

TUSCALOOSA, SHELBY, BUTLER COUNTIES)

This instrument was prepared by:

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MORTGAGE
AND
ABSOLUTE ASSIGNMENT OF LEASES AND RENTS

THIS MORTGAGE AND ABSOLUTE ASSIGNMENT OF LEASES AND RENTS (hereinafter referred to as this "**Mortgage**") is made and entered into as of this 13th day of December, 2000, by **WICKES INC.** (f/k/a **WICKES LUMBER COMPANY**), a corporation organized under the laws of the State of Delaware, as grantor or mortgagor (hereinafter referred to as "**Mortgagor**"), Mortgagor having its principal place of business at 706 N. Deerpath Drive, Vernon Hills, Illinois 60061, to **FLEET RETAIL FINANCE INC.**, a corporation organized under the laws of the State of Delaware, as Administrative Agent for the Lenders (hereinafter referred to as the "**Lenders**") party to the **Credit Agreement** (defined herein), as mortgagee (hereinafter referred to as "**Agent**"), Agent having its principal executive offices at 40 Broad Street, Boston, Massachusetts 02109.

WITNESSETH:

UNLESS THE CONTEXT OTHERWISE REQUIRES, ALL CAPITALIZED TERMS USED BUT NOT DEFINED HEREIN SHALL HAVE THE MEANINGS SET FORTH IN THE CREDIT AGREEMENT.

THAT FOR AND IN CONSIDERATION OF TEN AND NO/100 DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency whereof are hereby acknowledged by Mortgagor, and in order to secure the Obligations (as hereinafter defined) Mortgagor hereby grants, bargains, sells, assigns and conveys unto the Agent, and hereby grants to the Agent a security interest in, all of the Mortgagor's right, title and interest in, to and under the following property and interests in property, for the ratable benefit of the Lenders, and their respective successors and assigns, with MORTGAGE COVENANTS, all of the following described property (hereinafter collectively referred to as the "Property"):

(a) All that certain tract or parcel of land more particularly described in Exhibit A attached hereto and by this reference made a part hereof, together with all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-ways, streets, and alleys adjacent thereto, and all easements, rights-of-way, licenses, operating agreements, strips and gores of land, vaults, streets, ways, alleys, passages, sewers, sewer rights, waters, water courses, water rights and powers, oil, gas and other minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the land or under or above same, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to said tract or parcel of land or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired

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by Mortgagor and the reversion and reversions, remainder and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of the Mortgagor of, in and to the same (hereinafter referred to as the "Land"); and

(b) All buildings, structures, parking areas, landscaping, and other improvements of every nature now or hereafter situated, erected or placed on the Land (hereinafter referred to as the "Improvements"); and

(c) All fixtures, machinery, and equipment as defined in the Uniform Commercial Code as enacted in the State of Alabama (as amended and in effect from time to time, the "UCC"), and all furniture, and all materials intended for construction, reconstruction, alteration and repairs of the Improvements, including, but not limited to, all gas and electric fixtures, radiators, heaters, furnaces, engines and machinery, boilers, ranges, ovens, elevators and motors, bathtubs, sinks, commodes, basins, pipes, faucets and other plumbing, heating and air conditioning equipment, mirrors, refrigerating plant, refrigerators, iceboxes, dishwashers, carpeting, floor coverings, furniture, light fixtures, signs, lawn equipment, water heaters, and cooking apparatus and appurtenances, and all other fixtures and equipment now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the maintenance, repair, use, operation, or enjoyment of the Land or the Improvements, whether installed in such a way as to become a part thereof or not, including all extensions, additions, improvements, betterments, renewals and replacements of any of the foregoing and all the right, title and interest of Mortgagor in and to any of the foregoing, now owned or hereafter acquired by Mortgagor, all of which are hereby declared and shall be deemed to be fixtures and accessions to the freehold and a part of the Improvements as between the parties hereto and all persons claiming by, through or under them (hereinafter referred to as the "Personal Property"); and

(d) All right, title and interest of Mortgagor in and to all policies of insurance, licenses, franchises, permits, service contracts, maintenance contracts, property management agreements, and equipment leases which in any way now or hereafter belong, relate or appertain to the Land, the Improvements or the Personal Property or any part thereof now owned or hereafter acquired by Mortgagor, including, without limitation, all condemnation payments, insurance proceeds and escrow funds (hereinafter referred to as the "Intangible Property"); and

(e) All present and future leases, tenancies, occupancies and licenses, whether written or oral ("Leases") of the Land, the Improvements, the Personal Property and the Intangible Property, or any combination or part thereof, and all income, rents, issues, royalties, profits, revenues, security deposits and other benefits of the Land, the Improvements, the Personal Property and the Intangible Property, from time to time accruing, all payments under Leases, and all payments on account of oil and gas and other mineral Leases, working interests, production payments, royalties, overriding royalties, rents, delay rents, operating interests, participating interests and other such entitlements, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same (hereinafter referred to as the "Revenues"); and

(f) All the right, title, interest of Mortgagor in and to all construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guaranties and warranties, and plans and specifications relating to the construction of Improvements on the Land, whether now or hereafter existing, including, without limitation (i) any architectural or engineering agreement entered into with respect to the design of said Improvements and other architectural or engineering services, (ii) the plans and specifications for the

construction of said Improvements prepared by the architect, and (iii) any contractor's agreement entered into with respect to construction of Improvements on the Land (hereinafter collectively referred to as the "Contracts"); and

(g) All proceeds, products, substitutions and accessions of the foregoing of every type.

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Agent, for the ratable benefit of the Lenders, and the successors and assigns of Agent, in fee simple forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Property and holds marketable fee simple absolute title to the same and has good right to convey the Property and that the conveyances in this Mortgage are subject to only those matters (hereinafter referred to as the "Permitted Liens") to which the Agent has consented. Except for the Permitted Liens, Mortgagor does warrant and will forever defend the title to the Property against the claims of all persons whomsoever.

This Mortgage is intended to constitute: (i) a mortgage and security agreement, a security agreement and financing statement under the UCC, and (ii) a notice of assignment of rents or profits under Alabama law. This Mortgage is also intended to operate and be construed as an absolute present assignment of the rents, issues and profits of the Property, Mortgagor hereby agreeing, as provided for in Alabama law, that Agent is entitled to receive the rents, issues and profits of the Property prior to an Event of Default and without entering upon or taking possession of the Property. This Mortgage is intended by Mortgagor and Agent to serve as a fixture filing with respect to all goods and collaterals comprising part of the Property which are or are to become fixtures related to the Land. The goods are described by item or type in paragraphs (a) through (g) above. The Mortgagor is the debtor, and the Mortgagee is the secured party. The names of the debtor (Mortgagor) and the secured party (Mortgagee) are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtor (Mortgagor) as a fixture filing. The mailing address of the Mortgagee set out in the first paragraph of this Mortgage is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in first paragraph of this Mortgage is the mailing address for the debtor. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Mortgagor is a record owner of the real estate.

This Mortgage is given to secure the payment and performance of the Obligations as defined in that certain Credit Agreement originally dated as of February 17, 1999 by and among the Mortgagor, Fleet National Bank as Administrative Agent and Issuing Bank, Bank of America, N. A., as Documentation Agent, Fleet Securities Inc, as Syndication Agent and Arranger, and the lenders party thereto, as amended from time to time and as further amended and restated pursuant to that certain Amended and Restated Credit Agreement of even date herewith by and among others, the Mortgagor, Fleet Retail Finance Inc. as Administrative Agent for the Lenders, Fleet National Bank as the Issuing Bank, Bank of America, N.A., as Documentation Agent, and Fleet Securities, Inc. as Syndication Agent and Arranger and the Lenders party thereto (as further modified, amended, supplemented or restated, hereinafter referred to as the "**Credit Agreement**"), which include, without limitation, any and all additional advances made by Agent or any Lender to protect or preserve the Property or the security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Mortgagor's obligations hereunder or under the other Credit Documents or for any other purpose provided herein or in the other Credit Documents (whether or not the original Mortgagor remains the owner of the Property at the time of such advances). Interest shall accrue on the Obligations at a variable rate as provided for in the Credit Agreement. Notwithstanding anything to the contrary contained herein: (i) the maximum principal amount of the Obligations secured by this Mortgage (the "Principal Indebtedness") shall not exceed \$4,393,750.00 (the "Maximum Principal Amount") at any one time

outstanding under the Term Loan; (ii) the Maximum Principal Amount of the Principal Indebtedness secured by this Mortgage shall be deemed to be the first Obligations to be advanced and the last Obligations to be repaid; (iii) the security afforded by this Mortgage for the Obligations shall not be reduced by any payments or other sums applied to the reduction of the Obligations so long as the total amount of outstanding Principal Indebtedness exceeds the Maximum Principal Amount and thereafter shall be reduced only to the extent that any such payments and other sums are actually applied by the Lenders, in accordance with the Credit Documents, to reduce the outstanding Principal Indebtedness to an amount less than the Maximum Principal Amount; (iv) if at any time after the reduction of the Principal Indebtedness to an amount less than the Maximum Principal Amount, Principal Indebtedness should subsequently be incurred that increase the total outstanding Principal Indebtedness to an amount equal to or exceeding the Maximum Principal Amount, the security afforded by this Mortgage shall thereupon be increased to the Maximum Principal Amount; and (v) the limitation contained in this paragraph on the Maximum Principal Amount shall only pertain to Principal Indebtedness and shall not be construed as limiting the amount of interest, fees, expenses, indemnified amounts and other Obligations secured hereby that are not Principal Indebtedness, it being the intention of the parties to this Mortgage that this Mortgage shall secure any Principal Indebtedness remaining unpaid at the time of foreclosure up to the Maximum Principal Amount, plus interest thereon, all costs of collection and all other amounts (except Principal Indebtedness in excess of the Maximum Principal Amount) included in the Obligations.

Mortgagor hereby further covenants and agrees with Agent as follows:

1. Payment and Performance of Obligations. Mortgagor shall promptly pay the Obligations when due, and fully and promptly perform all of the provisions, agreements, covenants and obligations of the Obligations.

2. Impositions, Liens and Charges. Mortgagor shall pay when due all the yearly water and sewer bills, real estate taxes, ad valorem taxes, personal property taxes, assessments, betterments, all governmental charges of every name and restriction which may be levied on the Property as well as the yearly premium installments for the insurance covering the Property as required pursuant to Paragraph 3 hereof (hereinafter collectively referred to as the "Impositions") and other charges, if any, attributable to the Property. Mortgagor shall furnish to Agent all bills and notices of amounts due under this Paragraph 2 as soon as received, and, Mortgagor shall furnish to Agent evidence of such payments within five (5) days of the date such payments have been made. Mortgagor shall promptly discharge (by bonding, payment or otherwise) any lien filed against the Property (other than Permitted Liens) and will keep and maintain the Property free from the claims of all persons supplying labor or materials to the Property.

3. Property and Other Insurance; Casualty; Condemnation. (a) The Mortgagor agrees to maintain public liability insurance, third party property damage insurance, casualty insurance, flood insurance, if applicable, and such other insurance as may be required by law on the Property under such policies of insurance, with such insurance companies, in such amounts and covering such risks as are at all times satisfactory to the Agent in its commercially reasonable judgment. All liability policies of the Mortgagor are to name the Agent as an additional insured and all casualty policies covering the Property are to name the Agent as the loss payee in case of loss and are to contain such other provisions as the Agent may reasonably require to fully protect the Agent's interest in the Property and to any payments to be made under such policies. Fire and extended coverage policies maintained with respect to any Property shall be endorsed or otherwise amended to include (i) a non-contributing mortgage clause (regarding the Improvements) and lenders' loss payable clause (regarding Personal Property), in form and substance satisfactory to the Agent, which endorsements or amendments shall provide that, the insurer shall pay all proceeds otherwise payable to the Mortgagor under the policies directly to the Agent. Each such policy referred to in this Paragraph 3 also shall provide that it shall not be canceled, modified or not renewed (i) by reason

of nonpayment of premium except upon not less than 20 days' prior written notice thereof by the insurer to the Agent (giving the Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than 60 days' prior written notice thereof by the insurer to the Agent. The Mortgagor shall deliver to the Agent, prior to the cancellation, modification or nonrenewal of any such policy of insurance, a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Agent) together with evidence satisfactory to the Agent of payment of the premium therefor.

(b) The Mortgagor shall provide written notice to the Agent of the occurrence of any of the following events within five (5) Business Days after the occurrence of such event: any of the Property is (i) damaged or destroyed, or suffers any other loss, or (ii) condemned, confiscated or otherwise taken, in whole or in part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the use of the Property for the purposes to which the Property was used immediately prior to such condemnation, confiscation or taking, by exercise of the powers of condemnation or eminent domain or otherwise (collectively, a "Casualty Loss"). Upon the occurrence of a Casualty Loss, the Property may, in the Agent's discretion, no longer constitute Eligible Real Estate. The Mortgagor shall diligently file and prosecute its claim or claims for any award or payment in connection with a Casualty Loss. The proceeds of any award or claim for damages on account of any Casualty Loss are hereby assigned to the Agent, for the ratable benefit of the Lenders. Mortgagor agrees to execute such further assignment of any awards, proceeds, damages or claims arising in connection with such Casualty Loss. In the event of a Casualty Loss, the Mortgagor shall pay to the Agent, promptly upon receipt thereof, any and all insurance proceeds and payments received by the Mortgagor on account of damage, destruction, loss, condemnation or eminent domain proceedings (collectively, the "Casualty Proceeds"). The Casualty Proceeds shall be distributed as follows: (i) whether or not the Property shall constitute Eligible Real Estate prior to the occurrence of such Casualty Loss, if an Event of Default shall have occurred and be continuing at the time such Casualty Proceeds are made available by the insurance company or the governmental authority which exercised such condemnation or eminent domain proceeding, as the case may be, the Agent may at its option apply the Casualty Proceeds in reduction of the Obligations; (ii) (A) if the Property did not constitute Eligible Real Estate prior to the occurrence of such Casualty Loss, and (B) there has not occurred and there is not continuing an Event of Default at the time such Casualty Proceeds are made available by the insurance company or the governmental authority which exercised such condemnation or eminent domain proceeding, as the case may be, the Agent agrees to release such proceeds to the Mortgagor to be used (1) to repair, replace or rebuild the asset or property or portion thereof that was the subject of the Casualty Loss, or (2) subject to the prior written consent of the Agent, for such other purposes as may be permitted pursuant to the terms and conditions of the Credit Agreement; or (iii) (A) if the Property did constitute Eligible Real Estate prior to the occurrence of such Casualty Loss, and (B) there has not occurred and there is not continuing an Event of Default at the time such Casualty Proceeds are made available by the insurance company or the governmental authority which exercised such condemnation or eminent domain proceeding, as the case may be, the Agent agrees to release such proceeds to the Mortgagor to be used to repair, replace or rebuild the asset or property or portion thereof that was the subject of the Casualty Loss upon the Mortgagor's satisfaction of such customary construction loan disbursement procedures as the Agent may reasonably establish with respect thereto (including, without limitation, providing the Agent with evidence that the Mortgagor has sufficient funds, together with the Casualty Proceeds, to restore the Property to a condition satisfactory to the Agent as well as providing the Agent with satisfactory plans and specifications, construction budget and schedule for such repair and restoration), and upon completion of such work, to apply any excess Casualty Proceeds in reduction of the Obligations. After the occurrence and during the continuance of an Event of Default, (i) no settlement on account of any such Casualty Loss shall be made without the consent of the Majority Lenders, and (ii) the Agent may participate in any such proceedings and the Mortgagor shall deliver to the Agent such documents as may be requested by the Agent to permit such participation and shall consult with the Agent, its attorneys and agents in the making and

prosecution of such claim or claims. The Mortgagor hereby irrevocably authorizes and appoints the Agent its attorney-in-fact, exercisable after the occurrence and continuance of an Event of Default, to collect and receive for any such award or payment and to file and prosecute such claim or claims, which power of attorney shall be irrevocable and shall be deemed to be coupled with an interest, and the Mortgagor shall, upon demand of the Agent, make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning any such award or payment to the Agent for the benefit of the Lenders, free and clear of any encumbrances of any kind or nature whatsoever.

(c) In the event that the Mortgagor at any time or times shall fail to obtain or maintain any of the policies of insurance required hereby or to pay any premium in whole or part relating thereto, the Agent may, without waiving or releasing any obligation or liability of the Mortgagor hereunder or any Event of Default occasioned thereby, in its sole discretion, obtain and maintain such policies of insurance and pay such premium and take any other actions with respect thereto as the Agent deems advisable. All sums disbursed by the Agent in connection with this Paragraph 3(c), including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be payable, upon demand, by the Mortgagor to the Agent and shall be additional Obligations secured hereby.

4. Preservation and Maintenance. Mortgagor (a) shall not permit or commit waste, impairment, or deterioration of the Property or abandon the Property, (b) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property in the event of any damage, injury or loss thereto, to the equivalent of its condition prior to such damage, injury or loss, or such other condition as Agent may approve in writing, provided that the Agent has made the proceeds of any award or claim for damages on account of any Casualty Loss available to the Mortgagor, or if the Agent shall not have made such proceeds available to the Mortgagor, the Mortgagor shall take such steps as may be necessary to preserve the Property and to prevent any further deterioration in the value of the Property, (c) shall keep the Property, including the Improvements and the Personal Property, in good order, repair and tenantable condition and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good order, repair, and tenantable condition, and (d) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property. Mortgagor covenants and agrees to give Agent prompt notice of any non-compliance with such laws, ordinances, regulations or requirements and of any notice of non-compliance therewith which it receives or any threatened or pending proceedings in respect thereto or with respect to the Property (including, without limitation, changes in zoning). Neither Mortgagor nor any tenant or other person shall remove, demolish or alter any Improvements now existing or hereafter erected on the Property or any Personal Property in or on the Property, except (i) when incident to the replacement of Personal Property with items of like kind, and (ii) except for renovations to the Improvements in the ordinary course of business which do not result in the violation of any zoning by laws or any other Requirement of Law.

5. Transfers. Mortgagor will not, directly or indirectly, without the prior written consent of Agent in each instance: (a) sell, convey, assign, transfer, lease, option, mortgage, pledge, hypothecate or dispose of the Property, or any part thereof or interest therein; or (b) create or suffer to be created or to exist any lien, encumbrance, security interest, mortgage, pledge, restriction, attachment or other charge of any kind upon the Property, or any part thereof or interest therein other than the Permitted Liens.

6. Hazardous Materials Warranties and Indemnification.

(a) Definitions. The following definitions shall apply for purposes of this Mortgage:

(i) "Environmental Laws" shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereafter enacted, promulgated or issued, with respect to any Hazardous Materials (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions or wells. Without limiting the generality of the foregoing, the term shall encompass each of the following statutes and regulations promulgated thereunder as well as any amendments and successors to such statutes and regulations, as may be enacted and promulgated from time to time: (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified in scattered sections of 26 U.S.C., 33 U.S.C., 42 U.S.C. and 42 U.S.C. §9601 et seq.); (ii) the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.); (iii) the Toxic Substances Control Act (15 U.S.C. §2601 et seq.); (iv) the Clean Water Act (33 U.S.C. §1251 et seq.); (v) the Clean Air Act (42 U.S.C. §7401 et seq.); (vi) the Safe Drinking Water Act (21 U.S.C. §349; 42 U.S.C. §201 and §300f et seq.); (vii) the National Environmental Policy Act of 1969 (42 U.S.C. §4321); (viii) the Superfund Amendment and Reauthorization Act of 1986 (codified in scattered sections of 10 U.S.C., 29 U.S.C., 33 U.S.C. and 42 U.S.C.); and (ix) applicable laws of the jurisdiction where the Property is located.

(ii) "Hazardous Materials" shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law. Without limiting the generality of the foregoing, the term shall mean and include:

(A) "hazardous substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Superfund Amendment and Reauthorization Act of 1986, or Title III of the Superfund Amendment and Reauthorization Act, each as amended, and regulations promulgated thereunder;

(B) "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder;

(C) "hazardous materials" as defined in the Hazardous Materials Transportation Act, as amended, and regulations promulgated thereunder;

(D) "chemical substance or mixture" as defined in the Toxic Substances Control Act, as amended, and regulations promulgated thereunder;

(E) any other definitional terms contained in the applicable laws and regulations of the jurisdiction where the Property is located.

(iii) "Indemnified Parties" shall mean the Agent, the Syndication Agent, the Issuing Bank and each of the Lenders and their respective directors, officers, agents, employees and counsel, and the successors and assigns of any of them; and "Indemnified Party" shall mean any one of the Indemnified Parties.

(iv) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(v) "Threat of Release" shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the environment which may result from such Release.

(b) Environmental Representations and Warranties of Mortgagor. In addition to the representations and warranties made in Credit Agreement, Mortgagor represents and warrants to Agent as follows:

(i) Except as disclosed to the Agent in that certain Phase I Environmental Site Assessment provided to the Agent in connection with the delivery of this Mortgage and to the best of Mortgagor's knowledge, no condition, activity or conduct exists on or in connection with the Property which constitutes a violation of any Environmental Law.

(ii) Except as disclosed to the Agent in that certain Phase I Environmental Site Assessment provided to the Agent in connection with the delivery of this Mortgage and to the best of Mortgagor's knowledge, there has been no Release or Threat of Release of any Hazardous Materials on, upon or into the Property, nor, has there been any such Release or Threat of Release of any Hazardous Materials on, upon or into any real property in the vicinity of the Property which, through soil or groundwater migration, could reasonably be expected to come to be located on the Property.

(iii) To the best of Mortgagor's knowledge, there are no existing or closed underground storage tanks on the Property.

(iv) To the best of Mortgagor's knowledge, none of the following are or will hereafter be located, in, on or constitute a part of the Property: friable asbestos or friable asbestos-containing material in any form or condition; urea formaldehyde insulation; transformers or other equipment which contain dielectric fluid containing polychlorinated biphenyls; or leaded paint, except as may be brought on the Property for use or sale in connection with the current use of the Property.

(v) There are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on the Property.

(vi) No pending or current notice has been issued to Mortgagor by any agency, authority, or unit of government that Mortgagor has been identified as a potentially responsible party under any Environmental Law.

(vii) There exists no pending or current investigation, action, proceeding, or claim by any agency, authority, or unit of government or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Law with respect to any condition, use or operation of the Property or any other real property owned, leased or operated by Mortgagor.

(viii) There is currently no claim by any party that any use, operation, or condition of the Property has caused any nuisance or any other liability or adverse condition on any other property.

(c) Environmental Covenants of Mortgagor. In addition to the Mortgagor's covenants in the Credit Agreement, the Mortgagor covenants and agrees with Agent that Mortgagor shall:

(i) comply with all Environmental Laws;

(ii) not store (except in compliance with all Environmental Laws pertaining thereto), dispose of, Release or allow the Release of any Hazardous Materials on the Property;

(iii) neither directly nor indirectly transport or arrange for the transport of any Hazardous Materials (except in compliance with all Environmental Laws pertaining thereto); and

(iv) upon the request of Agent take all such action (including, without limitation, the conducting of environmental assessments at the sole expense of the Mortgagor in accordance with subparagraph (e) hereof) to confirm that no Hazardous Materials are stored, Released after the date hereof or disposed of after the date hereof on the Property.

(d) Environmental Indemnity. Mortgagor covenants and agrees, at Mortgagor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Agent) and hold each Indemnified Party harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against such Indemnified Party or the Property and arising directly or indirectly from or out of: (A) the Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas, regardless of whether or not caused by or within the control of Mortgagor; (B) the violation of any Environmental Laws relating to or affecting the Property or the Mortgagor, whether or not caused by or within the control of Mortgagor; (C) the failure of Mortgagor to comply fully with the terms and conditions of this Paragraph 6; (D) the violation of any Environmental Laws in connection with other real property of Mortgagor which gives or may give rise to any rights whatsoever in any party with respect to the Property by virtue of any Environmental Laws; (E) the breach of any representation or warranty contained in this Paragraph 6; or (F) the enforcement of this Paragraph 6, including, without limitation (i) the costs of assessment, containment and/or removal of any and all Hazardous Materials from all or any portion of the Property or any surrounding areas, (ii) the costs of any actions taken in response to a Release or Threat of Release of any Hazardous Materials on, in, under or affecting all or any portion of the Property or any surrounding areas to prevent or minimize such Release or Threat of Release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and (iii) costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The Indemnified Parties' rights under this Paragraph shall be in addition to all other rights of the Indemnified Parties under this Mortgage and the other Credit Documents and payments by Mortgagor under this paragraph shall not reduce Mortgagor's obligations and liabilities under any of the Credit Documents.

(e) Notice to Agent. If Mortgagor receives any notice or obtains knowledge of (i) any potential or known Release or Threat of Release of any Hazardous Materials at or from the Property, notification of which must be given to any governmental agency under any Environmental Law, or notification of which has, in fact, been given to any governmental agency, or (ii) any complaint, order, citation or notice with regard to air emissions, water discharges, or any other environmental health or safety matter affecting Mortgagor or the Property (an "Environmental Complaint") from any person or entity (including, without limitation, the Environmental Protection Agency), then Mortgagor shall immediately notify Agent orally and in writing of said Release or Threat of Release or Environmental Complaint. Upon such notification the Property may, in the

Agent's discretion, no longer constitute Eligible Real Estate. In the event that the Agent has confirmed that the Property shall continue to constitute Eligible Real Estate or if an Event of Default has occurred and is continuing, the Agent may obtain one or more environmental assessments of the Property prepared by a geohydrologist, an independent engineer or other qualified consultant or expert approved by the Agent which evaluates or confirms (i) whether any Hazardous Materials are present in the soil or water at or adjacent to the Property, and (ii) whether the use and operation of the Property comply with all Environmental Laws. Environmental assessments may include detailed visual inspections of the Property, including, without limitation, any and all storage areas, storage tanks, drains, dry wells and leaching areas, and the taking of soil samples, surface water samples and ground water samples, as well as such other investigations or analyses as are necessary or appropriate for a complete determination of the compliance of the Property and the use and operation thereof with all applicable Environmental Laws. All such environmental assessments shall be at the cost and expense of the Mortgagor. To the extent necessary to allow the Agent to obtain the environmental assessments provided for herein, the Mortgagor agrees that the Agent and the representatives and agents of the Agent shall have a right to enter upon, visit and inspect the Property.

(f) Survival, Assignability, and Transferability.

(i) The warranties, representations and indemnity set forth in this Paragraph 6 shall survive the payment and performance of the Obligations and any exercise by Agent of any remedies under this Mortgage, including without limitation, the power of sale, or any other remedy in the nature of foreclosure, and shall not merge with any deed given by Mortgagor to Agent or any Lender in lieu of foreclosure or any deed under a power of sale.

(ii) It is agreed and intended by Mortgagor and Agent that the warranties, representations and indemnity set forth above in this Paragraph 6 may be assigned or otherwise transferred by Agent to its successors and assigns and to any subsequent purchasers of all or any portion of the Property by, through or under Agent, without notice to Mortgagor and without any further consent of Mortgagor. To the extent consent or any such assignment or transfer is required by law, advance consent to any such assignment or transfer is hereby given by Mortgagor in order to maximize the extent and effect of such warranties, representations and indemnity given hereby.

7. Use of Property. Unless required by applicable law or unless Agent has otherwise agreed in writing, (i) Mortgagor shall not allow changes in the nature of the occupancy or use for which the Property was intended at the time this Mortgage was executed, and (ii) Mortgagor shall not initiate or acquiesce in a change in the zoning classification of the Property or subject the Property to restrictive or negative covenants without Lender's written consent. Mortgagor shall comply with, observe and perform all zoning and other laws affecting the Property, all restrictive covenants affecting the Property, and all licenses and permits affecting the Property.

8. Protection of Agent's Security. If Mortgagor fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Agent therein, including, but not limited to, eminent domain, insolvency, code enforcement or arrangements or proceedings involving a bankruptcy of the Mortgagor, then Agent, at Agent's option, may make such appearances, disburse such sums and take such action as Agent deems necessary to protect Agent's interest, including, but not limited to, disbursement of reasonable attorneys' fees, payment, contest or compromise of any lien or security interest which is prior to the lien or security interest of this Mortgage, and entry upon the Property to make repairs. Any amounts disbursed by Agent pursuant to this Paragraph 8, with interest thereon, shall become a portion of the Obligations. Unless Mortgagor and Agent agree to other terms of payment, such amounts shall be payable upon notice from Agent to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the default rate stated in the

Credit Agreement unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law. Mortgagor shall have the right to prepay such amounts in whole or in part at any time. Nothing contained in this Paragraph 8 shall require Agent to incur any expense or do any act.

9. Mortgagor and Lien Not Released. From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the Obligations and to observe the covenants of Mortgagor contained in this Mortgage and the other Credit Documents, and without affecting the guaranty of any person, corporation, partnership or other entity for payment or performance of the Obligations, and without affecting the lien or priority of lien of this Mortgage on the Property, Agent may, at Agent's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any guarantor, and without liability on the Agent's or any Lender's part, but subject to the terms and conditions of the Credit Agreement, grant extensions or postponements of the time for payment of the Obligations or any part thereof, release anyone liable on any of the Obligations, accept a renewal note or notes therefor, release from this Mortgage any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plat or subdivision of the Property, consent to the granting of any easement, join in any extension or subordination agreement and agree in writing with Mortgagor to modify the terms and conditions of any Credit Document. Mortgagor shall pay such title insurance premiums and attorneys' fees as may be incurred, at Agent's option, for any such action if taken at Mortgagor's request.

10. Forbearance Not Waiver. Any forbearance by Agent or any Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Agent shall not be a waiver of Agent's right to accelerate the maturity of the Obligations. Agent's receipt of any awards, proceeds or damages under Paragraph 3 hereof shall not operate to cure or waive Mortgagor's default in payment of the Obligations.

11. Security Agreement. Insofar as any item of property included in the Property which is or might be deemed to be "personal property" is concerned, the Mortgagor acknowledges and agrees that the Mortgagor has granted the Agent, for the ratable benefit of the Lenders, except for Permitted Liens, a first perfected security interest in and to each and every item of such Property pursuant to that certain Security Agreement dated as of February 17, 1999 (as modified, amended, supplemented or restated, hereinafter referred to as the "Security Agreement") and warrants and agrees that there is no financing statement covering the Personal Property, or any part thereof, on file in any public office of which the Agent has not received notice.

12. Leases and Revenues.

(a) As part of the consideration for the Obligations, Mortgagor has absolutely and unconditionally collaterally assigned and transferred to Agent for the ratable benefit of the Lenders all of Mortgagor's right, title and interest in and to the Leases and the Revenues, including those now due, past due or to become due by virtue of any Lease for the occupancy or use of all or any part of the Property. Mortgagor hereby represents and warrants as follows:

(i) Mortgagor is the sole and absolute owner of the entire landlord's or lessor's interest in the Leases and said rents, issues and profits and shall not assign its interest in, to or under any of the Leases or the Revenues to any person or entity other than the Agent;

(ii) Mortgagor has made no prior assignment of any of the Leases or with respect to any of said rents, issues or profits; and

(iii) Mortgagor has neither done any act nor omitted to do any act which might prevent Agent from, or limit Agent in, acting under any of the provisions of this assignment pursuant to this Mortgage.

(b) Mortgagor agrees that neither the foregoing assignment of Leases and Revenues nor the exercise of any of Agent's rights and remedies under Paragraph 17 hereof shall be deemed to make Agent a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Leases, the Property or the use, occupancy, enjoyment or operation of all or any portion thereof, unless and until Agent, in person or by agent, assumes actual possession thereof. Nor shall the appointment of any receiver for the Property by any court at the request of Agent or by agreement with Mortgagor, or the entering into possession of any part of the Property by such receiver, be deemed to make Agent a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Leases, the Property or the use, occupancy, enjoyment or operation of all or any portion thereof.

(c) If Agent or a receiver enters upon, takes possession of and maintains control of the Property, all Revenues thereafter collected shall be applied first to the costs of taking control of and managing the Property and collecting the Revenues, including, but not limited to, reasonable attorneys' fees actually incurred, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, Impositions and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor as landlord, lessor or licensor of the Property and then to the Obligations as provided for in the Credit Agreement. Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those Revenues actually received. Agent shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Property by reason of anything done or left undone by Agent pursuant to Paragraph 17 hereof. If the Revenues are not sufficient to meet the costs of taking control of and managing the Property and collecting the Revenues, any monies expended by Agent for such purposes shall become a portion of the Obligations. Unless Agent and Mortgagor agree in writing to other terms of payment, such amounts shall be payable upon notice from Agent to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the default rate stated in the Credit Agreement, unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law. The entering upon and taking possession of and maintaining of control of the Property by Agent or the receiver pursuant to the provisions of this Mortgage and the application of Revenues as provided herein shall not cure or waive any Event of Default or invalidate any other right or remedy of Agent hereunder.

13. Leases of the Property and Collection of Revenues. Mortgagor will not enter into any Lease of all or any substantial portion of the Property or amend, supplement or otherwise modify, or terminate or cancel, or accept the surrender of, or consent to the assignment or subletting of, or grant any concessions to or waive the performance of any obligations of any tenant, lessee or licensee under, any now existing or future Lease of the Property, without the prior written consent of Agent. Mortgagor agrees not to collect or accept the payment of any Revenues, or other income or profit from, or on account of, any use or occupancy of the Property, in advance of the time when such payment becomes due unless such amount is delivered to Agent to be applied to the Obligations.

14. Remedies Cumulative. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or under the other Credit Documents or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. Taxation of Mortgages. In the event of the enactment of any law deducting from the value of the Property any mortgage lien thereon, or imposing upon Agent the payment of all or part of the taxes, charges or assessments previously paid by Mortgagor pursuant to this Mortgage, or changing the law relating to the taxation of mortgages or debts secured by mortgages or Agent's interest in the Property so as to impose new incidents of tax on Agent, then Mortgagor shall pay such taxes or assessments or shall reimburse Agent therefor.

16. Events of Default and Acceleration. The term "Event of Default", wherever used in this Mortgage, shall mean any one or more of the following conditions or events:

(a) The occurrence of any "Event of Default" as defined in the Credit Agreement;
or

(b) The failure of the Mortgagor to duly observe or perform any term, covenant, condition or agreement contained in Paragraphs 4, 7, or 13 herein, and such failure shall continue unremedied for a period of fifteen (15) days,
or

(c) The failure of the Mortgagor to duly observe or perform any other term, covenant, condition or agreement contained herein and not set forth in clause (b) above.

If an Event of Default shall have occurred, Agent may, at Agent's option, by notice to Mortgagor declare the entire Obligations to be immediately due and payable, whereupon the same shall become immediately due and payable, and without presentment, protest, demand or other notice of any kind, all of which are hereby expressly waived by Mortgagor; provided, however, the Mortgagor acknowledges that as to certain Events of Default, as set forth in the Credit Agreement, the Obligations automatically shall become and be immediately due and payable, without any declaration or other act on the part of Agent. No omission on the part of Agent to exercise such option when entitled to do so shall be construed as a waiver of such right.

17. Rights and Remedies.

(a) Power of Sale and other Remedies. Upon the occurrence of any Event of Default, and whether or not Agent shall have accelerated the maturity of the Obligations pursuant to Paragraph 16 hereof, Agent, at its option, may:

(i) upon the breach or default by Mortgagor of any of the foregoing, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if

the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(ii) either with or without entering upon or taking possession of the Property, demand, collect and receive any or all Revenues;

(iii) exercise its rights as a secured party with respect to the Personal Property and enter upon any premises on which the Personal Property or any part thereof may be situated and remove the same;

(iv) either with or without taking possession of the Property, sell, lease or otherwise dispose of the Property in its then condition or following such preparation as Agent deems advisable;

(v) either with or without entering upon or taking possession of the Property, and without assuming any obligations of Mortgagor thereunder, exercise the rights of Mortgagor under, use or benefit from, any of the Leases or the Intangible Property;

(vi) in person, by agent or by court-appointed receiver, enter upon, take possession of, and maintain full control of the Property in order to perform all acts necessary or appropriate to maintain and operate the Property, including, but not limited to, the execution, cancellation or modification of Leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as Agent, in its sole discretion, deems proper or appropriate;

(vii) proceed by a suit or suits in law or in equity or by other appropriate proceeding to enforce payment of the Obligations or the performance of any term, covenant, condition or agreement of this Mortgage or the Credit Agreement or any of the other Credit Documents, or any other right, and to pursue any other remedy available to it, all as Agent shall determine most effectual for such purposes;

(viii) institute and maintain such suits and proceedings as Agent may deem expedient to prevent any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, to preserve or protect its interest in the Property and the Revenues, and to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that would impair the security hereunder or be prejudicial to the interest of Agent;

(ix) apply all or any portion of the Property, or the proceeds thereof, towards (but not necessarily in complete satisfaction of) the Obligations;

(x) foreclose any and all rights of Mortgagor in and to the Property, whether by sale, entry or in any other manner provided for hereunder or under the laws of the State of Alabama;

(xi) in the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Mortgagor or the creditors or property of Mortgagor, Agent, 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 Agent and the Lenders allowed in such proceedings for the entire amount of the Obligations at the date of the institution of such proceedings and for any additional portion of the Obligations accruing after such date;

(xii) exercise any other right or remedy of a mortgagee or secured party under the laws of the State of Alabama.

(b) Receiver. If an Event of Default shall have occurred Agent, 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 Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the Revenues. The receiver shall have all of the rights and powers permitted under the laws of the State of Alabama. Mortgagor will pay to Agent upon demand, all expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to such appointment and all such expenses shall be a portion of the Obligations.

(c) Sale or Other Disposition of Property. The Agent, in connection with the exercise of its rights under, and in accordance with the terms and conditions of the UCC and the Security Agreement may conduct any sale or other disposition of the Property at public or private sale, to the extent such private sale is authorized under the provisions of the UCC and the Security Agreement upon the Land, in which event Agent shall not be liable for any rent or charge for such use of the Land. Agent may purchase the Property, or any portion of it, at any sale held under this Paragraph 17. With respect to any Property to be sold pursuant to the UCC, Agent shall give Mortgagor at least ten (10) days written notice of the date, time, and place of any proposed public sale, and of the date after which any private sale or other disposition may be made. Agent may sell any of the Personal Property as part of the real property comprising the Property, or any portion or unit thereof, at the foreclosure sale or sales conducted pursuant hereto. If the provisions of the UCC are applicable to any part of the Personal Property which is to be sold in combination with or as part of the real property comprising the Property, or any part thereof, at one or more foreclosure sales, any notice required under such provisions shall be fully satisfied by the notice given in connection with any foreclosure proceedings with respect to the real property or any part thereof. Mortgagor waives any right to require the marshaling of any of its assets in connection with any disposition conducted pursuant hereto. In the event all or part of the Property is included at any foreclosure sale conducted pursuant hereto, a single total price for the Property, or such part thereof as is sold, may be accepted by Agent with no obligation to distinguish between the application of such proceeds amongst the property comprising the Property.

(d) Collection of Revenues. In connection with the exercise by Agent of the rights and remedies provided for in subparagraph (a)(ii) of this Paragraph 17:

(i) Agent may notify any tenant, lessee or licensee of the Property, either in the name of Agent or Mortgagor, to make payment of Revenues directly to Agent or Agent's agents, may advise any person of Agent's interest in and to the Revenues, and may collect directly from such tenants, lessees and licensees all amounts due on account of the Revenues;

(ii) At Agent's request, Mortgagor will provide written notification to any or all tenants, lessees and licensees of the Property concerning Agent's interest in the

Revenues and will request that such tenants, lessees and licensees forward payment thereof directly to Agent;

(iii) Mortgagor shall hold any proceeds and collections of any of the Revenues in trust for Agent and shall not commingle such proceeds or collections with any other funds of Mortgagor; and

(iv) Mortgagor shall deliver all such proceeds to Agent in the Blocked Account immediately upon the receipt thereof by Mortgagor in the identical form received, but duly endorsed or assigned on behalf of Mortgagor to Agent.

(e) Use and Occupation of Property. In connection with the exercise of Agent's rights under Subparagraph (a)(vi) of this Paragraph 17, Agent may enter upon, occupy, and use all or any part of the Property and may exclude Mortgagor from the Land and the Improvements or portion thereof as may have been so entered upon, occupied, or used. Agent shall not be required to remove any Personal Property from the Land and the Improvements upon Agent's taking possession thereof, and may render any Personal Property unusable to Mortgagor. In the event Agent manages the Land and the Improvements in accordance with Subparagraph (a)(vi) herein, Mortgagor shall pay to Agent on demand a reasonable fee for the management thereof in addition to the Obligations. Further, Agent may construct such Improvements on the Land or make such alterations, renovations, repairs, and replacements to the Improvements, as Agent, in its sole discretion, deems proper or appropriate. The obligation of Mortgagor to pay such amounts and all expenses incurred by Agent in the exercise of its rights hereunder shall be included in the Obligations and shall accrue interest at the default rate of interest stated in the Credit Agreement, unless collection from Mortgagor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Mortgagor under applicable law.

(f) Partial Sales. Mortgagor agrees that in case Agent, in the exercise of the power of sale contained herein or in the exercise of any other rights hereunder given, elects to sell in parts or parcels, said sales may be held from time to time and that the power shall not be exhausted until all of the Property not previously sold shall have been sold, notwithstanding that the proceeds of such sales exceed, or may exceed, the Obligations.

(g) Assembly of Property. Upon the occurrence of any Event of Default, Agent may require Mortgagor to assemble the Property and make it available to Agent, at Mortgagor's sole risk and expense, at a place or places to be designated by Agent which are reasonably convenient to both Agent and Mortgagor.

(h) Power of Attorney. Mortgagor hereby irrevocably constitutes and appoints Agent as Mortgagor's true and lawful attorney in fact, exercisable upon the occurrence of any Event of Default to take any action with respect to the Property to preserve, protect, or realize upon Agent's interest therein, each at the sole risk, cost and expense of Mortgagor, but for the sole benefit of Agent. The rights and powers granted Agent by the within appointment include, but are not limited to, the right and power to: (i) prosecute, defend, compromise, settle, or release any action relating to the Property; (ii) endorse the name of Mortgagor in favor of Agent upon any and all checks or other items constituting Revenues; (iii) sign and endorse the name of Mortgagor on, and to receive as secured party, any of the Personal Property; (iv) sign and file or record on behalf of Mortgagor any financing or other statement in order to perfect or protect Agent's security interest; (v) enter into leases or subleases relative to all or a portion of the Land or the Improvements; (vi) enter into any contracts or agreements relative to, and to take all action deemed necessary in connection with, the construction of any Improvements on the Land; (vii) manage, operate, maintain, or repair the Land and the Improvements; and (viii) exercise the rights of Mortgagor under any Leases, or Intangible Personal Property. Agent shall not be obligated to perform any of such acts or to exercise any of

such powers, but if Agent elects so to perform or exercise, Agent shall not be accountable for more than it actually receives as a result of such exercise of power, and shall not be responsible to Mortgagor except for Agent's willful misconduct or gross negligence. All powers conferred upon Agent by this Mortgage, being coupled with an interest, shall be irrevocable until terminated by a written instrument executed by a duly authorized officer of Agent.

18. Notices. Any and all notices, demands, elections or requests provided for or permitted to be given pursuant to this Mortgage shall be given or served as provided in the Credit Agreement.

19. Successors and Assigns Bound; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Agent and Mortgagor, subject to the provisions of the Credit Agreement. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

20. Governing Law; Severability. This Mortgage and the obligations of Mortgagor hereunder shall be governed by and interpreted and determined in accordance with the laws of the Commonwealth of Massachusetts except that the creation, governance, administration and enforcement of liens and rights and remedies with respect to the Property shall be governed by and interpreted in accordance with the laws of the State of Alabama. In the event that any provision or clause of this Mortgage or any other Credit Document conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or such Credit Document which can be given effect without the conflicting provision, and to this end, the provisions of this Mortgage and the other Credit Documents are declared to be severable. In the event that any applicable law limiting the amount of interest or other charges permitted to be collected from Mortgagor is interpreted so that any charge for which provision is made in this Mortgage or in the other Credit Documents, whether considered separately or together with other charges permitted to be collected from Mortgagor, is interpreted so that any such charge, whether considered separately or together with other charges that are considered a part of the transaction represented by this Mortgage and the other Credit Documents, violates such law, and Mortgagor is entitled to the benefit of such law, such charge is hereby reduced to the extent necessary to eliminate such violation. The amounts, if any, previously paid to Agent in excess of the amounts payable to Agent pursuant to such charges as reduced shall be applied by Agent to reduce the principal of the Obligations.

21. Discharge. If Mortgagor shall pay in full all of the Obligations including but not limited to all sums (principal, interest and charges) payable under the Credit Agreement and any and all extensions and renewals of the same; and all sums becoming due and payable by Mortgagor under the terms of this Mortgage and Credit Agreement and Credit Documents, including but not limited to advances made by Agent pursuant to the terms and conditions of this Mortgage; and have kept and performed each and every obligation, covenant, duty, condition, and agreement herein imposed on or agreed to by Mortgagor, then this conveyance and the grants and conveyances contained herein shall become null and void, and the Property shall revert to Mortgagor, and the entire estate, right, title and interest of Agent for the ratable benefit of the Lenders will thereupon cease; and Agent in such case shall, upon the request of Mortgagor and at Mortgagor's cost and expense, deliver to Mortgagor proper instruments acknowledging satisfaction of this Mortgage, otherwise this Mortgage shall remain in full force and effect. Upon payment and performance of the Obligations, Agent shall discharge this Mortgage. Mortgagor shall pay Agent's reasonable costs incurred in discharging this Mortgage.

22. Waivers. (a) Mortgagor agrees to the full extent permitted by law, that in case of an Event of Default hereunder, neither Mortgagor nor anyone claiming through or under Mortgagor shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension,

homestead, exemption or redemption 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 Property, or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for Mortgagor and all who may at any time claim through or under Mortgagor, hereby waives to the fullest extent that Mortgagor may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprised in the security intended to be created hereby marshaled upon any foreclosure of the lien hereof.

(b) No failure or delay of the Agent in exercising any power or right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Agent hereunder are cumulative and are not exclusive of any rights or remedies that the Agent would otherwise have. No waiver of any provisions of this Mortgage or any other Credit Document or consent to any departure by Mortgagor therefrom shall in any event be effective unless the same shall be permitted by paragraph (c) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

(c) Neither this Mortgage nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Agent and the Mortgagor with respect to which such waiver, amendment or modification is to apply, subject to any consent required in accordance with Section 12.10 of the Credit Agreement.

(d) In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Agent, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Obligations 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 (including, without limitation, the restrictions upon transfer contained in Paragraph 5).

23. Further Assurances. The Mortgagor shall take all such further actions and execute all such further documents and instruments as the Agent may at any time reasonably determine in its sole discretion to be necessary or desirable to further carry out and consummate the transactions contemplated by this Mortgage, to cause the execution, delivery and performance of this Mortgage to be duly authorized and to perfect or protect the Lien (and the priority status hereof) of the Agent on the Property. Upon any failure by Mortgagor so to do, Agent may make, execute, record, file, re-record and/or refile any and all such assignments, mortgages, security agreements, financing statements, continuation statements, instruments, certificates, and documents for and in the name of Mortgagor, and Mortgagor hereby irrevocably appoints Agent the agent and attorney in fact of Mortgagor so to do.

24. Subrogation. Agent shall be subrogated to all right, title, lien or equity of all persons to whom Agent may have paid any monies in settlement of liens, charges or assessments, or in acquisition of title or for its benefit hereunder, or for the benefit or account of Mortgagor upon execution of the Credit Agreement or subsequently paid under any provisions hereof.

25. Time of the Essence. Time is of the essence with respect to each and every covenant, agreement and obligation of Mortgagor under this Mortgage and any and all other Credit Documents.

26. Agent's Fees and Expenses; Indemnification. (a) Without in anyway limiting any other reimbursement obligations contained under the other Credit Documents, the Mortgagor agrees to pay upon demand to the Agent the amount of any and all reasonable expenses, including the reasonable fees, disbursements and other charges of its counsel and of any experts or agents, which the Agent may incur in connection with (i) the administration of this Mortgage, (ii) the custody or preservation of, or the sale of, collection from or other realization upon any of the Property, (iii) the exercise, enforcement or protection of any of the rights of the Agent hereunder or (iv) the failure of the Mortgagor to perform or observe any of the provisions hereof.

(b) Any such amounts payable as provided hereunder shall be additional Obligations secured hereby and by the other Security Documents. The provisions of this Paragraph 26 shall remain operative and in full force and effect regardless of the termination of this Mortgage or any other Credit Document, the consummation of the transactions contemplated hereby, the repayment of any of the Obligations, the invalidity or unenforceability of any term or provision of this Mortgage or any other Credit Document, or any investigation made by or on behalf of the Agent or any Lender. All amounts due under this Paragraph 26 shall be payable on written demand therefor.

27. Submission to Jurisdiction; Waivers. THE MORTGAGOR HEREBY IRREVOCABLY AND UNCONDITIONALLY: SUBMITS FOR ITSELF AND ITS PROPERTY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS MORTGAGE, OR FOR RECOGNITION AND ENFORCEMENT OF ANY JUDGMENT IN RESPECT THEREOF, TO THE NON-EXCLUSIVE GENERAL JURISDICTION OF THE COURTS OF THE STATE OF MASSACHUSETTS, THE COURTS OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF MASSACHUSETTS AND APPELLATE COURTS FROM ANY THEREOF; CONSENTS THAT ANY SUCH ACTION OR PROCEEDING MAY BE BROUGHT IN SUCH COURTS AND WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING BEING BROUGHT IN AN INCONVENIENT COURT AND AGREES NOT TO PLEAD OR CLAIM THE SAME; AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, TO THE MORTGAGOR AT ITS ADDRESS SET FORTH IN SECTION 11.5 OF THE CREDIT AGREEMENT OR AT SUCH OTHER ADDRESS OF WHICH THE AGENT SHALL HAVE BEEN NOTIFIED PURSUANT THERETO; AGREES THAT NOTHING HEREIN SHALL AFFECT THE RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR SHALL LIMIT THE RIGHT TO SUE IN ANY OTHER JURISDICTION; WAIVES THE RIGHT TO ASSERT ANY SETOFF, COUNTERCLAIM OR CROSS-CLAIM IN RESPECT OF, AND ALL STATUTES OF LIMITATIONS WHICH MAY BE RELEVANT TO, SUCH ACTION OR PROCEEDING; AND WAIVES DUE DILIGENCE, DEMAND, PRESENTMENT AND PROTEST AND ANY NOTICES THEREOF AS WELL AS NOTICE OF NONPAYMENT.

28. WAIVER OF JURY TRIAL. THE MORTGAGOR HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR ANY OTHER AGREEMENTS OR TRANSACTIONS RELATED HERETO OR THERETO.

29. Intent. It is intended that this Mortgage supplement the Security Agreement and the other Credit Documents. In the event of a conflict between this Mortgage and the other Credit Documents, the terms of this Mortgage shall control with respect to the Land, the Improvements, the Leases and the Revenues.

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

Witness:

Kenn M. Morley
Print Name: Kenn M. Morley

Heather Lauten
Print Name: Heather Lauten

WICKES INC.

By: *Mark B. Butkerman*

Name: Mark B. Butkerman

Title: Secretary

STATE OF ILLINOIS)
COOK County)

I, the undersigned authority, a notary public in and for said county in said state, hereby certify that Mark B. Butkerman, whose name as Secretary of Wickes Inc., a Delaware corporation, 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 13th day of December, 2000.

Toni L. Ruckman
Notary Public

[NOTARIAL SEAL]

My commission expires:



EXHIBIT A

[Legal Description of Land]

605414.5

EXHIBIT A

SHELBY COUNTY

Unit A:

Unit A of The Homecrafters Warehouse Building, a Condominium according to the Declaration of Condominium as recorded in Book 003 page 860 in the Office of the Judge of Probate of Shelby County, Alabama, together with an undivided fractional interest in the common elements as set out in the said Declaration of Condominium; being situated in Shelby County, Alabama.

Unit B:

Unit B of The Homecrafters Warehouse Building, a condominium, according to the Declaration of Condominium as recorded in Book 003 page 860 in the Office of the Judge of Probate of Shelby County, Alabama, together with an undivided fractional interest in the common elements as set out in the said Declaration of Condominium; being situated in Shelby County, Alabama.

TUSCALOOSA COUNTY

TRACT A:

Commence at the Northwest corner of the Southwest Quarter of the Northwest Quarter of Section 11, Township 21 South, Range 10 West Huntsville Meridian, Tuscaloosa County, Alabama; thence in southerly direction, along and with the West line of said Quarter-Quarter section 484.15 feet to the Point of Beginning; thence with a deflection of 86°31'44" left, 370.00 feet to a point; thence with a deflection of 86°35'45" right 359.47 feet to the northerly right-of-way margin of U. S. Highway 82 Bypass; thence with a deflection of 94°20'59" right, and along and with said right-of-way margin, 370.00 feet to a point; thence with a deflection of 85°35'00" right, leaving said right-of-way margin, 353.38 feet to the Point of Beginning.

TRACT B:

Commence at the Northwest corner of the Southwest Quarter of the Northwest Quarter of Section 11, Township 21 South, Range 10 West Huntsville Meridian, Tuscaloosa County, Alabama; thence in a southerly direction, along and with the West line of said Quarter-Quarter section 484.15 feet to a point; thence with a deflection of 86°31'44" left, 370.00 feet to the Point of Beginning; thence with a deflection of 86°35'45" right, 359.47 feet to the northerly right-of-way margin of U. S. Highway 82 Bypass; thence with a deflection of 85°39'01" left, along and with said right-of-way margin 82.00 feet to a point; thence with a deflection of 94°16'18" left, leaving said right-of-way margin, 360.80 feet to a point; thence with a left deflection of 86°40'26" 82.40 feet to the Point of Beginning.

EXHIBIT A

BULTER COUNTY

Lot 7 of Block 41 and Lots 9 and 10 of Block 42 according to the survey of W. P. DeJarnette of the City of Greenville, Alabama

LESS AND EXCEPT THE FOLLOWING:

- 1. That portion of Lot 9 sold to Southside Baptist Church which deed is recorded in the Butler County Probate Office in Deed Book 183, page 194.**
- 2. All that part of Lot 7 of Block 41 according to the W. P. DeJarnette survey of the City of Greenville, Alabama which lies North and West of King Street.**

Inst # 2000-44280

**12/20/2000-44280
03:46 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
023 NMB 6667.70**