

220

STATE OF ALABAMA)

JEFFERSON COUNTY)

MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

BOOK 102 PAGE 906

THIS INSTRUMENT (hereinafter, with all amendments thereto, being referred to as "this Mortgage"), made and entered into on November 26, 1986, between Ernest L. McCarty, Jr., a married man (the "Mortgagor"), whose address is Post Office Box 1408, Alabaster, Alabama 35007 and AmSouth Bank N.A., a national banking association (the "Mortgagee"), whose address is P.O. Box 11007, Birmingham, Alabama 35288.

Recitals

A. The Mortgagor is or hereinafter shall be justly indebted to the Mortgagee in the amount of One Million Dollars (\$1,000,000), as evidenced by a certain promissory note of the Mortgagor to the Mortgagee in said amount dated of even date herewith, payable in accordance with its terms and having a final maturity date of November 26, 2001 (the "Note"). The proceeds of the Note secured by this Mortgage have been applied to the purchase price of the property described herein, which property has been conveyed to the Mortgagor simultaneously herewith.

B. The Mortgagor, in order to secure the Note, and in order to induce the Mortgagee to extend credit to Mortgagor on the strength of the security provided by this Mortgage, has agreed to execute and deliver this Mortgage and convey the property described herein to the Mortgagee as hereinafter set forth.

Maynard Cooper
S.J.S.

Agreement

NOW, THEREFORE, in consideration of the premises and in order to induce the Mortgagee to extend credit to the Mortgagor, the Mortgagor hereby agrees with the Mortgagee as follows:

I. DEBT, GRANTING CLAUSES, ASSIGNMENTS, ETC.

SECTION 1.01. Indebtedness. This Mortgage is given to secure and shall secure the prompt payment of the following (hereinafter sometimes referred to collectively as the "Indebtedness"):

(a) Any and all sums, principal, interest and agreed charges, becoming due and payable by the Mortgagor under or with respect to the Note; and

(b) Any and all sums now or hereafter becoming due and payable by the Mortgagor to the Mortgagee under the terms of this Mortgage, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and

(c) All renewals and extensions of any or all of the obligations of the Mortgagor described in (a) and (b) above, whether or not any renewal or extension agreement is executed in connection therewith;

and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Mortgagor contained in this Mortgage.

SECTION 1.02. Granting Clauses. The Mortgagor does hereby grant, bargain, sell, assign and convey to the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses (a) through (d), both inclusive, and does hereby grant to the Mortgagee, its successors and assigns, a security interest in said property and interests in property:

(a) The real estate and premises described on Exhibit A attached hereto (the "Real Estate"), together with all improvements, buildings, structures and fixtures now or hereafter located thereon or therein, which real estate is located in Shelby County, Alabama.

(b) All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate.

(c) (i) All leases and subleases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate with respect to which the Mortgagor is the lessor or sublessor, including but not limited to the existing leases, if any, described on Exhibit B attached hereto and made a part hereof (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate, all such leases, subleases, agreements and tenancies heretofore mentioned (including but not limited to the Existing Leases) being hereinafter collectively referred to as the "Leases";

(ii) Any and all guaranties of the lessee's and any sublessee's performance under any of the Leases; and

(iii) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or any improvements thereon, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real

Estate, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred under this Mortgage, the Mortgagor shall have the right under a license granted hereby (but limited as provided in Section 4.03(f)(i)A hereof) to collect, receive and retain the Rents, but no Rents shall be collected in advance of the due date thereof.

(d) All fixtures and leasehold improvements and all appurtenances and additions thereto and substitutions or replacements therefor, owned by the Mortgagor and now or hereafter attached to, contained in, or used in connection with the Real Estate, and all proceeds thereof, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, equipment (including heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment), vacuum cleaning systems, hot water heaters, paging systems, alarm systems, generators, sprinkler systems and other fire prevention and extinguishing apparatus and all similar goods, fittings and fixtures now or hereafter affixed to or used in connection with the Real Estate, and all proceeds thereof.

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other encumbrances, if any, described on Exhibit C hereto ("Permitted Encumbrances").

All of the property described in the foregoing Granting Clauses (a) through (d), both inclusive, is herein sometimes collectively referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Mortgagee, its successors and assigns, forever.

SECTION 1.03. Assignment of Condemnation Awards. As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of the Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred

by the Mortgagee in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Mortgaged Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Mortgaged Property. Subject to the rights of the holders of any prior mortgages, all such damages, condemnation proceeds and consideration shall be paid directly to the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Indebtedness in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Indebtedness, or apply such balance to the restoration of the Mortgaged Property, or release the balance to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

SECTION 1.04. Assignment of Insurance Policies, etc. As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of the Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in the collection of any payment, the Mortgagor hereby assigns and pledges to the Mortgagee each and every policy of hazard insurance now or hereafter in effect which insures the Mortgaged Property, or any part thereof, together with all right, title and interest of the Mortgagor in and to each and every such policy, including but not limited to, all the Mortgagor's right, title and interest in and to any premiums paid on each such policy, including all rights to returned premium, and all proceeds of any of the foregoing.

II. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

In order to induce the Mortgagee to extend credit to the Mortgagor, the Mortgagor represents and warrants that:

SECTION 2.01. Valid Title, etc. The Mortgagor is lawfully seized of an indefeasible estate in fee simple in and to the Real Estate; it has a good right to sell and mortgage, grant a security interest in, and assign, the Mortgaged Property; the Mortgaged Property is subject to no mortgages, liens, encumbrances, assignments or security interests other than Permitted Encumbrances; and the Mortgagor will forever warrant and defend the title to the Mortgaged Property unto the Mortgagee against the claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

SECTION 2.02. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignments of, the Mortgaged Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Mortgaged Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

SECTION 2.03. Representations and Warranties Specifically Relating to Rents and Leases. Except for any Permitted Encumbrances:

(a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(b) The Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Mortgagor's part to be kept, observed and performed.

(c) Except as set forth in Exhibit C, the Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(d) No Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(e) The Mortgagor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(f) To the best of the Mortgagor's knowledge, the lessees under the Existing Leases are not in default under any of the terms thereof.

III. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Mortgagor covenants and agrees that, until the Indebtedness is paid in full and this Mortgage is satisfied in writing by the Mortgagee:

SECTION 3.01. Payment of Taxes and Other Assessments. The Mortgagor will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Mortgaged Property or on the interests created by this Mortgage or with respect to the filing of this Mortgage, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the lien and other interests created by this Mortgage, and at least ten days before said taxes, assessments and other governmental charges are due the Mortgagor will deliver receipts therefor to the Mortgagee, or, in the case of mortgage filing privilege taxes, pay to the Mortgagee an amount equal to such taxes. The Mortgagor may, at the Mortgagor's own expense, in good faith contest any such taxes, assessments and other governmental charges and, in the event of any such contest, may permit the taxes, assessments or other governmental charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed. If any tax or assessment (other than state and federal income taxes)

is levied, assessed or imposed by any governmental authority on the Mortgagee as a legal holder of the Note, any interest in this Mortgage or any of the other Loan Documents (as hereinafter defined), then unless all such taxes and assessments are paid by the Mortgagor as they become due and payable, but in any case before they become delinquent (and in the opinion of counsel for the Mortgagee, such payment by the Mortgagor is lawful and does not place the Mortgagee in violation of any law), the Mortgagee may, at its option, declare an Event of Default under this Mortgage.

SECTION 3.02. Insurance.

(a) The Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by the Mortgagee in such manner and with such companies and in such amounts as the Mortgagee may approve. All such policies shall name the Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Mortgagee, to be attached to each policy) be payable to the Mortgagee, subject to the rights of the holders of any prior mortgages, and provide that the insurance provided thereby, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of the Mortgagor, nor by the commencement of any proceedings by or against the Mortgagor in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. The Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with the Mortgagee. At least ten days prior to the date the premiums on each such policy or policies shall become due and payable, the Mortgagor shall furnish to the Mortgagee evidence of the payment of such premiums. The Mortgagor will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Mortgagee) to give the Mortgagee at least ten business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Mortgagor agrees that the Mortgagor will

BOOK 102 PAGE 912

not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder.

(b) With respect to all such insurance policies, subject to the rights of the holders of any prior mortgages, the Mortgagee is hereby authorized, but not required, on behalf of the Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Indebtedness, or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to the Mortgagor, but no such application or release shall cure or waive any default by the Mortgagor; provided that, the loss proceeds for any casualty to the Mortgaged Property diminishing by less than twenty percent (20%) the value of the Mortgaged Property shall be applied to the restoration of the Mortgaged Property. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Mortgaged Property in extinguishment of the Indebtedness, complete title to all insurance policies held by the Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Mortgaged Property.

BOOK 102 PAGE 913

SECTION 3.03. Waste, Demolition, Alteration or Replacement. The Mortgagor shall cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, shall not commit or permit waste thereon, shall not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Real Estate without the express prior written consent of the Mortgagee, shall comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. The Mortgagor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the express prior written consent of the Mortgagee and unless the same is immediately replaced with like property of at least equal value and utility.

SECTION 3.04. Covenants Relating to Rents and Leases. The Mortgagor covenants and agrees that the Mortgagor shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the Mortgagor, and shall give prompt notice to the Mortgagee in the event the Mortgagor fails to observe, perform and discharge the same;

(b) enforce or secure in the name of the Mortgagee the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of the Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, incurred in any action or proceeding in which the Mortgagee may appear;

(d) not receive or collect any Rents from any present or future lessee of the Real Estate or any part thereof for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(e) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Real Estate of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

(f) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of the Mortgagee;

BOOK 102 PAGE 914

(g) not renew or otherwise extend the term of any of the Existing Leases; provided, however, that nothing herein contained shall prevent the Mortgagor, upon expiration of the now-current term (or other expiration or termination) of any of the Existing Leases, from leasing the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the lien of this Mortgage; and

(h) promptly upon the execution by the Mortgagor of any future Lease, (i) furnish the Mortgagee with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of the Mortgagee, a copy of such Lease, and (ii) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require.

IV. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 4.01. Defeasance. If the Mortgagor shall: (a) pay in full (i) all of the Indebtedness (as defined herein), including but not limited to all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and (ii) all sums becoming due and payable by the Mortgagor under the terms of this Mortgage, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and (b) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

SECTION 4.02. Events of Default. The happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively

referred to as "Events of Default") shall constitute a default under this Mortgage:

(a) any representation or warranty made herein or in any loan agreement related to any of the Indebtedness or in any other document or instrument evidencing or securing any of the Indebtedness (any such loan agreement and any such other document or instrument evidencing or securing any of the Indebtedness being hereinafter collectively referred to as the "Loan Documents") shall prove to be false or misleading in any material respect; or

(b) any report, certificate, financial statement or other instrument furnished in connection with any of the Indebtedness or any Loan Document shall prove to be false or misleading in any material respect; or

(c) default shall be made in the prompt payment of the principal of or interest payable on the Note or any of the other Indebtedness, as and when due and payable; or

(d) default shall be made with respect to any indebtedness (other than the Indebtedness) of the Mortgagor when due or the performance of any other obligation incurred in connection with any indebtedness for borrowed money of the Mortgagor, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or any such indebtedness shall not be paid when due; or

(e) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of any Loan Document or any other event of default shall occur under this Mortgage or any other Loan Document, and such default or event of default shall continue unremedied for a period of 30 days after written notice thereof by the Bank to the Mortgagor; or

(f) the Mortgagor or any maker, endorser, surety or guarantor of the Note (the Mortgagor and any such maker, endorser, surety or guarantor being hereinafter individually called an "Obligor") shall

BOOK 102 PAGE 916

(i) die or apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of any such Obligor or of any of such Obligor's properties or assets, (ii) admit in writing any such Obligor's inability to pay such Obligor's debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against such Obligor in any proceeding under the federal Bankruptcy Code, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or file an answer admitting the material allegations of a petition filed against such Obligor in any proceeding under any such law or statute, or if corporate, partnership or other action shall be taken by any Obligor for the purpose of effecting any of the foregoing; or

(g) a petition shall be filed, without the application, approval or consent of any Obligor in any court of competent jurisdiction, seeking reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in clause (v) of paragraph (f) above against such Obligor, or the appointment of a receiver, trustee or liquidator or custodian of such Obligor, or of all or a substantial part of such Obligor's properties or assets, and such petition shall not be dismissed within 30 days after the filing thereof; or

(h) final judgment for the payment of money in excess of an aggregate of \$5,000 shall be rendered against any Obligor, and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed; or

(i) a default or event of default, or an event which upon notice or lapse of time or both would constitute an event of default under any prior mortgage on the Real Estate, or part thereof, shall occur and be continuing; or

(j) the interest of the Mortgagee in the Mortgaged Property shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon; or

(k) any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction.

SECTION 4.03. Rights and Remedies of the Mortgagee Upon Default.

(a) Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Indebtedness immediately due and payable, whereupon all such Indebtedness shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, any of the other Loan Documents and applicable law. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Note, any of the other Loan Documents and applicable law.

(b) Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but shall not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of the Mortgagor with respect to the Mortgaged Property.

BOOK 102 PAGE 918

(c) Judicial Proceedings; Right to Receiver.

Upon the occurrence of an Event of Default, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Mortgaged Property, to sue the Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

(d) Foreclosure Sale. Upon the occurrence of

any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or

without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. On the happening of any Event of Default or at any time thereafter, the Mortgagee shall have and may exercise with respect to the personal property and fixtures included in the Mortgaged Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise

of any other right or remedy of the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagee in accordance with the provisions of Section 5.10 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Mortgaged Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right, at its option after an Event of Default has occurred hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Indebtedness in such order and amounts and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) Rights of Mortgagee with Respect to Rents and Leases.

Upon the occurrence of an Event of Default, or at any time thereafter:

(i) The Mortgagee at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(A) to terminate the license granted to the Mortgagor in granting Clause C (iii) of Section 1.02 hereof to collect the Rents, and, without taking

possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Indebtedness in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security for the Indebtedness);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Mortgaged Property (including payment of reasonable management, brokerage and attorneys' fees) and payment of any Indebtedness in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral reserve as security for the Indebtedness);

(C) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of the Mortgagor under this Mortgage.

(ii) the collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Mortgaged Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall

thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

(g) Foreclosure Deeds. The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(h) Application of Proceeds. All payments received by the Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment in full of any of the Indebtedness that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the Note, (iii) to a cash collateral reserve fund to be held by the Mortgagor in an amount equal to, and as security for, any of the Indebtedness that is not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Indebtedness due. Any such sale may be made subject to the unmatured part of the Indebtedness secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness secured by this Mortgage, but as to such unmatured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under the

provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

(j) Waiver of Appraisement Laws. The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Mortgaged Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Indebtedness (commonly known as stay laws and redemption laws).

(k) Prerequisites of Sales. In case of any sale of the Mortgaged Property as authorized by this Section 4.03, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Indebtedness or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

V. MISCELLANEOUS PROVISIONS

SECTION 5.01. Waiver and Election. The exercise by the Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of

the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Loan Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 5.02. Landlord-Tenant Relationship. Any sale of the Mortgaged Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

SECTION 5.03. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagee to effectuate the provisions hereof.

SECTION 5.04. Application of Payments. If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Indebtedness or is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness that is not secured or not fully secured by said lien, assignment or security interest created hereby.

SECTION 5.05. Other Mortgages Encumbering the Real Estate. The Mortgagor hereby authorizes the holder of any other mortgage encumbering the Real Estate to disclose to the Mortgagee from time to time and at any time the following information: (a) the amount of indebtedness secured by such mortgage; (b) the amount of such indebtedness that is unpaid; (c) whether such indebtedness is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (e) any other information regarding such mortgage or the indebtedness secured thereby that the Mortgagee may request from time to time.

The Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Real Estate, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without giving notice to the Mortgagor. The Mortgagor agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Indebtedness secured by this Mortgage.

SECTION 5.06. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective heirs, personal representatives, successors and assigns. The term "Mortgagor" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, partnerships, corporations, associations, trusts or other entities or organizations.

SECTION 5.07. Advances by Mortgagee. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, the performance of the Mortgagor's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Mortgaged Property for the

purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Indebtedness and shall be secured hereby.

SECTION 5.08. Release or Extension by Mortgagee. The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Mortgaged Property not expressly released, may release any part of the Mortgaged Property or any person liable for any of the Indebtedness and may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of the Note, any of the Loan Documents, this Mortgage or any other instrument evidencing or securing any of the Indebtedness.

SECTION 5.09. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of the Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Indebtedness has been paid, the Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

SECTION 5.10. Addresses for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing and shall be mailed or sent or delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other parties thereto.

SECTION 5.11. No Obligations With Respect to Leases. The Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases or the Real Estate (unless expressly assumed by the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties

or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of the Mortgagor's duties, responsibilities and obligations under Leases and with respect to the Real Estate.

SECTION 5.12. Expenses. The Mortgagor shall pay all costs and expenses incurred by the Mortgagee in connection with preparing and recording this Mortgage and enforcing the Mortgagee's rights hereunder, including reasonable attorneys' fees.

SECTION 5.13. Titles. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

SECTION 5.14. Construction of Mortgage. This Mortgage may be construed as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation, or contract, or any one or more of them, in order fully to effectuate the lien, security interest and assignment created hereby and the purposes and agreements herein set forth.

SECTION 5.15. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagor in collecting or securing, or attempting to collect or secure, the Indebtedness, or any part thereof, or in defending or attempting to defend the priority of this Mortgage against any lien on the Mortgaged Property, or any part thereof, unless this Mortgage is herein expressly made subject to any such lien; and all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Indebtedness, and shall bear interest at the rate provided in the Note or such lesser amount as shall be the maximum amount permitted by law, and shall be secured by this Mortgage.

IN WITNESS WHEREOF, the Mortgagor has executed
this instrument on the day and year first above written.

WITNESS:

A. C. TISSAULT

Ernest L. McCarty, Jr.

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public, in
and for said county in said state, hereby certify that
Ernest L. McCarty, Jr., a married man, whose name is
signed to the foregoing instrument, and who is known to
me, acknowledged before me on this day that being informed
of the contents of said instrument, he executed the same
voluntarily on the day the same bears date.

Given under my hand and official seal this 26th
day of November, 1986.

Sara Finley
Notary Public

My Commission expires: MY COMMISSION EXPIRES JULY 28, 1990

[AFFIX SEAL]

This instrument was prepared by:

Sara J. Finley
MAYNARD, COOPER, FRIERSON & GALE, P.C.
12th Floor, Watts Building
Birmingham, Alabama 35203
(205)-252-2889

EXHIBIT A

(Real Estate Description)

A parcel of land located in the SW 1/4 of the SW 1/4 of Section 25, Township 20 South, Range 3 West, more particularly described as follows: Commence at the Southwest corner of the Southwest Quarter of the Southwest Quarter of Section 25, Township 20 South, Range 3 West, and run East along the South line of said Quarter-Quarter Section 130.60 feet to the Westerly Right-of-Way line of U. S. Highway Number 31; thence an angle left of 75 degrees 29 minutes and run Northeasterly along said Right-of-Way line, 974.0 feet to the point of beginning; thence continue along right-of-way line 400.0 feet; thence an angle left of 104 degrees 31 minutes and run Westerly 426.71 feet to a point on the Easterly right of way line of L & N Railroad; thence an angle left of 83 degrees 07 minutes 30 seconds and run Southerly along said Railroad Right of Way line, 295.67 feet; thence an angle left of 82 degrees 21 minutes 30 seconds and run easterly 373.77 feet to the point of beginning.

Less and except any part lying within a public roadway.

EXHIBIT B

(Leases)

Lease to be executed as of December 1, 1986 by and between the Mortgagor, as lessor, and Ernest McCarty Ford, Inc., as lessee, which lease shall be fully subordinate to this Mortgage.

EXHIBIT C

(Permitted Encumbrances)

Ad valorem taxes for the year 1987, which said taxes are not due or payable until October 1, 1987.

Right of Way granted to Alabama Power Company by instrument(s) recorded in Deed Book 299, page 128; and Deed Book 349, page 789.

Right of Way in favor of Alabama Power Company and Southern Bell Telephone & Telegraph Company by instrument(s) recorded in Misc. Book 12, page 150.

Right of Way to Shelby County, as recorded in Deed Book 169, page 59.

Permit to American Telephone and Telegraph as recorded in Deed Book 168, page 476.

Easements, restrictions, reservations and rights of way as shown by those instruments recorded in Deed Volume 71, page 613; and Deed Volume 177, page 438.

Easement to the City of Pelham as shown by instrument recorded in Deed Book 337, page 525.

BOOK 102 PAGE 932

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 DEC -2 PM 3:39

Thomas A. Henderson, Jr.
JUDGE OF PROBATE

1. Deed Tax \$ _____
2. Mtg. Tax. 1500.00
3. Recording Fee 70.00
4. Indexing Fee 1.00
TOTAL 1571.00