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89% Jefferson  
11% Shelby

STATE OF ALABAMA       )  
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JEFFERSON COUNTY       )  
SHELBY COUNTY           )

  
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Shelby Cnty Judge of Probate, AL  
04/25/2003 07:59:00 FILED/CERTIFIED

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT**, made as of the 24<sup>th</sup> day of April, 2003, is by **EASTWOOD MINI STORAGE COMPANY**, an Alabama general partnership (hereinafter called "Eastwood"), **JACK W. KIDD** (aka Jack Whitson Kidd), a married man (hereinafter called the "Borrower"), and **JACK RABBIT, LLC**, an Alabama limited liability company (hereinafter called "Guarantor" and together with the Borrower, the "Borrowing Parties", and together with Eastwood, hereinafter collectively referred to as "Mortgagors" and individually as "Mortgagor"), in favor of **FIRST COMMERCIAL BANK**, a banking corporation (hereinafter called the "Lender" or "Mortgagee").

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING PURSUANT TO SECTION 7-9A-502, CODE OF ALABAMA, 1975, AS AMENDED.**

**WITNESSETH:**

**WHEREAS**, Borrower and the Lender have entered into a Credit Agreement of even date herewith (as amended, modified, supplemented or otherwise changed from time to time, the "Credit Agreement") under the terms of which the Lender has agreed to issue for the benefit of Borrower a letter of credit facility in the aggregate amount of \$6,293,765 (as amended, modified, supplemented or otherwise changed from time to time, the "Letter of Credit") as credit support for Borrower's \$6,200,000.00 Taxable Variable/Fixed Rate Bonds, Series 2003 (the "Bonds"). Borrower is indebted to Lender with respect to the "Obligations" (as defined in the Credit Agreement), including, but not limited to, an obligation to fully reimburse Lender for all drawings under the Letter of Credit. Guarantor has fully guaranteed payment and performance by Borrower of all Obligations pursuant to a Guaranty Agreement executed by Guarantor (as amended, modified, supplemented or otherwise changed from time to time, the "Guaranty Agreement"). Eastwood has not executed the Credit Agreement and, as such, is not directly responsible for payment of the Bonds or the Obligations, but joins in the execution of this Mortgage in order to (i) grant to the Lender a mortgage covering fee simple title to all of the parcels of property described in Exhibit A in which Eastwood is the owner of an interest as security for all indebtedness and Obligations herein described, and (ii) make certain covenants as set forth in this Mortgage. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the Credit Agreement.

**WHEREAS**, the Bonds are being issued pursuant to a Trust Indenture between Borrower and First Commercial Bank, as Trustee (the "Indenture") dated as of April 1, 2003, and pursuant to the "Financing Documents" referred to therein.

**WHEREAS**, Eastwood is the owner of a fee simple interest in and to the real property situated in Jefferson County, Alabama, more particularly described on Exhibit "A" attached

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Title Group 3500 Colonnade Parkway Ste 375 B'ham AL 35243

hereto and denoted as "Parcel 15" thereon. Borrower is the owner of a fee simple interest in and to the real property situated in Jefferson County and Shelby County, Alabama, more particularly described on Exhibit "A" attached hereto and denoted as "Parcels 2-5, 8-14, and 16-17" thereon. Guarantor is the owner of a leasehold estate in and to the real property situated in Jefferson County, Alabama, more particularly described on Exhibit "A" attached hereto and denoted as "Parcels 6 and 7" thereon.

**WHEREAS**, the Lender has required, as a condition precedent to entering into the Credit Agreement and to making credit available thereunder to Borrower that the Borrower, Guarantor and Eastwood execute and deliver this Mortgage to the Lender to secure Borrower's Obligations under the Credit Agreement and the Credit Documents (as defined in the Credit Agreement) and Guarantor's obligations pursuant to the Guaranty Agreement and all other liabilities and Obligations of Borrower to Lender under the Loan Documents (as hereinafter defined) (collectively the "Secured Indebtedness"). This Mortgage, the Credit Agreement, the Guaranty Agreement, the other Credit Documents (as defined in the Credit Agreement) and every other certificate, assignment, agreement, instrument, mortgage, deed of trust, or report executed in connection with or pursuant to the Credit Agreement are hereinafter sometimes collectively referred to as the "Loan Documents".

**NOW, THEREFORE**, the undersigned Mortgagors, in consideration of the indebtedness and credit above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in all of the other Loan Documents, and to secure all other indebtedness and obligations of every description of the Borrowing Parties to Lender, whether now existing or hereafter arising, including, without limitation, the obligation of Borrower to make reimbursement to Lender pursuant to the Credit Agreement, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the Lender, its successors and assigns, and grant to Lender a security interest in the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by the Mortgagors 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 those certain tracts or parcels of land located in Jefferson and Shelby County, Alabama, as more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "Land"); and

(b) The leasehold interest in Parcels 6 and 7 of the Land, as set forth in that certain lease agreement (the "Lease") by and between Zimmer-Wesson Associates, Inc., Profit Sharing Trust and Zimmer-Wesson Associates, Inc., a corporation as lessor and Joe H. Williamson, as lessee, dated November 25, 1986, recorded in Real Volume 3110, page 912 and amended by instrument dated April 29, 1988 and recorded in Real Volume 3377, page 346 and assigned by that certain Assignment of Contract rights and Bill of Sale dated February 27, 1987 entered into by Joe H. Williamson, "Seller" and in favor of Jack W. Kidd "Buyer" recorded in Real Volume 3150, page 123 in the Probate Office of Jefferson County, Alabama, and further assigned to Guarantor in that certain Assignment and Assumption Agreement recorded in Instrument 200306/302 in the Probate Office of Jefferson County, Alabama, together with all rights,



options and other benefits inuring to either of the Borrowing Parties as lessee of the Leasehold including, without limitation, any and all reversions or remainders in and to the Leasehold and all credits, deposits, options (including, without limitation, any options to purchase or renew set forth therein and other privileges and rights of lessee thereunder) (collectively, the "Leasehold Estate");

(c) 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, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by the Mortgagors and located in, or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Land, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Land (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 Land as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by this Mortgage; and

(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 Land or the Leasehold or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by them; and

(e) All rents, issues, profits and revenues of the Land and Leasehold Estate and Improvements from time to time accruing, including, without limitation, all sums due under any leases or tenancies, together with all proceeds of insurance, condemnation payments, 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 the Mortgagors of, in and to the same, reserving only the right of the Mortgagors to collect the same so long as an Event of Default has not occurred hereunder or such collection is not otherwise restricted by this Mortgage; and

(f) To the fullest extent assignable (if assignable by law), any and all licenses and permits obtained by the Mortgagors relating to the use and operation of the Land and the Leasehold Estate and the Improvements.

**AND ALSO** (i) all money and investments from time to time on deposit in, or forming a part of, the funds and accounts established under the Indenture (herein called the "Special Funds"), subject to the prior lien of the Indenture with respect to the Special Funds and the provisions of the Indenture permitting the application thereof for the purposes and on the terms

and conditions set forth therein, and (ii) any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Lender as and for additional security hereunder by the Borrowing Parties or by anyone on, in the behalf of, or with the written consent of, the Borrowing Parties.

**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 set forth;

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if the Borrower and Guarantor shall pay or cause to be paid to the Lender all sums owed under the Credit Agreement at the time and in the manner stipulated therein and herein, and all other Obligations and Secured Indebtedness shall be paid, all without any deduction or credit for taxes or other similar charges paid by the Mortgagors, and Mortgagors shall keep, perform and observe all and singular the covenants and promises in the Credit Agreement and in the other Loan Documents, and in this Mortgage expressed to be kept, performed, and observed by and on the part of the Mortgagors, and all other indebtedness of every description owed by the Borrowing Parties to Lender shall be paid, 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 1.21 hereof) cease, determine and be void, but shall otherwise remain in full force and effect.

**AND** each of the Mortgagors represents, warrants, covenants and agrees with Lender as follows:

## **ARTICLE I**

1.1 **Performance of Credit Agreement and other Loan Documents.** The Borrowing Parties will perform, observe, and comply with all provisions hereof and of the Credit Agreement and the other Loan Documents and duly and punctually will pay to Lender the sum of money expressed in the Loan Documents with interest thereon and all other sums required to be paid by the Borrowing Parties pursuant to the provisions of this Mortgage. Each of the Borrowing Parties will perform, fulfill and pay all its obligations under the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by the Borrowing Parties.

1.2 **Warranty of Title.** Eastwood is lawfully seized of an indefeasible estate in fee simple in Parcel 15 of the Land. Borrower is lawfully seized of an indefeasible estate in fee simple in Parcels 2-5, 8-14, and 16-17 of the Land. Guarantor is lawfully seized on an indefeasible leasehold interest in Parcels 6 and 7 of the Land. Mortgagors have good and absolute title to all existing personal property hereby mortgaged. Each of the Mortgagors warrant that it has good right, full power and lawful authority to sell, convey and mortgage the Mortgaged Property in the manner and form aforesaid; that 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 each of the Mortgagors shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.



### **1.3 Taxes, Liens and Other Charges.**

(a) The Mortgagors shall pay, on or before the delinquency date thereof, all taxes, levies, license fees, permit fees and all other charges (in each case whether general or special, ordinary or extraordinary, or foreseen or unforeseen) of every character whatsoever, (including all penalties and interest thereon) now or hereafter levied, assessed, confirmed or imposed on, or in respect of, or which may be a lien upon the Mortgaged Property, or any part thereof, or any estate, right or interest therein, or upon the rents, issues, income or profits thereof, and shall submit to Lender such evidence of the due and punctual payment of all such taxes, assessments and other fees and charges as may be required by law. The Mortgagors shall have the right before they become delinquent to contest or object to the amount or validity of any such tax, assessment, fee or charge by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagors covenant to pay any such tax, assessment, fee or charge at the time and in the manner provided herein, unless the Mortgagors have given prior written notice to Lender of the Mortgagors intent to so contest or object, and unless (i) the Mortgagors shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such tax, assessment, fee or charge prior to final determination of such proceedings; and (ii) if required by Lender, the Mortgagors shall furnish a good and sufficient bond or surety as requested by and satisfactory to Lender; and (iii) the Mortgagors shall have provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

(b) Except for income tax, gross receipts tax or similar tax imposed on Lender by reason hereof, the Mortgagors shall pay, on or before the due date thereof, all taxes, assessments, charges, expenses, costs and fees which may now or hereafter be levied upon, or assessed or charged against, or incurred in connection with, this Mortgage or any other instrument now or hereafter evidencing, securing or otherwise relating to this Mortgage or the indebtedness secured hereby.

(c) The Mortgagors shall pay, on or before the due date thereof, all premiums on policies of insurance covering, affecting or relating to the Mortgaged Property, as required pursuant to Section 1.4, below; and all utility charges which are incurred by the Mortgagors for the benefit of the Mortgaged Property, or which may become a charge or lien against the Mortgaged Property for gas, electricity, water and sewer services and the like furnished to the Mortgaged Property, and all other public or private assessments or charges of a similar nature affecting the Mortgaged Property or any portion thereof, whether or not the nonpayment of same may result in a lien thereon. The Mortgagors shall submit to Lender such evidence of the due and punctual payment of all such premiums, rentals and other sums as Lender may require.

(d) The Mortgagors shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or remain outstanding against the Mortgaged Property; provided, however, that the Mortgagors may contest any such lien in good faith by appropriate legal proceedings provided the lien is bonded in such manner as not adversely to affect the priority of this Mortgage. Lender has not consented and will not consent to the performance of any work or the furnishing of any materials which might be deemed to create a lien or liens superior to the lien hereof.

#### 1.4 **Insurance.**

(a) The Mortgagors shall procure for, deliver to and maintain for the benefit of Lender during the term of this Mortgage, and upon request of the Lender deliver to Lender, certificates of insurance evidencing paid-up insurance policies of such insurance companies, in such amounts, in form and substance, and with such expiration dates as are acceptable to Lender and containing non-contributory standard mortgagee clauses, their equivalent, or a satisfactory mortgagee loss payable endorsement in favor of Lender, providing the following types of insurance covering the Mortgaged Property and the interest and liabilities incident to the ownership, possession and operation thereof:

(i) insurance against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and against such other hazards as, under good insurance practices, from time to time are insured against for properties of similar character and location, the amount of which insurance shall be not less than the full replacement cost of the Mortgaged Property without deduction for depreciation, and which policies of insurance shall contain satisfactory replacement cost endorsements;

(ii) comprehensive public liability insurance on an "occurrence basis" against claims for "personal injury", including without limitation bodily injury, death or property damage occurring on, in or about the Mortgaged Property and the adjoining streets, sidewalks and passageways, such insurance to afford immediate minimum protection to a limit of not less than \$1,000,000 with respect to personal injury or death to any one or more persons or damage to property;

(iii) worker's compensation insurance (including employer's liability insurance, if requested by Lender) for all employees of the Mortgagors engaged on or with respect to the Mortgaged Property, in such amount as is reasonably satisfactory to Lender, or, if such limits are established by law, in such amounts;

(iv) business interruption or rental continuation insurance in an amount equal to twelve (12) months' gross revenues from the Mortgaged Property, less those expenses not typically incurred during a period of business interruption;

(v) such other insurance on the Mortgaged Property or any replacements or substitutions therefor and in such amounts as may from time to time be reasonably required by Lender against other insurable casualties which at the time are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the improvements, their construction, location, use and occupancy, or any replacements or substitutions therefor.

(b) All policies of insurance required by the terms of this Mortgage shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act of negligence of Mortgagors which might otherwise result in forfeiture of said insurance, and the further agreement of the insurer waiving all rights of set off, counterclaim or deductions against the Mortgagors.



(c) Lender is hereby authorized and empowered, at its option, to collect and receive all proceeds from the insurance policies required under this Section 1.4, and the Mortgagors do hereby authorize and direct each insurance company to make payment for all such losses accordingly. In the event any insurance company fails to disburse directly and solely to Lender but disburses instead either solely to the Mortgagors or to the Mortgagors and Lender jointly, the Mortgagors agree immediately to endorse and transfer such proceeds to Lender to the extent of Lender's interest therein. Upon the failure of the Mortgagors to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsement or transfers for and in the name of the Mortgagors, and the Mortgagors hereby irrevocably appoint Lender as the Mortgagors' agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair and restoration of the property so damaged, without affecting the lien of this Mortgage, or Lender may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagors.

(d) At least thirty (30) days prior to the expiration date of each policy maintained pursuant to this Section 1.4, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. If requested by Lender, the Mortgagors shall deliver to Lender receipts evidencing the payment for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment or partial extinguishment of the Secured Indebtedness, all right, title and interest of the Mortgagors in and to all insurance policies then in force shall pass to the purchaser or Lender, and Lender is hereby irrevocably appointed by the Mortgagors as attorney-in-fact for the Mortgagors to assign any such policy to said purchaser or to Lender without accounting to the Borrowing Parties for any unearned premiums thereon.

(e) All policies of insurance required pursuant to the terms of this Section 1.4 shall contain a provision that such policies will not be canceled or materially amended, which term shall include any reduction in the scope of limits of coverage, without at least thirty (30) days prior written notice to Lender. In the event the Mortgagors fail to provide, maintain, keep in force or deliver and furnish to Lender evidence of policies of insurance required by this Section 1.4, Lender may procure such insurance or single-interest insurance for such risks covering Lender's interest, and the Mortgagors will pay all premiums thereon promptly upon demand by Lender. Until such payment is made by the Mortgagors, the amount of all such premiums, together with interest as hereinafter set forth, shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.5 **Monthly Deposits.** If hereafter required by applicable banking regulatory authority, or otherwise at the option of Lender, the Mortgagors shall, upon request of Lender, deposit with Lender, on the due date of each installment under the Credit Agreement, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments and insurance premiums as estimated by Lender to be sufficient to pay such charges; said deposits to be held and to be used by Lender to pay current taxes and assessments, insurance premiums and other charges on the Mortgaged Property as the same accrue and are payable. Payment from said sums for said

purposes shall be made by Lender at its discretion and may be made even though such payments will benefit subsequent owners of the Mortgaged Property. Said deposits shall not be, nor be deemed to be, trust funds, but may be, to the extent permitted by applicable law, commingled with the general funds of Lender. If said deposits are insufficient to pay the taxes and assessments, insurance premiums and other charges in full as the same become payable, the Mortgagors will deposit with Lender such additional sums or sums as may be required in order for Lender to pay such taxes and assessments, insurance premiums and other charges in full. Upon any default in the provisions of this Mortgage or the Credit Agreement, or any instrument evidencing, securing or in any way related to the Secured Indebtedness, Lender may, at its option, apply any money in the fund relating from said deposits to the payment of the Secured Indebtedness in such manner as it may elect.

1.6 **Condemnation.** If all or any Material Part (as herein defined) 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 indebtedness secured hereby shall at the option of Lender become immediately due and payable. For purposes hereof, a "Material Part" of the Mortgaged Property shall be any part thereof, which, if damaged or taken, shall prevent the cash flow available from the remaining portions of the Mortgaged Property after such taking from supporting the remaining debt secured hereby in substantially the same ratio of coverage as the debt is being supported prior to such damage or taking. The Mortgagors, immediately upon the obtaining knowledge of any institution, or any proposed, contemplated or threatened institution of any action or proceeding for the taking through condemnation of the Mortgaged Property or any part thereof, will notify Lender, and Lender is hereby authorized, at its option to commence, appear in and prosecute, through counsel selected by Lender, in its own or in the Mortgagors name, any action or proceeding relating to any condemnation. The Mortgagors may compromise or settle any claim for compensation, but shall not make any compromise or settlement for an award that is less than the Secured Indebtedness without the prior written consent of the Lender. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagors to Lender, and Lender is authorized, at its option, to collect and receive all such compensation, awards or damages and to give proper receipts and acquittance therefor without any obligation to question the amount of any such compensation, awards or damages. After deducting from said condemnation proceeds of all its expenses incurred in the collection and administration of such sums, including reasonable attorney's fees, Lender may release any moneys so received by it for the repair or restoration of the Mortgaged Properties taken, or may apply the same in such manner as Lender shall determine to reduce the sums secured hereby, and any balance of such moneys shall be paid to the Mortgagors.

1.7 **Care of Mortgaged Property.**

(a) The Mortgagors will keep the buildings, parking areas, roads and walkways, landscaping, and all other Improvements of any kind now or hereafter erected on the Land or any part thereof in good condition and repair, will not commit or suffer any waste and will not do or suffer to be done anything which would or could increase the risk of fire or other hazard to the Mortgaged Property or any other part thereof or which would or could result in the cancellation of any insurance policy carried with respect to the Mortgaged Property.



(b) The Mortgagors will not remove, demolish or alter the structural character of any Improvements located on the Land without the written consent of Lender, nor make or permit use of the Mortgaged Property for any purpose other than for which the same are now used.

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

(d) Lender or its representative is hereby authorized to enter upon and inspect the Mortgaged Property during normal business hours.

(e) The Mortgagors 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.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, Mortgagors will promptly restore the Mortgaged Property to the equivalent of its original condition; and if a part of the Mortgaged Property shall be damaged through condemnation, Mortgagor will promptly restore, repair or alter the remaining portions of the Land in a manner satisfactory to Lender. Notwithstanding the foregoing, Mortgagor shall not be obligated so to restore unless in each instance Lender agrees to make available to Mortgagor any net insurance or condemnation proceeds actually received by Lender hereunder in connection with such casualty loss or condemnation, 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 Mortgagor of its obligation to restore. In the event all or any portion of the Mortgaged Property shall be damaged or destroyed by fire or other casualty or by condemnation, Mortgagor shall promptly deposit with Lender a sum equal to the amount by which the estimated cost of the restoration of the Mortgaged Property (as determined by Lender in its good faith judgment) exceeds the actual net insurance or condemnation proceeds with respect to such damage or destruction.

1.8 **Leases.** Each of the Mortgagors will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, the Mortgagors will furnish Lender with executed copies of all leases now or hereafter created with respect to all or any part of the Mortgaged Property, and will enter into leases only upon a lease form previously approved by Lender and for a fair market rental, unless the Mortgagors first obtain Lender's written approval of changes to such form or the execution of a lease not on such form. If requested by Lender, the Mortgagors will separately assign to Lender as additional security any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues, and profits of the Mortgaged Property from time to time accruing.

1.9 **Security Agreement.** With respect to the apparatus, fittings, fixtures and articles of personal property referred to or described in this Mortgage, or in any way connected with the use and enjoyment of the Mortgaged Property, this Mortgage is hereby made and declared to be a security agreement encumbering and granting a security interest in each and every item of

personal property included herein as a part of the Mortgaged Property, in compliance with the provisions of the Uniform Commercial Code as enacted in the state wherein the Mortgaged Property is situated and as modified, amended and supplemented from time to time, and the Mortgagors hereby grant to Lender a security interest in said personal property. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of said personal property aforementioned shall be appropriately filed. 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 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. The Mortgagors 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 Mortgagors and Lender that everything used in connection with the production of income from the Mortgaged 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 (1) the proceeds of any fire and/or hazard insurance policy, or (2) any awareness in eminent domain proceedings for taking or for loss of value, or (3) the Mortgagors' interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged 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 (1) (2), or (3), 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 the Mortgagors will promptly upon demand reimburse Lender for the costs therefor.

1.10 **Further Assurances; After-Acquired Property.** At any time, and from time to time, upon request by Lender, Mortgagors will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or filed and from time to time thereafter to be rerecorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other and further deeds of trusts, security agreements, financing statements, continuation statements, instruments of further assurance, certificates and other documents as may, in the opinion of Lender, be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of the Borrowing Parties under the Credit Agreement and under this Mortgage and the other Loan Documents, and (b) the security interest created by this Mortgage as a first and prior security interest upon and security title in and to all of the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagors. Upon any failure by the Mortgagors so to do, Lender may make, execute, record, file, re-record and/or re-file any and all such deeds of trust, security agreements, financing statements, continuation statements, instruments,



certificates, and documents for and in the name of the Mortgagors, and the Mortgagors hereby irrevocably appoint Lender the agent and attorney-in-fact of the Mortgagors so to do. The lien of this Mortgage 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.

1.11 **Indemnity; Expenses.** The Mortgagors will pay or reimburse Lender, upon demand therefor, for all reasonable attorney's fees, costs and expenses incurred by Lender in any suit, action, legal proceeding or dispute of any kind in which Lender is made a party or appears as party plaintiff or defendant, relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, the exercise of the power of sale contained in 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 be added to the Secured Indebtedness and shall be secured by this Mortgage. The Mortgagors will indemnify and hold Lender harmless from and against all claims, damages, and expenses, including attorney's fees and court costs, resulting from any action by a third party against Lender relating to this Mortgage or the interest created herein, or the Mortgaged Property, including, but not limited to, any action or proceeding claiming loss, damage or injury to person or property, or any action or proceeding claiming a violation of any national, state or local law, rule or regulation, including those relating to environmental standards or dangerous or hazardous wastes, provided that the Mortgagors shall not be required to indemnify Lender for matters directly caused by Lender's gross negligence or willful misconduct.

1.12 **Estoppel Affidavits.** Upon ten (10) days prior written notice, the Borrowing Parties shall furnish to Lender a written statement, duly acknowledged, based upon its records, setting for the unpaid principal of, and interest on, the Secured Indebtedness, stating whether or not to its knowledge any off-sets or defenses exist against the Secured Indebtedness, or any portion thereof, and, if such off-sets or defenses exist, stating in detail the specific facts relating to each such off-set or defense.

1.13 **Subrogation.** To the full extent of the Secured Indebtedness, Lender is hereby subrogated to the liens, claims and demands, and to the rights of the owners and holders of each and every lien, claim, demand and other encumbrance on the Mortgaged Property which is paid or satisfied, in whole or in part, out of the proceeds of the Secured Indebtedness, and the respective liens, claims, demands and other encumbrances shall be, and each of them is hereby preserved and shall pass to and be held by Lender as additional collateral and further security for the Secured Indebtedness, to the same extent they would have been preserved and would have been passed to and held by Lender had they been duly and legally assigned, transferred, set over and delivered unto Lender by assignment, notwithstanding the fact that the same may be satisfied and canceled of record.

1.14 **Books, Records, Accounts and Reports.**

(a) Each of the Mortgagors shall keep and maintain or shall cause to be kept and maintained, at the Mortgagors' cost and expense, and in accordance with standard accounting principles, proper and accurate books, records and accounts reflecting all items of income and expense in connection with the operation of the Mortgaged Property. Lender, by Lender's agents, accountants and attorneys, shall have the right from time to time to examine

such books, records and accounts at the office of the Mortgagors or such other person or entity maintaining such books, records and accounts, to make such copies or extracts thereof as Lender shall desire, and to discuss the Mortgagors affairs, finances and accounts with the Mortgagors and with the officers and principals of the Mortgagors, at such reasonable times as may be requested by Lender.

(b) For as long as any portion of the Secured Indebtedness shall remain outstanding, in addition to other financial information required by any of the other Loan Documents, the Mortgagors will provide to Lender the following financial information:

(i) annual financial statements of each Mortgagor within one hundred twenty (120) days of its fiscal year, prepared in accordance with generally accepted accounting principles consistently applied or with another comprehensive basis of accounting acceptable to Lender, certified by the appropriate officer of each Mortgagor, as applicable, to be true and correct (Lender reserves the right to require that the annual financial statements of the Borrower be audited and prepared by a certified public accounting firm acceptable to Lender if required by external or internal banking regulations or if an event of default shall have occurred under any of the Loan Documents);

(ii) such other financial information pertaining to the Mortgagors or the Mortgaged Property as may be required by the other Loan Documents or as Lender may from time to time reasonably request.

The delivery of each of the financial statements required herein shall constitute each of the Mortgagors contemporaneous certification that (i) each of the Mortgagors has complied with and is in compliance with all terms, covenants and conditions of this Mortgage which are binding upon it, and; (ii) there exists no Event of Default as defined in this Mortgage 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 are true with the same affect as though made on the date of such certificate.

**1.15 Licenses and Permits Obtained.** The Mortgagors represent and warrant that all necessary permits, licenses and certificates have been obtained to permit the Mortgagors to operate the Mortgaged Property in the manner contemplated, and the Mortgagors will maintain in effect all such licenses, permits, and certificates, together with any other agreements necessary for the use and operation of the Mortgaged Property.

**1.16 Limit of Validity.** If from any circumstances whatsoever, fulfillment of any provision of this Mortgage or the Credit Agreement, 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 Credit Agreement 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 1.16 shall control every other provision of this Mortgage and of the Credit Agreement.



1.17 **Default Affidavits.** Upon the occurrence of any default hereunder, the Mortgagors shall deliver an affidavit specifying the nature of such default and the period of existence thereof and the action the Mortgagors have taken or propose to take with respect thereto.

1.18 **Legal Actions.** In the event that Lender is made a party, either voluntarily or involuntarily, in any action or proceeding affecting the Mortgaged Property, the Credit Agreement, the Secured Indebtedness or the validity or priority of this Mortgage (but excluding any action or proceeding involving a dispute solely between Lender and a participating lender, if any), the Mortgagors shall immediately, upon demand, reimburse Lender for all costs, expenses and liabilities incurred by Lender by reason of any such action or proceeding, including reasonable attorney's fees, and any such amounts paid by Lender shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

1.19 **Compliance with Zoning and Restrictions.** The Mortgagors shall at all times operate the Mortgaged Property in accordance with all applicable restrictions and zoning ordinances.

1.20 **Conveyance of the Mortgaged Property.** The Mortgagors shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property or any ownership interests of the Mortgagors without the prior written consent of Lender. Lender's consent to such a transfer, if given in Lender's sole discretion, shall not release or alter in any manner the liability of the Mortgagors or anyone who has assumed or guaranteed the payment of the Secured Indebtedness or any portion thereof. At the option of Lender the Secured Indebtedness shall be immediately due and payable in the event that the Mortgagors convey all or any portion of the Mortgaged Property or any interest therein, or in the event that the Mortgagors equitable title thereto or interest therein shall be assigned, transferred or conveyed in any manner, without obtaining Lender's prior written consent thereto, and any waiver or consent for any prior transfer shall not preclude Lender from declaring the Secured Indebtedness due and payable for any subsequent transfer.

1.21 **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 asbestos, or oil, or hazardous wastes or substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), as amended, 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.; and the Superfund Amendments and Reauthorization Act of 1986, as amended, as codified at 42 U.S.C. §9671, et seq.; 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. The Mortgagors represent and warrant to Lender that neither the Mortgaged Property nor the Mortgagors are in violation of or subject to any existing, pending or, to the best of the Mortgagors knowledge, 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 the Mortgagors have not obtained and are 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 the Mortgagors have taken all steps necessary to determine and have determined that no asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Mortgaged Property (except in the ordinary course of business and strictly in compliance with all Applicable Environmental Laws); and that the use which the Mortgagors have made, make or intend to make of the Mortgaged Property will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Land (except in the ordinary course of business and strictly in compliance with all Applicable Environmental Laws). The Mortgagors agree to notify Lender in the event that any governmental agency or other entity notifies either of the Mortgagors that it may not be in compliance with any Applicable Environmental Laws. The Mortgagors agree to permit Lender to have access to the Mortgaged Property at all reasonable times in order to conduct any tests which Lender deems are necessary to ensure that the Mortgagors and the Land are in compliance with all Applicable Environmental Laws. Each of the Mortgagors acknowledges that, pursuant to that certain Environmental Indemnity of even date herewith, it has agreed 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 that such Environmental Indemnity shall survive any foreclosure of this Mortgage or the taking by Lender of a deed in lieu of foreclosure.

1.22 **Appraisals.** At Lender's request, the Borrowing Parties will permit Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time, and the Borrowing Parties will cooperate with and provide any information requested in connection with such appraisals. At any time while the Secured Indebtedness remains outstanding, Lender may have the Mortgaged Property reappraised at the Borrowing Parties' expense if (i) an Event of Default shall then exist under the Loan Documents, or (ii) such appraisal shall be required by any regulatory guideline or authority to which Lender is subject, or (iii) Lender shall have determined, in the exercise of its sole discretion, that the aggregate value of the Mortgaged Property has or may have materially declined since the date of the last such appraisal, or (iv) Lender shall have determined, in the exercise of its sole discretion, that a material adverse change in the financial condition of the Mortgagors has or may have occurred; provided that the Mortgagors shall in no event be responsible for the cost of more than one such reappraisal during any twelve (12) month period.

1.23 **Future Advances.** Lender will make future advances to or for the benefit of the Borrower, pursuant to the Credit Agreement and the Letter of Credit, provided, that nothing contained herein shall constitute an obligation to do so except as may otherwise be required of Lender under the Credit Agreement and the Letter of Credit, if applicable. Such future advances,



with interest at the rate payable from time to time on the outstanding principal under the Credit Agreement, shall be secured by this Mortgage when evidenced by or made pursuant to the Credit Agreement or the Letter of Credit or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Lender may make such future advances (a) at the request of the Borrower, whether or not there is any obligation to make future advances; or (b) to pay, with or without the consent or request of the Mortgagors, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Property.

1.24 **Representations and Warranties.** Each of the Borrowing Parties represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the loan to Borrower, that:

(a) There are no actions, suits, or proceedings pending or, to the best of Borrowing Parties' knowledge, threatened, which might adversely affect the financial condition of the Borrowing Parties or which might impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Neither of the Borrowing Parties is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on Borrowing Parties' business or assets, and neither Borrower nor any guarantor of the Credit Agreement is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrowing Parties is subject. Neither the execution and performance of this Mortgage, the Credit Agreement, or any other Loan Document will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect the Borrowing Parties or the Credit Agreement.

(b) All financial statements of Borrowing Parties and other business enterprises in which either of the Borrowing Parties has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all respects as of its respective dates and prepared in accordance with generally accepted accounting principles consistently applied (or another method approved by Lender), and fairly represent the financial conditions of the business or persons to which it pertains, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(c) All utility and sanitary sewage services necessary for the use of the Mortgaged Property and all roads necessary for the use of the Mortgaged Property are available pursuant to permanent private or public easements which are not subject to the exclusive rights of any other persons which could interfere with the Mortgagor's use thereof.

(d) There are no proceedings pending, or, to the best of the Mortgagors' knowledge, threatened, to acquire by power of condemnation or eminent domain any portion of the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the use of any of the Mortgaged Property as presently used.

(e) All documents furnished to Lender by or on behalf of the Borrowing Parties as part of or in support of the loan application or pursuant to any commitment letter

issued by Lender are true, correct, complete and accurately represent the matters to which they pertain.

(f) The Mortgaged Property does and shall at all times comply with all applicable laws, ordinances, rules and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, and all laws, ordinances, rules and regulations to zoning, building codes, set back requirements and environmental matters.

(g) Guarantor is a duly organized and validly existing limited liability company having full power and authority to consummate the transactions contemplated by the Loan Documents. Eastwood is a duly organized and validly existing Alabama general partnership having full power and authority to consummate the transactions contemplated by the Mortgage.

1.25 **The Leasehold.** Each of the Borrowing Parties hereby unconditionally warrants and represents to Lender as follows:

(a) The Leasehold constitutes the legal, valid and binding obligation of the Borrowing Parties thereunder, and is enforceable by Borrowing Parties in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting creditors' rights and remedies generally or by application of general equity principles and the terms thereof as set forth in the copy of the Lease and related documents which have been delivered to the Lender;

(b) All rent, additional rent and other charges reserved in the Leasehold have been paid to the extent they are payable to the date hereof;

(c) Borrowing Parties have enjoyed and will enjoy the quiet and peaceful possession of Parcels 6 and 7 of the Land in accordance with and subject to the terms of the Lease;

(d) Borrowing Parties' leasehold interest in and to Parcels 6 and 7 of the Land is not subject to any other assignments by Borrowing Parties (except Borrower's assignment to Guarantor), and Borrowing Parties have good right and authority to assign and encumber the Leasehold to Lender;

(e) Borrowing Parties are not in default in any material respect under any of the terms of the Lease and, to the best of its knowledge, there are no circumstances that, with the passage of time or the giving of notice or both, would constitute any material event of default thereunder; and

(f) To the best of Borrowing Parties knowledge, the lessor under the Lease is not in default under any of the material terms or provisions thereof on the part of the Lessor to be observed or performed.



1.26 **Covenants Relating to the Lease.**

(a) Borrowing Parties will make all payments and otherwise perform in all material respects all obligations in respect of the Lease, and maintain the Leasehold in full force and effect and not allow the Lease to lapse or be terminated (except in connection with the exercise by Borrowing Parties of a purchase option in respect of the real and other property subject thereto) or any rights to renew the Lease or options to purchase the premises demised thereby to be forfeited or canceled. Borrowing Parties will notify Lender of any material default by any party with respect to the Lease.

(b) Except with respect to the termination of the Lease in connection with the exercise by Borrowing Parties of a purchase option in respect of any real property subject thereto, Borrowing Parties will not, without the prior written consent of Lender, cancel or terminate the Lease or consent to or accept any cancellation or termination thereof, or agree in any manner to any other amendment, modification or change of any term or condition thereof, or amend or otherwise modify the Lease or give any consent, waiver or approval thereunder, or waive any default thereunder or breach thereof, agree in any manner to any other amendment, modification or change of any term or condition thereof, or take any other action in connection therewith that would, or would be reasonably likely to, individually or in the aggregate, (i) impair the rights and interests of Lender, (ii) result in expiration or termination of the Lease prior to repayment in full of the Obligations, or (iii) prevent the unfettered use by Borrowing Parties of the premises leased thereunder for any and all activities related to the operation of its existing business.

(c) Subject to the foregoing, if Borrowing Parties default by failing to make any payment required to be made by Borrowing Parties pursuant to the provisions of the Lease or to keep, observe or perform, or cause to be kept, observed or performed, any of the terms, covenants, provisions or agreements of the Lease (unless waived by the Lessor thereunder), Borrowing Parties agree that Lender may (but shall not be obligated to) take any action on behalf of Borrowing Parties, to keep or cause to be kept, observed or performed any such terms, covenants, provisions or agreements and to enter upon the Premises and take all such action thereon as may be reasonably necessary therefor, and all money so expended by Lender, with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Borrowing Parties to Lender promptly upon demand by Lender and shall be added to the indebtedness secured by this Mortgage.

(d) Each of the Borrowing Parties covenant and agree that, without the prior written consent of Lender, neither of the Borrowing Parties nor their successors or assigns shall suffer or permit the fee title to the real property demised by the Lease and the Leasehold Estate to merge, it being understood and agreed that said estates shall always remain separate and distinct, notwithstanding the union of said estates in any person whomever by purchase or otherwise; and in case either of the Borrowing Parties acquires the fee title or any other estate, title or interest in the Land bound by the Lease, this Mortgage shall attach to and cover and be a lien upon the fee title or such other estate so acquired, and such fee title or other estate shall, without further assignment, mortgage or conveyance, become and be subject to the lien of and covered by this Mortgage.

(e) If the Lease is terminated prior to the expiration of its term, and Lender or its designee acquires a new lease on the premises covered thereby from the Lessor, Borrower shall have no right, title, or interest in or to such new lease or the leasehold estate created thereby, or renewal privileges therein contained.

#### 1.27 **Lessor's Bankruptcy.**

(a) Borrower acknowledges that pursuant to Section 365 of the Bankruptcy Act, a Lender in bankruptcy of the Lessor under the Lease ("Lessor"), or the Lessor as a debtor-in-possession, could reject the Lease, in which case Borrower, as lessee, would have the election described in Section 365(h) of the Bankruptcy Act (as amended from time to time, the "Election") to treat the Lease as terminated by such rejection or, in the alternative, to remain in possession for the balance of the term of the Lease and any renewal or extension thereof that is enforceable by the lessee under applicable nonbankruptcy law. Borrower covenants that it will not suffer or permit the termination of the Lease by exercise of the Election or otherwise without the prior written consent of Lender. Borrower acknowledges that since the Lease is a primary part of the security for the Obligations, it is not anticipated that Lender would consent to termination of the Lease in connection with any such election and Lender shall not under any circumstances be obliged to give such consent.

(b) In order to secure the covenant made in this section and as security for the Obligations, Borrower hereby assigns the Election and all rights related thereto to Lender for the benefit of Lender. Borrower acknowledges and agrees that the foregoing assignment of the Election and related rights is one of the rights which Lender may use at any time in order to protect and preserve the other rights and interests of Lender under this Mortgage, since exercise of the Election in favor of terminating the Lease would constitute waste hereunder.

(c) Borrower acknowledges and agrees that the Election is in the nature of a remedy and is not a property interest which Borrower can separate from the Lease. Therefore, Borrower agrees that exercise of the Election in favor of preserving the right to possession under the Lease shall not be deemed to constitute a taking or sale of the Mortgaged Property by Lender and shall not entitle Borrower to any credit against the Obligations.

(d) Borrower acknowledges and agrees that in the event the Election is exercised in favor of Borrower's remaining in possession, Borrower's resulting rights under the Lease, as adjusted by the effect of Section 365 of the Bankruptcy Act, shall then be part of the Leasehold Estate and shall be subject to the lien created by this Mortgage.

## ARTICLE II

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

(a) Failure of Borrower (i) to make any scheduled payment of interest or principal or other payments required under the terms of the Credit Agreement or the Indenture on or before the due date thereof, or (ii) to pay any other sum due, under the terms of any other Loan Document within ten (10) days after the due date thereof (in each case, a "Monetary Default"); or



(b) Failure of Borrower properly and timely to perform or observe any covenant or condition set forth in any Loan Document (other than a Monetary Default) which is not cured within any applicable cure period as set forth therein or, if no cure period is specified therefor, is not cured within ten (10) days of Lender's notice to Borrower of such Default; or

(c) Failure of Guarantor or Eastwood (i) to pay any sum due, under the terms of this Mortgage within ten (10) days after written notice or demand therefor by Lender; or (ii) to properly and timely perform or observe any covenant or condition set forth in this Mortgage (other than a Monetary Default) which is not cured within any applicable cure period as set forth herein or, if no cure period is specified therefor, is not cured within ten (10) days of Lender's notice of such failure;

(d) The death or dissolution of Borrower or any guarantor of any of the Secured Indebtedness or Eastwood; or

(e) The occurrence of any "Event of Default" under, and as defined in, any other Loan Document.

2.2 **Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire Secured Indebtedness 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 have occurred and be continuing, the Mortgagors, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged 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 Mortgaged Property without the appointment of a receiver or an application therefor, and may exclude the Mortgagors and their agents and employees wholly therefrom, and take possession of the books, papers and accounts of the Mortgagors;

(b) If the Mortgagors shall for any reason fail to surrender or deliver the Mortgaged 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 the Mortgagors to deliver immediate possession of the Mortgaged Property to Lender. The Mortgagors will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender, its attorneys and agents, and all such expenses and compensation shall, until paid, become part of the Secured Indebtedness 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 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 of the rights and powers of the Mortgagors to the same extent as the Mortgagors could in their 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 Mortgaged Property, 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 by 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 similar charges as Lender may at its option 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, 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 Section 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, incomes, 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 Mortgaged Property to the Mortgagors, their successors and assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

2.4 **Performance by Lender.** Upon the occurrence of an Event of Default in the payment, performance or observance of any term, covenant or condition of this Mortgage, Lender may, at its option, pay, perform or observe the same, and all payments made or costs or expenses incurred by Lender in connection therewith, with interest thereon at the Post-Default Rate provided in the Credit Agreement or at the maximum rate from time to time allowed by applicable law, whichever is less, shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagors to Lender. Lender shall be the sole judge of the necessity for any such actions and of the amounts to be paid. Lender is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to the Mortgagors or any person in possession holder under the Mortgagors. Notwithstanding anything to the contrary herein, Lender shall have no obligation, explicit or implied to pay, perform, or observe any term, covenant, or condition.

2.5 **Receiver.** If any Event of Default shall have occurred and be continuing, 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 occupancy or value of any security for the Secured Indebtedness 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 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. The Mortgagors will pay unto Lender upon demand all expenses, including reasonable receiver's fees, reasonable attorney's fees, costs and agent's compensation, incurred pursuant to the provisions of this Section 2.5, and upon any the Borrowing Parties' failure to pay the same, any such amounts shall be added to the Secured Indebtedness and shall be secured by this Mortgage.

**2.6 Lender's Power of Enforcement and Power of Sale.**

(a) In 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 (i) to enforce payment of the Credit Agreement or the performance of any term thereof or any other right, power or remedy thereunder, (ii) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as Lender shall deem most effectual for such purposes. Lender may take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as Lender may determine.

(b) 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 any 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 Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, 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.

**2.7 Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price.

**2.8 Application of Proceeds of Sale.** In the event of a foreclosure or other sale of all or any portion of the Mortgaged 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 attorneys' fees (attorneys' 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 hereunder, and interest thereon; then to payment of the Secured Indebtedness 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 Mortgagors, or to the person or entity lawfully entitled thereto.

2.9 **Mortgagors as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, the Mortgagors (if the Mortgagors 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 disposed according to provisions of law applicable to tenants holding over.

2.10 **Waiver of Appraisal, Valuation, Etc.** The Mortgagors agree, to the full extent permitted by law, that in case of a default on the part of the Mortgagors hereunder, neither the Mortgagors nor anyone claiming through or under the Mortgagors will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension, exemption or 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 Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and the Mortgagors, for each and all who may at any time claim through or under Mortgagors, hereby waives to the full extent that Mortgagors 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.

2.11 **Waiver of Homestead.** The Mortgagors hereby waive and renounce all homestead and exemption rights provided for by the Constitution of the laws of the United States and of any state, in and to the Mortgaged Property and against the collection of the Secured Indebtedness, or any part thereof.

2.12 **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, the Mortgagors 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.

2.13 **Remedies Not Exclusive.** Lender shall be entitled to enforce payment and performance of the Secured Indebtedness and to exercise all rights and powers under this Mortgage or under any other of the Loan Documents or other agreement or under any laws now or hereafter in force, notwithstanding that some or all of the Secured Indebtedness may now or hereafter be otherwise secured, whether by mortgages, deeds of trust, deeds to secure debt, pledges, liens, assignments or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Lender's right to realize upon or enforce any other security now or hereafter held by Lender, it being agreed that Lender shall be entitled to enforce this Mortgage and any other security now or hereafter held by Lender in such order and manner as Lender may in Lender's absolute discretion determine. No right or remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Lender or to which Lender otherwise may be entitled, may be exercised concurrently or independently, from time to time



and as often as may be deemed expedient by Lender, and Lender may pursue inconsistent remedies.

2.14 **Waivers.** Each of the Mortgagors make the following arrangements, waivers and relinquishments knowingly and as a material inducement to Lender in making the Loan.

(a) No delay or omission by Lender or by any holder of the Credit Agreement 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 the Mortgagors in the performance of the obligations of the Mortgagors 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 the Mortgagors 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 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 adversely the original liability under the Credit Agreement or this Mortgage or any other Loan Documents of the Borrowing Parties or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, 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 payment of all or any portion of the Secured Indebtedness; (ii) take other or additional security for the payment of any of the Secured Indebtedness; (iii) waive or fail to exercise any right granted herein or in the Credit Agreement; (iv) release any part of the Mortgaged Property from the security interest or lien of this Mortgage or otherwise change any of the terms, covenants, conditions or agreements of the Credit Agreement or this Mortgage or any of the other Loan Documents; (v) consent to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consent to the granting of any easement or other right affecting the Mortgaged 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 Credit Agreement, this Mortgage, the Land or any document or instrument evidencing, securing or in any way related to the Secured Indebtedness, 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 Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Secured Indebtedness, 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.

(c) Each of the Mortgagors waive and relinquish any and all rights it may have, whether at law or equity, to require Lender to proceed to enforce or exercise any rights, powers and remedies it may have under the Loan Documents in any particular manner, in any particular order, or in any particular state or other jurisdiction. To the fullest extent that the Mortgagors may do so, the Mortgagors agree that the Mortgagors will not at any time insist upon, plead, claim, or take the benefit or advantage of any law now or hereafter in force providing for any valuation, appraisal, stay of execution or extension, and the Mortgagors, for the Mortgagors, the Mortgagors' heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Mortgaged Property, to the extent permitted by law, hereby waives and releases all rights of valuation, appraisal, marshaling, stay of execution, and extension. The Mortgagors further agree that if any law referred to in this paragraph and now in force, of which the Mortgagors, the Mortgagors' heirs, devisees, representatives, successors and assigns or other person might take advantage despite this paragraph, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this paragraph. The Mortgagors expressly waive and relinquish any and all rights and remedies that the Mortgagors may have or be able to assert by reason of the laws of the State of jurisdiction pertaining to the rights and remedies of sureties.

2.15 **Suits to Protect the Mortgaged 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 Mortgaged Property by any acts which may be unlawful or constitute a default under this Mortgage; (b) to preserve or protect its interest in the Mortgaged 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.

2.16 **Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting any Mortgagors, 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 the Mortgagors under this Mortgage and the other Loan Documents at the date of the institution of such proceedings and for any additional amount which may become due and payable by such Mortgagor after such date.

### ARTICLE III

3.1 **Successors and Assigns.** This Mortgage shall inure to the benefit of and be binding upon the Mortgagors and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title, and assigns. Whenever a reference is made in this Mortgage to "Mortgagors", "Borrowing Parties", "Eastwood", "Guarantor" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors, successors-in-title and assigns of the Mortgagors, Borrowing Parties, Eastwood, Guarantor 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 subparagraphs shall refer to the corresponding Articles, Sections or subparagraphs of this Mortgage unless specific reference is made to Articles, Sections or subparagraphs of another document or instrument.

3.3 **Severability; Complete Agreement.** If any provision 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 Credit Agreement 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 **Limitation of Interest.** It is the intent of the Borrowing Parties and Lender in the execution of this Mortgage and all other Loan Documents to contract in strict compliance with the usury laws governing the Loan evidenced by the Credit Agreement. In furtherance thereof, Lender and the Borrowing Parties stipulate and agree that none of the terms and provisions contained in the Loan Documents shall ever be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws governing the Loan evidenced by the Credit Agreement. The Borrowing Parties or any guarantor, endorser or other party now or hereafter becoming liable for the payment of the Credit Agreement will not be required to pay interest at a rate in excess of the maximum interest that may be lawfully charged under the laws governing the Loan evidenced by the Credit Agreement, and the provisions of this paragraph shall control over all other provisions of the Credit Agreement and any other instrument executed in connection herewith which may be in apparent conflict herewith. In the event any holder of the Credit Agreement shall collect monies that are deemed to constitute interest and that would otherwise increase the effective interest rate on the Credit Agreement to a rate in excess of that permitted to be charged by the laws governing the Loan evidenced by the Credit Agreement, all such sums deemed to constitute interest in excess of the legal rate shall be applied to the unpaid principal balance of the Credit Agreement and if in excess of such balance, shall be immediately returned to the Borrowing Parties upon such determination.

3.5 **Notices.** All notices and other communications provided for hereunder shall be in writing and be deemed received (a) on the date delivered, if sent by hand delivery (to the person or department if one is specified below), (b) on the date deposited in U.S. mail, certified, with return receipt requested, or (c) on the date deposited with Federal Express or other national overnight carrier, and in each case properly addressed as set forth below. Either party may change its address for receipt notices to another single address within the United States as provided herein. Actual receipt of any notice other than a change of address notice shall not be required if properly sent in accordance with this Section 3.5.

If to the Borrower:

**JACK W. KIDD**

5492 Highway 280 East  
Birmingham, Alabama 35242

If to Guarantor:

**JACK RABBIT, LLC**

5492 Highway 280 East  
Birmingham, Alabama 35242  
Attn: Alan D. Kidd

If to Eastwood:

**EASTWOOD MINI STORAGE COMPANY**

5492 Highway 280 East  
Birmingham, Alabama 35242  
Attn: Jack W. Kidd

If to the Lender:

**FIRST COMMERCIAL BANK**

800 Shades Creek Parkway  
Birmingham, Alabama 35209  
Attn: John Marks

3.6 **Replacement of Credit Agreement.** Upon Lender's certification of the loss, theft, destruction or mutilation of the Credit Agreement, the Borrowing Parties at Lender's expense will execute and deliver, in lieu thereof, a replacement Credit Agreement, identical in form and substance to such Credit Agreement and dated as of the date of such Credit Agreement, and upon such execution and delivery all references in this Mortgage to the Credit Agreement shall be deemed to refer to such replacement Credit Agreement.

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 the Mortgagors under this Mortgage, the Credit Agreement and any and all other instruments now or hereafter evidencing, securing or otherwise relating to the Secured Indebtedness.

3.9 **No Homestead.** Each of the Mortgagors warrants that none of the Mortgaged Property constitutes the homestead of any Mortgagor or any Mortgagors spouse.

3.10 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED



IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA. THE LENDER'S PRINCIPAL PLACE OF BUSINESS IS LOCATED IN THE STATE OF ALABAMA, AND THE MORTGAGORS AGREE THAT THIS AGREEMENT SHALL BE DELIVERED TO AND HELD BY LENDER AT SUCH PRINCIPAL PLACE OF BUSINESS, AND THE HOLDING OF THIS AGREEMENT BY LENDER THEREAT SHALL CONSTITUTE SUFFICIENT MINIMUM CONTACTS OF MORTGAGORS WITH THE STATE OF ALABAMA FOR THE PURPOSE OF CONFERRING JURISDICTION UPON THE FEDERAL AND STATE COURTS PRESIDING IN SUCH STATE. THE MORTGAGORS CONSENT THAT ANY LEGAL ACTION OR PROCEEDING ARISING HEREUNDER MAY BE BROUGHT IN THE CIRCUIT COURT OF JEFFERSON OR SHELBY COUNTY; STATE OF ALABAMA, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA AND ASSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY SUCH COURT IN ANY ACTION OR PROCEEDING INVOLVING THIS AGREEMENT. NOTHING HEREIN SHALL LIMIT THE JURISDICTION OF ANY OTHER COURT.

3.11 **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, MORTGAGORS HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (I) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATED TO THE LOAN, OR (II) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND MORTGAGORS WITH RESPECT TO LOAN DOCUMENTS OR THE LOAN, OR IN CONNECTION WITH THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES HEREUNDER, OR THE CONDUCT OF THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE MORTGAGORS AGREE THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF THE MORTGAGORS IRREVOCABLY TO WAIVE ITS RIGHT TO TRIAL BY JURY, AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THE MORTGAGORS AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

3.12 **Limitation on Liability of Eastwood.** It is agreed that Eastwood has not executed and has no liability for reimbursement of draws under the Letter of Credit pursuant to the Credit Agreement. Eastwood has executed this Mortgage to (i) subject its interest in the Mortgaged Property to the lien of this Mortgage as security for repayment of the Secured Indebtedness and full performance of all Obligations under the Credit Agreement and (ii) enter into and bind itself to the covenants contained herein.

IN WITNESS WHEREOF, Mortgagors have executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

"Eastwood":

EASTWOOD MINI STORAGE, an  
Alabama general partnership

By: Jack W. Kidd  
Name: Jack W. Kidd  
Title: general partner

By: Faye D. Kidd  
Name: Faye D. Kidd  
Title: general partner

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Jack W. Kidd, whose name as a general partner of Eastwood Mini Storage Company, an Alabama general partnership, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such partner and with full authority executed the same voluntarily for and as the act of said partnership.

Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.

Jennifer L. Leuma  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
~~MY COMMISSION EXPIRES: Oct 2, 2004~~  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

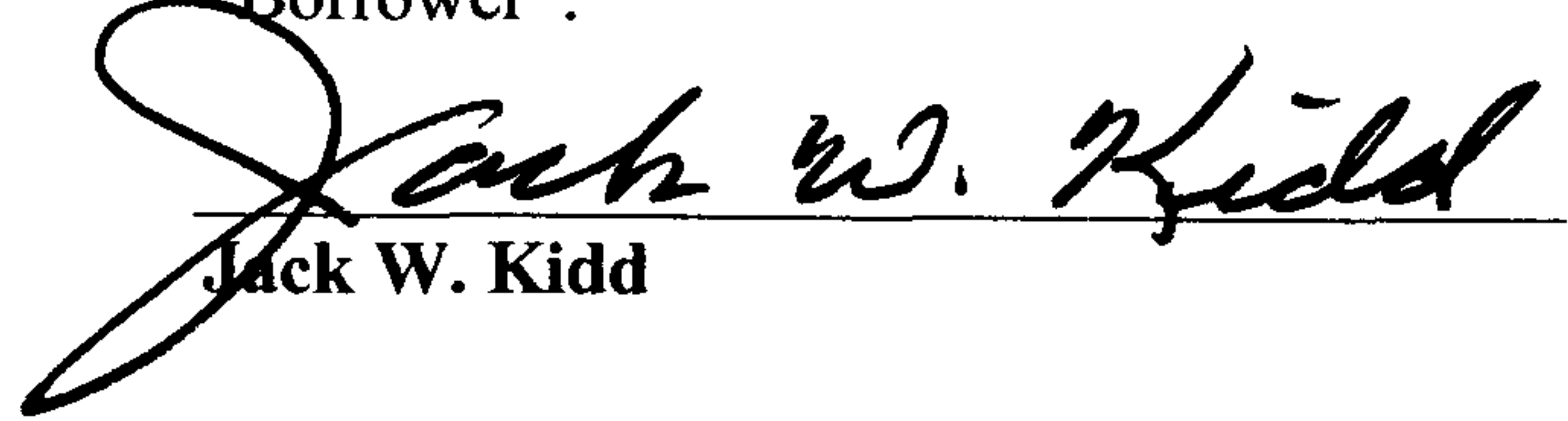
I, the undersigned, a Notary Public in and for said County and State, hereby certify that Faye D. Kidd, whose name as a general partner of Eastwood Mini Storage Company, an Alabama general partnership, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such partner and with full authority executed the same voluntarily for and as the act of said partnership.

Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.

A. Y. Bull  
NOTARY PUBLIC  
My Commission Expires: 10/2005



"Borrower":

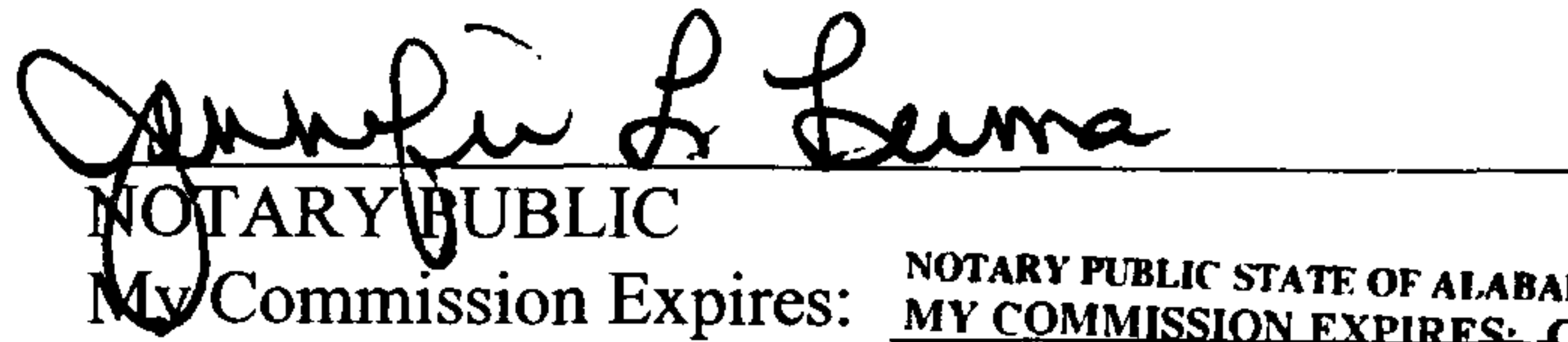
  
Jack W. Kidd

STATE OF ALABAMA            )

COUNTY OF JEFFERSON        )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Jack W. Kidd, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he voluntarily executed the same on the day the same bears date.

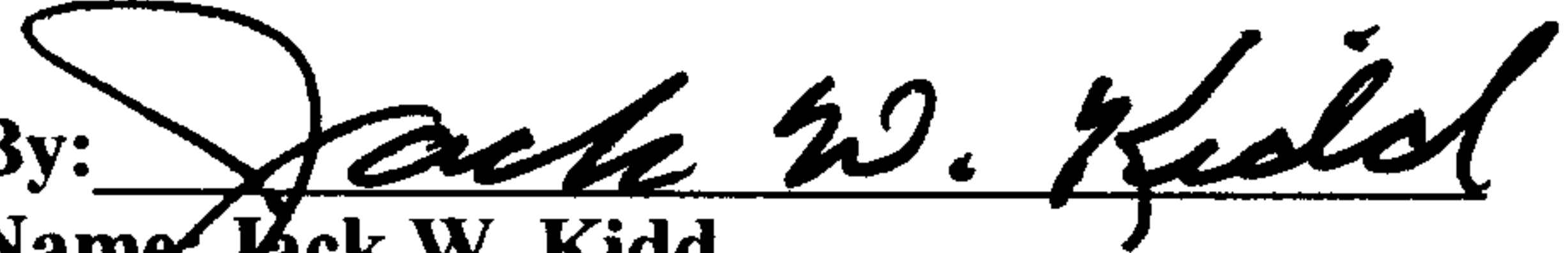
Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.


  
NOTARY PUBLIC  
My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
~~MY COMMISSION EXPIRES: Oct 2, 2004~~  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

“Guarantor”:

**JACK RABBIT, LLC**, an Alabama limited liability company


By:   
Name: Jack W. Kidd  
Title: Member

By:   
Name: Alan D. Kidd  
Title: Manager

STATE OF ALABAMA            )  
COUNTY OF JEFFERSON    )

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

Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.

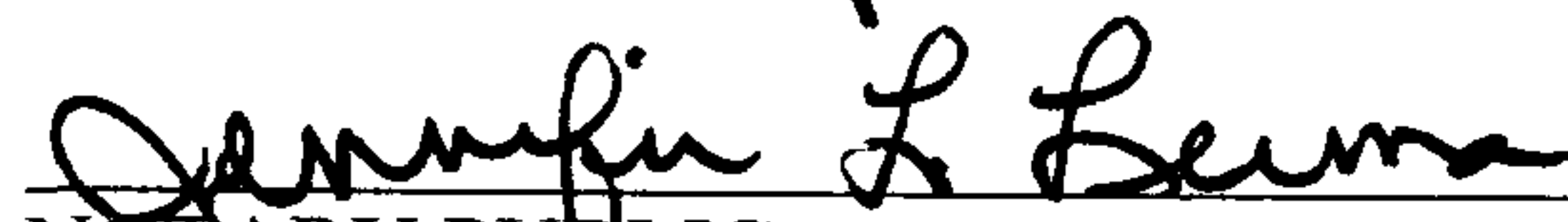
  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 2, 2004  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA            )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that Alan D. Kidd, whose name as the manager of Jack Rabbit, LLC, an Alabama limited liability company, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such manager and with full authority executed the same voluntarily for and as the act of said company.

Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.

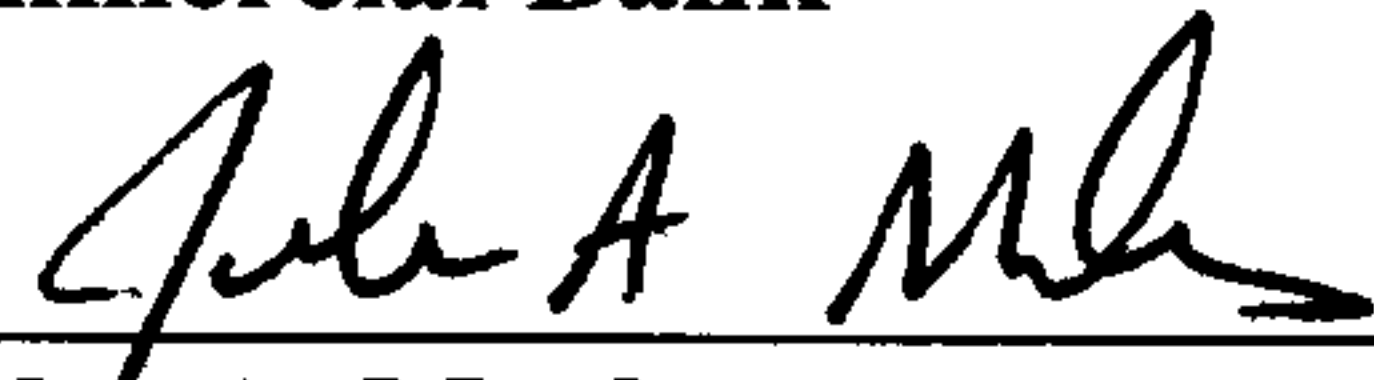
  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: Oct 2, 2004  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



"Lender":

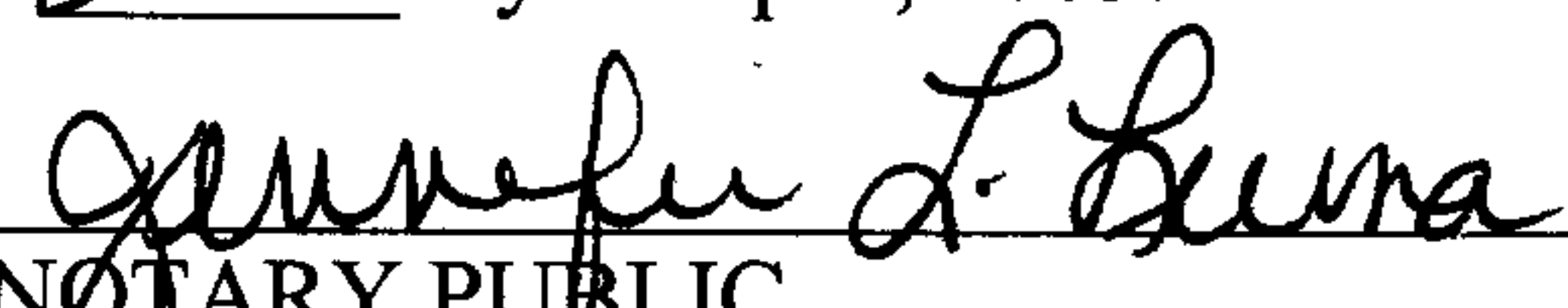
**First Commercial Bank**

By:   
**Name: John A. Marks**  
**Title: Vice President**

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that John A. Marks, whose name as the Vice President of First Commercial Bank, is signed to the foregoing and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal this the 23<sup>rd</sup> day of April, 2003.

  
NOTARY PUBLIC  
My Commission Expires Oct 2, 2004  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This Instrument Prepared By:

James E. Vann, Esq.  
Sirote & Permutt, P.C.  
2311 Highland Avenue South  
Birmingham, Alabama 35205  
(205) 930-5484

## **EXHIBIT "A"**

### **PROPERTY DESCRIPTIONS**

PARCEL 1: Intentionally deleted

PARCEL 2: (Commons Drive)

Lot 2-D, of a resurvey of Lot 2-C, of a resurvey of Lot 2, Lakeshore Commons, as recorded in Map Book 186, Page 17, in the Probate Office of Jefferson County, Alabama, and being more particularly described as follows:

Begin at the Southeast corner of Lot 2-B, of a resurvey of Lot 2, of Lakeshore Commons, as recorded in Map Book 185, Page 79, in the Office of the Probate Judge of Jefferson County, Alabama; thence run on an assumed bearing North 51 degrees 30 minutes 00 seconds East for 175.16 feet along the Northerly right of way line of Commons Drive; thence 87 degrees 32 minutes 45 seconds left and run on an assumed bearing of North 36 degrees 02 minutes 45 seconds West for 302.51 feet to a point on the Southerly right of way line of Lakeshore Parkway, said point being on a curve to the right, said curve having a radius of 3,969.72 feet and subtending a central angle of 02 degrees 31 minutes 54 seconds and an assumed chord bearing of South 57 degrees 49 minutes 29 seconds West; thence 87 degrees 23 minutes 43 seconds left to become tangent to said curve and run along the arc of said curve for 175.41 feet to the Northeast corner of said aforementioned Lot 2-B; thence from tangent to said curve 95 degrees 08 minutes 11 seconds left and run along the Easterly line of said Lot 2-B on an assumed bearing of South 36 degrees 02 minutes 45 seconds East for 321.85 feet to the point of beginning.

PARCEL 3: (West Park Drive)

Lot 20, according to the Survey of West Park at Oxmoor, as recorded in Map Book 169, Page 25, in the Probate Office of Jefferson County, Alabama.

PARCEL 4: (West Park Drive)

Lot 21, according to Baughan Resurvey at West Park, as recorded in Map Book 187, Page 41, in the Probate Office of Jefferson County, Alabama.

PARCEL 5: (Brookhurst)

Lot B, according to the Map and Survey of Roebuck Crest Addition to Brookhurst, as recorded in Map Book 114, Page 2, in the Probate Office of Jefferson County, Alabama.

PARCEL 6: (Jack Rabbit)

Lot 5A, Block 3, according to a Resurvey of Lots 5 and 6, Block 3, of Rosedale Park, as recorded in Map Book 151, Page 57, in the Probate Office of Jefferson County, Alabama.



PARCEL 7: (Auto Pride Car Wash)

Lot 36A, Block 2, according to the First Amendment to a Resurvey of Lots 36, 37 and 38, Block 2, of Rosedale Park, as recorded in Map Book 156, Page 21, in the Probate Office of Jefferson County, Alabama.

PARCEL 8: (Highway 280 Office/Warehouse)

Commence at the Northwest corner of the Northwest quarter of the Northeast quarter of Section 5, Township 19 South, Range 1 West, thence run North 86 degrees 43 minutes 38 seconds East for a distance of 333.88 feet to the Point of Beginning; thence run South 71 degrees 31 minutes 13 seconds East for a distance of 100.20 feet; thence run South 23 degrees 59 minutes 16 seconds West for a distance of 275.63 feet; thence run North 67 degrees 10 minutes 15 seconds West for a distance of 104.08 feet; thence run North 12 degrees 30 minutes 00 seconds West for a distance of 57.00 feet; thence run North 30 degrees 17 minutes 51 seconds East for a distance of 239.82 feet to the point of beginning.

Situated in Shelby County, Alabama

ALSO: An easement described as follows:

Commence at the northwest corner of the Northwest one-quarter of the Northeast one-quarter of Section 5, Township 19 South, Range 1 West; thence run North 86 degrees 43 minutes 38 seconds East along the North line of said quarter-quarter for a distance of 333.88 feet; thence run South 71 degrees 31 minutes 13 seconds East for a distance of 100.20 feet; thence run South 23 degrees 59 minutes 16 seconds West for a distance of 260.63 feet to the POINT OF BEGINNING; thence run South 71 degrees 19 minutes 30 seconds East for a distance of 29.78 feet to the point of intersection with a curve to the left, said curve having a central angle of 18 degrees 42 minutes 34 seconds, a radius of 183.00, a chord of 59.49 and a chord bearing of South 26 degrees 50 minutes 01 seconds West; thence run along the arc of said curve for a distance of 59.76 feet to the end of said curve; thence run South 17 degrees 28 minutes 44 seconds West for a distance of 153.42 feet to the point of commencement of a curve to the right, said curve having a central angle of 50 degrees 45 minutes, a radius of 146.77 feet, a chord of 125.79 and a chord bearing of South 42 degrees 51 minutes 14 seconds; thence run along the arc of said curve for a distance of 130.00 feet to the end of said curve; thence run South 68 degrees 13 minutes 44 seconds West for a distance of 30.04 feet to a point on the northeasterly right of way line of U. S. 280, said right of way being situated on a curve to the left and having a central angle of 0 degrees 35 minutes 01 seconds, a radius 2944.79 feet, a chord of 30.00 feet and a chord bearing of North 21 degrees 46 minutes 15 seconds West; thence run along the arc of said curve and the Northeasterly right of way line of U. S. Highway No. 280 for a distance of 30.00 feet; thence run North 68 degrees 13 minutes 44 seconds East for a distance of 30.04 feet to the point of commencement of a curve to the left, said curve having a central angle of 50 degrees 45 minutes, a radius of 116.77 feet, a chord of 100.08 feet and a chord bearing of North 42 degrees, 51 minutes 14 seconds East; thence run along the arc of said curve for a distance of 103.43 feet to the end of said curve; thence run North 17 degrees 28 minutes 44 seconds East for a distance of 153.42 feet to the point of commencement of a curve to the right, said curve, having a central

angle of 16 degrees 10 minutes 47 seconds, a radius of 213.00 feet, a chord of 59.95 feet and a chord bearing of North 25 degrees 34 minutes 08 seconds East; thence run along the arc of said curve for a distance of 60.15 feet to the end of said curve; thence run South 71 degrees, 19 minutes 30 seconds East for a distance of 1.46 feet to the POINT OF BEGINNING.

PARCEL 9: (Linden)

Lot 1, Block D, according to the Survey of Shades Heights, as recorded in Map Book 6, Page 97, in the Probate Office of Jefferson County, Alabama.

PARCEL 10: (Pears)

Lot 15, Block C, according to the Survey of Shades Heights, as recorded in Map Book 6, Page 97, in the Probate Office of Jefferson County, Alabama.

PARCEL 11: (Adams)

Sub-Parcel I:

A parcel of land located in the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the NW corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  Section; thence in an Easterly direction along the North line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section; a distance of 470.20 feet to the point of beginning; thence continue along last described course, a measured distance of 31.33 (31.24 feet deed); thence 42 degrees 06 minutes 46 seconds right, in a Southeasterly direction a distance of 244.75 feet to a point on a curve having a radius of 50 feet last described course being radial to said curve; thence in a Southwesterly direction along the arc of said curve to the left a distance of 23.90 feet; thence 39 degrees 19 minutes 16 seconds right from line tangent to said curve in a Southwesterly direction a distance of 197.05 feet; thence 104 degrees 30 minutes right; in a Northwesterly direction a measured distance of 271.44 (271.40 feet deed); thence 71 degrees 40 minutes 30 seconds right, in a Northeasterly direction a distance of 74.50 feet to the point of beginning.

Sub-Parcel II:

A parcel of land located in the SE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 25, Township 19 South, Range 3 West, more particularly described as follows: Commence at the NW corner of said  $\frac{1}{4}$  -  $\frac{1}{4}$  Section and run thence in an Easterly direction along the Northerly line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  Section a distance of 501.44 feet to point of beginning; thence continue along last described course a distance of 396.00 feet; thence 89 degrees 19 minutes 08 seconds right in a Southerly direction a distance of 82.27 feet; thence 54 degrees 43 minutes 51 seconds right in a Southwesterly direction a distance of 163.39 feet to a point of a curve having a radius of 50 feet; thence 103 degrees 01 minutes 59 seconds right to tangent to said curve and in a Northwesterly direction along the arc of said curve to the left a distance of 100.33 feet; thence in a Northwesterly direction along a line radial to said curve a distance of 244.75 feet to the point of beginning. Situated in Shelby County, Alabama.



Less and Except the following:

A portion of Sub-Parcel II, described as a parcel of land located in the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 25, Township 19 South, Range 3 West, more particularly described as follows:

Commence at the Northwest corner of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 25 and run South 89 degrees 55 minutes 20 seconds East along the North line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section for a distance of 761.20 feet to the point of beginning; from the point of beginning thus obtained continue along the last described course for a distance of 135.60 feet; thence turn an angle of 89 degrees 17 minutes 37 seconds to the right and run in a Southerly direction for a distance of 82.24 feet; thence turn an angle of 54 degrees 43 minutes 54 seconds to the right and run in a Southwesterly direction for a distance of 163.14 feet; thence turn an angle of 124 degrees 30 minutes 03 seconds to the right and run in a Northerly direction for a distance of 178.13 feet to the point of beginning.

PARCEL 12: (Rainbow Paint Center)

Lot 1, Carnaggio's Survey, as recorded in Map Book 121, Page 23, in the Probate Office of Jefferson County, Alabama.

PARCEL 13: (Rainbow Paint Center)

Lot 2-C, according to a resurvey of Lot 2-A, Meeks 1st Addition to Shady Springs and part of Lot D-1, being a part of a resurvey of Lot D, Meeks 1st Addition to Shady Springs, as recorded in Map Book 123, Page 59, in the Probate Office of Jefferson County, Alabama.

PARCEL 14: (Rainbow Paint Center)

A parcel of land being part of Lot 3, according to the Survey of Meeks 1st Addition to Shady Springs as recorded in Map Book 15, Page 31, and being bounded on the Southeasterly side by the Northwesterly line of Lot 1, Carnaggio's Survey Map Book 121, Page 23; on the Southwesterly side by the Northeasterly line of Lot 2C, a Resurvey of Lot 2-A Meeks 1st Addition to Shady Springs and part of Lot D-1, being a part of a Resurvey of Lot D, Meeks 1st Addition to Shady Springs as recorded in Map Book 123, Page 59, and by one of the Northeasterly lines of the Cabana Condominium Survey, Map Book 103, Page 55A, on Northwesterly side by one of the Southeasterly lines of the same Cabana Condominium Survey, and on the Northeasterly side by one of the Southwesterly sides of the same Cabana Condominium Survey, and by the Southwesterly boundary of Lot 3A according to a Resurvey of part of Lots 3 & 4, Meeks 1st Addition to Shady Springs, as recorded in Map Book 76, Page 64, and on the Southeasterly side by the Northwesterly right of way of U. S. Highway No. 31.

PARCEL 15: (Vacant Homewood Land and Xpress Lube)

All of Lots 32, 33, 34 and 35, in Block 2, according to the Survey of Rosedale park, as recorded in the Office of the Judge of Probate, Jefferson County, Alabama, in Map Book 3, Page 26, less

and except any portion lying in road right of way and being more particularly described as follows:

Beginning at the NW corner of said Lot 35, run in an Easterly direction along the North line of said Lot 35, for a measured distance of 150.03 feet to an existing iron pin being the Northeast corner of said Lot 35 and being on the West right of way of 18<sup>th</sup> Place South; thence turn an angle to the right of 89 degrees 47 minutes and run in a Southerly direction along the East line of said Lot 35 for a distance of 50.0 feet to an existing iron rebar being on the North right of way line of 29<sup>th</sup> Avenue, South; thence turn an angle to the right of 90 degrees 13 minutes and run in a Westerly direction along the North right of way line of 29<sup>th</sup> Avenue, South, for a distance of 222.43 feet to an existing iron pin being on the East right of way line of 18<sup>th</sup> Street; thence turn an angle to the right of 90 degrees 09 minutes 14 seconds and run in a Northerly direction along the East right of way line of 18 the Street for a distance of 102.26 feet, more or less, to an existing concrete right of way monument; thence turn an angle to the right of 43 degrees 37 minutes 28 seconds and run in a Northeasterly direction for a distance of 66.11 feet to an existing iron pin being on the North line of said Lot 32; thence turn an angle to the right of 46 degrees 13 minutes 18 seconds and run in an Easterly direction along the North line of said Lot 32, for a distance of 25.05 feet, more or less, to an existing iron pin, being the Northeast corner of said Lot 32; thence turn an angle to the right of 88 degrees 56 minutes 18 seconds and run in a Southerly direction along the East line of said Lot 32, for a distance of 50.0 feet to an existing PK nail, being the Southeast corner of said Lot 32; thence turn a measured angle to the right of 0 degrees 48 minutes 42 seconds and run in a Southerly direction for a distance of 50.0 feet, more or less; to the point of beginning.

Situated in Jefferson County, Alabama.

PARCEL 16: (Hardee's - Trussville)

Lot 3-A, according to the Resurvey of Lot 3, Cahaba Plaza, as recorded in Map Book 133, Page 52, in the Probate Office of Jefferson County, Alabama.

PARCEL 17: (Highlander)

Lots 3 and 4, in Block 4, according to the Survey of Highland Office Park, as recorded in Map Book 55, Page 91, in the Probate Office of Jefferson County, Alabama.

State of Alabama - Jefferson County  
I certify this instrument filed on:

2003 APR 24 P.M. 13:09  
Recorded and \$ 9,300.00 Mtg. Tax  
and \$ Deed Tax and Fee Amt.  
\$ 92.00 Total \$ 9,392.00  
MICHAEL F. BOLIN, Judge of Probate

  
200306/3015