

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made as of the 29th day of September, 1999, is by **BW & MMC, L.L.C.**, an Alabama Limited Liability Company (hereinafter called the "Borrower"), mortgagor, whose mailing address is 200 Union Hill Drive, Birmingham, Alabama 35209, Attn: Thomas H. Brigham, Jr., in favor of **FIRST COMMERCIAL BANK**, a State Bank (hereinafter called the "Lender"), mortgagee, whose mailing address is 800 Shades Creek Parkway, Birmingham, Alabama 35209, Attn: A. Todd Beard.

THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" AS DEFINED IN SECTION 7-9-313(1)(C) OF THE CODE OF ALABAMA, AND SECURES, AMONG OTHER OBLIGATIONS, AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF AN IMPROVEMENT ON LAND.

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED.

WITNESSETH:

WHEREAS, Borrower is justly indebted to Lender for borrowed money in the principal sum of One Million Fifty Thousand and No/100 Dollars (\$1,050,000.00) (the "Loan"), as evidenced by one or more promissory notes of even date herewith from Borrower, payable to 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, any amendments, modifications, and replacements hereof or thereof, and all other documents now or hereafter evidencing or securing the Note and all certificates, documents, and instruments now or hereafter executed by Borrower in favor of Lender, are collectively referred to herein as the "Loan Documents"); and

WHEREAS, this is a FUTURE ADVANCE MORTGAGE and the Note evidences a construction loan (the "Loan"), the proceeds of which are to be advanced by the Lender to the Borrower pursuant to a construction loan agreement to be entered into of even date herewith (the "Construction Loan Agreement"), and, in addition to the indebtedness evidenced by the Note, this mortgage shall also secure all other indebtedness, obligations and liabilities of the Borrower to the Lender, whether now existing or hereafter arising; and

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

NOW, THEREFORE, for and in consideration of the foregoing recitals, the sum of Ten Dollars, and other valuable considerations, the receipt and sufficiency whereof are hereby acknowledged, and in order to secure the indebtedness and other obligations of Borrower under the Note, this Mortgage and all other Loan Documents (all of such indebtedness and obligations secured hereby being referred to herein as the "Secured Indebtedness"), Borrower has bargained and sold and does hereby grant, bargain, sell, alien, and convey unto Lender, its successors and assigns, all of the foregoing described land and interests in land, estates,

09/30/1999-40864
03:50 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
023 CJ1 1639.50

