and to certify all requests for disbursement;

(g) No portion of such proceeds shall be made available by Lender for any purposes which are not directly attributable to the cost of reconstructing those portions of the property to which damage has occurred except to the extent covered by available insurance proceeds and then only in proportion to the work completed;

(h) Borrower shall commence such work within one hundred twenty (120) days of such damage and shall diligently pursue such work to completion;

(i) All such proceeds held by Lender shall be advanced to Borrower in the manner of loan proceeds under the Construction Loan Agreement; and

(j) In the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fails to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds, or the balance thereof, at Lender's option, either (i) to the full or partial payment or prepayment of the indebtedness under the Note (principal, interest, and prepayment premium, if any), or (ii) the repair and/or restoration of the property, buildings, improvements or fixtures damaged, all without affecting this instrument.

Notwithstanding anything to the contrary contained herein, the repair or restoration of the Premises pursuant to this Section 1.07 shall not modify, alter or amend any of the obligations of Borrower set forth in any of the Loan Documents.

1.08 Care of Premises.

(a) The Borrower will keep the buildings, parking areas, roads and walkways, landscaping and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Premises or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Premises.

(b) The Borrower will not remove, demolish or alter the structural character of any Improvement located on the Land without the written consent of the Lender, nor make or permit use of the Premises for any purpose other than that for which the same are now used.

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

(d) The Lender or its representative is hereby authorized to enter upon and inspect the Premises during normal business hours.

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

(f) If all or any part of the Premises shall be damaged by fire or other casualty, the Borrower will promptly restore the Premises to the equivalent of its condition as of the date hereof; and if a part of the Premises shall be damaged through condemnation, the Borrower will promptly restore, repair or alter the remaining portions of the Premises in a manner satisfactory to the Lender. Notwithstanding the foregoing, the Borrower shall not be obligated to so restore unless in each instance the Lender agrees to make available to the Borrower any net insurance or condemnation proceeds actually received by the Lender hereunder in connection with such casualty loss or condemnation, to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve the Borrower of its obligation to restore. In the event all or any portion of the Premises shall be damaged or destroyed by fire or other casualty or by condemnation, the Borrower shall promptly deposit with the Lender a sum equal to the amount by which the estimated cost of the restoration of the Premises (as determined by the Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.09 Leases. The Borrower will comply with and observe its obligations as landlord under all leases affecting the Premises or any part thereof. If requested by the Lender, the Borrower will furnish the Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Premises, and will enter into leases

only upon a lease form previously approved by the Lender and for a fair market rental, unless the Borrower first obtains the Lender's written approval of changes to such form or the execution of a lease not on such form. The Borrower will not enter into any lease having a term of less than three (3) months or more than twelve (12) months without the prior approval of the Lender. If requested by the Lender, the Borrower will separately assign to the Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, security deposits and profits of the Premises from time to time accruing.

1.10 Security Agreement. With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Premises, this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of personal property included herein as a part of the Premises, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and the Borrower hereby grants to the Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be executed by the Borrower and the Lender and appropriately filed. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default thereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at the Lender's sole election. The Borrower agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of the Borrower and the Lender that everything used in connection with the production of income from the Premises or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the Improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (i) the proceeds of any fire and/or hazard insurance policy, or (ii) any award in eminent domain proceedings for taking or for loss of value, or (iii) the Borrower's interest as lessor in any present or future lease or rights to income arising out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights to income arising out of the use and/or occupancy of the Premises, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of the Lender as determined by this instrument or affect the priority of the Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of the Lender in the event any court shall at any time hold, with respect to the foregoing items (i), (ii) or (iii), that notice of the Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code

records. This Mortgage may be filed as a financing statement in any office where the Lender deems such filing necessary or desirable, and the Borrower will promptly upon demand reimburse the Lender for the costs therefor.

1.11 Further Assurances; After - Acquired Property. At any time and from time to time, upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by the Lender, any and all such other and further deeds of trusts, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of the Borrower under the Note and under this Mortgage, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Premises, whether now owned or hereafter acquired by the Borrower. Upon any failure by the Borrower so to do, the Lender may make, execute, record, file, re-record and/or re-file any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of the Borrower, and the Borrower hereby irrevocably appoints the Lender as the agent and the attorney-in-fact of the Borrower so to do. The lien of this Mortgage will automatically attach, without further act, to all after-acquired property attached to and/or used in the operation of the Premises or any part thereof.

1.12 Indemnity; Expenses. The Borrower will pay or reimburse the Lender, upon demand therefor, for all reasonable attorneys' fees, costs and expenses incurred by the Lender in any suit, action, legal proceeding or dispute or any kind in which the Lender is made a party or appears as a party plaintiff or defendant, affecting the Secured Indebtedness, this Mortgage or the interest created herein, or the Premises, including, but not limited to, the exercise of the power of sale contained in this Mortgage, any condemnation action involving the Premises or any action to protect the security hereof, and any such amounts paid by the Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage. The Borrower will indemnify and hold the Lender harmless from and against all claims, damages, and expenses, including attorneys' fees and court costs, resulting from any action by a third party against the Lender relating to this Mortgage or the interest created herein, or the Premises, including, but not limited to, any action or proceeding claiming loss, damage or injury (including death) to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided the Borrower shall not be required to indemnify the Lender for matters directly caused by the Lender's intentional misconduct or gross negligence.

1.13 Estoppel Affidavits. Upon ten (10) days' prior written notice, the Borrower shall furnish to the Lender a written statement, duly acknowledged, based upon its records, setting forth the unpaid principal of, and interest on, the Secured Indebtedness, stating

whether or not to its knowledge any off-sets or defenses exists against the Secured Indebtedness, or any portion thereof, and, if such off sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

1.14 Subrogation. To the full extent of the Secured Indebtedness, the Lender is hereby subrogated to the liens, claims and demands, and to the right of the owners and holders of each and every lien, claim, demand and other encumbrance on the Premises which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby preserved and shall pass to and be held by the Lender as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by the Lender had they been duly and legally assigned, transferred, set over and delivered unto the Lender by assignment, notwithstanding the fact that the same may be satisfied and cancelled of record.

1.15 Books, Records, Accounts and Annual Reports. The Borrower shall keep and maintain or shall cause to be kept and maintained, at the Borrower's cost and expense, and in accordance with generally accepted accounting principles, proper and accurate books, records and accounts reflecting all items of income and expense in connection with any services, equipment or furnishings provided in connection with the operation of the Premises. The Lender, by the Lender's agents, accountants and attorneys, shall have the right from time to time to examine such books, records or entity maintaining such books, records and accounts, to make such copies or extracts thereof as the Lender shall desire, and to discuss the Borrower's affairs, finances and accounts with the Borrower and with the officers and principals of the Borrower, at such reasonable times as may be requested by the Lender.

The Borrower will furnish to the Lender (i) within ninety (90) days after the end of the applicable fiscal year (or calendar year with respect to any natural person), financial statements of the Borrower in reasonable detail and form satisfactory to the Lender and certified by the Borrower, or if required by the Lender, a certified public accountant satisfactory to the Lender, and (ii) within thirty (30) days after the end of each calendar quarter (or more frequently if the Lender shall so request), a rent schedule of the Premises, certified by the Borrower showing the name of each tenant, and, for each tenant, the space occupied, the lease expiration date and the rent paid.

1.16 Licenses and Permits Obtained. The Borrower represents and warrants that all necessary permits, licenses and certificates have been obtained to permit the Borrower to operate the Premises in the manner contemplated, and the Borrower will maintain in effect all such licenses, permits, and certificates, together with any other agreements necessary for the use and operation of the Premises.

1.17 Limit of Validity. If, from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall

be due, shall involve transcending any limitations presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, ipso facto, the obligation to be fulfilled shall be reduced to the maximum obligation allowed under such limitation. The provisions of this Section 1.17 shall control every other provision of this Mortgage and of the Note.

1.18 Legal Actions. In the event that the Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Premises, the Note, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between the Lender and a participating lender, if any), the Borrower shall immediately, upon demand, reimburse the Lender for all costs, expenses and liabilities incurred by the Lender by reason of any such action or proceeding, including reasonable attorneys' fees, and any such amounts paid by the Lender shall be added to the secured indebtedness and shall be secured by this Mortgage.

1.20 Compliance with Zoning and Restrictions. The Borrower shall at all times operate the Premises in accordance with all applicable restrictions and zoning ordinances.

1.21 Conveyance of Premises. The Borrower shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Premises without the prior written consent of the Lender. The Lender's consent to such a transfer, if given in the Lender's sole discretion, shall not release or alter in any manner the liability of the Borrower or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of the Lender, the Secured Indebtedness shall be immediately due and payable in the event that the Borrower conveys all or any portion of the Premises or any interest therein, or in the event that the Borrower's equitable title hereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining the Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude the Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer. An encumbrance, pledge, conveyance, transfer or assignment of the Premises under this Section 1.21 shall include the voluntary or involuntary sale of member interests (or other ownership interests) of the Borrower (or the stock or other ownership interest of any entity directly or indirectly controlling the Borrower by operation of law or otherwise) or the creation or issuance of new member interests (or other ownership interests) by which an aggregate of more than twenty-five percent (15%) of the member interests (or other ownership interests) of the Borrower shall be vested in a party or parties who are not now members of the Borrower.

1.22 Compliance with Applicable Environmental Law. The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or asbestos, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42. U.S.C. §§ 6901 et

seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. §§ 9671, et seq.; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. The Borrower represents and warrants to the Lender that, to the best of Borrower's knowledge, the Premises and the Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Premises; that the Borrower has not obtained and is not, to the best of Borrower's knowledge, required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Premises by reason of any Applicable Environmental Law; that the Borrower has taken all reasonable steps necessary to determine and has determined that, to the best of Borrower's knowledge, no asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Premises; and that the use which the Borrower has made, makes or intends to make of the Premises will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Premises other than reasonable quantities stored in compliance with Applicable Environmental Laws. The Borrower hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Premises and to indemnify and forever save the Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Premises or the Lender; and this indemnity shall survive any foreclosure of this Mortgage or the taking by the Lender of a deed in lieu of foreclosure; provided however, that this indemnity shall not extend to acts of the Lender which exclusively result in such fines, charges, fees, expenses, damages, losses, liabilities, or response costs. The Borrower agrees to immediately notify the Lender in the event that any governmental agency or other entity notifies the Borrower that it may not be in compliance with any Applicable Environmental Laws. The Borrower agrees to permit the Lender to have access to the Premises at all reasonable times in order to conduct, at the Borrower's expense, any tests which the Lender reasonably deems are necessary to ensure that the Borrower and the Premises are in compliance with all Applicable Environmental Laws.

1.23 Appraisals. At the Lender's request, Borrower will permit the Lender, or its agents, employees or independent contractors, to enter upon and appraise the Premises at any time and from time to time; and Borrower will cooperate with and provide any information requested in connection with such appraisals. At any time while the Secured

Indebtedness remains outstanding, Lender may have the Premises reappraised at Borrower's expense if (i) an Event of Default shall then exist under the Loan Documents, or (ii) such appraisal shall be required by any external regulatory guideline or authority to which the Lender is subject, or (iii) the Lender shall have determined, in the exercise of its reasonable discretion, that the fair market value of the Premises has materially declined since the date of the last such appraisal; provided that Borrower shall in no event be responsible for the cost of more than one (1) such reappraisal during any twelve (12) month period.

1.24 Future Advances. The Lender, at its option, may make future advances to the Borrower; provided, that nothing contained herein shall constitute an obligation to do so. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage and the other Loan Documents when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. The Lender may make such future advances (a) at the request of the Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of the Borrower, any amounts which may be due under this Mortgage or any other mortgage or lien affecting the Premises.

1.25 Corporate Change. Without the prior written consent of Lender, which consent shall not be unreasonably withheld or delayed, the Borrower shall not, in any single transaction or series of transactions, directly or indirectly (i) liquidate, dissolve or terminate its existence; (ii) be a party to any merger or consolidation; (iii) sell, convey or lease all or any substantial part of its assets, except, as expressly permitted herein or in the other Loan Documents; or (iv) permit any change in the current ownership of the Borrower (as a result of the transfer of any member interest in the Borrower, or otherwise).

1.26 Existence. The Borrower represents to the Lender that it is a duly organized and validly existing Alabama limited liability company with the power, right and authority to consummate the transactions contemplated by this Mortgage. The Borrower is duly qualified to do business in all jurisdictions in which it conducts its business. The execution, delivery and performance of this Mortgage has been duly authorized by all necessary action, and all consents, approvals and waivers of rights required for the consummation of the transactions contemplated by this Mortgage have been obtained. The Borrower was organized pursuant to those certain Articles of Organization of Covington Properties, L.L.C. dated as of March 18, 1997 and recorded at Instrument 1997-08311 in the Office of the Judge of Probate of Shelby County, Alabama (the "Articles of Organization"), and its operations are governed by that certain Operating Agreement of Covington Properties, L.L.C. effective March 18, 1997 by and between Joseph F. Covington, Sr., Joseph F. Covington, Jr., Ruth S. Covington and Catherine L. Covington (the "Operating Agreement"). As of the date hereof, the Articles of Organization and the Operating Agreement are in full force and effect and have not been modified or amended. This Mortgage is executed by the person and in the manner required by the Articles of

Organization and the Operating Agreement to cause this Mortgage to be binding on, and enforceable against, the Borrower in accordance with its terms.

ARTICLE II

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

(a) Nonpayment of Indebtedness. Failure by Borrower to pay any sum due, whether by acceleration or otherwise, under the terms of any Loan Document within ten (10) days after written demand therefor by Lender to Borrower (in each instance, a "Monetary Default").

(b) Failure to Perform Obligations. Failure by the Borrower or any Guarantor to perform, observe or comply with any term, condition, agreement or covenant contained herein or in any Loan Document (other than terms, conditions, agreements or covenants requiring the payment of money), which failure is not cured within thirty (30) days after written notice thereof from the Lender to the Borrower; provided that if such default is not reasonably susceptible to being cured within such thirty (30) day period, but Borrower commences and diligently pursues cure efforts within the initial thirty (30) days, no Event of Default will occur until the expiration of a total of sixty (60) days after the date of such written notice.

(c) Sale or Encumbrance of Property. The actual or attempted sale or other transfer of the Premises, or any interest therein, or the further encumbrance of the Premises in any respect other than the liens in favor of the Lender created in the Loan Documents, without in each case the prior written consent of the Lender, which may be given or withheld in the Lender's sole discretion.

(d) Voluntary Insolvency Proceedings. The filing by the Borrower or any Guarantor of a voluntary petition in bankruptcy or Borrower's or any Guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or any Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself, himself or herself, under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or any Guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or such Guarantor or the making of any general assignment for the benefit of creditors or the admission in writing of its, his or her inability to pay its, his or her debts generally as they become due.

(e) Involuntary Insolvency Proceedings. The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Borrower or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any Guarantor of a substantial part of its, his or her property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Borrower or such Guarantor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive);

(f) Misrepresentation. If any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of the Borrower or any Guarantor pursuant to or in connection with the Loan Documents (including, without limitation, representations and warranties contained therein), or as an inducement to the Lender to extend any credit to the Borrower or to enter into this or any other agreement with the Borrower, proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified, or if on the date of execution of this Mortgage there shall have been any materially adverse change in any of the facts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to the Lender at or prior to the time of such execution.

(g) Material Adverse Change. If there shall occur any materially adverse change in the financial condition of the Borrower, any Guarantor or the Premises which, in the reasonable judgment of the Lender, may adversely effect the Borrower's ability to perform its obligation under this Mortgage and/or the other Loan Documents or any Guarantor's ability to perform its, his or her obligations under the Guaranty; provided that Borrower shall be given a period of thirty (30) days after written notice from Lender of the specific facts or circumstances giving rise to Lender's determination that a material adverse change has occurred within which to cure or otherwise correct such facts or circumstances in a manner reasonably satisfactory to Lender.

(h) Default Under Loan Documents. The occurrence of any "Event of Default" under and as defined in any of the other Loan Documents.

(i) Death of Guarantor. The expiration of ninety (90) days after the death of any Guarantor, unless prior to the expiration of such period the Borrower shall demonstrate to the sole and discretionary satisfaction of Lender that the Borrower, the Property and the remaining Guarantor continue to provide adequate security for the Borrower's obligations hereunder, and the Lender shall provide written notice to the Borrower that no event of default exists.

(j) Change in Ownership. Any change in the current ownership of Borrower (as a result of a transfer of any member interest in the Borrower, or otherwise), or the encumbrance, either voluntary or involuntary, of any ownership interest in Borrower without the written consent of the Lender, such consent not to be unreasonably withheld.

(b) Notwithstanding the foregoing, no notice of default shall be required if the Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period, if any, specified with respect to such event shall commence on the date thereof rather than from the date of notice. Nothing herein shall require any notice to the Borrower except as expressly set forth above or in the other Loan Documents referred to herein.

2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire Secured Indebtedness shall, at the option of the Lender, immediately become due and payable without notice or demand, time being of the essence of this Mortgage, and no omission on the part of the Lender to exercise such option when entitled to do so shall be construed as a waiver of such right.

2.03 Right to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession of the Premises and, if and to the extent permitted by law, the Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Premises without the appointment of a receiver or an application therefor, and may exclude the Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of the Borrower.

(b) If the Borrower shall for any reason fail to surrender or deliver the Premises or any part thereof after such demand by the Lender, the Lender may obtain a judgment or decree conferring upon the Lender the right to immediate possession or requiring the Borrower to deliver immediate possession of the Premises to the Lender. The Borrower will pay to the Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to the Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness and shall be secured by this Mortgage.

(c) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Premises and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Premises insured; (iii) manage and operate the Premises and exercise all of the rights and powers of the Borrower to the same extent as the Borrower could in its own

name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to the Lender, all as the Lender from time to time may determine to be in its best interest. The Lender may collect and receive all the rents, issues, profits and revenues from the Premises, including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing and operating the Premises (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other similar charges as the Lender may at its option pay; (E) other proper charges upon the Premises or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of the Lender, the Lender shall apply the remainder of the monies and proceeds so received by the Lender, first, to the payment of accrued interest; second, to the payment of any deposits required by Section 1.05 and to other sums (other than principal) required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.03 to the contrary notwithstanding, the Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by the Lender of its rights under this Mortgage, and the Lender shall be liable to account only for rents, incomes, issues and profits actually received by the Lender.

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, the Lender shall surrender possession of the Premises to the Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.04 Performance by the Lender. Upon the occurrence of an Event of Default in the payment, performance or observation of any term, covenant or condition of this Mortgage, the Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by the Lender in connection therewith, with interest thereon at the Default Rate (as defined in the Note) provided in the Note or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender. The Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. The 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 term, covenant or condition without thereby becoming liable to the Borrower or any person in possession holding under the Borrower. Notwithstanding anything to the contrary herein, the Lender shall have no obligation, explicit or implied, to pay, perform, or observe any term, covenant or condition.

2.05 Receiver. If any Event of Default shall have occurred and be continuing, the Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter

of strict right, without notice and without regard to the occupancy or value of any security for the Secured Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Premises and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have the rights and powers permitted under the laws of the state wherein the Land is situated. The Borrower will pay unto the Lender upon demand all expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.05, and upon the Borrower's failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

2.06 Lender's Power of Enforcement and Power of Sale.

(a) If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Premises, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

(b) If an Event of Default shall have occurred, the Lender may sell the Premises at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Premises is located, either in person or by auctioneer, after having first given notice of the time, place and terms of said 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, the Lender or any person conducting the sale for the Lender is authorized to execute to the purchaser at said sale a deed to the Premises so purchased. The Lender may bid at said sale and purchase said Premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Premises 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 the Lender may elect.

2.07 Purchase by the Lender. Upon any foreclosure sale or sale of all or any portion of the Premises under the power herein granted, the Lender may bid for and purchase the Premises and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

2.08 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Premises, the proceeds of said sale shall be applied, first, to the expenses of such sale and all proceedings in connection therewith, including reasonable attorneys' fees (attorneys fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes

and charges including utility charges advanced by the Lender hereunder, and interest thereon; then to payment of the Secured Indebtedness and accrued interest thereon, in such order of priority as the Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to the Borrower, or to the person or entity lawfully entitled thereto.

2.09 Borrower as Tenant Holding Over. In the event of any such foreclosure sale or sale under the powers herein granted, the Borrower (if the Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily disposed according to provisions of law applicable to tenants holding over.

2.10 Waiver of Appraisalment, Valuation, Etc. The Borrower agrees, to the full extent permitted by law, that in case of a default on the part of the Borrower hereunder, neither the Borrower nor anyone claiming through or under the Borrower will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, exemption or laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Premises, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and the Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest or lien of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

2.11 Waiver of Homestead. The Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the laws of the United States and of any state, in and to the Premises as against the collection of the Secured Indebtedness, or any part thereof.

2.12 Discontinuation of Proceedings. In case the Lender shall have proceeded to enforce any right, power 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 the Lender, then in every such case, the Borrower and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceedings had occurred.

2.13 Remedies Not Exclusive. The Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Lender's right to realize upon or enforce any other security now or hereafter held by the Lender, it being

agreed that the Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Lender in such order and manner the Lender may in its absolute discretion determine. No right or remedy herein conferred upon or reserved to the Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Lender or to which it otherwise may be entitled, may be exercised concurrently or independently, from time to time and as often as may be deemed expedient by the Lender, regardless of any inconsistencies of such remedies.

2.14 Waivers. After consulting with and considering the advice of independent legal counsel selected by the Borrower (or knowingly and voluntarily declining to obtain the advice of such legal counsel), the Borrower makes the following arrangements, waivers and relinquishments knowingly and as a material inducement to the Lender in making the Loan.

(a) No delay or omission by the Lender or by 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 the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender. No consent or waiver expressed or implied by the Lender to or of any breach or default by the Borrower in the performance of the obligations of the Borrower hereunder shall be deemed or construed to be a consent or waiver to or of any other breach of default in the performance of the same or any other obligations of the Borrower hereunder. Failure on the part of the Lender to complain of any act or failure to act or failure to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Lender of its rights hereunder or impair any rights, powers or remedies of the Lender hereunder.

(b) No act or omission by the Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of the Borrower or any subsequent purchaser of the Premises or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by the Lender. Without limiting the generality of the foregoing, the Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or the Note; (iv) release any part of the Premises from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Premises; (vi) consent to the

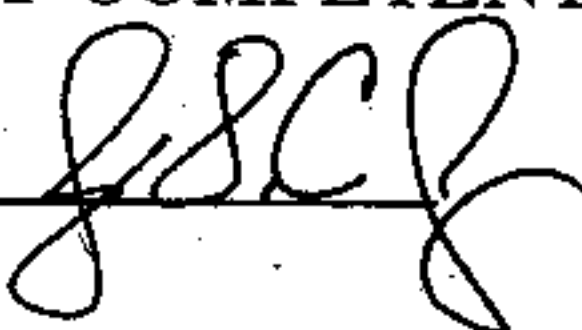
granting of any easement or other right affecting the Premises; (vii) make or consent to any agreement subordinating the security title or lien hereof; or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Premises or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding the Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or part of the Premises, the Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Premises or the Secured Indebtedness, or with reference to any of the terms, covenants, conditions or agreements 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 liabilities, obligations or undertakings.

(c) Borrower waives and relinquishes any and all rights it may have, whether at law or equity, to require the Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular State or other jurisdiction. To the fullest extent that the Borrower may do so, the Borrower agrees that the Borrower will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisement, stay of execution or extension, and the Borrower, for the Borrower's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisement, marshaling, stay of execution, and extension. The Borrower further agrees that if any law referred to in this paragraph and now in force, of which the Borrower, the Borrower's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. The Borrower expressly waives and relinquishes any and all rights and remedies that the Borrower may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties.

(d) THE BORROWER, AND ALL OTHER PARTIES CLAIMING UNDER THE BORROWER, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT, PROCEEDING, OR COUNTERCLAIM BROUGHT BY THE LENDER (A) ARISING OUT OR IN ANY WAY CONNECTED WITH THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT (B) OR IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER OR THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE BORROWER AND THE LENDER AGREE THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS PARAGRAPH IN ANY COURT AS WRITTEN EVIDENCE OF

THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

Initials



2.15 Suits to Protect the Premises. The Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Premises by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interests in the Premises and in the rents, issues, profits and revenues arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other government enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would materially impair the security hereunder or be prejudicial to the interest of the Lender or the Lender's right under this Mortgage.

2.16 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Borrower, its creditors or its property, the Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Lender allowed in such proceedings for the entire amount due and payable by the Borrower under this Mortgage at the date of the institution of such proceedings and for any additional amount which may become due and payable by the Borrower hereunder after such date.

2.17 Partial Foreclosure. In the event the Premises are comprised of more than one parcel of real property, Borrower hereby waives any right to require Lender to foreclose or exercise any of its other remedies before proceeding against all of the Premises as a whole or to require Lender to foreclose or exercise such remedies against one portion of the Premises prior to the foreclosure or exercise of said remedies against other portions of the Premises.

ARTICLE III

3.01 Successors and Assigns. This Mortgage shall inure to the benefit of and be binding upon the Borrower and the Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns. Whenever a reference is made in this Mortgage to "Borrower" such references shall be deemed to include a reference to the successors, successors-in-title and assigns of the Borrower or the Borrowers, but shall not imply any permission to make or permit any transfer which is otherwise prohibited.

Whenever a reference is made in this Mortgage to "Lender" such reference shall be deemed to include a reference to the successors, successors-in-title and assigns of the Lender.

3.02 Terminology. All personal pronouns used in this Mortgage, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa. Titles and Articles are for convenience only and neither limit nor amplify the provisions of this Mortgage, and all references herein to the Articles, Sections or subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.03 Severability; Complete Agreement. If any provision of this Mortgage or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. This Mortgage, the Note and the instruments executed in connection herewith constitute the full and complete agreement of the parties and supersede all prior negotiations, correspondence, and memoranda relating to the subject matter hereof, and this Mortgage may not be amended except by a writing signed by the parties hereto.

3.04 Applicable Law. The laws of the State of Alabama shall govern the validity, interpretation, construction, and performance of this Mortgage and all other Loan Documents. If, for any reason or to any extent any word, term, provision, or clause of this Mortgage or any of the other Loan Documents, or its application to any person or situation, shall be found by a court or other adjudicating authority to be valid or unenforceable, the remaining words, terms, provisions or clauses shall be enforced, and the affected word, term, clause or provision shall be applied, to the fullest extent permitted by law.

3.05 Limitation of Interest. It is the intent of the Borrower and the Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Note. In furtherance thereof, the Borrower stipulates and agrees that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Note. The Borrower or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Note shall never be liable for unearned interest on the Note and shall never be required to pay interest on the Note at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Note, and the provisions of this paragraph shall control over all other provisions of the Note and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Note shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Note to a rate in excess of that permitted to be charged by the laws governing the Loan

evidenced by the Note, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Note and if in excess of such balance, shall be immediately returned to the Borrower upon such determination.

3.06 Notices. All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery, (b) on the date deposited in U.S. mail, certified or registered, with return receipt request, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth in the heading of this Mortgage. Either party may change its address for receipt of notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.06.

3.07 Replacement of Note. Upon receipt of evidence reasonably satisfactory to the Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to the Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, the Borrower at the Lender's expense will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to such Note and dated as of the date of such Note, and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement note.

3.08 Assignment. This Mortgage is assignable by the Lender and any assignment hereof by the Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to the Lender.

3.09 Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of the Borrower under this Mortgage, the Note and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be executed by its duly authorized Manager as of the day and year first above written.

BORROWER:

COVINGTON PROPERTIES, L.L.C.

By:

Its:  Manager

STATE OF ALABAMA)

Shelby COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Joseph F. Covington, Jr. whose name as Manager of Covington Properties, L.L.C., a limited liability company, is signed to the foregoing Mortgage and Security Agreement and who is known to me, acknowledged before me on this day ~~that~~, being informed of the contents of the Mortgage and Security Agreement, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand this 13th day of August, 1997.

[SEAL]

Charlyn Dunagan Gann
Notary Public
My commission expires: 9/20/97

EXHIBIT "A"

Lot 4, of Ingrams Survey of the SW 1/4 of the NE 1/4 of Section 31, Township 18 South, Range 1 West, more particularly described as follows:

Beginning at the center of said Section 31, Township 18 South, Range 1 West and run in a Northerly direction along the West boundary of the NE 1/4, which is the North and South median line of said Section, 165 feet for point of beginning; run thence in an easterly direction and parallel with the East and West median line of said Section 1288.2 feet to a public road; run thence in a Northerly direction along said road to a point which is 330 feet North of the East and West median line of said Section, run thence in a Westerly direction and parallel with the East and West median line of said Section 1281.4 feet to the North and South median line of said Section; run thence in a Southerly direction along said median line 165 feet to point of beginning a/k/a Tract 4 of the Jessica Ingram Survey as recorded in Map Book 3 page 54 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Mineral and mining rights excepted.

Inst # 1997-25841

**08/14/1997-25841
09:07 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
029 MCD 1706.00**