

THIS INSTRUMENT PREPARED BY:

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MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT ("Mortgage"), made and entered into as of the 7th day of February, 2003, is from **ALABASTER RETAIL PROPERTY, L.L.C.**, an Alabama limited liability company (the "Borrower"), as grantor, whose mailing address is 3500 Eastern Boulevard, Montgomery, Alabama, 36116-1781, Attention: Mr. Jake Aronov, to **SOUTHTRUST BANK**, an Alabama banking corporation, with principal offices in Birmingham, Alabama, whose mailing address is 420 North 20th Street (35203), P.O. Box 2554, Birmingham, Alabama 35290, Attention: Commercial Real Estate Department (the "Lender"), as grantee.

WITNESSETH:

That for and in consideration of the sum of Ten Dollars to Borrower in hand paid by Lender, and other valuable considerations, the receipt and sufficiency of which are acknowledged, and in order to secure the indebtedness and other obligations of Borrower hereinafter set forth, Borrower has bargained, sold, given, granted, mortgaged, assigned, transferred, set over and conveyed, and by these presents does bargain, sell, give, grant mortgage, assign, transfer, set over and convey to the Lender and the Lender's successors and assigns, all of the Borrower's right, title and interest in and to 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 "Property") to-wit:

(a) All estate, right, title, and interest of Borrower in and to those certain tracts or parcels of land located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and by this reference made a part hereof (collectively, the "Land"); and

THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY DOES NOT EXCEED \$9,544,000.00.

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

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the Land, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said Land or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposals, washers, dryers, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements;

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

(e) All rents, issues, profits, revenues, accounts, accounts receivable, and general intangibles of the Borrower now existing or hereafter accruing from or relating to the Property (including, without limitation, all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, reserving only the right to them to collect and use, retain, and distribute the same so long as Borrower is not in default hereunder or such collection, use, distribution, or retention is not otherwise restricted by this Mortgage; and

(f) All plans and specifications and Borrower's books and records relating to the Property or construction of improvements thereat; all governmental permits, approvals and licenses; and all contracts now or hereafter made by Borrower relating to the Property or the construction, equipping, marketing, management, sale or lease of all or any part of the Property or improvements now or hereafter located thereat (including, without limitation, all rights, including rights to payment, pursuant to that certain Infrastructure Agreement between the City of Alabaster and the Borrower), and all bonds and other guarantees of performance in favor of Borrower with respect to any such contracts (and Borrower agrees that upon any Event of Default under this Mortgage, Lender shall have the absolute right to make such use of the property so assigned in this subsection as Lender shall desire, and that Lender will not be limited to remedies available under the Uniform Commercial Code, but may at its option avail itself of the rights to use such property as set forth herein or in the Loan Agreement in addition to or in substitution for its Uniform Commercial Code remedies).

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof, to the use, benefit and behoof of Lender, its successors and assigns, in fee simple forever, subject, however to the terms and conditions herein;

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

This Mortgage is given to secure the following obligations of Borrower (collectively, the "Obligations"), to wit:

(a) The payment of an indebtedness for borrowed money in the principal amount not exceeding **NINE MILLION FIVE HUNDRED FORTY-FOUR THOUSAND AND NO/100 DOLLARS (\$9,544,000.00)**, together with interest thereon, due or to become due, which Lender has advanced or has agreed to advance pursuant to a Loan Agreement between Borrower and Lender of even date herewith, as the same may hereafter be amended (the "Loan Agreement"; capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement) and evidenced by one or more Promissory Notes from Borrower payable to Lender or its order (together with any extensions, modifications and/or renewals thereof and any notes given in payment of any such principal and/or interest, all of such being individually and collectively referred to as the "Note");

(b) Any and all other obligations or fees, charges, premiums, expenses or other sums from time to time due from Borrower pursuant to, and the faithful

performance by Borrower of all terms and conditions contained in, this Mortgage, the Note, the Loan Agreement, and any and all other instruments or documents heretofore or hereafter executed and delivered in connection with any of the foregoing or the transactions contemplated thereby, together with any and all extensions, modifications and/or renewals of any of the foregoing (collectively, the "Loan Documents"); and,

(c) All sums advanced by Lender to Borrower or expended by Lender for Borrower's account pursuant to the Loan Documents, including but not limited to advances for taxes and insurance, or for Borrower's benefit pursuant to the terms of this Mortgage; and

(d) The payment of all court costs, expenses and costs of whatever kind incident to the collection of any indebtedness secured hereby and the enforcement or protection of the lien of this conveyance, including reasonable attorney's fees, whether at trial, on appeal or in any bankruptcy proceedings.

AND BORROWER HEREBY FURTHER COVENANTS AND AGREES WITH LENDER AS FOLLOWS:

ARTICLE I

1.1 Payment of Indebtedness. Borrower shall pay the indebtedness evidenced by the Note according to the tenor thereof and the remainder of the Obligations promptly as the same shall become due.

1.2 Warranty of Title. The Borrower is lawfully seized of an indefeasible estate in fee simple in the Land and other real property hereby conveyed and has good and absolute title to all existing personal property hereby conveyed and has good right, full power and lawful authority to convey and encumber the same in the manner and form aforesaid; that, except as otherwise set forth on Exhibit B hereto (the "Permitted Encumbrances"), 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 the Lender, and its successors and assigns, against the lawful claims of all persons whomsoever.

1.3 Monthly Tax Deposits. Following an Event of Default, upon the request of Lender, the Borrower will pay to the Lender on the due date of and in addition to each scheduled monthly installment of principal and/or interest under the Note, until the Obligations are fully paid, an amount equal to one-twelfth (1/12th) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become delinquent, all taxes, assessments, and other similar charges against the Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender; provided that if Borrower shall so request in writing, a separate interest-bearing deposit account will be established in Borrower's name for

the purpose of receiving and holding such deposits, and all interest thereon shall accrue to the benefit of Borrower. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges prior to delinquency. Upon the occurrence of an Event of Default, the Lender may apply to the reduction of the Obligations, in such manner as the Lender shall determine, any amount under this Section remaining to the Borrower's credit.

1.4 Other Taxes, Utilities and Liens.

(a) The Borrower will pay promptly, before delinquency, and, upon written request of Lender, will exhibit promptly to the 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 Property or any part thereof, or upon the interest of the Lender in the Property (other than any of the same for which provision has been made pursuant to Section 1.3 above), 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 the Borrower or in respect of the Property or any part thereof, or any charge of the type listed in this subsection (a) which, if unpaid, would become a lien or charge upon the Property. Borrower may contest any of the foregoing to the extent permitted by applicable law and may, if permitted by applicable law without loss or forfeiture of title to the Property, delay payment of any of the foregoing during the period of such contest, provided (i) Borrower notifies Lender in writing of such contest, (ii) pursues such contest with due diligence, (iii) if Lender requests, deposits with Lender the amount claimed to be due plus any interest or penalties that may accrue during the period of such contest, and (iv) promptly pays such amount as is finally determined to be due upon conclusion of such contest.

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

(c) The Borrower shall pay promptly all charges for labor and materials and will not suffer any mechanic's, laborer's, statutory, or other lien to be filed against any of the Property, unless such lien is bonded and removed as a lien against the Property within thirty (30) days after the filing thereof. Borrower shall not consent to any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof. Unfiled, inchoate liens for labor and materials shall be permitted so long as such lien is subordinate hereto, and payment is not overdue or, if overdue, a bond or other security for payment satisfactory to Lender has been provided to Lender.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of deeds of trust or security agreements or debts secured thereby or the manner of collecting such taxes, then upon notice thereof to Borrower and at Lender's request Borrower will pay any such tax on or before the due date thereof. If Borrower fails to make such prompt payment after request therefor by Lender, or

if, in the opinion of Lender, any such state, federal, municipal, or other governmental law, order, rule or regulation prohibits Borrower from making such payment or would penalize Lender if Borrower makes such payment or if, in the reasonable opinion of Lender, the making of such payment might result in the imposition of interest beyond the maximum amount permitted by applicable law, then the entire balance of the Obligations shall, at the option of Lender, become due and payable in full ninety (90) days after written demand for payment by Lender.

(e) The Borrower hereby indemnifies and holds Lender harmless from any sales or use tax that may be imposed on the Lender by virtue of the Obligations.

1.5 Insurance. The Borrower will procure for, deliver to, and maintain for the benefit of the Lender during the life of this Mortgage insurance policies, in such amounts as the Lender shall reasonably require, insuring the Property against losses typically insured under policies of fire and extended coverage insurance, and against such other insurable hazards, casualties and contingencies as the Lender may reasonably require, including insurance against flood, earthquake and subsidence. Without limiting the foregoing, the Borrower will maintain builder's risk insurance with respect to any improvements under construction and constituting a part of the Property from time to time in the amount of their full replacement cost, and as improvements are completed will maintain fire and extended coverage insurance against such perils as may be required by Lender and subject to only such exclusions as are acceptable to Lender in an amount not less than the full replacement cost thereof and business income insurance (including loss of rents) in an amount equal to twelve (12) months' estimated gross rents from the operations at the Property. The Borrower will also maintain commercial general liability insurance and all other insurance typically maintained by prudent companies owning and leasing or operating properties similar to the Property, all in such amounts and with such companies as shall be reasonably satisfactory to Lender. The form of such policies and the companies issuing them shall be reasonably acceptable to the Lender. All builder's risk, property and business income policies shall contain a standard non-contributory mortgagee endorsement and a loss payee endorsement making losses payable to the Lender and all liability policies shall name Lender as an additional insured. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. The Borrower shall deliver to the 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 Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the 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 the Lender, instead of to the Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Lender may, except as otherwise set forth in Section 1.16 hereof, and without affecting this Mortgage, apply the net proceeds, at its option, either toward restoring the Property, or as a credit on any portion of the Obligations selected by it, whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly

or in part may be paid over to the Borrower to be used to restore the Property or for any other purpose or object satisfactory to the Lender. 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.

Following an Event of Default, upon request of Lender, the Borrower will pay to the Lender together with and in addition to the regular installment of principal and interest due under the Note, until the Obligations are fully paid, an amount equal to one-twelfth (1/12th) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender; provided that if Borrower shall so request in writing, a separate interest-bearing deposit account will be established in Borrower's name for the purpose of receiving and holding such deposits, and all interest thereon shall accrue to the benefit of Borrower. Upon demand of the Lender, the Borrower agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums when due. Upon the occurrence of an Event of Default the Lender may apply to the reduction of the Obligations, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.6 Condemnation. If all or any material part of the 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, other than a taking of a part of the Property which does not in Lender's opinion materially and adversely affect access to and use of the Property or the value of the Property, then the entire Obligations shall at the option of the Lender become immediately due and payable. The 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 the 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 the Borrower to the Lender, who, after deducting therefrom all its expenses, including reasonable attorney's fees actually incurred, may, except as otherwise required by Section 1.16 hereof, without affecting this Mortgage, release any moneys so received by it or apply the same in such manner as the Lender shall determine to the reduction of the Obligations, whether then matured or to mature in the future, and any balance of such moneys then remaining shall be paid to the Borrower. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.7 Care of the Property.

(a) The Borrower will preserve and maintain the 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 Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Property shall be removed, demolished or substantially altered without the prior written consent of the Lender, which consent shall not be unreasonably withheld by Lender. The Borrower may sell or otherwise dispose of, free from the lien and security interest of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien and security interest hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Ten Thousand Dollars (\$10,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien and security interest of this Mortgage.

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

(d) The Lender is hereby authorized to enter upon and inspect the Property at all reasonable times during normal business hours, provided that any tenants of the Property shall not be unduly disturbed in the course of such inspection, and such entry and inspection are otherwise performed in conformity with the terms of any tenant lease.

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

(f) If all or any part of the Property shall be damaged by fire or other casualty, the Borrower will restore promptly the Property substantially to the equivalent of its original condition, regardless of whether or not insurance proceeds shall be sufficient for such purpose. If a part of the Property shall be physically damaged through condemnation, the Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to the Lender. Notwithstanding the foregoing, if Borrower can satisfy and does satisfy the conditions of Section 1.16 hereof relating to use of the proceeds of insurance or condemnation for repair and restoration, Borrower shall not be obligated to restore unless in each instance Lender makes available to Borrower (pursuant to a procedure satisfactory to Lender) any net insurance or condemnation proceeds actually received by Lender in connection with such casualty loss or condemnation (after deduction of expenses incurred by Lender), to the extent such proceeds are required to defray the expense of such restoration; provided, however, that the insufficiency of any such insurance or condemnation proceeds to defray the entire expense of restoration shall in no way relieve Borrower of its obligation to restore the Property. In the event all or any portion of the Property shall be damaged or destroyed by fire or other casualty or by condemnation, Borrower shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Property (as reasonably determined by Lender) exceeds the actual net insurance or condemnation proceeds paid to and held by Lender with respect to such damage or destruction.

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

1.9 Expenses. The Borrower will pay or reimburse the Lender for all reasonable attorney's fees, costs, and expenses incurred by the Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which the Lender is made a party, or appears as party plaintiff or defendant, affecting the Obligations, this Mortgage, Borrower, or the Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Property, or any action to protect the security hereof; and any such amounts paid by the Lender shall bear interest at the Default Rate set forth in the Note, shall be payable upon demand, and shall be secured by this Mortgage.

1.10 Books and Records. The Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the leasing or operation of the Property, and Borrower shall permit Lender during normal business hours the right to inspect and make copies of such books and records upon request.

1.11 Estoppel Affidavits. The Borrower within ten (10) days after written request from Lender, but not more often than four times during any calendar year, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Obligations and whether or not any known offsets or defenses to payment thereof then exist.

1.12 Performance by Lender of Defaults by Borrower. If the Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the Property; in the payment of any utility charge, whether public or private; in the payment of insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the timely performance or observance of any covenant, condition, or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made for costs or incurred by the Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Lender with

interest thereon at the Default Rate set forth in the Note. Lender will give Borrower notice and a reasonable opportunity to perform or observe any such covenant, condition or term except where in Lender's judgment Lender in good faith subjectively believes prompt action is necessary to protect or preserve any collateral or Lender's interest therein or the priority of any lien or security interest of Lender in any such collateral. Lender's subjective good faith judgment 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 shall be a sufficient basis for incurring expenses and Lender's entitlement to reimbursement from Borrower, but shall not prevent or prejudice Borrower in any contest with any third party other than Lender. The Lender is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower, except in the event of gross negligence or willful misconduct by Lender.

1.13 Security Agreement. With respect to the apparatus, fittings, fixtures, equipment, accounts, general intangibles and other personal property now or hereafter owned by Borrower or in which Borrower now or hereafter has an interest and to which a security interest may attach, and which is referred to or described in this Mortgage, this Mortgage is hereby made and declared to be a security agreement encumbering such property included herein as a part of the Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Land is situated, and Borrower hereby grants to Lender a security interest in such apparatus, fittings, fixtures, equipment, accounts, general intangibles and other personal property more particularly described in the definition of "Property" and authorizes Lender to file one or more financing statements describing any or all of said personal property in such filing offices as Lender deems appropriate, and Borrower will reimburse Lender for all fees and costs thereof. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default hereunder, shall be (i) as prescribed herein, or (ii) as prescribed by general law, or (iii) as prescribed by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Lender's sole election. Borrower and Lender agree that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Lender that everything used in connection with the production of income from the Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings, both legal or equitable, shall be, regarded as part of the real estate conveyed hereby regardless of whether (a) any such item is physically attached to the improvements, (b) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (c) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (aa) the proceeds of any fire and/or hazard insurance policy, or (bb) any award in eminent domain proceedings for taking or for loss of value, or (cc) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Lender as determined by this instrument or affect the priority of Lender's security interest granted hereby or by any other recorded document, it being understood and agreed that such

mention in such financing statement(s) is solely for the protection of Lender in the event any court shall at any time hold, with respect to the foregoing items (aa), (bb), or (cc), that notice of Lender's priority of interest, to be effective against a particular class of persons, must be filed in the Uniform Commercial Code records. This Mortgage may be filed as a financing statement in any office where Lender deems such filing necessary or desirable, and Borrower will promptly upon demand reimburse Lender for the costs therefor.

1.14 Limit of Validity. If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or of the Note, at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then, *ipso facto*, the obligation to be fulfilled shall be reduced to the limit of such validity, so that in no event shall any exaction be possible under this Mortgage or under the Note that is in excess of the current limit of such validity, but such obligation shall be fulfilled to the limit of such validity. The provisions of this Section shall control every other provision of this Mortgage and of the Note.

1.15 Appraisals. At the Lender's request, Borrower will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Property at any time and from time to time, and Borrower will cooperate with and provide any information reasonably requested in connection with such appraisals. Borrower will reimburse Lender for the cost of any such appraisals.

1.16 Restoration and Repair of Property Damaged or Taken. Notwithstanding the provisions of Sections 1.5 and 1.6 hereof, Lender agrees that Lender shall make available to Borrower the net proceeds of insurance or condemnation (after payment of costs and expenses incurred in obtaining such proceeds pursuant to Sections 1.5 and 1.6) for Borrower's repair or restoration of the Property upon the following terms and subject to Borrower's satisfaction of the following conditions, and, in the event Borrower is required by the terms of any tenant lease to restore Property damaged or taken, then Borrower shall fully satisfy the following conditions:

(a) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Default or Event of Default under this Mortgage or under any other Loan Document.

(b) The property, buildings, improvements and fixtures for which a loss or damage has resulted shall be capable of being restored to substantially their pre-existing condition and utility with a value equal to or greater than prior to such loss or damage, shall be capable of being completed prior to the maturity of the Note, and as to all tenant space, such damage or taking shall not be such as would allow any tenant of such space to reduce its rental payments (except during any period in which the leased premises are not capable of being used for tenant's normal operations) or terminate or reduce the term of or rent under its lease (or a written agreement waiving such right to terminate or reduce the term or rent shall have been obtained from such tenant), and evidence thereof reasonably satisfactory to Lender shall have been provided to Lender.

(c) Within sixty (60) days from the date of such loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose and shall provide evidence reasonably satisfactory to Lender that the Primary Lease (as defined in the Loan Agreement) shall remain in full force and effect notwithstanding such casualty or condemnation, that the requirements of the Primary Lease regarding restoration can be timely satisfied and that no reduction in rent shall occur (except for an equitable reduction during the period of restoration).

(d) Within ninety (90) days following the receipt of applicable insurance or condemnation proceeds, and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:

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

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

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

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

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

(e) Lender may, at Borrower's expense, retain an independent inspecting engineer to review plans and specifications and completed construction and to certify all requests for disbursement.

(f) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of reconstructing those portions of the property for which a loss or damage has occurred.

(g) Borrower shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion.

(h) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with disbursement procedures reasonably satisfactory to Lender.

(i) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security

agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest.

(j) Without in any way limiting the foregoing terms of this Mortgage regarding the circumstances under which insurance proceeds must be made available to fund the costs of repair or restoration, in the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fail to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the Obligations, in such order as Lender may elect, whether or not then due, or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

ARTICLE II

2.1 **Events of Default.** The term "Event of Default," wherever used in this Mortgage, shall mean the occurrence of any one or more of the following events:

(a) The occurrence of any "Event of Default" pursuant to and as defined in, the Note or any other Loan Document; or

(b) The creation or suffering to exist by the Borrower of any lien or encumbrance upon the Property, other than (i) the lien of this Mortgage, (ii) liens for ad valorem taxes and assessments not then delinquent, (iii) liens or encumbrances which are imposed without the consent or acquiescence of Borrower and are bonded off or otherwise removed from the Property within thirty (30) days after Borrower becomes aware that such a lien or encumbrance has been filed against all or a part of the Property, (iv) subordinate, inchoate, unfiled liens for labor or materials to the extent permitted by Section 1.4 hereof, and (v) the Permitted Encumbrances, unless in each instance the written consent of the Lender is first obtained, which consent may be granted or refused by the Lender in its sole discretion.

With respect to any of the foregoing wherein a notice is required, such Event of Default will be deemed to have occurred upon the occurrence of such event without notice being required if Lender is prevented from giving notice by bankruptcy or other applicable law. Nothing herein shall require notice in any item of this Section where notice is not expressly required.

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

2.3 **Right to Enter and Take Possession.**

(a) If an Event of Default shall exist, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Property and if, and to the extent

permitted by law, Lender itself, or by such officers or agents as it may appoint, may enter and take possession of all or any part of the Property without the appointment of a receiver or an application therefor, and may exclude Borrower and its agents and employees wholly therefrom, and take possession of the books, papers and accounts of Borrower.

(b) If Borrower shall for any reason fail to surrender or deliver the Property or any part thereof after such demand by Lender, Lender may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Property to Lender, and Borrower hereby specifically consents to the entry of such judgment or decree. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable expenses actually incurred by Lender's attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Obligations and shall be secured by this Mortgage.

(c) Upon every such entering upon or taking of possession, Lender may hold, store, use, operate, manage and control the 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 Property insured; (iii) manage and operate the Property and exercise all of the rights and powers of Borrower to the same extent as Borrower could in its own name or otherwise act with respect to the same; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender from time to time may determine to be in its best interest. Lender may collect and receive all the rents, issues, profits and revenues from the Property, including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing and operating the Property (including compensation for the services of all persons employed for such purposes); (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (cc) the cost of such insurance; (dd) such taxes, assessments and other similar charges as Lender may at its option pay; (ee) other proper charges upon the Property or any part thereof; and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the monies and proceeds so received by Lender, first, to the payment of accrued interest; second, to the payment of deposits required in Sections 1.3 and 1.5 and to other sums required to be paid hereunder; and third, to the payment of overdue installments of principal. Anything in this Section 2.3 to the contrary notwithstanding, Lender shall not be obligated to discharge or perform the duties of a landlord to any tenant or incur any liability as a result of any exercise by Lender of its rights under this Mortgage, and Lender shall be liable to account only for the rents, income, issues and profits actually received by Lender.

(d) Whenever all such interest, deposits and principal installments and other sums due under any of the terms, covenants, conditions and agreements of this Mortgage shall have been paid and all Events of Default shall have been cured, Lender shall surrender possession of the 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.

2.4 Receiver. If any Event of Default shall exist, Lender, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right, without notice and without regard to the value of any security for the Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Property and to collect and apply the rents, issues, profits and revenues thereof. The receiver shall have all of the rights and powers permitted under the laws of the state wherein the Land is situated. Borrower will pay unto Lender upon demand all reasonable expenses, including receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section, and any such amounts paid by Borrower shall be added to the Obligations and shall be secured by this Mortgage.

2.5 Enforcement; Power of Sale.

(a) If an Event of Default shall exist, 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 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 the powers herein with respect to entry or taking possession, as Lender may determine.

(b) If an Event of Default shall exist, Lender may sell the Property at public outcry to the highest bidder for cash in front of the Court House door in the county where the 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 Property so purchased. Lender may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Property maybe 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.

(c) With respect to any personal property or fixtures included in or located on the Property, Lender may, at its option, sell or otherwise dispose of the same by public or private proceedings, separate from the sale of the real property, in accordance with the provisions of the Uniform Commercial Code of the State of Alabama, and Lender may with respect to such personal property and fixtures exercise any other rights or remedies of a secured party under the Alabama Uniform Commercial Code.

2.6 Purchase by Lender. Upon any foreclosure sale or sale of all or any portion of the Property under the power herein granted, if Lender bids for and purchases the Property, it shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

2.7 Application of Proceeds of Sale. In the event of a foreclosure or other sale of all or any portion of the Property, the proceeds of said sale shall be applied, first, to the expenses of

such sale and of all proceedings in connection therewith, including reasonable fees actually incurred by the attorney conducting such sale (and attorney fees and expenses shall become absolutely due and payable whenever foreclosure is commenced); then to insurance premiums, liens, assessments, taxes and charges including utility charges advanced by Lender, and interest thereon; then to payment of the Note and accrued interest thereon, in such order of priority as Lender shall determine, in its sole discretion; and finally the remainder, if any, shall be paid to Borrower, or to the person or entity lawfully entitled thereto.

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

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

2.10 Leases. Lender, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceeding instituted by Lender to collect the sums secured hereby.

2.11 Discontinuance of Proceedings. In case Lender shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then 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 proceedings had occurred.

2.12 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other 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, in equity or by statute.

2.13 No Waiver.

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

(b) No act or omission by Lender shall release, discharge, modify, change or otherwise affect the original liability under the Note or this Mortgage or any other obligation of Borrower or any subsequent purchaser of the Property or any part thereof, or any maker, cosigner, endorser, surety or guarantor, nor preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then existing or of any subsequent default, nor alter the lien of this Mortgage, except as expressly provided in an instrument or instruments executed by Lender. Without limiting the generality of the foregoing, Lender may (i) grant forbearance or an extension of time for the payment of all or any portion of the Obligations; (ii) take other or additional security for the payment of any of the Obligations; (iii) waive or fail to exercise any right granted herein or in the Note; (iv) release any part of the Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Note or this Mortgage; (v) consent to the filing of any map, plat or replat affecting the Property; (vi) consent to the granting of any easement or other right affecting the Property; (vii) make or consent to any agreement subordinating the security title or lien hereof, or (viii) take or omit to take any action whatsoever with respect to the Note, this Mortgage, the Property or any document or instrument evidencing, securing or in any way related to the Obligations, all without releasing, discharging, modifying, changing or affecting any such liability, or precluding Lender from exercising any such right, power or privilege or affecting the lien of this Mortgage. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Property or the Obligations, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings.

2.14 Suits to Protect the Property. Lender shall have power to institute and maintain such suits and proceedings as it may deem expedient (a) to prevent any impairment of the Property by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Property and in the rents, issues, profits and revenues 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 materially impair the security hereunder or be prejudicial to the interest of Lender.

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

2.16 Tradenames, etc. During the exercise of any right in the Property pursuant to this Article II, Lender shall not be liable to Borrower for any inadvertent violation or infringement upon any tradename, trademark, service mark, or logo relating to the Property, and Borrower waives any claim for any such violation or infringement that occurs prior to notice of such infringement by Borrower to Lender.

ARTICLE III

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

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

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

3.4 Applicable Law. The agreements of Borrower and Lender with respect to the Obligations, the interest thereon, and the loan charges, commitment fees and brokerage commissions, if any, with respect to the loan transaction evidenced and secured by this Mortgage shall be governed by and construed in accordance with the laws of the State of Alabama, but all other rights and obligations under this Mortgage (including, without limitation, the rights and

remedies of the Lender with respect to the security for the Obligations and the enforcement of Lender's rights in such security) are to be governed by and construed in accordance with the laws of the State of Alabama.

3.5 Notices. Any and all notices, elections or demands permitted or required to be made to Lender or Borrower under this Mortgage, the Note, or any documents evidencing, securing or relating to the Obligations, or by applicable law, shall be given and be deemed effective in accordance with the provisions set forth in the Loan Agreement.

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

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

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

3.9 WAIVER OF JURY TRIAL. BORROWER WAIVES ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATING TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE, THE NOTE, OR ANY OTHER LOAN DOCUMENT, OR IN CONNECTION WITH ANY TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT EITHER OR BOTH OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. BORROWER HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF LENDER, INCLUDING LENDER'S COUNSEL, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT

LENDER WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH, AND BORROWER ACKNOWLEDGES THAT LENDER HAS, IN PART, BEEN INDUCED TO MAKE THE EXTENSION OF CREDIT EVIDENCED BY THE NOTE IN RELIANCE ON THE PROVISIONS OF THIS PARAGRAPH.

* * *

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

BORROWER:

ALABASTER RETAIL PROPERTY, L.L.C.,
an Alabama limited liability company

BY: SC Management, Inc.,
an Alabama corporation
Its Manager

BY: Jennifer P. Autrey
Print Name: Jennifer P. Autrey
Its: Secretary

STATE OF ALABAMA)
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jennifer P. Autrey whose name as Secretary of SC Management, Inc., an Alabama corporation, acting as Manager of Alabaster Retail Property, L.L.C., 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 informed of the contents of the instrument, s/he, as such Secretary and with full authority, executed the same voluntarily for and as the act of said corporation acting as Manager of said limited liability company.

Given under my hand and official seal this 7th day of February, 2003.

[NOTARY SEAL]

Jennifer P. Autrey
Notary Public
My commission expires: 9/20/2004

EXHIBIT A

LEGAL DESCRIPTION

PARCELS 1-7

A parcel of land located in the Northwest quarter of the Northwest quarter and in the Northeast quarter of the Northwest quarter of Section 14, Township 21 South, Range 3 West and being more particularly described as follows:

Commence at a 3 inch pipe found at the Northwest corner of said Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the Section line 1538.52 feet to a half inch capped rebar set at the POINT OF BEGINNING, said POINT being on the East right of way of Alabama Highway 119, a variable-width right of way; thence continue South 89 degrees 03 minutes 42 seconds East and along the section line 804.97 feet to a half inch capped rebar set; thence run South 25 degrees 30 minutes 31 seconds West 1443.13 feet to a half inch capped rebar set on the North right of way of Shelby County Road 26, an 80 foot wide right of way; thence North 83 degrees 11 minutes 42 seconds West and along said right of way 658.64 feet; thence run North 19 degrees 20 minutes 38 seconds West along a right of way transition 109.84 feet to a point on the East right of way of Alabama Highway 119 that is 117 feet right of centerline station 455+70; thence run North 22 degrees 54 minutes 14 seconds East along said right of way 166.37 feet to a point that is 110 feet right of centerline station 457+37; thence run North 25 degrees 20 minutes 17 seconds East along said right of way 313.00 feet to a point that is 110 feet right of centerline station 460+50; thence run North 47 degrees 08 minutes 22 seconds East along said right of way 26.93 feet to a point that is 120 feet right of centerline station 460+75; thence run North 25 degrees 20 minutes 17 seconds East along said right of way 175.00 feet to a point that is 120 feet right of centerline station 462+50; thence run North 14 degrees 01 minutes 41 seconds East along said right of way 152.97 feet to a point that is 90 feet right of centerline station 464+00; thence run North 25 degrees 20 minutes 17 seconds East along said right of way 412.63 feet to the POINT OF BEGINNING.

LESS AND EXCEPT from the above description the following described parcel.

Commence at a 3 inch pipe found at the Northwest corner of said Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the section line 1837.00 feet; thence run South 00 degrees 56 minutes 18 seconds West 13.00 feet to a half inch capped rebar set at the POINT OF BEGINNING; thence run South 89 degrees 03 minutes 42 seconds East 100.00 feet to a half inch capped rebar set; thence run South 00 degrees 56 minutes 18 seconds West 100.00 feet to a half inch capped rebar set; thence run North 89 degrees 03 minutes 18 seconds 100.00 feet to a half inch capped rebar set; thence run North 00 degrees 56 minutes 18 seconds East 100.00 feet to the POINT OF BEGINNING.

PARCEL 8

An easement located in the Northeast quarter of the Northwest quarter of Section 14, Township 21 South, Range 3 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Northwest corner of Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the section line 2343.49 feet; thence run South 25 degrees 30 minutes 31 seconds West 617.60 feet to the POINT OF BEGINNING; thence continue South 25 degrees 30 minutes 31 seconds West 589.55 feet; thence run North 44 degrees 42 minutes 44 seconds East 69.92 feet; thence run North 25 degrees 30 minutes 31 seconds East 355.71 feet; thence run North 17 degrees 42 minutes 15 seconds East 169.38 feet to the POINT OF BEGINNING.

PARCEL 9

An easement located in the Northeast quarter of the Northwest quarter of Section 14, Township 21 South, Range 3 West and being more particularly described as follows:

Commence at the Northwest corner of said Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the section line 2343.49 feet to the POINT OF BEGINNING; thence continue South 89 degrees 03 minutes 42 seconds East along the section line 348.00 feet; thence run South 26 degrees 56 minutes 53 seconds East 306.56 feet; thence run South 25 degrees 30 minutes 13 seconds West 306.26 feet; thence run North 64 degrees 29 minutes 47 seconds West 559.58 feet; thence run North 25 degrees 30 minutes 31 seconds East 348.41 feet to the POINT OF BEGINNING.

PARCEL 10

An easement for ingress over and across a part of the Northeast quarter of the Northwest quarter of Section 14, Township 21 South, Range 3 West, said easement being more particularly described as follows:

Commence at the Northwest corner of said Section 14; thence run South 89 degrees 03 minutes 42 seconds East and along the section line 2343.49 feet; thence run South 25 degrees 30 minutes 31 seconds West 348.41 feet to the POINT OF BEGINNING; thence run South 25 degrees 30 minutes 31 seconds West 60.00 feet; thence run South 64 degrees 29 minutes 47 seconds East 559.59 feet; thence run North 25 degrees 30 minutes 13 seconds East 60.00 feet; thence run North 64 degrees 29 minutes 47 seconds West 559.58 feet to the POINT OF BEGINNING.

EXHIBIT B

20030210000081150 Pg 24/24 14,399.01
Shelby Cnty Judge of Probate, AL
02/10/2003 13:02:00 FILED/CERTIFIED

Permitted Encumbrances

1. General and special taxes or assessments for 2003 and subsequent years not yet due and payable.
2. Release of damages recorded in Deed Book 216, page 584.
3. Easement and right-of-way granted the City of Alabaster recorded under Instrument Number 1999-30479.
4. Agreement and easements to the Alabaster Water Board as recorded in Instrument Number 1996-04042.
5. Southern Natural Gas Pipeline easement as described in Deed Book 90, page 68, and Deed Book 195, page 398.
6. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities thereto, if any, not owned by Borrower.
7. Easement to the City of Alabaster as recorded under Instrument Number 1999-30482.
8. Terms and conditions of the Slope Easement Agreement as set forth in instrument recorded simultaneously herewith.
9. Terms and conditions of the Access Easement Agreement as set forth in instrument recorded simultaneously herewith.
10. Terms and conditions of the Stock Pile Easement Agreement as set forth in instrument recorded simultaneously herewith.