

409
This Instrument Prepared By:

William W. Brooke
WALLACE, BROOKE & BYERS
2000 SouthBridge Parkway, Suite 525
Birmingham, Alabama 35209

STATE OF ALABAMA)
COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE (the "Mortgage"), dated as of November 3, 1989, by and between GUARANTY FEDERAL SAVINGS & LOAN ASSOCIATION having its principal office at P. O. Box 128 (2030 First Avenue North), Birmingham, Alabama 35201 (hereinafter called the "Mortgagee") and RANDAL L. WYATT, DIANNE WYATT BOOTH AND WESLEY C. WYATT, whose address is 621 Lorna Square, Birmingham, Alabama 35216 (hereinafter collectively called the "Mortgagor");

W I T N E S S E T H:

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the principal sum of Three Hundred Thousand and No/100 Dollars (\$300,000) as evidenced by that certain Promissory Note of even date herewith having a maturity date of December 1, 1999, (hereinafter the "Note") executed by Mortgagor and payable to the order of Mortgagee; and

WHEREAS, this Mortgage shall secure the performance of the covenants contained in the Note together with certain other covenants herein described (collectively, the "Obligations").

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of the principal and any other sums payable on the Note or this Mortgage and the performance and observance of all of the provisions hereof and of said Note, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, Mortgagor hereby grants, bargains, sells, warrants, aliens, remises, releases, conveys, assigns, transfers, mortgages and sets over and confirms unto Mortgagee, all that certain real property situated in Shelby County, Alabama more particularly described in Exhibit "A" attached hereto and made a part hereof, together with all buildings, structures and other improvements and replacements thereto, now or hereafter located on the real property referred to above (the "Improvements") or any part thereof (all of the foregoing hereinafter referred to as the "Real Property");

TOGETHER WITH all furniture, furnishings, fixtures, machinery, apparatus, equipment, fittings and fixtures now or hereafter attached to the Real Property or incorporated in the

Improvements, and all building materials of every kind and nature, and all trade, domestic and ornamental fixtures and all personal property now or hereafter located in, upon, over or under said Real Property or any part thereof and used or usable or intended to be used in connection with any present or future operation of said Real Property, including, but not limited to, all heating, air conditioning, lighting, incinerating, and power equipment; all engines, compressors, pipes, pumps, tanks, motors, conduits, and switchboards; all plumbing, lifting, cleaning, fire prevention, fire extinguishing, refrigeration, ventilating and communications apparatus; all boilers, furnaces, oil burners, vacuum cleaning systems, elevators, and escalators; all built in stoves, ovens, ranges, dishwashers, water heaters, exhaust systems, refrigerators, cabinets and partitions; all rugs and carpets; laundry equipment; together with all contract rights to acquire any of the foregoing and all deposits and payments made under contracts for the acquisition of same; together with all additions and accessions thereto and replacements thereof and proceeds therefrom, but excluding from the lien and effect hereof all such items which are owned by Tenants of the Property (the Mortgagor hereby agreeing with respect to all additions, accessions, replacements and proceeds to execute and deliver from time to time such further instruments as may be requested by the Mortgagee to confirm and perfect the conveyance, transfer and assignment of any and all of the foregoing;

TOGETHER WITH all rights of way, streets, alleys, passages, riparian and littoral rights, waters, water courses, sewer capacity rights, sewer connection fees, privileges, tenements, hereditaments, easements, and appurtenances thereunto belonging or in any wise appertaining, whether now owned or hereafter acquired by the Mortgagor, and including all rights of ingress and egress to and from the Real Property and all adjoining property (whether such rights now exist or subsequently arise) together with the reversion or reversions, remainder or remainders, rents, issues and profits thereof; and

TOGETHER WITH any and all awards or payments, including interest thereon, and the right to receive the same, as a result (a) the exercise of the right of eminent domain, condemnation proceedings or the taking of the Mortgaged Property (as hereinafter defined) or any part thereof, (b) the alteration of the grade of any street, or (c) any other injury to, taking of, or decrease in the value of, the Mortgaged Property to the extent of all amounts which may be secured by this Mortgage at the date of receipt of any such award or payment by Mortgagee and of the reasonable attorney's fees, costs and disbursements incurred by Mortgagee in connection with the collection of such award or payment;

TOGETHER WITH any and all deposits (including tenants' security deposits), documents, contract rights, accounts, commitments, construction contracts, architectural agreements, permits, licenses, franchises, certificates, general intangibles (including, without limitation, trademarks, tradenames and symbols, subject, however, to any limitations imposed by any applicable governmental authority relating to the use thereof) and instruments, notes or chattel paper arising from or related to the Mortgaged Property;

TOGETHER WITH all rents, issues and profits arising from all of the above described property whether real or personal, and the Mortgagor's interest as Lessor in and to all leases of said property, or any part thereof, heretofore made and entered into, and in and to all such leases hereafter made and entered into during the life of this Mortgage or any extension or renewal hereof; provided, however, so long as this Mortgage and the Note shall not be in default, Mortgagor shall enjoy the benefit of the revenues and proceeds derived from said property, but upon default, Mortgagor's right to receive such revenue and proceeds shall immediately cease and the Mortgagee shall have the right to receive and collect the proceeds and revenues from the said property.

ALL the foregoing property, both real and personal, and the interests, privileges and rights encumbered by this Mortgage are collectively referred to herein as the "Mortgaged Property" or the "Real Estate Security."

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining and the reversion and reversions thereof and all the estate, right, title, interest, homestead, dower and right of dower, separate estate, possession, claim and demand whatsoever, in law as well as in equity, of Mortgagor in and unto the same, and every part thereof, with the appurtenances of Mortgagor in and to the same, and every part and parcel thereof unto Mortgagee.

This is a Purchase Money Mortgage.

PROVIDED, HOWEVER, that if Mortgagor shall pay to Mortgagee the indebtedness evidenced by the Note together with all other sums advanced by Mortgagee to or on behalf of Mortgagor pursuant to the Note or this Mortgage, and all sums or other indebtedness secured hereby or by any other instruments and agreements given in conjunction with or to secure the indebtedness and undertakings secured hereby (all of the foregoing documents and instruments hereinafter referred to collectively as the "Loan Documents") then this Mortgage and the estate hereby created shall cease and terminate.

ARTICLE I
COVENANTS OF Mortgagor

Mortgagor further covenants and agrees with Mortgagee as follows:

1.01 Title. Mortgagor warrants that it has full ownership of all of the Mortgaged Property, as well as good and marketable title to an indefeasible fee estate in the Real Property, subject to no lien, charge or encumbrance except as may be set forth on Exhibit "A" hereto. Mortgagor has full power and lawful authority to mortgage the Mortgaged Property in the manner and form herein accomplished or intended to be accomplished. Mortgagor will preserve such title and will forever warrant and defend the same to Mortgagee and will forever warrant and defend the validity of the lien hereof against the claims of all persons and parties whomsoever.

1.02 Performance. To perform, observe and comply with each and every provision and covenant of the Note, this Mortgage and all other Loan Documents.

1.03 Prompt Payment. To pay when due all sums as provided for in the Note and any renewal, extension or modification thereof and in this Mortgage, all such sums to be payable in lawful money of the United States of America at Mortgagee's principal office listed above, or at such other place as Mortgagee may designate in writing.

1.04 Assessments. To pay when due, and without requiring any notice from Mortgagee, all taxes, assessments of any type or nature and all other charges levied, assessed or otherwise imposed against the Mortgaged Property or this Mortgage and produce validated receipts therefor no later than the last day upon which such assessments may be paid without penalty. Mortgagor shall also pay all income, franchise and other taxes and governmental charges levied, assessed or imposed by the United States of America or any state, any political subdivision thereof or any other taxing authority upon Mortgagor or in respect of any of the Mortgaged Property or any part thereof, and all charges made by utility companies, public or private, for services furnished or used in connection with the Mortgaged Property (collectively "Impositions").

Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Impositions by appropriate legal proceedings, but this right shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided herein unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's interest to so contest or object to an Imposition,

and unless, at Mortgagee's sole option (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceeding; or (ii) Mortgagor shall demonstrate to Mortgagee's satisfaction that Mortgagor shall provide a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such sale; or (iii) Mortgagor shall furnish a good and sufficient bond or surety as requested by, and in form and amount satisfactory to, Mortgagee.

Mortgagor shall pay all taxes (excluding income, franchise and doing business taxes), assessments, charges, expenses, costs and fees (including registration and recording fees) levied on or assessed against Mortgagee, or incurred in connection with any of the Loan Documents. Mortgagor shall also pay all stamp and other similar taxes required to be paid in connection with the Obligations.

BOOK 264 PAGE 946
In the event of the enactment of or change (including a change in interpretation) of any applicable law, in any manner changing or modifying the laws governing (i) the taxation of mortgages or other security instruments or the debts secured thereby; (ii) the manner of collecting such taxes; or (iii) reserve or special deposit requirements in respect of loans or other assets held by Mortgagee, so as to adversely affect Mortgagee, the Mortgage or any other Loan Document or the indebtedness secured thereby, Mortgagor shall promptly pay any such tax and otherwise compensate Mortgagee to the extent of such detriment; provided, however, that if Mortgagor fail to make such payments or any such law prohibits Mortgagor from making such payment or would penalize Mortgagee in the event of such payment, then the entire principal balance of the Obligations, together with all premiums and interest accrued, thereon and any and all other sums secured by this Mortgage shall, without notice, become immediately due and payable at the option of the Mortgagee.

Failure to pay any such taxes, assessments or charges when due shall entitle Mortgagee to pay same, at Mortgagee's option, and the amount so paid shall become immediately due and payable with interest at the Default Rate as defined in the Note.

1.05 Tax and Insurance Deposits. Mortgagor shall make monthly deposits on account of real estate taxes, assessments levied against the Mortgaged Property and insurance premiums equal to one-twelfth (1/12) of the annual charges estimated by Mortgagee in order to accumulate with Mortgagee sufficient funds to pay such taxes, assessments and premiums 30 days prior to their due date. Such funds shall not constitute trust funds,

shall not bear interest for the account of Mortgagor and may be commingled with other funds of Mortgagee.

1.06 Further Assurances. This Mortgage is given pursuant to the requirements of the loan commitment letter (the "Commitment") between Mortgagor and Mortgagee and Mortgagor will, at the sole cost of Mortgagor, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, renewals, UCC forms, assignments, notices of assignment, transfers and assurances as Mortgagee shall from time to time require in order to fully effectuate the intent of the Commitment, and to preserve the lien of this Mortgage or to facilitate the performance of the terms thereof. To the extent that Mortgagor shall fail or refuse to so execute, acknowledge and deliver any such documents of further assurance following Mortgagee's written request that it do so, Mortgagor hereby appoints Mortgagee its true, lawful and limited attorney-in-fact for the purpose of executing, acknowledging and delivering all such documentation on behalf of Mortgagor.

1.07 Insurance and Application of Insurance Proceeds. Mortgagor shall obtain and maintain in full force and effect, without cost to Mortgagee, fire with all-risk coverage insurance, public liability insurance (in an amount of not less than \$1,000,000) and such other insurance (including rental interruption covering a minimum period of six months) as Mortgagee may reasonably require from time to time. All such insurance shall be obtained from such companies (which must have a Best's rating of A or better and a financial category of X or better) in such amounts (in no event less than the full insurable value of the Mortgaged Property) and with such provisions as Mortgagee may deem necessary or desirable to protect its interests and shall contain a waiver of subrogation clause and non-contributory standard mortgagee clauses. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds may, at Mortgagee's option, either be used to effect restoration of the improvements or applied in payment of the indebtedness secured by the Mortgage, whether or not then due and payable, in any order of priority.

If Mortgagee elects to apply insurance proceeds to restoration, (i) the proceeds may at Mortgagee's election be disbursed in installments by Mortgagee or by a disbursing agent ("Depository") selected by Mortgagee and paid by Mortgagor, (ii) Mortgagor will upon demand by Mortgagee from time to time deposit with Mortgagee or Depository, in a mutually satisfactory interest bearing account, such amounts in excess of remaining insurance proceeds as may be necessary to effect restoration, and (iii) the insurance proceeds (and any amounts in excess thereof

deposited by Mortgagor in the Depository) shall be disbursed from time to time as restoration progresses, based upon receipt of appropriate lien waivers and certificates of the architect or engineer in charge of the work, the form and content of said certificates to be reasonably satisfactory to Mortgagee, and title insurance protection against mechanic's and materialmen's liens.

If an event of default (not cured within any applicable cure period) occurs prior to full disbursement of the insurance proceeds, any undisbursed portion of the insurance proceeds may at Mortgagee's option be applied to the indebtedness evidenced by the Note, whether or not then due and in any order of priority.

In the event any insurance company fails to disburse directly and solely to the Mortgagee but disburses instead either solely to the Mortgagor or to the Mortgagee and Mortgagor jointly, Mortgagor shall receive such insurance proceeds in trust for the benefit of the Mortgagee and shall immediately endorse and transfer the insurance proceeds to the Mortgagee upon demand. If the Mortgagor shall fail or refuse to endorse and transfer such insurance proceeds to the Mortgagee upon demand, the Mortgagee may execute such endorsements or transfers for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoint the Mortgagee as its agent and attorney-in-fact with power and substitution to do so.

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1.08 Mortgagee Consent. To first obtain the written consent of Mortgagee before (a) removing or demolishing any building now or hereafter erected on the premises, (b) materially altering the arrangement, design or structural character thereof, if such alteration has the effect of diminishing Mortgagee's security, (c) making any repairs which involve the removal of structural parts or the exposure of the interior of such building to the elements without adequate safeguards to protect Mortgagee's security, (d) removing any of the personal property which is part of the Mortgaged Property without immediate replacement thereof with property of no less value which is subject to no lien, or title retention or conditional sales contract, or (e) entering into or modifying any lease affecting all or a substantial part of the Mortgaged Property, or (f) amending, modifying, extending or renewing (except in accordance with existing lease provisions, if any), terminating or accepting the surrender of any lease affecting the Mortgaged Property on the date hereof.

1.09 Maintenance and Repairs. To constantly maintain the Mortgaged Property in good condition and repair, and to not commit or permit any waste thereof. Mortgagor shall not, without the prior written consent of Mortgagee, diminish in any respect nor materially alter the Improvements, except such alterations as may be required by laws, ordinances or

regulations, (including landscaped and recreation areas) nor the on-site paved parking areas during the existence of this Mortgage, and shall not erect any buildings or additions to existing buildings or other structures on the Real Property.

1.10 Compliance with Laws. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Mortgaged Property, (including the payment of all taxes owed the United States which may become a lien against the premises), and not to suffer or permit any violation thereof.

1.11 Hazardous Waste and Asbestos.

(a) Mortgagor hereby represents and warrants that neither the Mortgagor nor, to the best of Mortgagor's knowledge, any prior owner or prior or current tenant, subtenant or other occupant of all or any part of the Real Estate Security, has ever caused or permitted any "Hazardous Substances" (as hereinafter defined) to be placed, held, located or disposed of on, under or at the Real Estate Security or any part thereof in any manner that violates the "Environmental Laws" (as hereinafter defined) and, to the best of Mortgagor's knowledge, neither the Real Estate Security nor any part thereof has ever been used (whether by Mortgagor or by any prior owner or current or prior tenant, subtenant or other occupant of all or any part of the Real Estate Security) as a dump site or storage site (whether permanent or temporary) for any Hazardous Substances. Mortgagor hereby further represents and warrants that, to the best of its knowledge and belief, the Real Estate Security does not contain, and has not in the past contained, any asbestos-containing material in friable form and there is no current or potential airborne contamination of the Real Estate Security by asbestos fiber, including, without limitation, any potential contamination that would be caused by maintenance or tenant finish activities in the Real Estate Security.

(b) At its sole cost and expense, Mortgagor shall comply with all federal, state and local laws, regulations and orders with respect to the discharge and removal of hazardous substances or toxic wastes, pay immediately when due the cost of removal of any such wastes, and keep the Mortgaged Property free of any lien imposed pursuant to such laws, rules, regulations and orders. In addition, Mortgagor shall not install or permit to be installed in the Mortgaged Property, asbestos or any substance containing asbestos and deemed hazardous by federal, state or local laws, rules, regulations or orders respecting such material. In the event Mortgagor fails to comply herewith, then after notice to Mortgagor and the expiration of the earlier of (a) 30 days after written notice, or (b) the cure period permitted under the applicable law, rule, regulation or order, Mortgagee may either declare this Mortgage to be in default or cause the Mortgaged Property to be freed from the hazardous

wastes, contaminants or asbestos and the cost of the removal shall be so much additional indebtedness secured hereby and shall become immediately due and payable without notice and with interest thereon at the Default Rate as defined in the Note. Mortgagor shall give to Mortgagee and its agents and its employees access to the Mortgaged Property and hereby specifically grants to Mortgagee a license, effective upon expiration of the applicable cure period, to remove the hazardous wastes, contaminants or asbestos. Mortgagor shall indemnify Mortgagee and hold Mortgagee harmless from and against all loss, cost, damage and expense (including, without limitation, attorney's fees and costs incurred in the investigation, defense and settlement of claims) that Mortgagee may incur as a result of or in connection with the assertion against Mortgagee of any claim relating to the presence or removal of any hazardous waste, contaminants or asbestos referred to in this paragraph or compliance with any federal, state or local laws, rules, regulations or orders relating thereto except for any loss, costs, damage and expense that arises as a result of the willful, wanton or grossly negligent misconduct of Mortgagee. The obligation of Mortgagor under this subparagraph shall survive any termination or satisfaction of this Mortgage.

(c) For purposes of this paragraph 1.11, "Hazardous Substances" shall mean and include those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (EPA) or the list of toxic pollutants designated by Congress or the EPA or any flammable substances, explosives, radioactive materials, hazardous materials, hazardous wastes, toxic substances, pollutants, pollution or related materials which are covered by, or regulated under, any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous wastes, substance or material, as now or at any time hereafter in effect (herein collectively referred to as the "Environmental Laws").

(d) Mortgagor further represents and warrants to Mortgagee that Mortgagor has not received any summons, citation, letter or other communication, whether written or verbal, from any agency or department of any government concerning the presence on the Real Property of any hazardous or toxic wastes or substances. If Mortgagor receives any notice of (i) the happening of any event involving the use, spill, release, leak, seepage, discharge or cleanup of any Hazardous Substance on the Real Estate Security or in connection with Mortgagor's or any tenant's operations thereon or (ii) any complaint, order, citation or notice with regard to air emissions, water discharge or any other environmental, health or safety matter affecting Mortgagor or the Real Estate Security from any person or entity (including but not limited to the EPA), then Mortgagor shall

immediately notify Mortgagee orally and in writing of said notice.

1.12 Mortgagee's Advances to Protect Security. If Mortgagor fails to pay any claim, lien or encumbrance which is or may be superior to this Mortgage, or when due, any tax or assessment or insurance premium, or to keep the Mortgaged Property in repair, or shall commit or permit waste, or if there be commenced any action or proceeding affecting the Mortgaged Property or the title thereto, or the interest of Mortgagee therein, including, but not limited to, eminent domain, bankruptcy or reorganization proceedings, or if Mortgagor otherwise fails to perform any of its obligations or covenants contained in any of the Loan Documents, then Mortgagee, at its option, may pay said claim, lien, encumbrance, tax, assessment or premium, with right of subrogation thereunder, may take such repairs and take such steps as it deems advisable to prevent or cure such waste, and may appear in any such action or proceeding and retain counsel therein, and take such action therein as Mortgagee deems advisable, and may otherwise perform the obligation of Mortgagor under the Loan Documents. For any of such purposes Mortgagee may advance such sums of money, including all costs, reasonable attorney's fees and other items of expense as it deems necessary. Mortgagee shall be the sole judge of the legality, validity and priority of any such claim, lien, encumbrance, tax, assessment and premium and of the amount necessary to be paid in satisfaction thereof. Mortgagee shall not be held accountable for any delay in making any such payment, which delay may result in any additional interest, costs, charges, expenses or otherwise.

1.13 Repayment of Advances. Mortgagor will pay to Mortgagee, immediately upon demand, all sums of money advanced by Mortgagee, including all costs, reasonable attorney's fees and other items of expense, together with interest on each such advance at the Default Rate as defined in the Note, and all such sums and interest thereon shall be secured hereby.

1.14 Change of Ownership or Further Encumbrances and Acceleration. In the event Mortgagor (or any of them), without the prior written consent of Mortgagee (which consent may be withheld for any reason or for no reason), shall sell, convey, assign, transfer or otherwise dispose of or be divested of its title to, or, shall mortgage, convey security title to, or otherwise encumber or caused to be encumbered, the Mortgaged Property or any part thereof or any interest therein in any manner or way, whether voluntary or involuntary, then, in any such event, the entire balance of the secured indebtedness, plus the prepayment premium as defined in the Note, shall become immediately due and payable at the option of Mortgagee. This provision shall not apply to transfers of title or interest under any will or testament or applicable laws of descent. Provided,

further, there shall be no secondary financing of the Mortgaged Property without the prior written consent of Mortgagee. This provision shall apply to each and every sale, assignment, transfer, conveyance or encumbrance regardless of whether or not the Mortgagee has consented to or waived its rights hereunder whether by action or non-action in connection with any previous sale, assignment, transfer, conveyance or encumbrance, whether one or more. In the event that any of the foregoing events shall occur without the prior written consent of Mortgagee, the Mortgagee shall have the right, in its sole discretion, to require that an assumption fee be paid to Mortgagee and/or that the interest rate payable under the Note be increased and that the remaining principal balance of the Note be amortized over a period to be specified by Mortgagee, and that the amount of the monthly payment due under the Note may be changed to reflect any one or more of the foregoing.

1.15 Future Advances. This Mortgage shall secure not only existing indebtedness, but also such future advances, whether such advances are obligatory or to be made at the option of Mortgagee, or otherwise, as are made by Mortgagee to or for the benefit of Mortgagor after the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage.

1.16 No Cooperative or Condominium. Mortgagor shall not operate the Mortgaged Property or permit same to be operated as a cooperative or condominium building or building in which the tenants or occupants participate in the ownership, control, or management of the Mortgaged Property or any part thereof, as tenant stockholders or otherwise.

1.17 Modification. Without obtaining the consent of the Mortgagor, endorser, surety or guarantor, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note:

(a) Release any person liable for payment of all or any part of the indebtedness or for the performance of any obligation.

(b) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge thereof.

(c) Exercise or refrain from exercising or waive any right Mortgagee may have.

(d) Accept additional security of any kind.

(e) Release or otherwise deal with the property, real or personal, securing the indebtedness, including all or any part of the Mortgaged Property.

1.18 Intervening Liens. Any agreement hereafter made by Mortgagor and Mortgagee pursuant to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

1.19 Condemnation. In the event that the Mortgaged Property, or any part thereof, is taken under the power of eminent domain or by condemnation, the Mortgagee, its successors and assigns, shall as a matter of right be entitled to the entire proceeds of the award which is hereby assigned to the Mortgagee, its successors and assigns. The Mortgagor shall give the Mortgagee immediate notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Mortgaged Property and shall deliver to the Mortgagee copies of any and all papers served in connection with any such proceedings. In the event of a total and permanent taking, the proceeds of the award shall be applied to the payment of the indebtedness secured hereby, and if such proceeds shall exceed the amount required under the terms and provisions of the Loan Documents to release the Mortgaged Property, then the excess shall be returned to the Mortgagor. Mortgagor shall be permitted to negotiate a settlement with the condemning authority in connection with the amount of the award to be paid by reason of the taking by power of eminent domain or by condemnation of the property hereinabove described, or any part thereof, provided, however, that no agreement as to the amount of any such award shall become final or binding upon the Mortgagee until consented to in writing by the Mortgagee, provided further, that Mortgagee shall not unreasonably withhold such consent, and provided that any award, whether paid as a result of a negotiated settlement or judgment shall be paid to the Mortgagee, and the Mortgagee is hereby appointed attorney-in-fact for this purpose and as such is duly authorized and empowered to receive, receipt for, discharge and satisfy any such award and judgment, whether joint or several on behalf of Mortgagor, its successors and assigns, which said receipt, discharge and satisfaction shall be as legally effective and binding as if given directly by Mortgagor, or its successors in interest.

1.20 Annual Financial Statements. Mortgagor shall furnish Mortgagee with an annual operating statement in form satisfactory to Mortgagee and prepared and certified by Mortgagor (or, at Mortgagees sole option, by Mortgagor's independent certified public accountant), showing all elements of income and expenses for the operation of the Mortgaged Property, within 120 days of the close of each fiscal year of Mortgagor. The statement shall also include an annual rent schedule and detailed rent roll.

Mortgagee shall have the right during normal business hours, upon five (5) days prior written notice, to inspect and make copies, at Mortgagee's expense, of Mortgagor's books, records and income tax returns with reference to the Mortgaged Property for the purpose of verifying any such report within three (3) years after it has been submitted.

1.21 Warranty of Non-Foreign Mortgagor. Mortgagor hereby represents and warrants to Mortgagee that Mortgagor is not a "foreign person" within the meaning of the Internal Revenue Code of 1954 (the "Code"), (26 U.S.C. §§1445, 7701), that is, Mortgagor is not a nonresident alien, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder, and any successor or assign of the Mortgagor shall provide an affidavit concerning such status under the Code in the form requested by Mortgagee.

ARTICLE II DEFAULTS AND REMEDIES

2.01 Default. The occurrence of any of the following events with respect to the Obligations, the Real Property or the Mortgagor shall constitute an "event of default":

(a) if default be made in payment of any installment of principal or interest of the Note or any part thereof when due or in payment, when due, of any other sum secured hereby, or if there be any default in performance of any of Mortgagor's obligations, covenants or agreements hereunder or under any other Loan Document or instrument delivered by Mortgagor to Mortgagee in connection with the Note and the Mortgage including without limitation the Assignment of Leases of even date herewith, and if said non-monetary default is not cured within thirty (30) days following receipt by Mortgagor of written notice thereof specifying the nature of said default, except that (i) if the default relates to the failure to provide or maintain any required insurance coverages, Mortgagor shall only have five (5) days after receipt of written notice to cure such default (ii) if the default relates to an event of bankruptcy, insolvency or other similar action of debtor relief or protection, no notice shall be required; and (iii) if the default is, in Mortgagee's reasonable judgment, of such a nature that it cannot reasonably be cured within thirty (30) days, then Mortgagor shall have such additional time for cure as Mortgagee may reasonably approve in writing after receipt by Mortgagee within such thirty (30) day period of a written request by Mortgagor therefor, provided Mortgagor commences such cure within said thirty (30) day period and diligently pursues such cure to completion within the time limit set by Mortgagee.

(b) if default should occur in the payment of any other indebtedness owing by the Mortgagor (or any one of them) to Mortgagee, which default shall not be cured within any applicable cure period provided therefore;

(c) if any representation or warranty made in writing by or on behalf of Mortgagor or any guarantor, if any, or other obligor of the Note and this Mortgage in any report, certificate, financial statement or other instrument furnished by or on behalf of Mortgagor or such guarantor or obligor is incorrect in any material respect on the date when made or reaffirmed;

(d) if Mortgagor or such guarantor or obligor admits in writing his or its inability, or be generally unable to pay his or its debts as they become due, or makes an assignment for the benefit of creditors, files a petition in bankruptcy, petitions or applies to any tribunal for the appointment of a custodian, receiver or trustee for Mortgagor or such guarantor or obligor for a substantial part of his or its assets, or commences any proceeding under the bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute or any jurisdiction, whether now or hereafter in effect;

(e) if there is filed any such petition or application, or any such proceeding is commenced against Mortgagor or such guarantor or obligor in which an order for relief is entered and which remains undismissed for a period of thirty (30) days or more;

(f) if Mortgagor or any such guarantor or obligor by act or omission indicates his or its consent to, approval of or acquiescence in any such petition, abdication, proceeding, order for relief, the appointment of a custodian, receiver or any trustee for Mortgagor or any such guarantor or obligor for any substantial part of any of his or its assets, or suffers any such custodianship, receivership or trusteeship to continue undischarged for a period of sixty (60) days or more;

(g) if Mortgagor or any such guarantor or obligor conceals, removes, or permits to be concealed or removed, any part of his or its properties, with intent to hinder, delay or defraud his or its creditors or any of them, or makes or suffers a transfer of any of his or its properties which may be fraudulent under any bankruptcy, fraudulent conveyance or similar law, or makes any transfer of his or its properties to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or suffers or permits, while insolvent, any creditor to obtain a lien upon any of his or its properties through legal proceedings or distraint which is not vacated or in event of lien, if not bonded off or removed from title within thirty (30) days from the date thereof;

(h) if any such guarantor or obligor seeks to cancel, for whatever reason, any guaranty of the Note and the Mortgage, except as expressly permitted by the terms of such guaranty, or breaches any of the covenants and agreements contained therein;

(i) if any final judgment, order or decree be entered against Mortgagor or any such guarantor or obligor for the payment of money not covered by insurance, which is not discharged or the execution of which is not stayed within thirty (30) days from the date the judgment becomes final, or if Mortgagor or any such guarantor or obligor fails during any such stay or execution to appeal from the entry of such judgment and have the same set aside;

(j) if any such guarantor or obligor, if a corporation, voluntarily or involuntarily dissolves or takes any affirmative action seeking to terminate its existence;

(k) if Mortgagor shall fail to either fund and maintain an escrow account as required by Mortgagee to cover all taxes and insurance associated with the Real Property or required to fund completion of tenant improvements, or to be maintained pending the achievement of leasing requirements with respect to the Real Property.

2.02 Remedies. Upon event of default as defined in paragraph 2.01 herein, all of the indebtedness secured hereby shall become and be immediately due and payable at the option of Mortgagee. Thereafter, Mortgagee may avail itself of all rights and remedies, at law or in equity, and this Mortgage may be foreclosed with all rights and remedies afforded by the laws of the State within which the Mortgaged Property is located and Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and may sell the premises at public outcry to the highest bidder for cash in front of the Courthouse door in the County where said property is located, either in person or by auctioneer, 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, Mortgagee, or any person conducting the sale for Mortgagee, is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase the premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the premises 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 Mortgagee may elect. In any such foreclosure and any suit for a deficiency judgment, if any, or upon the enforcement of any other remedy of Mortgagee under this Mortgage or the Note, there shall be allowed and included as

additional indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this Mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this Mortgage, the Note or the premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the default rate specified in the Note, and shall be secured by this Mortgage. The indebtedness secured hereby shall bear interest at the Default Rate, as defined in the Note, from and after the date of any such default of Mortgagor. In the event of a default hereunder resulting in an accelerated payoff of the indebtedness secured hereby, the payoff shall be characterized as an attempt by Mortgagor voluntarily to prepay the loan and the Mortgagor shall pay to the Mortgagee a sum secured by the Mortgage, as a default premium (the "Default Premium") equal to the amount required to be paid at the time of any prepayment as set forth in the Note. If Mortgagee otherwise deems itself insecure with regard to any articles of personalty or removable fixtures that are pledged as, and constitute significant collateral for the repayment of the Note and the fulfillment of the other covenants of Mortgagor hereunder, then Mortgagee may avail itself of any and all remedies provided under the Uniform Commercial Code as adopted in the State within which the Mortgaged Property is located.

2.03 Additional Default Remedies. Upon the occurrence of any event of default set forth herein,

(a) Mortgagee is authorized at any time in its sole discretion to enter upon and take possession of the Mortgaged Property or any part thereof, to perform any acts Mortgagee deems necessary or proper to conserve the security and to collect and receive all rents, issues and profits thereof, including those past due as well as those accruing thereafter; and

(b) Mortgagee shall be entitled as a matter of absolute right, without notice and ex parte, and without consideration to the value or occupancy of the security, or the solvency of the Mortgagor, or the adequacy of the Mortgaged Property as security for the Note, to have a receiver appointed to enter upon and take possession of the Mortgaged Property, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights and powers

permitted under the laws of the State within which the Mortgaged Property is located.

In either such case, Mortgagee or the receiver may also take possession of, and for these purposes use, any and all personal property which is a part of the Mortgaged Property and used by Mortgagor in the rental or leasing thereof or any part thereof. The expenses (including receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby. Mortgagee shall (after payment of all costs and expenses incurred) apply such rents, issues and profits received by it on the indebtedness secured hereby in such order as the court determines. The right to enter and take possession of the Mortgaged Property, to manage and operate the same, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee.

2.04 Affirmation of Right of Acceleration. Mortgagor affirms on behalf of itself, its successors and assigns, that Mortgagee has the right to accelerate the maturity of the indebtedness evidenced by the Note, in security of which this Mortgage is given, as provided by the terms and provisions of said Note.

2.05 Premises to be Sold as One Unit. Mortgagor hereby waives its rights, if any, to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure.

2.06 Other Security Interests. If the indebtedness secured hereby is now or hereafter further secured by chattel mortgages, security interests, financing statements, pledges, contracts of guaranty, assignments of leases or other securities, or if the Mortgaged Property hereby encumbered consists of more than one parcel of real property, Mortgage may, at its option exhaust any one or more of said securities and security hereunder, or such parcels of the security hereunder, either concurrently or independently, and in such order as it may determine.

2.07 Non-Waiver. No delay by Mortgage in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder. No waiver by Mortgagee of any default shall constitute a waiver of or consent to subsequent defaults. No failure of Mortgagee to exercise any option herein given to accelerate maturity of the debt hereby secured, no forbearance by Mortgagee before or after the exercise of such option and no withdrawal or abandonment of foreclosure

proceeding by Mortgagee shall be taken or construed as a waiver of its right to exercise such option or to accelerate the maturity of the debt hereby secured by reason of any past, present or future default on the part of Mortgagor; and, in like manner, the procurement of insurance or the payment of taxes or other liens or charges by Mortgagee shall not be taken or construed as a waiver of its right to accelerate the maturity of the debt hereby secured.

ARTICLE III SECURITY INTEREST

3.01 Creation of Security Interest. Mortgagor hereby grants to Mortgagee a security interest in and to any and all of the tangible and intangible personal property, including all fixtures, equipment and appliances, as well as all contract rights, permits and licenses included within the definition of the Mortgaged Property.

3.02 Uniform Commercial Code. As to the personal property and fixtures referred to above this Mortgage and the security interest created hereby shall constitute a Security Agreement as that term is used in the Uniform Commercial Code as adopted by the State within which the Mortgaged Property is located, and to that end, the Mortgagor hereby grants unto Mortgagee a security interest in such items of collateral.

ARTICLE IV MISCELLANEOUS

4.01 Invalidity. In the event any one or more of the provisions contained in this Mortgage or in the Note shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Mortgagee, not affect any other provisions of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

4.02 Successors and Assigns. The covenants and agreements herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors, and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. All covenants, agreements and undertakings shall be joint and several, and each reference to the "Mortgagor" shall be deemed to include and be made by and on behalf of Mortgagor and each of them.

4.03 Captions. Captions to the paragraphs of this Mortgage are inserted for convenience only, and are not meant to amplify, amend, modify or affect in any way whatsoever, the meanings and intent of this Mortgage.

4.04 Cumulative Rights. The Mortgagee's rights under this Mortgage shall be separate, distinct and cumulative of other powers and rights which the Mortgagee may have in law or equity, and none of them shall be in exclusion of the others. This Mortgage shall not be construed more strictly against one party than against the other, merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both parties have contributed substantially and materially to the preparation of this Mortgage.

4.05 Governing Laws. This Mortgage and Note which it secures shall be governed under the laws of the State of Alabama.

4.06 Notices. Any notice, demand, consent, approval, direction, agreement or other communication required or permitted hereunder or under the other Loan Documents shall be in writing and shall be validly given if mailed by United States mail, certified mail, return receipt requested, postage prepaid, addressed to the persons and at the address set forth below:

As to Mortgagee:

Guaranty Federal Savings & Loan Association
2030 First Avenue North
P. O. Box 128
Birmingham, Alabama 35201

As to Mortgagor:

Randal L. Wyatt, Dianne Wyatt Booth and
Wesley C. Wyatt
621 Lorna Square
Birmingham, Alabama 35216

4.07 Commitment Letter. Except to the extent inconsistent with this Mortgage or the other loan Documents evidencing the Loan, all requirements, covenants and conditions of the Loan Commitment of Mortgagee dated December 19, 1988 and accepted by Mortgagor on January 6, 1989, shall survive the execution of this Mortgage and the closing of the Loan and shall continue in full force and effect until the Loan is paid in full.

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

Randal L. Wyatt
Randal L. Wyatt

Dianne Wyatt Booth
Dianne Wyatt Booth

Wesley C. Wyatt
Wesley C. Wyatt

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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

Given under my hand this 3 day of November, 1989.

W. J. Tol
NOTARY PUBLIC

[SEAL]
My Commission Expires: 3/20/92

BOOK 264 PAGE 961

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Dianne Wyatt Booth, whose name is signed to the foregoing Promissory Note, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this 3 day of November, 1989.

Wm T. Boh
NOTARY PUBLIC

[SEAL]
My Commission Expires: 3/20/92

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

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

Given under my hand this 3 day of November, 1989.

Wm T. Boh
NOTARY PUBLIC

[SEAL]
My Commission Expires: 3/20/92

BOOK 264 PAGE 962

EXHIBIT "A" TO
MORTGAGE AND SECURITY AGREEMENT

LEGAL DESCRIPTION
OF
REAL PROPERTY

A parcel of land located in the North Half of the SW 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows: Commence at the NE corner of the SW 1/4 of the NW 1/4 of said Section 31; thence in an easterly direction, a distance of 452.73 feet; thence 86 degrees 31 minutes 40 seconds right, in a southerly direction, a distance of 1321.78 feet; thence 47 degrees 06 minutes right, in a southwesterly direction, a distance of 250.20 feet to a point in the approximate centerline of an existing road; thence 100 degrees 04 minutes 45 seconds left, in a southeasterly direction along said approximate centerline, a distance of 380.41 feet to the beginning of a curve to the right, having a radius of 965.17 feet; thence in a southeasterly direction along said curve and centerline, a distance of 394.42 feet to the end of said curve; thence continue in a southeasterly direction along said centerline and tangent to said curve, a distance of 210.29 feet; thence 5 degrees 32 minutes 10 seconds right, in a southeasterly direction along said centerline, a distance of 31.69 to the Point of Beginning; thence continue southeasterly along last described course and along said centerline, a distance of 120.37 feet; thence 97 degrees 15 minutes 10 seconds right, in a southwesterly direction, a distance of 261.85 feet; thence 85 degrees 19 minutes 55 seconds right, in a northwesterly direction, a distance of 115.63 feet; thence 93 degrees 43 minutes 38 seconds right, in a northeasterly direction, a distance of 256.11 feet to the Point of Beginning.

Together with and including:

EASEMENT FOR INGRESS AND EGRESS

A parcel of land located in the North Half of the SW 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows: Commence at the NE corner of the SW 1/4 of the NW 1/4 of said Section 31; thence in an easterly direction, a distance of 452.73 feet; thence 86 degrees 31 minutes 40 seconds right, in a southerly direction, a distance of 1321.78 feet; thence 47 degrees 06 minutes right, in a southwesterly direction, a distance of 250.20 feet to a point in the approximate centerline of an existing road; thence 100 degrees 04 minutes 45 seconds left, in a southeasterly direction along said approximate centerline, a distance of 380.41 feet to the beginning of a curve to the right, having a radius of 965.17 feet; thence in a

southeasterly direction along said curve and centerline, a distance of 394.42 feet to the end of said curve; thence continue in a southeasterly direction along said centerline and tangent to said curve, a distance of 210.29 feet; thence 5 degrees 32 minutes 10 seconds right, in a southeasterly direction, a distance of 19.62 feet to the Point of Beginning; thence continue southeasterly along last described course and along said centerline, a distance of 24.15 feet; thence 96 degrees 18 minutes 43 seconds right, in a southwesterly direction, a distance of 256.66 feet; thence 86 degrees 16 minutes 22 right, in a northwesterly direction, a distance of 71.76 feet to a circle right-of-way on a curve having a radius of 50.0 feet; thence 90 degrees right to tangent of said right-of-way curve to the left, having a central angle of 35 degrees 27 minutes 02 seconds, in a northeasterly direction along said curve, a distance of 30.78 feet; thence 125 degrees 27 minutes 02 seconds right to tangent of said curve, in a southeasterly direction, a distance of 58.87 feet; thence 86 degrees 16 minutes 22 seconds left, in a northeasterly direction, a distance of 226.50 feet to the Point of Beginning.

Subject to the following:

1. Restrictions, covenants and conditions as set out in instrument recorded in Deed Book 281 page 6 in Probate Office.
2. Easement to Alabama Power Company as shown by instrument recorded in Deed Book 329 page 306 in Probate Office.
3. Easement to South Central Bell as shown by instrument recorded in Real 229 page 497 in Probate Office.
4. Easement for ingress and egress as shown on survey of Melvin A. Reynolds dated July 20, 1988.

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

89 NOV -7 AM 8:29

F. Thomas R. Shouder, Jr.
JUDGE OF PROBATE

1. Deed Tax -----	\$	450.00
2. Mfg. Tax -----	\$	57.50
3. Recording Fee -----	\$	4.00
4. -----	\$	
5. -----	\$	
6. -----	\$	1.00
Total -----	\$	512.50

