

THIS INSTRUMENT PREPARED BY:

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STATE OF ALABAMA)
COUNTY OF SHELBY)

Inst # 2002-18049

04/18/2002-18049
09:14 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE

016 NHK

199.40

AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), made this 11th day of April, 2002, by **SELKIRK PARTNERS, LLC**, an Alabama limited liability company (hereinafter called "Borrower"), Mortgagor, whose address is 5120 Selkirk Drive, Suite 210, Birmingham, Alabama 35242, in favor of **SOUTHTRUST BANK**, an Alabama banking corporation (hereinafter called "Lender"), whose mailing address is 420 North 20th Street, P.O. Box 2554, Birmingham, Alabama (35290 if by mail for delivery to the P.O. Box; 35203 if for delivery to the street address), Attention: Commercial Real Estate Department.

WITNESSETH

WHEREAS, Borrower is justly indebted to Lender in the principal sum of Seven Hundred Twenty-Five Thousand and No/100 Dollars (\$725,000.00), as evidenced by a certain Amended and Restated Promissory Note from Borrower to Lender of even date herewith, payable to Lender in installments with interest thereon (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note") and is otherwise obligated to Lender pursuant to the other "Loan Documents" (as defined in the Note).

NOW, THEREFORE, the undersigned, in consideration of the indebtedness and obligations above mentioned, and to secure the prompt payment and performance of same, with the interest thereon, and any extensions or renewals of same, and further to secure the

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

THIS MORTGAGE CONSTITUTES AN AMENDMENT AND RESTATEMENT OF THAT CERTAIN CONSTRUCTION MORTGAGE FROM BORROWER IN FAVOR OF LENDER, RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA, AS INSTRUMENT NUMBER 1999-12303, SECURING AN ORIGINAL PRINCIPAL INDEBTEDNESS OF SIX HUNDRED NINETY THOUSAND AND NO/100 DOLLARS (\$690,000.00) (THE "ORIGINAL MORTGAGE"). THIS MORTGAGE SECURES AN ADDITIONAL INDEBTEDNESS OF UP TO NINETY-FIVE THOUSAND EIGHT HUNDRED THIRTY AND 80/100 DOLLARS (\$95,830.80). MORTGAGE TAXES ATTRIBUTABLE TO THIS ADDITIONAL INDEBTEDNESS ARE \$143.75.

Alabama Title

performance of the covenants, conditions and agreements hereinafter set forth, has bargained and sold and do hereby grant, bargain, sell, alien and convey unto Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All that tract or parcel of land particularly described in Exhibit A attached hereto and made a part hereof.

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the property described in Exhibit A, and all fixtures, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the improvements located or to be located on the real estate described herein, whether such materials, equipment, fixtures, fittings and personal property are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(d) All rents, profits, issues and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues and profits thereof; and

(e) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Lender is hereby authorized on behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so

received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform and observe all and singular the covenants and promises in the Note, the Loan Documents (as defined in the Note), and in this Mortgage expressed to be kept, performed, and observed by and on the part of Borrower, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall (except as provided in Section 1.11 hereof) cease, determine and be void, but shall otherwise remain in full force and effect.

AND Borrower covenants and agrees with Lender as follows:

ARTICLE 1

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

Section 1.02 Warranty of Title. Borrower is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that, except as otherwise set forth in the policy of title insurance furnished to Lender contemporaneously herewith, hereto, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

Section 1.03 Taxes, Utilities and Liens.

(a) Borrower will pay promptly, when and as due, and will promptly exhibit to Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state,

county, municipality, borough or other taxing authority upon Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

Section 1.04 Insurance. Borrower will procure for, deliver to, and maintain for the benefit of, Lender during the life of this Mortgage, insurance policies, in such amounts as Lender shall require, insuring the improvements (if any) constituting the Mortgaged Property against fire, extended coverage, and such other insurable hazards, casualties and contingencies as Lender may require and liability insurance as Lender may require. The form of such policies and the companies issuing them shall be acceptable to Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to Lender, instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, Lender may apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the Mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be paid over to Borrower to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

Section 1.05 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its

option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require.

Section 1.06 Care of the Property.

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) No buildings, fixtures, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender.

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

(d) Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) Lender is hereby authorized to cause the Mortgaged Property to be appraised and reappraised from time to time, as deemed necessary by Lender, whether or not an Event of Default has occurred hereunder, and Borrower agrees to pay all expenses incurred by Lender in connection therewith.

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

(g) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether or not there shall be any insurance proceeds therefor. If a part of the Mortgaged Property shall be physically damaged through condemnation, Borrower will promptly restore, repair or alter the remaining property in a manner satisfactory to Lender.

Section 1.07 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may,

in the opinion of Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligations of Borrower under the Note, the Loan Documents, and this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

Section 1.08 Expenses. Borrower will pay or reimburse Lender for all reasonable attorney's fees, costs and expenses incurred by Lender in any action, proceeding or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting the Note, this Mortgage, the Loan Documents, Borrower or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by Lender shall bear interest at a rate equal to two percent (2%) in excess of the interest rate then borne by the Note, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

Section 1.09 Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the premises; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition or term of this Mortgage, then Lender, at its option, may perform or observe the same, and all payments made for costs or expenses incurred by Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at a rate equal to two percent (2%) in excess of the rate then borne by the Note. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower.

Section 1.10 Estoppel Affidavits. Borrower, within ten (10) days after written request from Lender, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest.

Section 1.11 Compliance with Applicable Environmental Law. The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. §9601 et. seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. §6901 et. seq.; the Superfund

Amendments and Reauthorization Act of 1986, as codified at 42U.S.C. §9671, et. seq.; and the Hazardous Wastes Management and Minimization Act as codified at Code of Ala. 1975 §22-30-1 et. seq., as amended; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Borrower represents and warrants to Lender that the Mortgaged Property and Borrower are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that Borrower has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Borrower hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property or Lender; and this indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure. Borrower agrees to notify Lender in the event that any governmental agency or other entity notifies Borrower that it may not be in compliance with any Applicable Environmental Laws. Borrower agrees to permit Lender to have access to the Mortgaged Property at all reasonable times in order to conduct, at Borrower's expense, any tests which Lender deems are necessary to ensure that Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

Section 1.12 Appraisals. Lender may, at any time while the loan evidenced by the Note remains outstanding, require that the Mortgage Property be reappraised at Borrower's expense (i) after an Event of Default, (ii) if required by external regulatory authorities having jurisdiction over Lender, or (iii) if required by internal Lender policy as a result of diminution in the value of the Mortgage Property as reasonably determined by Lender.

Section 1.13 Representations and Warranties of Borrower. Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan secured hereby, that:

(a) Borrower is a duly organized and existing limited liability company having full power and authority to consummate the transactions contemplated by the Loan Documents.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or Guarantors or which might impair the value of any collateral taken or to be taken by Lender in connection with this Mortgage and the Loan Documents. Neither Borrower nor Guarantors are in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on Borrower's or Guarantors' business or assets, and neither Borrower nor Guarantors are in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or Guarantors are subject. Neither the execution and performance of this Mortgage nor the Loan Documents by Borrower nor the execution and performance of the Guaranty of Payment and Performance executed by the Guarantors will result in any breach of any mortgage, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or the Guarantors.

(c) All financial statements of Borrower, Guarantors and other business enterprises in which Guarantors have an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of their respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective dates thereof.

(d) There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to exercise any power of condemnation or eminent domain with respect to the Mortgaged Property, or any interest therein.

(e) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the Loan application or pursuant to this Mortgage and the Loan Documents are true, correct, complete and accurately represent the matters to which they pertain.

(f) All representations and warranties contained herein shall be deemed continuing and in effect at all times while Borrower remains indebted to Lender and shall be deemed to be incorporated by reference in each requisition for advance by Borrower unless Borrower specifically notifies Lender in writing of any change therein. If Borrower notifies Lender of any such change, Lender shall not be obligated to make any further advance unless the change does not, in Lender's opinion, adversely affect the Mortgaged Property or the financial condition or prospects of Borrower or Guarantors.

Section 1.14 Additional Covenants of Borrower. Borrower covenants and agrees, from the date of this Mortgage and as long as Borrower remains indebted to Lender:

(a) To maintain its existence as an Alabama limited liability company; not to convey, transfer, or lease any substantial part of its property, assets, or business to any other person or entity except in the normal course of its business; not to merge or consolidate with or

into any other firm or corporation or enter into any partnership or joint venture with any other person or entity except with Lender's prior written consent; and not to make any loans or advances to any other person or entity.

(b) Furnish to Lender within ninety (90) days after the end of each calendar year (or fiscal year with respect to any entity having a different fiscal year), financial statements of Borrower and any Guarantor for the year as of the end of such period. Each statement for Borrower shall consist of a balance sheet and income statement and each statement for an individual shall consist of a statement of assets and liabilities and, if requested, personal cash flow information. All financial statements shall be certified to be correct by the person or entity to which they pertain. If required by Lender, all financial statements of Borrower shall also be audited statements certified by a certified public accountant acceptable to Lender. Upon Lender's request, Borrower shall also certify with delivery of each of its financial statements that:

(i) Borrower has complied with and is in compliance with all terms, covenants and conditions of this Mortgage and the Loan Documents which are binding upon it;

(ii) there exists no Event of Default under this Mortgage and the Loan Documents and no event which with the giving of notice or lapse of time, or both, would constitute such an Event of Default; or, if such is not the case, that one or more specified Events of Default have occurred; and

(iii) the representations and warranties contained in this Mortgage and the Loan Documents are true with the same effect as though made on the date of such certificate.

(c) At Lender's request, execute and deliver to Lender all further documents and perform all other acts which Lender reasonably deems necessary or appropriate to perfect or protect its security for the loan secured hereby.

ARTICLE 2

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

(a) Failure by Borrower to pay as and when due and payable under the Note or this Mortgage any installments of principal or interest; or

(b) Failure by Borrower to duly observe any other covenant, condition or agreement of the Note, any of the Loan Documents, this Mortgage or any other document or instrument evidencing or securing the indebtedness secured hereby for thirty (30) days or more, or the occurrence of an Event of Default under any such document or instrument; or

(c) The filing by Borrower, Required Tenant or any Guarantor of a voluntary petition in bankruptcy or Borrower's, Required Tenant's or any Guarantor's adjudication as a bankrupt or insolvent, or the filing by Borrower, Required Tenant or any Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief

for debtors, or Borrower's, Required Tenant's or any Guarantor's seeking or consent to or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower, Required Tenant or any Guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

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

(e) subject to terms of Section 8 of the Note, the sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein, without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion; or

(f) The creation or suffering to exist by Borrower of any lien or encumbrance on the Mortgaged Property, other than the lien of this Mortgage and the lien for ad valorem taxes not then delinquent, without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion; or

(g) The sale or other transfer by any member of Borrower of any interest in Borrower without the prior written consent of Lender, which consent may be granted or refused by Lender in its sole discretion.

Section 2.02 Acceleration of Maturity. If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

Section 2.03 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession, and if and to the extent permitted by law, Lender may enter and take possession, of all the Mortgaged Property, and may exclude Borrower and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals,

replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other charges prior to the lien of this Mortgage as Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender; shall apply the remainder of the moneys so received by Lender to the payment of accrued interest, and to the payment of overdue installments of principal, all in such order and priority as Lender may determine.

(c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

Section 2.04 Receiver.

(a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) Borrower will pay to Lender upon demand all expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this Mortgage.

Section 2.05 Lender's Power of Enforcement. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Note or the performance of any term thereof or any other right, (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law, and (c) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

Section 2.06 Power of Sale. If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the Purchaser at said sale a deed to the premises so purchased. Lender may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

Section 2.07 Application of Foreclosure Proceeds. The proceeds of any foreclosure sale pursuant to Section 2.06 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at a rate equal to four percent (4%) in excess of the rate borne by the Note, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner.

Section 2.08 Lender's Option on Foreclosure. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expense, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

Section 2.09 Waiver of Exemption. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

Section 2.10 Suits to Protect the Mortgaged Property. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.

Section 2.11 Delay or Omission No Waiver. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

Section 2.12 No Waiver of One Default to Affect Another, etc. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein, in the Loan Documents, or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note, the Loan Documents, or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note, the Loan Documents, this Mortgage or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, at its option, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions 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 of the liabilities or undertakings hereunder.

Section 2.13 Discontinuance of Proceedings - Position of Parties Restored. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.

Section 2.14 **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

ARTICLE 3

Section 3.01 **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

Section 3.02 **Headings, etc.** The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

Section 3.03 **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, the Loan Documents, or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms and provisions contained therein or herein shall be in no way affected, prejudiced or disturbed thereby.

Section 3.04 **Future Advances.** This Mortgage secures future advances made pursuant to the Note. Notwithstanding anything to the contrary contained in this Mortgage, the Loan Documents, or in the Note secured hereby, or in any other instrument securing the loan evidenced by said Note, Lender may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Lender hereunder, immediately due and payable in the event of a breach by Borrower of any covenant contained in the Loan Documents, which said Loan Documents are, by reference thereto, herein incorporated to the same extent and effect as though set forth herein in full.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed, the day and year first above written.

BORROWER:

SELKIRK PARTNERS, LLC,
an Alabama limited liability company,

By: *Teresa Lumpkin*
Name: Teresa ALumpkin
Its: Member

STATE OF ALABAMA)
Shelby **COUNTY**)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Teresa ALumpkin, whose name as authorized member of **SELKIRK PARTNERS, LLC**, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the foregoing instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 11th day of April __, 2002.

Cynthia P. Thompson
Notary Public
My Commission Expires: 12-13-05

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION

Lot 11-B, according to the Survey of Inverness Parcel "11-B", as recorded in Map Book 24, Page 97 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama

Inst # 2002-18049

04/18/2002-18049
09:16 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
016 MMH 199.65