

THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED. 19% OF THE PROPERTY SECURED HEREBY IS LOCATED IN ST. CLAIR COUNTY, 22% IS LOCATED IN TALLADEGA COUNTY, AND 59% IS LOCATED IN SHELBY COUNTY. 100% OF THE MORTGAGE TAX DUE HEREUNDER HAS BEEN PAID TO SHELBY COUNTY FOR DISTRIBUTION TO ALL COUNTIES.

STATE OF ALABAMA)
)
COUNTIES OF SHELBY,
ST. CLAIR, AND TALLADEGA)

**MORTGAGE AND SECURITY AGREEMENT
AND FIXTURE FILING**

THIS MORTGAGE AND SECURITY AGREEMENT, made this 13th day of September, 2002, between **WESLEY L. BOWDEN, JR. AND NORA M. BOWDEN**, husband and wife, (jointly and severally hereinafter the "Mortgagor"), whose address is P.O. Box 145, Sylacauga, Alabama 35150, and **SOUTHTRUST BANK**, an Alabama banking corporation, (hereinafter called the "Lender"), Mortgagee, whose address is Post Office Box 2554, Birmingham, Alabama 35290, Attention: Commercial Lending.

WITNESSETH

WHEREAS, Wesley L. Bowden, Jr. is justly indebted to Lender in the principal sum of \$3,750,000 pursuant to a Term Loan in said initial principal amount said Loan being evidenced by a Real Estate Term Promissory Note in said principal amount made payable to the order of Lender dated September 13th, 2002 (the "Note") (capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to them in the Note); and

WHEREAS, as a condition to making the Term Loan, Lender has required that Mortgagor mortgage, pledge, assign, and convey to it the real estate and interests more particularly described herein.

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, and to secure all other indebtedness of every description of Mortgagor to Lender, arising out of or relating to the Note, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the Lender, its successors and

✓ Canaba Title (File)

assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by Mortgagor and subject to the lien of this Mortgage, or intended to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All those certain tracts or parcels of land particularly described in Exhibit A attached hereto and made a part hereof.

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

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

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

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

(b) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of

eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets. Lender is hereby authorized on behalf and in the name of Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may apply to all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorney's fees, on the indebtedness secured hereby in such manner as it elects, or at its option, the entire amount or any part thereof so received may be released.

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

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall keep, perform and observe all and singular the covenants and promises in the Note, in the Loan Agreement, and in this Mortgage expressed to be kept, performed, and observed by and on the part of the Mortgagor, and all other indebtedness of every description owed by Mortgagor to Lender represented by the Note, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall (except as provided in Section 1.14 hereof) cease, determine and be void, but shall otherwise remain in full force and effect.

AND Mortgagor covenants and agrees with the Lender as follows:

ARTICLE I

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

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

1.03 Monthly Tax Deposits. If required by the Lender, Mortgagor will pay to the Lender on the first day of each month together with and in addition to the regular payment of

interest, until the Note are fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments and similar charges. In the event of a default by the Borrower or Mortgagor in the performance of any of the terms, covenants or conditions in the Note, the Mortgage, or any other loan documents, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determiné, any amount under this Section 1.03 remaining to the Borrower's credit.

1.04 **Other Taxes, Utilities and Liens.**

(a) Mortgagor will pay promptly, when and as due, and will promptly exhibit to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

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

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

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.05 **Insurance.** Mortgagor will procure for, deliver to, and maintain for the benefit of, the Lender during the life of this Mortgage, insurance policies, in such amounts as the Lender shall require, insuring the Mortgaged Property against fire, extended coverage, war damage (if available), and such other insurable hazards, casualties and contingencies as the Lender may require. The form of such policies and the companies issuing them shall be acceptable to the

Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Lender. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Lender shall be delivered to the Lender. Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

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

If required by the Lender, Mortgagor will pay to the Lender on the first day of each month, together with and in addition to the regular payment of interest and monthly tax deposit (as required by Section 1.03 hereof) until the Note are fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Lender to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Upon demand of the Lender, Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such insurance premiums. In the event of a default by the Borrower in the performance of any of the terms, covenants and conditions in the Note, this Mortgage, or any other loan document, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

1.06 Condemnation. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Mortgagor to the Lender, who, after deducting therefrom all its

expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

1.07 Care of the Property.

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

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof One Thousand Dollars (\$1,000.00) for any single transaction, or a total of Five Thousand Dollars (\$5,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

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

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

(e) The Lender is hereby authorized to cause the Mortgaged Property to be appraised and reappraised from time to time, as deemed necessary by the Lender, whether or not an Event of Default has occurred hereunder, and Mortgagor agrees to pay all expenses incurred by the Lender in connection therewith. Bank agrees to pay the cost of any appraisal required in excess of one per calendar year.

(f) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof, including, without limitation, the Americans with Disabilities Act.

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

will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender.

1.08 Further Assurances; After Acquired Property. At any time, and from time to time, upon request by the Lender, Mortgagor will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or re-filed at such time and in such offices and places as shall be deemed desirable by the Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of the Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligations of Mortgagor under the Note, this Mortgage, and any other loan document, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Mortgagor. Upon any failure by Mortgagor so to do, the Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Mortgagor and Mortgagor hereby irrevocably appoints the Lender the agent and attorney-in-fact of Mortgagor so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.

1.09 Leases Affecting Mortgaged Property. Mortgagor will comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Mortgagor will furnish Lender with executed copies of all leases now or hereafter created on said premises; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Mortgagor will not accept payment of rent more than one (1) month in advance without the express written consent of Lender. Mortgagor assigns to the Lender as additional security all such leases, whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the premises from time to time accruing, and will not cancel, surrender or modify any lease so assigned without the written consent of the Lender.

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

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

interest thereon at the Default Rate. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

1.12 **Books and Records.** Mortgagor shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Mortgagor will furnish to the Lender within ninety (90) days after the end of Mortgagor's fiscal year, a balance sheet and a statement of income and expenses, both in reasonable detail and form satisfactory to Lender and certified by Mortgagor, and audited by a Certified Public Accountant satisfactory to the Lender, and a rent schedule of the Mortgaged Property, certified by Mortgagor, showing the name of each tenant, and for each tenant, the space occupied, the lease expiration date and the rent paid.

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

1.14 **Compliance with Applicable Environmental Law.** The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. § 9601 *et. seq.*; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. § 6901 *et seq.*; the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. § 9671, *et seq.*; and the Hazardous Wastes Management and Minimization Act as codified at Code of Ala. 1975 § 22-30-1 *et. seq.*, as amended; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. Mortgagor represents and warrants to the Lender that the Mortgaged Property and Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Mortgaged Property; that Mortgagor has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law; that Mortgagor has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Mortgaged Property; and that the use which Mortgagor

has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. Mortgagor hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities, or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Mortgaged Property and to indemnify and forever save the Lender harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Mortgaged Property or the Lender; and this indemnity shall survive any foreclosure of this Mortgage or the taking by the Lender of a deed in lieu of foreclosure. Mortgagor agrees to notify the Lender in the event that any governmental agency or other entity notifies Mortgagor that it may not be in compliance with any Applicable Environmental Laws. Mortgagor agrees to permit the Lender to have access to the Mortgaged Property at all reasonable times in order to conduct, at Mortgagor's expense, any tests which the Lender deems are necessary to ensure that Mortgagor and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

ARTICLE II

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

(a) Failure by the Borrower or Mortgagor to pay as and when due and payable under the Note, this Mortgage, or any other loan document any installments or other payments of principal, interest or escrow deposits; or

(b) The occurrence of an "Event of Default" as defined in the Note or any other loan document; or

(c) Failure by the Borrower or Mortgagor to duly observe any other covenant, condition or agreement of the Note, this Mortgage or any other document or instrument evidencing or securing the indebtedness secured hereby; or

(d) The filing by Mortgagor of a voluntary petition in bankruptcy or the Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consent to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or

(e) The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief

for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of Mortgagor which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(f) The sale or other transfer of all or any portion of the Mortgaged Property, or any interest therein, without the prior written consent of the Lender, which consent may be granted or refused by the Lender in its sole discretion; or

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

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

2.03 Right of Lender to Enter and Take Possession.

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

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments and other charges prior to the lien of this Mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation,

expenses and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, to the payment of tax and insurance deposits required in Sections 1.03 and 1.05 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

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

2.04 Receiver.

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

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

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

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

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

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

(b) Second, to the repayment of any money, with interest thereon at a rate equal to the Default Rate, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

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

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

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

2.09 Waiver of Exemption. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage.

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

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

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

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

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

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

ARTICLE III

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

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

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

3.04 Security Agreement. This Mortgage shall also be construed to be, and shall be construed as, a security agreement with respect to any of the properties described herein which are characterized by law as fixtures or personal property, of whatever nature (hereinafter referred to as the "Collateral").

(a) **Assembly of Collateral.** Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof, or of the Note secured hereby, the Lender may, at its discretion, require Mortgagor to assemble the Collateral and make it available to the Lender at a place reasonably convenient to both parties to be designated by the Lender.

(b) **Manner of Sale.** Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof, or of the Note secured hereby, all or any part of the Collateral may, at the sole discretion of the Lender, be combined with the real property covered hereby and sold together with such real property as an entirety, or the Collateral (or any part of the Collateral not sold together with the real property) may be sold separately, as one parcel or in such parcels, manner, or order as the Lender, in its sole discretion, may elect.

(c) **Notice of Sale.** The Lender shall give Mortgagor notice, by registered or certified mail, postage prepaid, of the time and place of any public sale of any Collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to Mortgagor at least ten (10) days before the time of the sale or other disposition, which provisions for notice Mortgagor and Lender agree are reasonable.

(d) **Additional Documents.** Mortgagor will, from time to time, within fifteen (15) days after request by the Lender, execute, acknowledge and deliver any financing statement, certificate, continuation statement, inventory, or other similar documents as the Lender may request in order to protect, preserve, continue, extend, or maintain the security interest under the priority of this Mortgage and will, upon demand, pay any expenses incurred by the Lender in the preparation, execution, and filing of any such documents.

(e) **Alabama Uniform Commercial Code.** Except as specifically set forth herein, the Lender shall have, with respect to the Collateral, all rights and privileges of a secured party under the Alabama Uniform Commercial Code.

(f) **Mortgage to Serve as Financing Statement.** This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code.

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

Wesley L. Bowden, Jr.
Wesley L. Bowden, Jr.

Nora M. Bowden
Nora M. Bowden

STATE OF ALABAMA)
Jefferson COUNTY)

I, Judy D. Baker, a Notary Public in and for said County in said State, hereby certify that Wesley L. Bowden, Jr., a married man, and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the Agreement, he executed the same voluntarily.

Given under my hand this 13th day of September, 2002.

Judy D. Baker
Notary Public
My Commission Expires: 4/6/04

STATE OF ALABAMA)
Jefferson COUNTY)

I, Judy D. Baker, a Notary Public in and for said County in said State, hereby certify that Nora M. Bowden, a married woman, and who is known to me, acknowledged before me on this day that, being fully informed of the contents of the Agreement, she executed the same voluntarily.

Given under my hand this 13th day of September, 2002.

Judy D. Baker
Notary Public
My Commission Expires: 4/6/04

This instrument was prepared by George M. Taylor, III, 3100 SouthTrust Tower, 420 North 20th Street, Birmingham, Alabama 35203

EXHIBIT A

Property Descriptions

Parcel 1 (16937 US Hwy 280, Chelsea, Shelby County, Alabama 35043)

Lot 2, according to the survey of The Shoppes at the Corners, Phase 2, as recorded in Map Book 26, page 89, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Parcel 2 (5275 US Hwy 280, Harpersville, Shelby County, Alabama 35078)

From the true Southwest corner of the Southwest 1/4 of Section 28, Township 19 South, Range 2 East, run thence East along the true South boundary of said Southwest 1/4 of Southeast 1/4 a distance of 582.97 feet; thence turn 72°06'48" left and run 135.73 feet to a point on the North Boundary of Kymulga Ferry Road, being the Southeast corner of the McDaniel Investment, Inc. lot as described in Instrument 1993-32023, being the point of beginning of herein described lot; thence continue along said course and along the East line of the McDaniel Investment, Inc. lot a distance of 265.18 feet to an iron pin on the South boundary of U.S. Highway 280 (120 foot right-of-way); thence turn 99°09' right and run a chord distance of 256.71 feet to a concrete monument on said Highway boundary; thence turn 75°58'30" right and run 133.95 feet along a right-of-way flair-back to a concrete monument on the North boundary of Kymulga Ferry Road; thence turn 78°11'15" right and run 100.10 feet along said road boundary to a concrete monument; thence turn 90°17'50" left and run 10.0 feet to a concrete monument on said road boundary; thence turn 89°58'20" right and run 179.73 feet along said road boundary to the point of beginning herein described lot; being situated in Shelby County, Alabama.

Parcel 3 (1859 Martin Street South, Pell City, St. Clair County, Alabama 35125)

A parcel of land lying in the Southwest Quarter of the Southwest Quarter of Section 7, Township 17 South, Range 4 East, Pell City, St. Clair County, Alabama, and being more particularly described as follows: Commence at the Southeast corner of Lot 12, Block 1 of the E.D. Scott Subdivision on the West right of way of U.S. Highway 231 (said subdivision map is on record in Map Book 1908, Page 60, in the Office of the Judge of Probate, St. Clair County Courthouse, Pell City, Alabama.); thence run South 09 degrees 41 minutes 25 seconds East along said right of way for 277.89 feet to the point of beginning; thence continue South 09 degrees 41 minutes 25 seconds East along said right of way for 4.63 feet; thence run South 81 degrees 14 minutes 20 seconds West along said right of way for 75.05 feet; thence run along a spiral to the right of said right of way for 195.38 feet (chord = South 08 degrees 21 minutes 15 seconds East, 195.37 feet), to the PC of a curve on said right of way; thence leaving said right of way run South 84 degrees 03 minutes 45 seconds West for 258.12 feet; thence run North 08 degrees 11

minutes 10 seconds West for 200.00 feet; thence run North 83 degrees 25 minutes 50 seconds East for 332.40 feet to the point of beginning.

Less and except all that portion of the above described property conveyed to the State of Alabama by deed recorded in Deed Book 260, page 55, as recorded in the Probate Office of St. Clair County, Alabama. The above contains 1.2 acres, more or less.

Parcel 4(a) (Broadway & 10th Street, Sylacauga, Talladega County, Alabama)

Commence at a corner in place being the Northeast intersection of Norton Avenue and 10th Street; thence proceed South 88° 13' 43" East along the North boundary of said 10th Street for a distance of 230.0 feet to the POINT OF BEGINNING. From this beginning point continue South 88° 13' 43" East along the North boundary of said 10th Street for a distance of 25 feet to a corner in place; thence proceed North 01° 49' 47" East for a distance of 199.89 feet to a corner in place; thence proceed North 88° 06' 45" West for a distance of 25 feet; thence proceed South 01° 49' 47" West for a distance of 199.86 feet to the POINT OF BEGINNING.

The above described land is located in the Northeast one-fourth of the Northwest one-fourth of Section 29, Township 21 South, Range 4 East, Talladega County, Alabama, and contains 0.11 acres

Parcel 4(b) (Broadway & 10th Street, Sylacauga, Talladega County, Alabama)

A parcel of land described by its bounds as follows: Commence at a corner in place being the Northeast Intersection of Norton Avenue and 10th Street, as now located in the City of Sylacauga, Alabama; thence proceed South 88° 13' 43" East along the North Boundary of said 10th Street for a distance of 255.0 feet to a corner in place, being the POINT OF BEGINNING. From this beginning point continue South 88° 13' 43" East along the North boundary of said 10th Street for a distance of 127.97 feet to its point of intersection with the Westerly right-of-way line of Broadway Avenue; thence proceed North 16° 00' 04" East along the Westerly right-of-way line of said Broadway Avenue for a distance of 141.71 feet to its point of intersection with the East boundary of the Northeast one-fourth of the Northwest one-fourth Section 29, Township 21 South, Range 4 East, Talladega County, Alabama; thence proceed North 00° 41' 33" East along the East boundary of said quarter-quarter section for a distance of 62.21 feet; thence proceed North 88° 06' 45" West for a distance of 161.43 feet to a corner in place; thence proceed South 01° 49' 47" West along a fence for a distance of 199.89 feet to the POINT OF BEGINNING.

The above described land is located in the Northeast one-fourth of the Northwest one-fourth Section 29, Township 21 South, Range 4 East, Talladega County, Alabama.

EXHIBIT B
Permitted Exceptions

1. General special taxes or assessments for the year 2002 and subsequent years not yet due and payable.
2. Easements as shown by recorded plat, including an easement of 30 feet x 15 feet on the southeasterly corner (Parcel 1).
3. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 102 page 143 in Probate Office (Parcel 1).
4. Title to all minerals within and underlying the premises, together with all mining rights, privileges and immunities relating thereto, including rights set out in Deed Book 13 page 177 in Probate Office (Parcel 1).
5. Restrictions, limitations and conditions as set out in Map Book 26 Page 89 in the Probate Office (Parcel 1).
6. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 107 page 472 in Probate Office (Parcel 2).
7. Right(s)-of-Way(s) granted to State of Alabama by instrument(s) recorded in Deed Book 339 page 665 in Probate Office (Parcel 2).
8. Right(s)-of-Way(s) granted to Shelby County by instrument(s) recorded in Deed Book 114 page 562 in Probate Office (Parcel 2).
9. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 327 page 226 in Probate Office (Parcel 2).
10. Pole Line Permit(s) to Alabama Power Company as set out by instrument recorded in Deed Book 45 page 441 and Deed Book 80 page 141 in the Probate Office (Parcel 3).
11. Rights of tenants in possession under unrecorded Leases (Parcel 4).