

FOR RECORDER'S USE ONLY

PREPARED BY:

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Services Inc.
222 North LaSalle Street
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Chicago, Illinois 60601

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2001-46269

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SHELBY COUNTY JUDGE OF PROBATE
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**MORTGAGE, ASSIGNMENT OF RENTS
AND SECURITY AGREEMENT**

FROM

**HOLCOMBE PROPERTIES, LTD.
MORTGAGOR**

TO

**MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.
MORTGAGEE**



Alabama

MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT ("Mortgage") is made as of September 5, 2001 by **HOLCOMBE PROPERTIES, LTD.**, a limited partnership organized and existing under the laws of the State of Alabama having its principal office at 16145 Hwy. 280, Chelsea, AL 35043 ("Mortgagor") in favor of **MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**, a Delaware corporation having its principal office at 222 North LaSalle Street, 17th Floor, Chicago, Illinois 60601 ("Mortgagee"), and pertains to the real property described on Exhibit "A" attached hereto and made a part hereof, and the Other Property described herein.

I. DEFINITIONS

1.01 Specific Terms. In addition to terms defined elsewhere in this Mortgage, when used herein the following terms shall have the following meanings:

- (a) "Additional Agreements" shall have the meaning set forth in the Loan Agreements.
- (b) "Business Day" shall mean any day other than a Saturday, Sunday, federal holiday or other day on which the New York Stock Exchange is regularly closed.
- (c) "Documents" shall mean collectively the Loan Agreements, the Notes and the other Additional Agreements.
- (d) "Loan Agreements" shall mean that certain **WCMA LOAN AND SECURITY AGREEMENT NO. 525-07642** and that certain **WCMA REDUCING REVOLVER LOAN AND SECURITY AGREEMENT NO. 525-07643** and that certain **WCMA REDUCING REVOLVER LOAN AND SECURITY AGREEMENT NO. 525-07644**, each between Mortgagor and Mortgagee, as either or both of the same may from time to time be or have been amended, renewed, restated, extended or supplemented.
- (e) "Notes" shall mean (i) that certain **WCMA NOTE** included in **WCMA LOAN AND SECURITY AGREEMENT No. 525-07642** providing for a maximum revolving line of credit of \$1,400,000.00, having a maturity date of August 31, 2002, and (ii) that certain **WCMA NOTE** included in **WCMA REDUCING REVOLVER LOAN AND SECURITY AGREEMENT No. 525-07643** providing for a maximum revolving line of credit of \$875,000.00, having a maturity date of 8/31/2006, and (iii) that certain **WCMA NOTE** included in **WCMA REDUCING REVOLVER LOAN AND SECURITY AGREEMENT No. 525-07644** providing for a maximum revolving line of credit of \$200,000.00, having a maturity date of 8/31/2006, each given by Grantor to Grantee, as either or both of the same may from time to time be amended, renewed, restated, extended or supplemented.
- (f) "Obligations" shall mean all indebtedness, obligations and liabilities of Mortgagor to Mortgagee, howsoever created, arising or evidenced, whether now existing or hereafter arising, whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint and several, relating to the Notes and under this Mortgage.
- (g) "Other Property" shall have the meaning set forth in Section 2.01 hereof.
- (h) "Real Property" shall mean the real property commonly known as 16145 Hwy. 280, Chelsea, AL 35043, and more fully described in Exhibit "A" attached hereto and made a part hereof, and all improvements thereon.
- (i) "Property" shall mean the Real Property and the Other Property, collectively.

II. THE GRANT; ASSIGNMENT OF RENTS AND LEASES

2.01 Grant. In order to induce Mortgagee to extend or continue to extend credit to Mortgagor under the Loan Agreements or otherwise, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure the payment and performance of the Obligations and the covenants and agreements herein contained, Mortgagor does hereby grant, bargain, sell, convey, mortgage and warrant to Mortgagee and its successors and assigns forever the Real Property, and all of Mortgagor's estate, right, title and interest therein, together with the following described property (the "Other Property"):

(a) All buildings and other improvements of every kind and description now or hereafter erected or placed on the Real Property, and all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon, all of which materials shall be deemed to be included as part of the Other Property immediately upon the delivery thereof to the Real Property;

(b) All right, title, and interest of Mortgagor, including any after-acquired title or reversion, in and to the rights-of-ways, streets, avenues, sidewalks, and alleys adjoining the Real Property;

(c) Each and all of the tenements, hereditaments, easements, appurtenances, passages, waters, water courses, riparian rights, other rights, liberties and privileges of the Real Property in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity, as well as any after-acquired title, franchise or license and the reversions and remainders thereof;

(d) All rents, issues, deposits and profits accruing and to accrue from the Real Property and Other Property and the avails thereof;

(e) All of Mortgagor's rights and claims, in and to all accounts, accounts receivable, security deposits, insurance premium rebates, writings evidencing a monetary obligation, contract rights and other creditor's interests existing in favor of, owned or acquired by Mortgagor with respect to the Real Property; all contracts relating to the use, operation, occupation, maintenance, repair or construction of the Real Property; all permits, licenses, franchises benefiting the Real Property, together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf in connection with the foregoing; and all books and records, including but not limited to all lease documents, relating to the Real Property and Other Property;

(f) All machinery, equipment, fittings, apparatus, appliances, furniture, furnishings, tools, fixtures (including, without limitation, all heating, air conditioning, ventilating, waste disposal, sprinkler and fire and theft protection equipment, and all plumbing, lighting, communications and elevator fixtures) and other property of every kind and description now or hereafter owned by Mortgagor and located upon or in, and used or useful in connection with, the operation, maintenance or occupancy of the Real Property or the Other Property, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are attached to such improvements; and

(g) All judgments, awards of damages or settlements related to and all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including but not limited to proceeds of insurance and/or condemnation, and all products, additions, accessions, attachments, parts, replacements and substitutes therefor.

TO HAVE AND TO HOLD the same unto Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

2.02 Special Terms Concerning This Mortgage. All of the Other Property is pledged hereunder primarily, on a parity with the Real Property, and not secondarily. This Mortgage is given as equal security for all of the Obligations without preference or priority of any part of the Obligations for any reason whatsoever. The Notes secured by this Mortgage contemplate a variable rate of interest.

This Mortgage is given in part to secure certain line of credit obligations, as evidenced and witnessed by the Notes, and secures not only the indebtedness from Mortgagor existing on the date hereof, but all such future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, and although there may be no indebtedness outstanding at the time any advance is made. The lien of this Mortgage as to third persons without actual notice thereof shall be valid as to all indebtedness and future advances from the time this Mortgage is filed for record in the Office of the Recorder of Deeds of the County set forth on Exhibit A attached hereto. The total amount of revolving indebtedness that may be secured by this Mortgage may increase or decrease from time to time, but the total unpaid balance of the Notes secured at any one time, shall not exceed the maximum principal amount of the Notes plus interest thereon and any disbursements made by Mortgagee to protect and preserve the lien of this Mortgage (including, but not limited to, real estate taxes, water and sewer assessments, and insurance premiums), with interest on such disbursements.

2.03 Other Property. Mortgagor acknowledges and agrees that all of the Other Property now and hereafter owned by Mortgagor and placed by Mortgagor on the Real Property or used in connection with the operation or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be part of the Real Property and covered by this Mortgage, and as to any of the Other Property which is not part of the Real Property or does not constitute a "fixture," as such term is defined in the Uniform Commercial Code (the "Code"), as enacted in the state in which the Real Property is located, this Mortgage shall be deemed to be, as well, a security agreement under the Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to Mortgagee as "secured party," as such term is defined in the Code. All Other Property acquired by Mortgagor after the date hereof which is required or intended by the terms of this Mortgage to be subjected to the lien and security interest of this Mortgage shall, immediately upon the acquisition thereof by Mortgagor, and without any further mortgage, conveyance, assignment or transfer, become subject to the lien and security interest of this Mortgage.

2.04 Other Amounts Secured. At all times, this Mortgage secures, in addition to the Notes, all other Obligations together with moneys advanced by Mortgagee to protect and preserve the lien of this Mortgage, as aforesaid.

2.05 Assignments of Rents and Leases. Mortgagor hereby assigns, transfers and sets over unto Mortgagee all the rents, fees or payments now or hereafter due, under or by virtue of any lease or other agreement, whether oral or written, for the use or occupancy of any part of the Property and to all amendments and guarantees thereof, whether heretofore, now or hereafter agreed to; together with the right to let and relet the Property or any part thereof, in Mortgagee's sole discretion, and to do anything with respect to the Property as Mortgagor might do. Any proceeds received hereunder may be applied by Mortgagee as otherwise provided in Section 4.05 of this Mortgage. Mortgagor hereby directs all tenants, lessees and occupants of the Property to pay all rental, payments or fees for use and occupancy of the Property in accordance herewith. Mortgagee agrees not to exercise its rights granted in this Section unless and until an Event of Default, as hereafter defined, shall have occurred and is continuing, provided that this assignment shall nevertheless be deemed a present assignment. Mortgagor shall execute, acknowledge, and deliver to Mortgagee, within 5 Business Days after any request by Mortgagee, such assignment of rent documents as may be required by Mortgagee, in form and substance satisfactory to Mortgagee. Mortgagor further agrees to pay to Mortgagee all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution and recording of any such documents.

III. GENERAL AGREEMENTS

3.01 Payment of Obligations. Mortgagor shall pay or cause the payment on or before the applicable due date of each installment payable under the Notes and all other Obligations, and Mortgagor shall timely perform or cause the performance of all of its other Obligations.

3.02 Property Taxes. Mortgagor shall pay on or before the applicable due date, all taxes, assessments and other charges that may be asserted against the Property or any part thereof or interest therein. Mortgagor shall furnish to Mortgagee duplicate receipts or other evidence of payment of such taxes, assessments and other charges within 30 days after payment thereof.

3.03 Right to Perform Obligations. If Mortgagor shall fail to do any act or thing which it has covenanted to do under the Documents or any representation or warranty on the part of Mortgagor contained in the Documents shall be breached, Mortgagee may, in its sole discretion, after 5 Business Days written notice is sent to Mortgagor (or such lesser notice, including no notice, as is reasonable under the circumstances), do the same or cause it to be done or remedy any such breach, and may expend its funds for such purpose. Any and all reasonable amounts so expended by Mortgagee shall be payable to Mortgagee by Mortgagor on demand, with interest at the highest "Interest Rate" (as that term is defined in the Notes) during the period from and including the date funds are so expended by Mortgagee to the date of repayment, and all such amounts shall be additional Obligations. The payment or performance by Mortgagee of any of Mortgagor's obligations hereunder shall not relieve Mortgagor of said obligations or of the consequences of having failed to pay or perform the same, and shall not waive or be deemed a cure of any Event of Default.

3.04 Insurance.

(a) **Hazard.** Mortgagor shall keep the improvements now existing or hereafter erected on the Real Property insured under a replacement cost form of insurance policy against loss or damage resulting from such hazards as may be reasonably required by Mortgagee (including, but not limited to, flood insurance in an amount necessary to comply with applicable law), and shall pay promptly, when due, all premiums on such insurance. Without limiting the foregoing, during construction of any improvements on the Real Property, Mortgagor shall maintain "Builders Risk" insurance with extended coverage over fire and other casualties using completed values for the amount of the full insurable value for all such improvements under construction at any time on the Real Property, including equipment and materials delivered to the Real Property for incorporation into the Property. All such insurance shall be in form and with insurers approved in writing by Mortgagee and shall have attached thereto: (i) standard non-contributing mortgage clauses entitling Mortgagee, as its interest may appear, to collect any and all proceeds payable under such insurance, and (ii) standard waiver of subrogation endorsements, so long as such subrogation endorsement can be obtained without material additional cost to Mortgagor.

In the event of any casualty loss, Mortgagor shall give immediate notice thereof to Mortgagee. Mortgagor hereby authorizes Mortgagee, at Mortgagee's option, to adjust and compromise any such losses under any of the aforesaid insurance and, after deducting any of Mortgagee's reasonable costs of collection, to use, apply, or disburse the balance of such insurance proceeds: (i) toward repairing, restoring and rebuilding the aforesaid improvements, provided such repair, restoration or rebuilding is economically feasible and the security of this Mortgage is not thereby impaired, in which event Mortgagee shall not be obliged to see to the proper application thereof nor shall the amount so released for such purposes be deemed a payment on the indebtedness secured thereby; or (ii) as a credit upon any portion of the indebtedness secured hereby, with the excess, if any, paid to Mortgagor; *provided, however*, that so long as no Event of Default shall then exist and no Event of Default shall exist at any time during the period of any repair, restoration and/or rebuilding of the aforesaid improvements, and subject to the provisions of the immediately following Section, upon Mortgagor's written request to Mortgagee made on or before the disbursement of such insurance proceeds to Mortgagee, such insurance proceeds shall be used to repair, restore and/or rebuild the aforesaid improvements. Unless Mortgagor and Mortgagee otherwise agree in writing, any such application of proceeds to the sums secured by this Mortgage shall not extend or postpone the due date of any portion of the indebtedness secured hereby or change the amount of any installment due on such indebtedness.

To the extent any such insurance proceeds are used toward repairing, restoring and rebuilding such improvements, such proceeds shall be made available, from time to time, upon Mortgagee being furnished with satisfactory evidence of the estimated cost of such repairs, restoration and rebuilding and with such architect's certificates, waivers of lien, certificates, contractors' sworn statements and other evidence of the estimated cost thereof and of payments as Mortgagee may reasonably require and approve, and if the estimated cost of the work exceeds 5% of the original principal amount of the Notes, with all plans and specifications for such plans, restoration and rebuilding as Mortgagee may reasonably require and approve. Payments made prior to the final completion of the work shall not exceed 90% of the value of the work performed, from time to time, and at all times the undisbursed balance of such proceeds remaining in the hands of Mortgagee shall be at least sufficient to pay for the cost of completion of the work, free and clear of any liens except the lien of this Mortgage. Mortgagee shall have the right to require that all funds shall be paid through a construction escrow with a title

insurance company selected by Mortgagee. In the event of foreclosure of this Mortgage, enforcement of the power of sale or other transfer of title to the Property in extinguishment of the Obligations, all right, title and interest of Mortgagor in and to any such insurance policies then in force, and any claims or proceeds thereunder, shall pass to Mortgagee or any purchaser or grantee therefrom.

(b) **Liability.** Mortgagor shall carry and maintain such comprehensive public liability and worker's compensation insurance as may be reasonably required from time to time by Mortgagee; *provided, however*, that the amounts of liability coverage shall not be less than \$2,000,000.00 single limit. Mortgagee shall be named as an additional party insured.

(c) **Proof of Insurance.** All insurance shall be in amount, form and content and with insurers approved in writing by Mortgagee. Mortgagor shall deliver to Mortgagee a copy or certificate of each policy or policies, with evidence of premiums prepaid, and, prior to any expiration or cancellation, each renewal or replacement thereof. Each policy shall contain provision for not less than 10 days' notice to Mortgagee prior to any cancellation thereof.

3.05 Condemnation and Eminent Domain. Any and all awards heretofore or hereafter made or to be made to the present, or any subsequent, owner of the Property, by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Property or any easement thereon or appurtenance thereof, are hereby assigned by Mortgagor to Mortgagee, which awards Mortgagee is hereby authorized to collect and receive from the condemnation authorities, and Mortgagee is hereby authorized to give appropriate receipts therefor. Mortgagor shall give Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Real Property, or any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear and discharged of any encumbrance of any kind whatsoever, any and all further assignments and other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning all awards and other compensation heretofore and hereafter made to Mortgagor for any taking, either permanent or temporary, under any such proceeding. In the event of any damage or taking by eminent domain of less than substantially all of the Property, Mortgagee shall make available the proceeds of any award received in compensation for any such damage or taking, less Mortgagee's reasonable costs of collection, for the purpose of rebuilding and restoring the Property, subject to the same terms and conditions as set forth in Section 3.04 (a). If any of the foregoing conditions are not or cannot be satisfied, then Mortgagee may use or apply the award to the Obligations.

3.06 Use, Maintenance and Repair. (a) Mortgagor shall not desert or abandon the Property or, without the prior written consent of Mortgagee, cause or permit a material change in the use of the Property.

(b) Mortgagor shall at its expense maintain the Property in good, safe and insurable condition and repair, and in compliance with all applicable laws and other governmental requirements. Mortgagor further agrees not to permit, commit or suffer any waste, impairment or deterioration of the Property or any part thereof; to effect such repairs as Mortgagee may reasonably require, and, from time to time, to make all necessary and proper replacements thereof and additions thereto so that all of the Property will, at all times, be in good condition and repair, and fit for the purposes for which originally erected or installed.

(c) Mortgagor shall not, without the prior written consent of Mortgagee, cause or permit the demolition, removal, construction, restoration, addition or material alteration to the Property or any portion thereof, except that without such consent: (i) Mortgagor may in the ordinary course of its business or operations replace any worn, broken, unfit or obsolete personal property or fixtures included in the Other Property with like property which is new or substantially new and free of all liens other than the lien of the Mortgage, and (ii) Mortgagor may make non-structural interior alterations having an aggregate cost in any calendar year of not in excess of \$100,000.00.

3.07 Liens and Transfers. Except upon the prior written consent of Mortgagee, Mortgagor shall not sell, transfer, convey, assign, hypothecate or otherwise transfer the title to or any interest in all or any portion of the Property, whether by operation of law, voluntarily, or otherwise, and, if title to the Property or any part thereof is now or shall hereafter become vested in a trustee, including any sale, transfer, assignment, hypothecation or

other transfer of the beneficial interest or power of direction therein, nor shall Mortgagor contract to do any of the foregoing, or create, suffer or permit to be created or filed against the Property or any part thereof hereafter any mortgage lien or other lien upon the Property other than the lien of this Mortgage; *provided, however*, that without such consent Mortgagor may: (a) permit the existence of a lien arising from any work performed, material furnished, or other obligations incurred by Mortgagor but only if, not later than 5 Business Days after the filing thereof, Mortgagor shall have furnished to Mortgagee security and indemnification satisfactory to Mortgagee for the final payment and discharge thereof, and (b) Mortgagor may replace worn, broken, unfit or obsolete property to the extent permitted by Section 3.06 hereof.

3.08 Stamp Taxes. If at any time the United States government, or any federal, state, county or municipal governmental subdivision, requires or imposes documentary stamps, levies, or any tax on this Mortgage or on the Obligations, then Mortgagor shall pay the same on or before the applicable due date, or to the extent Mortgagee has or will make any payment related thereto, then to the greatest extent permitted by law such indebtedness shall be and become due and payable by Mortgagor to Mortgagee within 5 Business Days after the receipt by Mortgagor of written notice of such indebtedness from Mortgagee.

3.09 Change in Laws. In the event of the enactment, after the date of this Mortgage, of any law of the state in which the Real Property is located imposing upon Mortgagee the payment of all or any part of the taxes, assessments, charges, or liens hereby required to be paid by Mortgagor, or changing in any ways the laws relating to the taxation of mortgages or debts secured by mortgages or Mortgagor's interest in the Property, or the manner of collection of taxes, so as to affect this Mortgage or the indebtedness secured hereby or the holder thereof, then Mortgagor, upon demand by Mortgagee, shall pay such taxes, assessments, charges or liens or reimburse Mortgagee therefor; *provided, however*, that if, in the opinion of counsel for Mortgagee, it might be unlawful to require Mortgagor to make such payment or the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then Mortgagee may elect, by notice in writing given to Mortgagor, to declare all of the indebtedness secured hereby to become due and payable within 60 days after the giving of such notice; *provided, further*, that nothing contained in this Section shall be construed as obligating Mortgagor to pay any portion of Mortgagee's federal income tax.

3.10 Inspection of Property. Mortgagor shall permit Mortgagee and its representatives and agents to inspect the Property from time to time during normal business hours and as frequently as Mortgagee considers reasonable.

3.11 Environmental Conditions. (a) Mortgagor hereby represents and warrants to Mortgagee that no Hazardous Substances [as defined in Section 3.11 (b)] are presently stored or otherwise located on the Real Property and, to the best of its knowledge, on any adjacent parcels of real estate, except in accordance with all applicable Hazardous Substances Laws [as defined in Section 3.11 (b)].

(b) Neither Mortgagor nor any other persons from time to time present on the Real Property shall use, generate, manufacture, store, release, dispose of, or permit or suffer to exist in, on, under or about the Real Property or transport to or from the Real Property any flammable materials, explosives, petroleum products (including crude oil), radioactive materials, hazardous wastes, toxic substances or related materials, including, without limitation, any asbestos, asbestos containing materials, PCB's or any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, the "Hazardous Substances"), under any Federal, state or local law, ordinance or regulation dealing with or otherwise pertaining to toxic or hazardous substances, wastes or materials or to occupational safety (collectively, the "Hazardous Substances Laws"). Notwithstanding the foregoing, Mortgagor may bring limited quantities of Hazardous Substances onto the Real Property for their customary and ordinary application, storage and use for landscape purposes, janitorial services and pest control purposes.

Upon the written request of Mortgagee to Mortgagor, Mortgagee's attorneys, employees, agents or other persons or entities designated by Mortgagee shall, from time to time, and at any reasonable time, be allowed to enter upon the Real Property and conduct environmental examinations and environmental audits of the Real Property, all in form, manner and type as Mortgagee may then require in its sole discretion. Mortgagor shall fully cooperate and make the Real Property available to Mortgagee at such times as Mortgagee may reasonably request in order to conduct such environmental examinations and environmental audits.

(c) Mortgagor hereby agrees to give immediate notice of any violation of any Hazardous Substances Laws affecting the Real Property. Mortgagor covenants and agrees to promptly contain and clean up any and all releases of Hazardous Substances on the Real Property. Notwithstanding any language or provision of this Mortgage to the contrary, Mortgagor hereby unconditionally gives Mortgagee the right, but not the obligation, and Mortgagee does not so obligate itself, to undertake to contain and clean up releases of Hazardous Substances on the Real Property. Mortgagor hereby indemnifies and saves Mortgagee harmless of and from any and all loss, costs (including reasonable attorneys' fees), liability and damage whatsoever incurred by Mortgagee, by reason of any violation of any applicable Hazardous Substances Laws or by reason of the imposition of any governmental lien for the recovery of environmental clean-up costs related to the Real Property expended by reason of such violation; provided that, to the extent that Mortgagee is strictly liable under any Hazardous Substances Laws, Mortgagor's obligation to Mortgagee under this indemnity shall likewise be without regard to fault on the part of Mortgagor with respect to the violation of Hazardous Substances Laws that results in liability to Mortgagee. Mortgagor further agrees that this indemnity shall continue and remain in full force and effect beyond the term of Obligations and shall be terminated only when there is no further obligation of any kind whether in law or in equity or otherwise of Mortgagee in connection with any such Hazardous Substances involving the Real Property.

3.12 Security Instruments. Mortgagor shall execute, acknowledge and deliver to Mortgagee, within 5 Business Days after request by Mortgagee, a security agreement, financing statements and any other similar security instrument required by Mortgagee, in form and of content satisfactory to Mortgagee, covering all property of any kind whatsoever owned by Mortgagor which, in the sole opinion of Mortgagee, is essential to the operation of the Property and concerning which there may be any doubt whether title thereto has been conveyed, or a security interest therein perfected, by this Mortgage under applicable law.

3.13 Interest Laws. Mortgagor hereby warrants and represents that the proceeds of the Notes will be paid to an entity and/or used for the purposes specified in Section 205/4(c) of Chapter 815, of the Illinois Compiled Statutes and that the principal obligations secured hereby constitutes a business loan which comes within the purview and operation of such Section. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois and the laws of the State in which the Property is located, it is agreed that notwithstanding any provision to the contrary in any of the Documents, no provision of any of the Documents shall require the payment or permit the collection of any amount in excess of the maximum amount of interest permitted to be charged by law ("Excess Interest"). If any Excess Interest is provided for, or is adjudicated as being provided for, in any of the Documents, then: (a) Mortgagor shall not be obligated to pay any such Excess Interest; and (b) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be: (i) applied as a credit against the then unpaid principal balance of the Notes, or accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing.

IV. EVENTS OF DEFAULT AND REMEDIES

4.01 Events of Default. Each of the following events shall constitute an Event of Default under this Mortgage:

(a) Mortgagor shall fail to pay when due any amount owed by Mortgagor to Mortgagee under either of the Notes, the Loan Agreements or other Documents or any other Obligations, and such failure shall continue for more than 5 Business Days after written notice thereof shall have been given by Mortgagee to Mortgagor; or

(b) Mortgagor shall default in the performance or observance of any term, covenant, condition or agreement to be performed by Mortgagor under this Mortgage (not constituting an Event of Default under any other clause of this Section 4.01) and such default shall continue unremedied for 10 Business Days after written notice thereof shall have been given by Mortgagee to Mortgagor; or

(c) Any representation or warranty made by Mortgagor in this Mortgage shall at any time prove to have been incorrect in any material respect when made; or

(d) Any default or Event of Default (howsoever such terms are defined) shall occur under the Documents.

4.02 Remedies Upon Default. Upon the occurrence and during the continuance of any Event of Default, Mortgagee may at its sole option do any one or more or all of the following, at such time and in such order as Mortgagee may in its sole discretion choose:

(a) **Acceleration of Maturity.** Mortgagee may declare the principal of and interest and any premium or other charges on the Notes, and all other Obligations to be forthwith due and payable, whereupon all such amounts shall be immediately due and payable, without presentment, demand for payment, protest and notice of protest, notice of dishonor, notice of acceleration, notice of intent to accelerate or other notice or formality of any kind, all of which are hereby expressly waived.

(b) **Foreclosure of Mortgage.** Mortgagee may proceed to foreclose the lien of this Mortgage by judicial proceedings in accordance with the laws of the State in which the Property is located.

(c) **Power of Sale.** Mortgagee may proceed to exercise the statutory power of sale in accordance with the applicable laws of the State in which the Property is located.

(d) **Right of Possession.** Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of, the Property or any part thereof, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Property, together with all documents, books (or copies thereof), records (or copies thereof), papers, and accounts of Mortgagor or the then owner of the Property relating thereto, and may exclude Mortgagor, such owner, and any agents and servants thereof wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage, and control all or any part of the Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its sole and arbitrary discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Property for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Property made subsequent to this Mortgage or subordinated to the lien hereof;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Property, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loans evidenced by the Notes and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale or sale pursuant to the power of sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale or sale pursuant to the power of sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser; and

(v) make all necessary or proper repairs, decorations, renewals, replacements, alterations, additions, betterments and improvements in connection with the Property as may reasonably necessary, to insure and reinsure the Property and all risks incidental to Mortgagee's possession, operation, and management thereof, and to receive all rents, issues, deposits, profits and avails therefrom.

(e) **Application of Deposits.** Mortgagee may, at its option, without being required to do so, apply any money or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of the Obligations in such order and manner as Mortgagee may elect. When the Obligations have been fully paid, any remaining deposits shall be paid to Mortgagor or its

successors or assigns, or to the then owner or owners of the Property, or to whoever else may then be adjudged entitled thereto.

(f) Exercise Rights of Secured Party. To the extent that this Mortgage may operate as a security agreement under the Code, Mortgagee may exercise any or all of the remedies of a secured party under the Code.

4.03 Appointment of Receiver. Upon or at any time after the filing of any complaint to foreclose the lien of this Mortgage or upon the enforcement of the power of sale, the court may, upon application, appoint a receiver of the Property (which may be Mortgagee). Such appointment may be made either before or after foreclosure sale or sale pursuant to the power of sale, without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the indebtedness secured hereby; without regard to the value of the Property at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Such receiver shall have the power to take possession, control and care of the Property and to collect all rents, issues, deposits, profits and avails thereof during the pendency of such foreclosure suit or such enforcement of the power of sale and, in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any further times when Mortgagor or its devisees, legatees, heirs, executors, administrators, legal representatives, successors or assigns, except for the intervention of such receiver, would be entitled to collect such rents, issues, deposits, profits and avails, and shall have all other powers that may be necessary or useful in such cases for the protection, possession, control, management and operation of the Property during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court to extend or modify any then existing leases and to make new leases of the Property or any part thereof, which extensions, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured hereby, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof, and upon the purchaser or purchasers at any such foreclosure sale or sale pursuant to the power of sale, notwithstanding any redemption from sale, discharge of indebtedness, satisfaction of foreclosure decree, or issuance of certificate of sale or deed to any purchaser. Any receiver shall be liable to account only for the rents actually received.

4.04 Sale. In the event of any foreclosure sale or sale pursuant to the power of sale the Property may be sold in one or more parcels at the courthouse door of the County in which the Property is located after giving notice by publication once a week for three consecutive weeks of the time, place and terms of the sale, together with a description of the Property, by publication in some newspaper published in the County where the Property is located. Mortgagee may be the purchaser at any sale of the Property or any part thereof.

4.05 Application of Proceeds. The proceeds of any foreclosure sale of the Property, or any part thereof, shall, unless otherwise required by applicable law, be distributed and applied in the following order of priority:

(a) *first*, on account of all costs and expenses incident to the foreclosure proceedings or proceedings to enforce the power of sale, including, without limitation, the items described in Section 4.09 hereof;

(b) *next*, in any order as determined by Mortgagee in its sole discretion, on account of the outstanding balance of the Notes, all other items that, under the terms of this Mortgage, constitute secured indebtedness additional to that evidenced by the Notes and all other unpaid Obligations; and

(c) *the balance*, to Mortgagor or its successors or assigns, as their interests and rights may appear or whoever else may then be adjudged entitled thereto.

4.06 Priority of Payments. Any rents, issues, deposits, profits, and avails of the Property received by Mortgagee after taking possession of all or any part of the Property, or pursuant to any assignment thereof to Mortgagee under the provisions of this Mortgage, shall (unless otherwise required by court order) be applied in payment of or on account of the following, in the order listed:

(a) operating expenses of the Property (including reasonable compensation to Mortgagee, any receiver of the Property, any agent or agents to whom management of the Property has been delegated, and also including lease commissions and other compensation for and expenses of seeking and procuring tenants and entering into leases, establishing claims for damages, if any, and paying premiums on insurance hereinabove authorized);

(b) taxes, special assessments, and water and sewer charges now due or that may hereafter become a lien thereon prior to the lien of this Mortgage;

(c) any and all reasonable repairs, decorating, renewals, replacements, alterations, additions, betterments, and improvements of the Property (including, without limitation, the cost of placing the Property in such condition as will, in the judgment of Mortgagee or any receiver, make it readily rentable or salable);

(d) all indebtedness secured by this Mortgage and other Obligations, including, without limitation, any deficiency that may result from any foreclosure sale or sale pursuant to the power of sale pursuant hereto; and

(e) any remaining funds to Mortgagor or its successors or assigns, as their interests and rights may appear or to whoever else may then be adjudged entitled thereto.

4.07 Rent. During the continuance of any Event of Default and if Mortgagee or any judicially appointed representative has a right to exclude Mortgagor from all or any part of the Property, Mortgagor agrees to pay the fair and reasonable rental value for the use and occupancy of the Property, or any portion thereof which are in its possession and being occupied for such period and, upon default of any such payment, will vacate and surrender possession of the Property to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however designated.

4.08 Remedies are Severable and Cumulative. All rights and remedies of Mortgagee herein are severable and cumulative and in addition to all other rights and remedies available in the other Documents, at law or in equity, and any one or more of such rights and remedies may be exercised simultaneously or successively.

4.09 Litigation Expenses. In any proceeding to foreclose the lien of this Mortgage or enforce any other right or remedy of Mortgagee under this Mortgage or any of the other Documents, or in any other proceeding whatsoever in connection with any of the Property in which Mortgagee is named as a party, there shall be allowed and included, as additional indebtedness in the judgment or decree resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee, including, but not limited to, reasonable attorneys' fees and expenses.

4.10 Waiver of Statutory Rights. To the greatest extent permitted by law: (a) Mortgagor hereby waives the benefit of, and agrees that it will not apply for or avail itself of, any appraisal, valuation, redemption, reinstatement, stay, extension or exemption laws, or any so-called "moratorium laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement, enforcement of the power of sale or foreclosure of this Mortgage; and (b) Mortgagor, for itself, any and all persons or entities who may claim through or under it and each and every person or entity acquiring any interest in the Property or title to the Real Property subsequent to the date of this Mortgage, hereby also waives (i) any and all rights to have the Property and estates comprising the Property marshaled upon any foreclosure of the lien hereof or enforcement of the power of sale, and agrees that any court having jurisdiction to foreclose such lien may order the Property sold in its entirety; and (ii) any and all rights of (A) redemption in the event of foreclosure of the lien hereof or in the event of the enforcement of the power of sale pursuant to the rights herein granted; and (B) homestead in the Real Property which Mortgagor may now or hereafter have under the laws of the State in which the Property is located; and (iii) all rights to void liens under Section 506 of the United States Bankruptcy Code (11 U.S.C. §506), or any amendment or successor thereto.

V. MISCELLANEOUS

5.01 Notices. All notices hereunder shall be given and become effective in accordance with the provisions of the Loan Agreements.

5.02 Covenants Run with Land. All of the covenants of this Mortgage shall run with the land constituting the Real Property.

5.03 Governing Law. This Mortgage shall be governed in all respects by the laws of the State of Illinois, except that the priority and enforceability hereof shall be governed and construed in accordance with the laws of the State in which the Property is located.

5.04 Severability. Whenever possible, each provision of this Mortgage shall be interpreted in such manner as to be effective and valid under applicable law. Any provision of this Mortgage which is prohibited or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Mortgage.

5.05 Non-Waiver. No failure or delay on the part of Mortgagee in exercising any right, power or remedy pursuant to this Mortgage or any of the other Documents shall operate as a waiver thereof, and no single or partial exercise of any such right, power or remedy shall preclude any other or further exercise thereof, or the exercise of any other right, power or remedy. Neither any waiver of any provision of this Mortgage or any of the other Documents, nor any consent to any departure by Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by Mortgagee. Any waiver of any provision of this Mortgage or any of the other Documents and any consent to any departure by Mortgagor from the terms of this Mortgage or any of the other Documents shall be effective only in the specific instance and for the specific purpose for which given. Except as otherwise expressly provided herein, no notice to or demand on Mortgagor shall in any case entitle Mortgagor to any other or further notice or demand in similar or other circumstances. Acceleration of maturity, once claimed hereunder by Mortgagee, may at Mortgagee's option be rescinded by written acknowledgment to that effect by Mortgagee and shall not affect Mortgagee's right to accelerate maturity upon or after any future Event of Default.

5.06 Headings. Captions and headings in Sections and Paragraphs of this Mortgage are inserted only as a matter of convenience and shall not affect the interpretation hereof.

5.07 Grammar. As used in this Mortgage, the singular shall include the plural, and masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

5.08 Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor, and its successors, assigns, legal representatives and all other persons or entities claiming under or through Mortgagor and the word "Mortgagor," when used herein, shall include all such persons and entities and any others liable for the payment of the Obligations or any part thereof, whether or not they have executed any of the Notes or this Mortgage. The word "Mortgagee," when used herein, shall include Mortgagee's successors, assigns, and legal representatives, including all other holders, from time to time, of the Notes.

5.09 Release. Mortgagee shall release this Mortgage and the lien thereof by proper instrument upon presentation of satisfactory evidence that all Obligations have been fully paid.

5.10 Further Assurances. Mortgagor agrees to do such further acts and things and to execute and deliver to Mortgagee such additional agreements, instruments and documents as Mortgagee may reasonably require or deem advisable to effectuate the purposes of this Mortgage, or to confirm unto Mortgagee its rights, powers and remedies under this Mortgage.

5.11 Time of the Essence. Time is of the essence to this Mortgage, and all provisions pertaining thereto shall be strictly construed.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the date hereinabove first written.

HOLCOMBE PROPERTIES, LTD.

By: X Howard Holcombe
Signature

X Howard Holcombe
Printed Name

X General Partner
Title

ATTEST:

By: X Josephine Holcombe
Signature

X Josephine Holcombe
Printed Name

X General Partner
Title

g:\word\admin\jyk\real estate\Holcombe Properties, Ltd.,, inc\alabama mortgage.doc

STATE OF ALABAMA

COUNTY OF

Shelby

}
} SS.

I, Joyce Delair, a notary public, in and for said County in said State, hereby certify that Edward Holcombe, whose name as General Partner of **HOLCOMBE PROPERTIES, LTD.**, a limited partnership, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation, .

GIVEN under my hand this 21 day of Sept AD, 2001

Joyce Delair
NOTARY PUBLIC

My Commission Expires:

may 25, 2003

[SEAL]

**EXHIBIT A ATTACHED TO AND HEREBY MADE A PART OF
MORTGAGE, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT
BETWEEN HOLCOMBE PROPERTIES, LTD., MORTGAGOR AND
MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**

COMMON ADDRESS OF REAL PROPERTY: 16145 Hwy. 280
Chelsea, AL 35043

PIN NUMBER:

LEGAL DESCRIPTION: See attached Exhibit

PARCEL II:

~~A parcel of land situated in the Northwest ¼ of Southwest ¼ of Section 26, Township 19 South, Range 1 West, Shelby County, Alabama, described as follows:~~

Commence at the Southwest corner of the Northwest ¼ of Southwest ¼ of Section 26, Township 19 South, Range 1 West; thence run East along the South line of said ¼ - ¼ section a distance of 176.06 feet, to the point of beginning; thence turn an angle of 89°22'48" to the left and run North and parallel with the West line of said ¼ - ¼ section a distance of 914.26 feet to the South right of way line of U.S. Highway No. 280; thence turn an angle of 80°23'29" to the right and run along said right of way line a distance of 210.00 feet; thence turn an angle of 99°36'31" to the right and run South and parallel with the West line of said ¼ - ¼ section a distance of 947.07 feet to the South line of said ¼ - ¼ section; thence turn an angle of 89°22'48" to the right and run West along the South line of said ¼ - ¼ section a distance of 207.06 feet, to the point of beginning.

Situated in the Northwest ¼ of Southwest ¼ of Section 26, Township 19 South, Range 1 West, Shelby County, Alabama.

Also known as the following described property:

A parcel of land situated in the Northwest Quarter of the Southwest Quarter of Section 26, Township 19 South, Range 1 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the Southwest corner of the Northwest Quarter of the Southwest Quarter of Section 26, Township 19 South, Range 1 West; thence run S 89°23'09" E along the South line of said Quarter-Quarter Section a distance of 176.06 feet, to the point of beginning; thence N 1°14'03" E parallel to the West line of said Quarter-Quarter Section a distance of 920.59 feet to the South right-of-way line of U.S. Highway 280; thence N 81°37'00" E along said right-of-way a distance of 211.24 feet; thence S 1°18'28" W for a distance of 953.61 feet to the South line of said Quarter-Quarter Section; thence N 85°23'09" W along the South line of said Quarter-Quarter Section for a distance of 207.06 feet to the point of beginning.

Inst # 2001-46269

10/26/2001-46269
09:40 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
D16 MEL 57.00