323

THE STATE OF ALABAMA)
)
TUSCALOOSA COUNTY)

AMENDED CLAIM AGAINST ESTATE

IN THE PROBATE COURT OF
SAID COUNTY

THE FIRST NATIONAL BANK OF
TUSKALOOSA

vs:

ESTATE OF T. H. BENNERS, II
(CASE NO.: 10181)

I, the undersigned, Thomas P. Hester, do hereby certify that I am a Vice President of The First National Bank of Tuskaloosa and as such officer have knowledge of the notes and accounts of said bank.

I further certify that the Estate of T. H. Benners, II, is indebted to said The First National Bank of Tuskaloosa, Tuscaloosa, Alabama, in the amount of $65,450.00, evidenced by one note dated May 14, 1979; copies of note attached.

This claim is filed to correct inadvertent typographical error in the designation of decedent. Debt claimed herein is the same debt as the one claimed October 10, 1979.

Given under my hand this 22nd day of January, 1980.

Thomas P. Hester
Thomas P. Hester

19800710000075330 1/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

Subscribed and sworn to before me this

22nd day of January, 1980.

Barbara A. Mott
Notary Public
MY COMMISSION EXPIRES FEB. 15, 1983.

The original of this claim received and

filed this 22 day of January, 1980

W. Hardy McCollum
Judge of Probate

Claim 10181
pp. 79

Bradley, Arant, Rose & White

36 PAGE 628
BOOK
THIS INSTRUMENT PREPARED BY
BK
D.T.
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BOOK 36 PAGE 629

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Shelby Cnty Judge of Probate, AL
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H/

Tuskaloosa, Ala., May 14 1979

$65,450.0

On June 15, 1979 days after date, I promise to pay to the order of THE FIRST NATIONAL BANK OF TUSKALOOSA, with interest from Sixty-Five Thousand Four Hundred Fifty and No/100 date at 12% DOLLARS, in lawful money of the United States, for value received; negotiable and payable at THE FIRST NATIONAL BANK OF TUSKALOOSA, Tuskaloosa, Alabama.

All of the parties to this note, whether maker, endorser, surety, or guarantor, each for himself hereby severally agrees to pay a discount on the indebtedness evidenced by this note, at the rate of eight per cent (8%) per annum, from the date of this note until the maturity thereof, or to pay interest, in advance, on said indebtedness, at the rate of eight per cent (8%) per annum from the date of this note until the maturity thereof, and to pay interest on said indebtedness from the maturity of this note at the rate of eight per cent (8%) per annum until paid.

As collateral security for the payment of this note, and for the payment of any and all other debts, obligations, and/or liabilities, of the undersigned, and/or of either or any of them, to, or held or owned by, any holder hereof, due or to become due, or which may hereafter be contracted or existing, whether the same have been incurred, or shall in the future be incurred, directly, or indirectly, by the undersigned, and/or by either or any of them, to the holder hereof, and whether such debts, obligations, and/or liabilities have been, or shall in the future be, acquired by the holder through transactions with the undersigned, and/or with either or any of them, or through assignment from other persons in regular course of business, or otherwise, and whether such debts, obligations, and/or liabilities of the undersigned, and/or either or any of them, be absolute or contingent, and whether such debts, obligations, and/or liabilities be single or joint, binding the maker, or any of the makers, of this note singly, or jointly, with any other person, or persons, whether as a corporation or a partnership or individually, I deliver to and deposit with, and hereby pledge, assign and convey to said payee, the following property, viz.:

Secured by collateral as listed on Collateral Record Nos. 4215, 4165, 4167 and 4171 attached

I authorize and empower said payee, and/or its, his, or their successors, heirs, personal representatives or assigns, to sell, assign and deliver the whole or any part of said collaterals, or any substitute therefor, or any addition thereto, at any broker's board, or any other place selected by the holder hereof, at public or private sale, at the option of the owner or holder of this instrument, his, theirs, or its assigns, selling said property at the option of the holder, either as a whole or in parts at the same time, or at different times, and/or to collect said collaterals, on default in the payment of this instrument, or on non-payment of any of the liabilities above named, or at any time or times thereafter, with or without advertisement, or notice which is hereby expressly waived; and upon such sale or sales the owner or holder hereof may purchase the whole or any part of said property, or securities, discharged from any right of redemption or liability for conversion. In case of depreciation in the market value of the property or securities hereby pledged, or that may hereafter be pledged, for the payment of this instrument, or if from any cause whatever the said property, or securities pledged shall cease to be satisfactory collateral to the owner or holder hereof for this debt, its renewal, extension or substitute, the undersigned hereby agrees to deposit additional security, from time to time as demanded, and failing to deposit additional security to the satisfaction of the owner or holder hereof, this instrument shall become due and payable for all purposes, and sale and/or collection of the collateral pledged may be made immediately as provided for above. The owner or holder of this instrument is authorized to apply the proceeds of any such sale, and/or collection, as follows: First, to the payment of the expenses of making such sale, or sales, collection or collections, including commissions, together with a reasonable attorney's fee, if an attorney is employed or consulted; Second, to the payment of the principal debt hereby secured, with interest thereon; Third, to the payment of any other debts, obligations and/or liabilities of the undersigned, or of either or any of them, as maker, surety, endorser, guarantor, or otherwise, to, or held or owned by, the owner, or holder of this instrument, although such other debt, instrument, obligation, or liability, be not then due; and, lastly, if any surplus remains the same shall be paid to the undersigned, allowing a rebate of all unearned interest paid in advance. The owner or holder of this instrument, or debt, may sue on and enforce any of the securities, collateral, or property above pledged, and may exercise all rights and powers therein contained.

Any bonds, notes or other property that the undersigned, or either of them, may have in the possession or custody of the owner or holder of this instrument, at the time of the maturity of this instrument, or at the time of the maturity of any other obligation, or liability of the undersigned, or of either, or any of them, then held, or owned by the owner, or holder, of this instrument, shall be regarded as security for the payment of this instrument, and as security for the payment of any other debt, liability or liabilities of the undersigned, or either of them, to, or held or owned by, the owner or holder hereof, and may be sold and/or collected by the owner or holder hereof, on the terms and conditions above mentioned, and the proceeds of the sale or sales, collection, or collections, or so much thereof as may be needed, may be applied to the payment of this instrument, and/or to the payment of any other debt, liability or liabilities of the undersigned, or either of them, to, or held or owned by, the owner or holder hereof, whether the same be then due or not.

All parties to this instrument, whether maker, endorser, surety, or guarantor, each severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them, or either of them, and they severally agree that time of payment may be extended without notice to them or either of them of such extension. The Bank at which this instrument is payable is hereby authorized, solely at its option, to apply, on or after maturity of this instrument, whether such maturity be before or on the due date set out in the face of this instrument, to the payment of this debt, and/or to the payment of any other debt, or liability, of the undersigned, or either or any of them, to, or held or owned by, the owner or holder hereof, any funds in said bank belonging to the maker, endorser, surety, guarantor or either or any of them; but the failure or omission to make such application shall not have the effect of releasing or in any way impairing the obligation of any party to this instrument, whether maker, endorser, surety, or guarantor.

Bankruptcy proceedings by or against, or garnishment or attachment proceedings against the property or funds of, any party to this instrument, whether maker, endorser, surety or guarantor, shall mature this instrument, and make the same become and be, at once, due and payable, regardless of the due date set out in the face of this instrument. All parties to this instrument, whether maker, endorser, surety, or guarantor, each for himself, hereby severally waives as to this debt, and any renewal or extension thereof, all rights of exemption under the Constitution and laws of Alabama, or of any other State, as to personal property, and they each severally agree to pay all costs and expenses of collecting or securing or attempting to collect or secure this instrument, including a reasonable Attorney's fee, whether the same be collected or secured, or enforced, by suit, either at law, or in equity, foreclosure under the power herein contained, or by proceeding in Court, or otherwise.

Upon the transfer of this instrument the payee, or holder hereof, may deliver the collaterals, or any part thereof, to the transferee, who shall become vested with all of the powers and rights of the payee with respect thereto; and the payee or holder shall thereafter be relieved and discharged from all liability or responsibility in the premises.

Upon the payment of the indebtedness evidenced and secured by this instrument, the payee, or holder hereof, may deliver all of the collaterals to either or any of the undersigned; and the payee, or holder hereof, shall thereafter be released and discharged from any and all liability or responsibility in the premises.

If the maturity of this instrument is accelerated under any provision herein contained and interest thereon has been paid in advance, credit for unearned interest shall be given.

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No. (L.S.)

R. No. (L.S.)

Due Jun 15, 79 (L.S.)

900 206 5 - ~~00018~~ - 6,600.00 ~~09062~~ - 11,000.00
~~00026~~ - 2,250.00
~~00034~~ - 15,000.00 ~~09059~~ - 15,000.00
00067 - 5,000.00

Mr. Thomas H. Bonners, III 1110 East Hargrove

THE STATE OF ALABAMA

COUNTY OF TUSCALOOSA

IN THE MATTER OF THE ESTATE OF	§	IN THE PROBATE COURT OF TUSCALOOSA COUNTY, ALABAMA
THOMAS H. BENNERS II, DECEASED	§	CASE NO. 10181

CLAIM AGAINST ESTATE

Now comes E. Earl Rhyne, General Partner of FIFTEENTH STREET, LTD, and presents and files this claim against the Estate of Thomas H. Benners II, deceased, and shows unto this Court that said Estate is indebted to claimant as a "Lessee" under that certain lease agreement between FIFTEENTH STREET, LTD, as Lessor, and John M. Forney, T. H. Benners II, Charles Northen and Douglas Layton as Lessees, a copy of which is attached hereto as Exhibit "A" of this claim.

The undersigned has knowledge of the correctness of this claim; that the same is true and correct; that the Estate is liable under said lease agreement; and that there are no set-offs or credits against said claim.

FIFTEENTH STREET, LTD.

BY: _____
E. Earl Rhyne, Its General Partner

Sworn to and subscribed before me the undersigned authority, on this 11th day of December, 1979.

Margaret Ann Sewell
Notary Public 1/31/83

BOOK 36 PAGE 630

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THIS INSTRUMENT WAS FILED
BK ____ PG ____
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DEC 14 3 58 PM '79
JUDGE OF PROBATE
TUSCALOOSA, ALA.

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

THIS INSTRUMENT WAS PREPARED BY:
ROSEN, WRIGHT, HARWOOD & ALBRIGHT, P.A.
ATTORNEYS AT LAW
1020 25TH AVENUE
TUSCALOOSA, ALABAMA 35401

Claimsbook
8P. 73

LEASE AGREEMENT

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

1. PARTIES. THIS LEASE AGREEMENT is between FIFTEENTH STREET, LTD., a Limited Partnership, herein referred to as LESSOR, and John M. Forney, T. H. Benners, II, Charles Northern and Douglas Layton, Individuals, herein referred to as LESSEE.

2. PREMISES. LESSOR hereby leases to LESSEE and LESSEE leases from LESSOR, for the term and upon the terms and conditions hereinafter set forth, the premises described in Exhibit "A" and shown on the site plan which shall be Exhibit "B", both of which Exhibits shall be initialed by the parties and attached hereto and made a part hereof, together with the building and other improvements to be constructed thereon as hereinafter provided, and together with the right to use all adjoining parking areas, driveways, sidewalks, roads, alleys and means of ingress and egress, insofar as LESSOR has the power to lease or license the use thereof. (If Exhibit "B" conflicts with any revised site plan as hereinafter provided, the revised site plan shall control.)

3. CONSTRUCTION. LESSOR agrees at LESSOR's expense to construct on the leased premises a building and other improvements in accordance with plans and specifications approved by LESSEE. LESSOR acknowledges receipt of Set No. RS37-V of LESSEE's plans and specifications, as drawn by LEROY W. VANOVER, ARCHITECT, BIRMINGHAM, AL., dated January 1, 1978. The parties agree promptly to obtain an architect's or engineer's site plan. If any revision of LESSEE's plans and specifications is necessary, for any reason, the parties shall obtain revised plans and specifications. The site plan and any revision of the plans and specifications must be approved by LESSEE. LESSEE's approval shall be evidenced by the signature of LESSEE's authorized representative on the site plan, Exhibit "B". The cover sheet of each set of plans and specifications, which shall be marked as Exhibit "C", shall be signed by all parties. LESSOR agrees on or before 12-1, 1978, to complete construction of the building and other improvements in strict accordance with the site plan and plans and specifications as approved by LESSEE. If LESSOR shall fail to complete the construction on or before the agreed date, LESSEE may enforce specific performance

EXHIBIT "A"

of LESSOR's covenants and agreements or may pursue any other available legal or equitable remedy. If LESSOR for any reason whatever shall fail to complete the construction before 2-1, 1979, LESSEE shall have the option to terminate this lease.

LESSOR shall submit bids to LESSEE within _____ (___) days after the signing of this Agreement. LESSEE shall have the right to entertain competitive bids from other contractors, but in any event the LESSEE must approve a Contractor within sixty (60) days of the signing hereof. LESSOR will use its best efforts in collecting construction bids to limit the cost of Lessor's investment above land cost to Ninety One Thousand and No/100---------- Dollars ($91,000.00-----); however, in the event the lowest bid received by LESSOR requires that Lessor's investment be in excess of $91,000.00------, LESSEE shall: ~~have the option to terminate the monthly rental based upon the cost of the improvements (b)~~ Pay in cash all improvement costs in excess of the amount stated above upon completion of construction; ~~XXXX

5. RENT. LESSEE agrees to pay to LESSOR or his designee, a rental of ONE THOUSAND EIGHT HUNDRED AND NO/100---------- Dollars ($1,800.00) per month for each and every month during the term of this lease, and Six (6%) per cent of the gross annual sales, as defined herein, in excess of THREE HUNDRED FORTY FIVE THOUSAND AND No/100--- Dollars ($345,000.00) such monthly rental to be paid in advance on or before the First (1st) day of each month (unless such rent shall be abated or diminished as provided hereinafter). Such rental payments may be paid by check and sent to LESSOR by ordinary first class mail. See Special Stipulations A and B.

6. LESSOR'S USE COVENANT. LESSOR covenants that the leased premises can be used for the purpose of operating thereon a 24-hour 365-day-a-year restaurant with the location of the store building, signs and curb breaks to be shown on the site plan which shall be Exhibit "B", and attached hereto, or as changed or modified by LESSEE. In the event such intended use of the property would violate any federal, state or local ordinances or should LESSEE be prevented from so using and enjoying the property by any regulation or restriction affecting the property, or by the failure or refusal of any authority having jurisdiction over the property to issue any permit or license, then such fact or facts shall be treated as objections to LESSOR's title, the provisions herein with reference thereto shall apply, and LESSEE shall not be required to accept lease on subject premises.

7. TAXES. LESSEE agrees to pay all property taxes levied upon the land and building. LESSEE further agrees to pay all taxes levied upon personal property, including trade fixtures and inventory kept on the leased premises during the term of this lease. LESSOR shall promptly forward LESSEE an exact copy of all tax notices received by LESSOR. LESSEE agrees to pay to LESSOR a proportionate amount of the taxes levied upon the land which is designated as per attached site plan and marked Exhibit "B". Lessee agrees to pay any & all rental taxes or fees.

8. MAINTENANCE. LESSEE agrees to keep both the interior and exterior of the building in good repair, and in as good order and repair as it is at the date of commencement of this Lease, normal wear and tear or other casualty excepted, including the plumbing, electrical wiring, air conditioning and heating equipment, and to maintain the surface of the parking area. LESSOR shall, during the term of this lease, and any renewal thereof, maintain the structural soundness of the bui[redacted]g.

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Shelby Cnty Judge of Probate, AL

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9. ALTERATIONS. LESSEE shall not make any alteration involving structural changes without securing LESSOR's written consent. Other alterations or additions, such as to store front, marquee and non-weight bearing partitions, may be made by LESSEE in a good and workman-like manner and without cost to LESSOR.

10. TERMINATION ON DEFAULT. It is mutually agreed that in the event LESSEE shall default in the payment of rent herein reserved when due, or shall fail to pay when due and payable all taxes and governmental charges provided in Paragraph 7 above, and shall fail to cure such default or failure within Thirty (30) days after written notice thereof from LESSOR; or if LESSEE is adjudicated a bankrupt, or if a permanent receiver is appointed for LESSEE's property and such receiver is not removed within Sixty (60) days after written notice from LESSOR to LESSEE to obtain such removal; or if, whether voluntarily or involuntarily, LESSEE takes advantage of any debtor relief proceeding under any present or future law whereby the rent or any part thereof, is, or is proposed to be, reduced or payment thereof deferred; or if LESSEE makes an assignment for the benefit of creditors; or if LESSEE's effects should be levied upon or attached under process against LESSEE, and if said levy or attachment is not satisfied, dissolved, or stayed by bond within Thirty (30) days after written notice from LESSOR to LESSEE to obtain satisfaction thereof; then, and in any of the aforesaid events, LESSOR, at its option, may at once or within Six (6) months thereafter (but only during continuance of such default or condition) terminate this lease by written notice to LESSEE, whereupon this lease shall end.

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11. TRADE FIXTURES. LESSOR recognizes that from time to time throughout the original and any renewal term hereof, LESSEE will place upon demised premises and within the building located thereon certain machinery, equipment, fixtures, and trade fixtures, which personal property may be the subject of a conditional sales agreement, a mortgage or other security interest. LESSOR does hereby acknowledge and agree that all items of machinery equipment, fixtures and trade fixtures placed or located upon the demised premises shall be and remain the sole property of LESSEE or any secured party of LESSEE. LESSOR further covenants that said equipment and fixtures shall be and remain the personal property of LESSEE regardless of the manner in which said equipment and fixtures are attached or secured to the demised premises; that such

equipment and fixtures shall not at any time be deemed a part of the realty, and that such equipment and fixtures may be removed from the demised premises by LESSEE or its secured party at any time before or after termination of this Lease Agreement, and any extensions or renewals thereof; provided, however that LESSEE or its said secured party shall repair any damage caused by such removal, so long as not in default and there is no reason to believe that Lessee will be in default.

12. IDENTIFICATION OF BUILDING. LESSOR acknowledges and agrees that the building and improvements which are constructed, or to be constructed, on the leased premises will be in accordance with unique and distinctive designs or the plans and specifications of the OMELET SHOPPE, INC.; therefor, LESSOR warrants that upon the termination of this lease for any reason whatsoever, LESSEE shall have the right, at its own expense, to take such action as shall be necessary to distinguish said building and improvements from the "Omelet Shoppe" System, so as to eliminate any possible confusion by the public. LESSOR acknowledges that in the event of breach of these covenants, LESSEE and OMELET SHOPPE, INC., will not have an adequate remedy at law. Therefore, LESSEE and OMELET SHOPPE, INC., shall be entitled to equitable relief to enforce the provisions of this paragraph and LESSOR agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by LESSEE and/or OMELET SHOPPE, as a result of LESSOR's violation of, or default in performance of this paragraph or any other part of this lease agreement.

13. SIGNS AND TRADEMARKS. LESSOR acknowledges and agrees that LESSEE shall install or have installed, on the leased premises, unique and distinctive signs advertising the "Omelet Shoppe" business of LESSEE that LESSOR does not by virtue of this agreement or otherwise, acquire any rights to or interest in any trademarks, service marks, copyrights, or patent rights, existing or applied for, or which may be applied for the future in connection with said signs. Said signs shall be at all times deemed personal property and shall at all times be severable from the leased premises, free of any claims or right of LESSOR. Upon the termination of this lease agreement, or any extension thereof, for any reason, LESSEE or OMELET SHOPPE, INC., shall have the right to remove all said signs from the premises and LESSOR agrees to peaceably surrend and deliver possession thereof.

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Shelby Cnty Judge of Probate, AL
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14. CONDITION OF DEMISED PREMISES. LESSOR and LESSEE acknowledge that LESSEE will use the building presently located (or to be constructed) on the demised premises for a restaurant or other lawful purposes, and LESSEE agrees that upon the expiration or other termination herein provided in this Lease Agreement, LESSEE will surrender to LESSOR the possession of the demised premises and all buildings, parking areas, driveways and other improvements thereon in as good condition as when received, reasonable wear, tear, use condemnation and casualty excepted. At such time, LESSEE, or LESSEE's secured party referred to in Paragraph 11 above shall remove all of their respective effects from the demised premises and at such time, LESSOR shall have the right to enter the demised premises and be repossessed thereof, removing all persons and effects therefrom by the use of such force as may be necessary without being guilty of trespass, forcible entry, detainer or other tort.

Lessee to take Loss of Rents insurance.

15. INSURANCE. LESSEE shall, at its own cost and expense, obtain and maintain throughout the term of this lease, public liability insurance for the benefits of the LESSOR and LESSEE in an amount of not less than Two Hundred Fifty Thousand Dollars ($250,000.00) for any one injury and Five Hundred Thousand Dollars ($500,000.00) for any one casualty. The insurance referred to above shall be in the name of LESSOR and LESSEE and shall be issued under the LESSEE's general policy. LESSEE shall furnish LESSOR with certificates thereof issued by LESSEE's insurance company. LESSEE further agrees to obtain and maintain in force and furnish a standard fire and extended coverage insurance policy on said improvements during the entire term of this lease and any renewals thereof in an amount equal to at least Seventy Thousand Dollars ($70,000.00) or 80% of the replacement value, whichever is greater, in the name of and for the benefit of LESSOR and LESSEE. LESSEE agrees to name LESSOR's mortgage holder as an additional insured. Lessee will be responsible for full replacement cost whether covered or not by insurance.

16. UTILITY BILLS LESSEE shall pay for all utility charges, including, but not limited to, water, sanitation, sewer, gas, electricity, fuel, and other services incident to LESSEE's use of the demised premises. Lessee will also pay all meter deposits.

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17. CASUALTY TO BUILDING. In the event the improvements located on the demised premises are partially or totally damaged by fire or other peril covered under the standard fire and extended coverage insurance policy as described herein, the resulting proceeds of said policy of insurance shall promptly be used by LESSEE and LESSOR, for restoration of the said improvements to a condition at least as good as that existing immediately prior to such casualty. If, however, such casualty occurs during the last two years of the original or any renewal or extension term of this lease and results in damage to said improvements to the extent of 60% or more of the replacement cost of said improvements, then in such event, LESSEE shall have the option to cancel this lease by turning over to LESSOR such insurance proceeds as LESSEE has received (less any amount payable to any secured party of LESSEE) but in no case less than the cost to place

accompanied by written notice to LESSOR of LESSEE's intention to cancel the Lease Agreement within Thirty (30) days following date of such casualty. During the period that the demised premises are unsuitable, LESSEE's rental payments shall not abate until total repairs and restoration are completed because Lessee should provide loss of rents insurance. If LESSEE elects to operate its business in said building before the demised premises are totally repaired and restored, the rent payable hereunder shall be reduced in the same proportion that the aggregate number of square feet of said building and parking area are reduced by said lack of repair and restoration.

~~If any casualty occurs which is not the fault of LESSEE and LESSEE's right to cancel this lease by giving written notice to LESSOR or LESSEE's intention to cancel within Ten (10) days following the date of such casualty~~ In any event, if the applicable term of the lease is not cancelled by LESSEE, such term and any renewal or extension term thereof shall automatically be extended by a period of time equal to the time consumed in the repairing of said premises after any insured or uninsured casualty.

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18. EMINENT DOMAIN. If all of the leased premises are taken under the power of eminent domain or conveyed under threat of condemnation proceedings, or if only a part of such premises are so taken or conveyed and LESSEE shall determine that the remainder is inadequate or unsatisfactory for its purposes, which determination shall not be arbitrarily or capriciously made, then in either event, this lease

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shall terminate effective as of the date LESSEE is required to give up the right to occupy or use any part of the leased premises or common areas. The termination of this lease as above provided shall not operate to deprive LESSEE of the right to make claim against the condemning authority for any damages suffered by LESSEE, but LESSEE shall have no right to make any claim against LESSOR because of such termination. If this lease is not terminated as above provided, LESSOR and LESSEE shall agree upon an equitable reduction of the rental. If the parties fail to agree upon such reduction within Sixty (60) days from the date of the final award or payment for the part of the leased premises so taken or conveyed, LESSOR and LESSEE shall each choose one arbitrator and the two arbitrators so chosen shall choose a third arbitrator. The decision of any two of the arbitrators as to the rental reduction, if any, shall be binding on LESSEE and LESSOR and any expense of arbitration shall be divided equally between LESSEE and LESSOR.

19. SUBLETTING. LESSEE may sublet the premises or assign this lease for any lawful use or purpose without LESSOR's consent; provided, however, that LESSEE shall remain liable under all the terms and provisions of this lease following any such assignment or subletting unless specifically released in writing by LESSOR.

20. LESSOR'S COVENANT. LESSOR covenants, warrants and agrees that during the original term and any renewal or extension thereof, LESSOR will not sell or lease any real property nor will Lessee or Guarantor's operate a business within a radius of One (1) Mile of the demised premises for the use of a 24-hour restaurant or restaurant serving breakfast, such as Dennys, Waffle House, Sambos, Shoneys, Pitt Grill, Jerrys, or Huddle House, but not limited to the above restaurants.

21. LESSOR'S WARRANTY. LESSOR represents and warrants that LESSOR is, or presently shall be, the owner in fee simple of, or holds a leasehold estate in, the demised premises, and that on the date hereof the demised premises are free and clear of any liens, encumbrances, tenancies, and leases, (other than this lease and mortgage financing of LESSOR incidental to acquisition of land and construction of the contemplated improvements thereon); that LESSOR has the power and authority to execute and deliver this indenture and to incur all obligations provided herein, and perform and comply with the terms, conditions and provisions of any agreement, obligation, judgment, decree, order, statute, rule or

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regulation applicable to LESSOR. LESSOR hereby agrees, at LESSOR's expense, to furnish LESSEE with a Title Binder and a standard form of Leasehold Title Policy issued by a Company qualified to insure titles in this State and which is acceptable to LESSEE.

22. COMPLIANCE WITH LAWS. LESSEE will promptly comply with all applicable and valid laws, ordinances and regulations of federal, state, county, municipal or other lawful authority pertaining to the use and occupancy of the demised premises.

23. BANKRUPTCY. Should LESSEE make an assignment for the benefit of creditors, or be adjudicated a bankrupt, such action shall constitute a breach of this lease for which LESSOR, at its option, may terminate all rights of LESSEE or its successors in interest under this lease.

24. ATTORNEYS FEES. If suit is brought to enforce any covenant or condition herein contained, the parties hereto agree that the losing party shall pay to the prevailing party reasonable attorneys fees, together with all costs of Court.

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25. HOLDING OVER. If LESSEE remains in possession of premises after expiration of the term hereof, with LESSOR's acquiescence and without any express agreement of the parties, LESSEE shall be a tenant at will at 1½ times rental rate in effect at the end of the lease, and there shall be no renewal or extension of this lease by operation of law.

26. SHORT FORM LEASE. LESSOR and LESSEE hereby agree to enter into a short form Memorandum of Lease setting out (a) the names of the parties hereto, (b) the description of the demised premises as the same appears on Exhibit "A" hereof, and (c) the dates of this Lease Agreement and the original and any renewal term hereof. Such Memorandum of Lease shall be in writing, shall be duly executed by all parties hereto and shall be properly witnessed and acknowledged for recording at the expense of the party that needs it recorded, in the state in which the demised premises are located.

27. NOTICES. All rentals payable to LESSOR and notices required to be given to LESSOR under this lease shall be sent to LESSOR at:

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

FIFTEENTH STREET, LTD.
P. O. Box 26370
Birmingham, Alabama 35226

and all notices required to be given to LESSEE shall be sent to LESSEE at:

TUSCALOOSA OMELET SHOPPES, INC.
120 Office Park Drive
Birmingham, Alabama 35223

unless either party notifies the other in writing of a change of address.

28. DEFAULT OF FRANCHISEE. The LESSEE, under this Lease Agreement, is a Franchisee of OMELET SHOPPE, INC., Birmingham, Alabama, and if LESSEE shall be in default under any provision of this Lease Agreement, and LESSOR has given written notice to LESSEE of LESSOR's intent to terminate this agreement under the terms herein, or if LESSEE is in default under any of the provisions of LESSEE's Franchise Agreement with OMELET SHOPPE, INC., the parent company, and OMELET SHOPPE, INC. desires to terminate said Franchise Agreement, LESSOR and LESSEE mutually agree that OMELET SHOPPE, INC. shall have the option to take over this lease and to cure LESSEE's default if any, and to assume said Lease Agreement from LESSEE upon the same terms and conditions herein. It is further agreed by LESSOR, should LESSEE be in default under any provision of this Lease Agreement, LESSOR shall notify OMELET SHOPPE, INC. (129 Citation Court, Birmingham, Alabama, 35209) of said default and they shall have the option to cure LESSEE's default and assume this lease in its entirety and shall assume all the obligations, terms and conditions contained in this Agreement.

BOOK 36 PAGE 640

29. OFF-SITE IMPROVEMENTS. LESSOR warrants that adequate public sanitary sewer, city water, natural gas and three phase electricity lines are located at the property line or in the street or alley immediately adjoining the subject property and are available for LESSEE's use. If the utilities are not available, LESSOR agrees to make these utilities available to the subject property without additional expense to LESSEE, other than normal connection or tap-on charges.

30. RIGHT OF FIRST REFUSAL. If during the term of this lease, or any extension thereof, LESSOR shall receive a bona fide offer to purchase the demised premises, which offer is acceptable to LESSOR, LESSOR agrees that LESSEE shall have and is hereby granted an option to purchase the demised premises upon the same terms and provisions. LESSOR agrees immediately after receipt of such offer to give LESSEE notice in writing of the terms and provisions thereof, and that LESSEE may exercise its

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

option to purchase said property at any time within Fifteen (15) days after such notice is received by LESSEE. If LESSEE shall elect to exercise such option it shall do so by giving notice in writing to LESSOR within such Fifteen (15) day period and a contract of sale shall be executed by the parties and title closed within a reasonable time thereafter. The failure of LESSEE to exercise the option provided in this paragraph shall in no way relieve or release LESSOR from the terms and effect of the option granted in Paragraph 31 herein.

~~XXXX

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

further waiver of the same covenant or condition or any other covenant or condition of this lease or a waiver of any other or subsequent breach.

(c) All of the covenants, agreements, provisions, and conditions of this lease shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives and assigns.

(d) The captions, section numbers, and index appearing in this lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this lease nor in any way affect this lease.

(e) This Lease Agreement shall become binding upon all parties and be of full force and effect upon the last execution date hereof.

35. SPECIAL STIPULATIONS.

(A) GROSS SALES. "Gross Sales" is hereby defined to mean the total of all sales less sales from vending machines, refunds or credits and all taxes paid.

BOOK 36 PAGE 642

(B) PERCENTAGE RENT. Percentage Rent as described herein, shall be paid annually commencing at the beginning of the term of this lease or on any anniversary date of the beginning of the term of this lease. Lessee shall keep a full and accurate set of books showing the amount of Gross Sales as defined herein in each lease year and shall pay said percentage rents based upon said books within thirty (30) days after the close of each lease year. LESSOR shall have the right to annually inspect the LESSEE's books and all supporting documents during normal business hours. If an audit shows that sales have been under report by 5% or more then Lessee will pay for the audit.

~~(C) GUARANTY AGREEMENT. This lease and all the conditions~~ contained herein are guaranteed by the Guaranty Agreement attached ~~hereto, signed and executed by all parties.~~

(D) AGENT'S COMMISSION. It is agreed that E. Earl Rhyne has represented to Landlord in negotiating and securing this lease with the Tenant: that Landlord and its successors in title to said real estate shall pay to E. Earl Rhyne five (5%) percent rental commission each month on all rental received by such Landlord or its successors in title during the term of this lease, during the term of any and all options of this lease which may have been exercised by the Tenant, and also so long as the Landlord or its successors in title to the leased premises shall lease said premises to the Tenant, or any assignee or

(E) Lessor has entered into an agreement with Key Oil Co., Inc. that they will not use or sublease the property east of the demised premises for a restaurant, if Lessee agrees not to use or sublease the demised premises for the sale of gasoline or auto repair.

36. The Lessee is being leased the West 120 feet of the property owned by the Lessor and the Lessor will continue to own the East 80 feet of Lots 13 through 16, Block 10 of Cedar Crest Subdivision. It is understood and agreed between the parties that both parcels shall be used for public, commercial purposes and, in order to facilitate the free flow of pedestrian and vehicular traffic on, across and between the parcels, neither party shall erect any fence or other obstruction on either parcel. Both parties, their respective agents and employees, and their respective customers shall all have free right of ingress and egress to and from both parcels of property, subject to the rights given herein and the right of the parties to place suitable buildings or improvements on the property; provided, however, that such buildings and other improvements shall not unreasonably interfere with reasonable ingress and egress.

BOOK 36 PAGE 643

IN WITNESS WHEREOF, the parties hereto hereunto affix their hands and seals.

EXECUTED BY LESSOR, this 15th day of August, 1980.

LESSOR: FIFTEENTH STREET, LTD.

WITNESSES:

E. Earl Rhyne, General Partner

19800710000075330 16/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

EXECUTED BY LESSEE, this 29 day of August, 19 76.

LESSEE:

ATTEST:

By

Its

John M. Forney, Individual

T. H. Benners, II, Individual

Charles Northern, Individual

Douglas Layton, Individual

STATE OF ALABAMA)
COUNTY OF Jefferson)

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

Given under my hand and seal this the 29th day of August, 1978.

Josephine M. Kaplan
Notary Public

My Commission Expires May 5, 1980

STATE OF ALABAMA)
COUNTY OF Jefferson)

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

Given under my hand and seal this the 29th day of August, 1978.

Josephine M. Kaplan
Notary Public

My Commission Expires May 5, 1980

19800710000075330 17/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 36 PAGE 644

STATE OF ALABAMA)
COUNTY OF Jefferson)

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

Given under my hand and seal this the 29th day of August, 1978.

STATE OF ALABAMA)
COUNTY OF Jefferson)

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

Given under my hand and seal this the 29th day of August, 1978.

Josephine M. Kaplan
Notary Public

My Commission Expires May 5, 1980

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 36 PAGE 645

STATE OF ALABAMA)
COUNTY OF Jefferson)

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

Given under my hand and seal this the 15th day of August, 1978.

Pattie R. Jackson
Notary Public
My Commission Expires: 7-24-82

STATE OF ALABAMA)
)
TUSCALOOSA COUNTY)

IN THE MATTER OF THE ESTATE OF THOMAS H. BENNERS, II	)))	IN THE PROBATE COURT OF TUSCALOOSA COUNTY, ALABAMA CASE NO. 10181

Comes now Birmingham Trust National Bank and files this claim against the Estate of Thomas H. Benners, II, deceased, and says the the Estate of Thomas H. Benners, II is indebted to Birmingham Trust National Bank in the principal sum of Nine Thousand Five Hundred and 00/100 Dollars ($9,500.00), plus interest from September 5, 1979, as evidenced by a promissory note dated October 17, 1979, such note being secured by a pledge of One Hundred Sixty-Eight (168) shares of stock in Exxon Corporation and One Hundred (100) shares of stock in Standard Oil Company, a true and correct copy of which promissory note is attached hereto and made a part hereof; and Birmingham Trust National Bank states that the said Estate of Thomas H. Benners, II is further indebted to Birmingham Trust National Bank in the principal sum of Two Thousand Seven Hundred Thirty-Seven and 82/1 Dollars ($2,737.82), plus interest thereon from June 6, 1979, as evidenced by a promissory note dated March 15, 1979, a true and correct copy of which note is attached hereto and made a part hereof.

The indebtednesses as hereinabove described are due and unpaid in their entirety after allowing all proper credits,

BK 36 PAGE 646
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Shelby Cnty Judge of Probate, AL
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Claims Book
8 P. 70

and the said Birmingham Trust National Bank hereby makes demand in full for the entire balance of the indebtednesses due together with all accrued interest thereon.

Dated this 21st day of November, 1979.

BIRMINGHAM TRUST NATIONAL BANK

By: _____
Clark Gillespy, Vice President

STATE OF ALABAMA)
)
JEFFERSON COUNTY)

Before me, the undersigned authority, in and for said County, in said State, this day personally appeared Clark Gillespy, known to me, and who, after being first duly sworn, deposes and says that he is Vice president of Birmingham Trust National Bank, the claimant, and authorized to make this affidavit; that he has personal knowledge of the foregoing claim and that the same is true and correct and due and unpaid after allowing all proper credits.

Sworn to and subscribed before me this 21st day of November, 1979.

_____
Notary Public
My Commission Expires Dec. 26, 1980

BOOK 36 PAGE 647

19800710000075330 20/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

This Instrument was prepared by:
JAMES J. ROBINSON, Attorney
1600 Bank for Savings Building
BIRMINGHAM, ALABAMA 35203

Ref. 9,500.00

[redacted]GLE PAYMENT NOTE, SECURITY [redacted]EMENT AND DISCLOSURE STAT[redacted]

044-40098

BIRMINGHAM TRUST NATIONAL BANK
P. O. Box 2554
Birmingham, Alabama 35290

Name of Borrower: Thomas H. Benners, II
Name of Borrower: c/o Elizabeth Benners
Address: 1110 East Hargrove Road
Tuscaloosa, Al. 35401
(City) (County) (State) (Zip)

$ 9,500.00

Birmingham, Alabama October 17, *19* 79

1. demand but not later than 90 days from 9/5/79 *after date, for value received, the undersigned (whether one or more, hereinafter called Borrower) severally promise(s) to pay to the order of Birmingham Trust National Bank (hereinafter, together with any holder of this note, called the Holder) at any office of said Bank or at such other place as the Holder may designate, the sum of* Nine thousand five hundred dollars and 00/100 ---------- *DOLLARS Borrower and every endorser, surety, and guarantor hereof hereby agree to the deduction of discount or payment of interest in advance made concurrently with the execution hereof at the rate fixed thereby if the same is done, otherwise interest is payable on the principal amount hereof at the rate of* 12.00 *percent per annum until maturity, and in either event, at the maximum rate allowed by law on the unpaid principal balance after maturity.*

2. To secure the payment when due of the indebtedness evidenced hereby, all renewals and extensions thereof and all FUTURE AND OTHER INDEBTEDNESS of the Borrower to the Holder, Borrower hereby grants Holder a SECURITY INTEREST in and pledges with Holder the property described below and all accessions now or hereafter affixed thereto, and the proceeds of all of the above (all of which is hereinafter called "the Collateral"):

168 Shares of Exxon Corporation
100 Shares of Standard Oil Company

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Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

3. Holder shall have the right to set off the indebtedness evidenced hereby against any indebtedness of Holder to Borrower or any other party obligated hereon. As additional security for the payment of this note when due, Borrower hereby transfers and assigns to Holder, and grants Holder a continuing lien upon and SECURITY INTEREST in, all account balances, credits, deposits, and rights of withdrawal of Borrower with Holder, whether now or hereafter existing, and whether jointly or severally held, and Borrower agrees that Holder shall have a lien upon and SECURITY INTEREST in all property of the Borrower of every kind now or hereafter in the possession or control of Holder for any reason. The SECURITY INTEREST of Holder under this paragraph and paragraph 2 covers AFTER ACQUIRED PROPERTY of Borrower.

4. In the event of death of, insolvency of, general assignment by, judgment against, or filing of petition in bankruptcy by or against any party obligated hereon, or in the event Borrower fails to provide any insurance required hereunder, or in the event any of the Collateral is moved to another state for more than 30 days, or in the event the Holder reasonably deems itself insecure, then in any such event the Holder shall have the right at its election, and without notice to the Borrower or any other party, to declare the entire indebtedness evidenced hereby immediately due and payable and to proceed in any lawful manner for the collection thereof. No delay in making any election hereunder shall be construed as a waiver of the right to make one.

5. If the original amount financed exceeds $300.00, Borrower agrees to pay all costs of collecting or attempting to collect this note, including a reasonable ATTORNEY'S FEE not exceeding 15% of the unpaid debt after default if any attorney, not a salaried employee of Holder, is consulted with reference to suit or otherwise.

6. In the event of prepayment in full, acceleration of due date, or the refinancing or renewal of this note before maturity, Borrower shall receive a daily pro rata refund or credit (at Holder's option) of the unearned portion of the FINANCE CHARGES hereunder, and the insurance premiums for insurance purchased from Holder and financed hereunder, if any, computed as of the date of such prepayment, acceleration, refinancing or renewal.

BOOK 30 PAGE 040

INSURANCE

7. IF AMOUNT FINANCED exceeds $300.00, (exclusive of charges for insurance) insurance against loss of or damage to the Collateral (if any) or insurance insuring Holder's lien on the Collateral is required. If Borrower at any time fails to provide such insurance coverage Holder may, at its election and upon 10 days' notice to Borrower, purchase single interest insurance, and Borrower agrees to reimburse Holder for the cost of same. BORROWER MAY CHOOSE PERSON THROUGH WHICH PROPERTY INSURANCE IS OBTAINED. BORROWER HAS THE OPTION OF PROVIDING ANY SUCH INSURANCE THROUGH AN EXISTING POLICY OR A POLICY INDEPENDENTLY OBTAINED AND PAID FOR BY BORROWER. NO CREDIT LIFE OR DISABILITY INSURANCE IS REQUIRED AND NONE IS PROVIDED UNLESS SIGNED AND DATED IN THE SPACE PROVIDED. The term of any insurance provided hereunder shall end on the maturity date of this note as originally scheduled, unless a different term is disclosed below. Borrower desires and requests Holder to obtain insurance coverage as checked below:

☐ Property Damage Insurance [Term_____Months] Cost $_____

☐ Disability Insurance (A&H) [Term_____Months] Cost $_____

☐ Credit Life Insurance [Term_____Months] ..... Cost $_____

I desire property damage, credit life and/or disability insurance as checked above if available, but understand that coverage of either may be declined; if declined, any charge therefor shall be paid to me or credited to my account at Holder's option. I certify that I am _____ years of age and in good health to the best of my knowledge.

_____ _____, 19____
(Only the Insured Borrower signs here) (Date)

NO INSURANCE PROVIDED HEREUNDER COVERS LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY OF OTHERS.

8. LOAN PROCEEDS, consisting of:
   a. Cash Proceeds ..... $_____
   b. Net Payoff of Loan Being Refinanced .... $ 9,500.00
   c. TOTAL LOAN PROCEEDS (a+b) ..... $ 9,500.00

9. OTHER CHARGES, consisting of
   a. Property Insurance ..... $_____
   b. Credit Life Insurance ..... $_____
   c. Disability Insurance ..... $_____
   d. Recording Fees ..... $_____
   e. Title Fees ..... $_____
   f. Other (Specify) ..... $_____
   g. TOTAL OTHER CHARGES (a+b+c+d+e+f) ..... $_____

10. AMOUNT FINANCED (8c+9g) ..... $ 9,500.00

11. FINANCE CHARGES, consisting of
   a. Discount (Prepaid Finance Charge) ..... $_____
   b. Interest to Date of Maturity ..... $ 281.09
   c. Other (Specify) ..... $_____

12. **FINANCE CHARGE** (11a+11b+11c) ..... $ 281.09

13. **ANNUAL PERCENTAGE RATE** ..... 12.00 %

14. TOTAL OF PAYMENTS (10+12) ..... $ 9,781.09

15. Interest accrues from date of this note unless a different date is shown here _____

16. Obligations payable on demand are considered to have a maturity of one-half year for the purpose of computing the amount of the finance charge, the annual percentage rate, and the total of payments, except that where the obligation is alternatively payable upon a stated maturity date, the stated maturity date is used for the purpose of such computation.

17. No provision of this note requires the payment or permits the collection of finance charges in excess of the maximum premitted by law. If any finance charge in excess of the maximum permitted by law is or shall be adjudicated to be provided for herein, the provisions of this paragraph shall govern, and Borrower shall not be obligated to pay the amount of such finance charge to the extent that it is in excess of the amount permitted by law. Any such excess amount paid by Borrower will be held in trust for Borrower to be refunded or credited upon demand. If any provision of this note is unlawful, each such provision shall be without force and effect without thereby affecting any other provisions hereof.

18. Borrower and every other party obligated hereon severally waive demand, presentment, notice of dishonor, protest, acceptance, suit and any other requirement necessary to hold them liable hereon, and, to the extent permitted by law, each such party waives all rights of exemption of property from levy and sale under the Constitution and laws of the State of Alabama, provided, however, that no consumer protection provision of the Alabama Consumer Credit Act is waived hereby.

IN WITNESS WHEREOF, the parties have signed this note without condition on the above date. At the time of signing, Borrower acknowledges receipt of a duplicate copy hereof, completely and legibly filled in and signed, which constitutes the entire agreement between the parties. No modification hereof shall be valid in any event unless made in writing and signed by the parties hereto. The additional terms and conditions on the reverse side are a part of this note.

CAUTION — IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

_____ [SEAL]
Endorser's Signature — See Endorser's Agreement on Reverse Side

Elizabeth M. Dawn Benners
x Adm. Est. Thomas H. Benners II [SEAL]
Borrower's Signature Thomas H. Benners, II

_____ [SEAL]
Borrower's Signature

Endorser's Address

Account No. _____
Note No. _____
Date December 4, 1979

SEE ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE

SINGLE PAYMENT NOTE, SECURITY AGREEMENT AND DISCLOSURE STATEMENT 944-40098

BIRMINGHAM TRUST NATIONAL BANK
P. O. Box 2554
Birmingham, Alabama 35290

Name of Borrower: TOM H. BENNERS
Name of Borrower:
Address: 110 EAST HARGROVE RD
TUSCALOOSA AL 35401
(City) (County) (State) (Zip)

$2,949.57 Rec 202.10 SAM 97.90 P

Birmingham, Alabama 3-15-79, 19

1. 90 days after date, for value received, the undersigned (whether one or more, hereinafter called Borrower) severally promise(s) to pay to the order of Birmingham Trust National Bank (hereinafter, together with any holder of this note, called the Holder), at any office of said Bank or at such other place as the Holder may designate, the sum of Twenty Nine Hundred Forty Nine DOLLARS Borrower and every endorser, surety, and guarantor hereof hereby agree to the deduction of discount or payment of interest in advance made concurrently with the execution hereof at the rate fixed thereby if the same is done, otherwise interest is payable on the principal amount hereof at the rate of 10 percent per annum until maturity, and in either event, at the maximum rate allowed by law on the unpaid principal balance after maturity.

2. To secure the payment when due of the indebtedness evidenced hereby, all renewals and extensions thereof and all FUTURE AND OTHER INDEBTEDNESS of the Borrower to the Holder, Borrower hereby grants Holder a SECURITY INTEREST in and pledges with Holder the property described below and all accessions now or hereafter affixed thereto, and the proceeds of all of the above (all of which is hereinafter called "the Collateral"):

19800710000075330 22/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

3. Holder shall have the right to set off the indebtedness evidenced hereby against any indebtedness of Holder to Borrower or any other party obligated hereon. As additional security for the payment of this note when due, Borrower hereby transfers and assigns to Holder, and grants Holder a continuing lien upon and SECURITY INTEREST in, all account balances, credits, deposits, and rights of withdrawal of Borrower with Holder, whether now or hereafter existing, and whether jointly or severally held, and Borrower agrees that Holder shall have a lien upon and SECURITY INTEREST in all property of the Borrower of every kind now or hereafter in the possession or control of Holder for any reason. The SECURITY INTEREST of Holder under this paragraph and paragraph 2 covers AFTER ACQUIRED PROPERTY of Borrower.

4. In the event of death of, insolvency of, general assignment by, judgment against, or filing of petition in bankruptcy by or against any party obligated hereon, or in the event Borrower fails to provide any insurance required hereunder, or in the event any of the Collateral is moved to another state for more than 30 days, or in the event the Holder reasonably deems itself insecure, then in any such event the Holder shall have the right at its election, and without notice to the Borrower or any other party, to declare the entire indebtedness evidenced hereby immediately due and payable and to proceed in any lawful manner for the collection thereof. No delay in making any election hereunder shall be construed as a waiver of the right to make one.

5. If the original amount financed exceeds $300.00, Borrower agrees to pay all costs of collecting or attempting to collect this note, including a reasonable ATTORNEY'S FEE not exceeding 15% of the unpaid debt after default if any attorney, not a salaried employee of Holder, is consulted with reference to suit or otherwise.

6. In the event of prepayment in full, acceleration of due date, or the refinancing or renewal of this note before maturity, Borrower shall receive a daily pro rata refund or credit (at Holder's option) of the unearned portion of the FINANCE CHARGES hereunder, and the insurance premiums for insurance purchased from Holder and financed hereunder, if any, computed as of the date of such prepayment, acceleration, refinancing or renewal.

INSURANCE

7. IF AMOUNT FINANCED exceeds $300.00, (exclusive of charges for insurance) insurance against loss of or damage to the Collateral (if any) or insurance insuring Holder's lien on the Collateral is required. If Borrower at any time fails to provide such insurance coverage Holder may, at its election and upon 10 days' notice to Borrower, purchase single interest insurance, and Borrower agrees to reimburse Holder for the cost of same. BORROWER MAY CHOOSE PERSON THROUGH WHICH PROPERTY INSURANCE IS OBTAINED. BORROWER HAS THE OPTION OF PROVIDING ANY SUCH INSURANCE THROUGH AN EXISTING POLICY OR A POLICY INDEPENDENTLY OBTAINED AND PAID FOR BY BORROWER. NO CREDIT LIFE OR DISABILITY INSURANCE IS REQUIRED AND NONE IS PROVIDED UNLESS SIGNED AND DATED IN THE SPACE PROVIDED. The term of any insurance provided hereunder shall end on the maturity date of this note as originally scheduled, unless a different term is disclosed below. Borrower desires and requests Holder to obtain insurance coverage as checked below:

☐ **Property Damage Insurance** [Term_____Months] Cost $_____

☐ **Disability Insurance (A&H)** [Term_____Months] Cost $_____

☐ **Credit Life Insurance** [Term_____Months] ..... Cost $_____

I desire property damage, credit life and/or disability insurance as checked above if available, but understand that coverage of either may be declined; if declined, any charge therefor shall be paid to me or credited to my account at Holder's option. I certify that I am _____ years of age and in good health to the best of my knowledge.

_____ _____, 19____
(Only the Insured Borrower signs here) (Date)

NO INSURANCE PROVIDED HEREUNDER COVERS LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY OF OTHERS.

8. LOAN PROCEEDS, consisting of:
- a. Cash Proceeds ..... $
- b. Net Payoff of Loan Being Refinanced ..... $ 2,949.57
- c. TOTAL LOAN PROCEEDS (a+b) ..... $ 2,949.57

9. OTHER CHARGES, consisting of
- a. Property Insurance ..... $
- b. Credit Life Insurance ..... $
- c. Disability Insurance ..... $
- d. Recording Fees ..... $
- e. Title Fees ..... $
- f. Other (Specify) ..... $
- g. TOTAL OTHER CHARGES (a+b+c+d+e+f) ..... $

10. AMOUNT FINANCED (8c + 9g) ..... $ 2,949.57

11. FINANCE CHARGES, consisting of
- a. Discount (Prepaid Finance Charge) ..... $
- b. Interest to Date of Maturity ..... $ 76.37
- c. Other (Specify) ..... $

12. FINANCE CHARGE (11a + 11b + 11c) ..... $ 76.37

13. ANNUAL PERCENTAGE RATE ..... 10.5 %

14. TOTAL OF PAYMENTS (10 + 12) ..... $ 3,025.94

15. Interest accrues from date of this note unless a different date is shown here _____

16. Obligations payable on demand are considered to have a maturity of one-half year for the purpose of computing the amount of the finance charge, the annual percentage rate, and the total of payments, except that where the obligation is alternatively payable upon a stated maturity date, the stated maturity date is used for the purpose of such computation.

17. No provision of this note requires the payment or permits the collection of finance charges in excess of the maximum premitted by law. If any finance charge in excess of the maximum permitted by law is or shall be adjudicated to be provided for herein, the provisions of this paragraph shall govern, and Borrower shall not be obligated to pay the amount of such finance charge to the extent that it is in excess of the amount permitted by law. Any such excess amount paid by Borrower will be held in trust for Borrower to be refunded or credited upon demand. If any provision of this note is unlawful, each such provision shall be without force and effect without thereby affecting any other provisions hereof.

18. Borrower and every other party obligated hereon severally waive demand, presentment, notice of dishonor, protest, acceptance, suit and any other requirement necessary to hold them liable hereon, and, to the extent permitted by law, each such party waives all rights of exemption of property from levy and sale under the Constitution and laws of the State of Alabama, provided, however, that no consumer protection provision of the Alabama Consumer Credit Act is waived hereby.

IN WITNESS WHEREOF, the parties have signed this note without condition on the above date. At the time of signing, Borrower acknowledges receipt of a duplicate copy hereof, completely and legibly filled in and signed, which constitutes the entire agreement between the parties. No modification hereof shall be valid in any event unless made in writing and signed by the parties hereto. The additional terms and conditions on the reverse side are a part of this note.

CAUTION — IT IS IMPORTANT THAT YOU THOROUGHLY READ THE CONTRACT BEFORE YOU SIGN IT.

_____ [SEAL] Endorser's Signature — See Endorser's Agreement on Reverse Side

x T. H. Benners, II [SEAL] Borrower's Signature

Endorser's Address

[SEAL] Borrower's Signature

Account No. 1661694
Note No. 0981014
Due Date JUNE 13 1979

SEE ADDITIONAL TERMS AND CONDITIONS ON REVERSE SIDE

[redacted] 10: [redacted] 2,737.32 + Int. 9[redacted]

BOOK 30 PAGE 64

LOAN AND DISCOUNT – COMMERCIAL LOANS NEW NOTE

24. In the event of default hereunder Borrower agrees ... to do so shall be a bar to any action against Holder for taking such property when the Collateral is repossessed. Upon ... shall assemble the Collateral and make it available to Holder at a place designated by Holder. To the extent that notice of any sale or other disposition of the Collateral upon repossession is required by law to be given to Borrower, the requirement of reasonable notice shall be met by mailing such notice to Borrower at the address shown hereon, or at such address as Borrower shall furnish Holder in writing, at least five (5) days before the time of such sale or disposition.

25. Borrower hereby consents that Holder and its agents may come upon any and all premises where the Collateral is located and agrees that any such entry for the purpose of repossession of the Collateral after default shall not be a trespass upon the premises and any such repossession shall not be a conversion of the Collateral.

26. Holder shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder or as provided by law, and no waiver of any kind shall be valid unless in writing and signed by Holder. Holder may take or release any other security for, and may release any party primarily or secondarily liable on, this note, and may grant extensions, renewals, or indulgences hereof, all without releasing or in any way affecting the liability of any party obligated hereon.

ENDORSER'S AGREEMENT

Each of the endorsers, jointly and severally, engages that upon dishonor he will pay the within note according to its tenor at the time of his endorsement together with a reasonable attorney's fee not exceeding 15 % of the unpaid balance on the note if the original amount financed exceeds $300 and if an attorney, not a salaried employee of Holder, is consulted with reference to suit or otherwise. The liability of each endorser hereunder shall not be affected by any extension, renewal or other change in the time of payment of the note, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for the payment thereof, or the release or non-perfection of any security interest in or lien on any collateral therefor. The Holder of the within note shall not be bound to exhaust its recourse against Borrower or any other person or any security the Holder may have at any time before being entitled to payment from each endorser hereunder. Each of the endorsers hereby waives demand, presentment, protest, notice of dishonor, and any other demands and notices required by law and waives exemption of personal property from levy and execution; provided, however, that no consumer protection provision of the Alabama Consumer Credit Act is waived hereby.

ACCOMMODATION SECURITY AGREEMENT

In consideration of the loan this day made to Borrower, the undersigned, claiming an interest in the Collateral described in the within Note, hereby join(s) in granting the security interest provided in paragraphs 2 and 3 of said Note and agree(s) to be bound to the same extent Borrower is bound by the provisions of paragraphs 20, 21, 22, 23, 24, 25, and 26 of the said Note, but the undersigned shall not otherwise be obligated on said Note.

SIGNATURE

SIGNATURE

19800710000075330 23/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

THE STATE OF ALABAMA)
)
TUSCALOOSA COUNTY)

IN THE PROBATE COURT OF
SAID COUNTY

THE FIRST NATIONAL BANK OF
TUSKALOOSA

vs:

ESTATE OF T.H. BENNERS, III
(CASE NO: 10181)

I, The undersigned, Thomas P. Hester, do hereby certify that I am a Vice President of the First National Bank of Tuskaloosa and as such officer have knowledge of the notes and accounts of said bank.

I further certify that the Estate of T.H. Benners, III, is indebted to said The First National Bank of Tuskaloosa, Tuscaloosa, Alabama, in the amount of $65,450.00, evidenced by one note dated May 14, 1979; copies of note attached.

Given under my hand this 10th day of October, 1979.

555980 0812 00.50 16 00
555980 0812 00.50 A 00

BOOK 36 PAGE 651

THIS INS. FILED
BK ____ PG ____
D.T. ____ TAX $ ____
Oct 12 10 PM '79
PROBATE JUDGE
TUSCALOOSA CO., AL

Thomas P. Hester
Thomas P. Hester

Subscribed and sworn to before me this
10th day of October, 1979.

19800710000075330 24/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

Marcelle S. Mott
Notary Public
My Commission Expires [illegible]

The original of this claim received and
filed this 12th day of October, 1979.

W. Hardy McCollum
Judge of Probate

Claim $88.68

36 PAGE 652

19800710000075330 25/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

II/

FORM 2500

Tuskaloosa, Ala., I 14 1979 $65,450.00

On June 15, 1979 days after date, I promise to pay to the order of THE FIRST NATIONAL BANK OF TUSKALOOSA, with interest from date at 12% DOLLARS,

Sixty-Five Thousand Four Hundred Fifty and No/100

in lawful money of the United States, for value received; negotiable and payable at THE FIRST NATIONAL BANK OF TUSKALOOSA, Tuskaloosa, Alabama.

All of the parties to this note, whether maker, endorser, surety, or guarantor, each for himself hereby severally agrees to pay a discount on the indebtedness evidenced by this note, at the rate of eight per cent (8%) per annum, from the date of this note until the maturity thereof, or to pay interest, in advance, on said indebtedness, at the rate of eight per cent (8%) per annum from the date of this note until the maturity thereof, and to pay interest on said indebtedness from the maturity of this note at the rate of eight per cent (8%) per annum until paid.

As collateral security for the payment of this note, and for the payment of any and all other debts, obligations, and/or liabilities, of the undersigned, and/or of either or any of them, to, or held or owned by, any holder hereof, due or to become due, or which may hereafter be contracted or existing, whether the same have been incurred, or shall in the future be incurred, directly, or indirectly, by the undersigned, and/or by either or any of them, to the holder hereof, and whether such debts, obligations, and/or liabilities have been, or shall in the future be, acquired by the holder through transactions with the undersigned, and/or with either or any of them, or through assignment from other persons in regular course of business, or otherwise, and whether such debts, obligations, and/or liabilities of the undersigned, and/or either or any of them, be absolute or contingent, and whether such debts, obligations, and/or liabilities be single or joint, binding the maker, or any of the makers, of this note singly, or jointly, with any other person, or persons, whether as a corporation or a partnership or individually, I deliver to and deposit with, and hereby pledge, assign and convey to said payee, the following property, viz.:

Secured by collateral as listed on Collateral Record Nos. 4215, 4165, 4167 and 4171 attached

I authorize and empower said payee, and/or its, his, or their successors, heirs, personal representatives or assigns, to sell, assign and deliver the whole or any part of said collaterals, or any substitute therefor, or any addition thereto, at any broker's board, or any other place selected by the holder hereof, at public or private sale, at the option of the owner or holder of this instrument, his, theirs, or its assigns, selling said property at the option of the holder, either as a whole or in parts at the same time, or at different times, and/or to collect said collaterals, on default in the payment of this instrument, or on non-payment of any of the liabilities above named, or at any time or times thereafter, with or without advertisement, or notice, which is hereby expressly waived; and upon such sale or sales the owner or holder hereof may purchase the whole or any part of said property, or securities, discharged from any right of redemption or liability for conversion. In case of depreciation in the market value of the property or securities hereby pledged, or that may hereafter be pledged, for the payment of this instrument, or if from any cause whatever the said property, or securities pledged shall cease to be satisfactory collateral to the owner or holder hereof for this debt, its renewal, extension or substitute, the undersigned hereby agrees to deposit additional security, from time to time as demanded, and failing to deposit additional security to the satisfaction of the owner or holder hereof, this instrument shall become due and payable for all purposes, and sale and/or collection of the collateral pledged may be made immediately as provided for above. The owner or holder of this instrument is authorized to apply the proceeds of any such sale, and/or collection, as follows: First, to the payment of the expenses of making such sale, or sales, collection or collections, including commissions, together with a reasonable attorney's fee, if an attorney is employed or consulted; Second, to the payment of the principal debt hereby secured, with interest thereon; Third, to the payment of any other debts, obligations and/or liabilities of the undersigned, or of either or any of them, as maker, surety, endorser, guarantor, or otherwise, to, or held or owned by, the owner, or holder of this instrument, although such other debt, instrument, obligation, or liability, be not then due; and, lastly, if any surplus remains the same shall be paid to the undersigned, allowing a rebate of all unearned interest paid in advance. The owner or holder of this instrument, or debt, may sue on and enforce any of the securities, collateral, or property above pledged, and may exercise all rights and powers therein contained.

Any bonds, notes or other property that the undersigned, or either of them, may have in the possession or custody of the owner or holder of this instrument, at the time of the maturity of this instrument, or at the time of the maturity of any other obligation, or liability of the undersigned, or of either, or any of them, then held, or owned by the owner, or holder, of this instrument, shall be regarded as security for the payment of this instrument, and as security for the payment of any other debt, liability or liabilities of the undersigned, or either of them, to, or held or owned by, the owner or holder hereof, and may be sold and/or collected by the owner or holder hereof, on the terms and conditions above mentioned, and the proceeds of the sale or sales, collection, or collections, or so much thereof as may be needed, may be applied to the payment of this instrument, and/or to the payment of any other debt, liability or liabilities of the undersigned, or either of them, to, or held or owned by, the owner or holder hereof, whether the same be then due or not.

All parties to this instrument, whether maker, endorser, surety, or guarantor, each severally waives demand, presentment, protest, notice of protest, suit and all other requirements necessary to hold them, or either of them, and they severally agree that time of payment may be extended without notice to them or either of them of such extension. The Bank at which this instrument is payable is hereby authorized, solely at its option, to apply, on or after maturity of this instrument, whether such maturity be before or on the due date set out in the face of this instrument, to the payment of this debt, and/or to the payment of any other debt, or liability, of the undersigned, or either or any of them, to, or held or owned by, the owner or holder hereof, any funds in said bank belonging to the maker, endorser, surety, guarantor or either or any of them; but the failure or omission to make such application shall not have the effect of releasing or in any way impairing the obligation of any party to this instrument, whether maker, endorser, surety, or guarantor.

Bankruptcy proceedings by or against, or garnishment or attachment proceedings against the property or funds of, any party to this instrument, whether maker, endorser, surety or guarantor, shall mature this instrument, and make the same become and be, at once, due and payable, regardless of the due date set out in the face of this instrument. All parties to this instrument, whether maker, endorser, surety, or guarantor, each for himself, hereby severally waives as to this debt, and any renewal or extension thereof, all rights of exemption under the Constitution and laws of Alabama, or of any other State, as to personal property, and they each severally agree to pay all costs and expenses of collecting or securing or attempting to collect or secure this instrument, including a reasonable Attorney's fee, whether the same be collected or secured, or enforced, by suit, either at law, or in equity, foreclosure under the power herein contained, or by proceeding in Court or otherwise.

Upon the transfer of this instrument the payee, or holder hereof, may deliver the collaterals, or any part thereof, to the transferee, who shall become vested with all of the powers and rights of the payee with respect thereto; and the payee or holder shall thereafter be relieved and discharged from all liability or responsibility in the premises.

Upon the payment of the indebtedness evidenced and secured by this instrument, the payee, or holder hereof, may deliver all of the collaterals to either or any of the undersigned; and the payee, or holder hereof, shall thereafter be released and discharged from any and all liability or responsibility in the premises.

If the maturity of this instrument is accelerated under any provision herein contained and interest thereon has been paid in advance, credit for unearned interest shall be given.

No. (L.S.)

R. No. 900 206 5 - ~~00018~~-6,600.00 ~~00042~~- 11,000.00 (L.S.)

Due Jun 15 79 - ~~00026~~-2,250.00 ~~00059~~- 15,000.00 (L.S.)

~~00034~~-15,000.00 00067- 5,000.00 T H Bonners (L.S.)

Mr. Thomas H. Bonners, III, 1110 East Hargrove Road, Tuscaloosa, Alabama 35401

STATE OF ALABAMA)
)
COUNTY OF TUSCALOOSA)

AFFIDAVIT AND PROOF OF CLAIM

RE: Estate of Thomas H. Benners II

The undersigned, Sam P. Faucett, III, being first duly sworn on oath states:

That he is President of the First Alabama Bank of Tuscaloosa,N.A., which said First Alabama Bank of Tuscaloosa, N.A. is the owner of the following described claim against the Estate of Thomas H. Benners, II, Deceased:

A promissory note in the face amount of $5,314.79 executed by T. H. Benners II and William T. Manderson on June 4, 1979, and due on September 4, 1979. The outstanding balance on the note is $5,314.79, plus interest from June 4, 1979 at 12% per annum.

A promissory note in the face amount of $3,449.09 executed by Benners-Nicol Enterprises, Inc. on June 4, 1979 and due on September 4, 1979. The outstanding balance due on the note is $3,449.09 plus interest from June 4, 1979 at 12% per annum. This note is personally guaranteed by T. H. Benners, II, by way of a separate continuing guaranty dated July 24, 1973.

A promissory note in the face amount of $11,616.48 executed by Benners-Nicol Enterprises, Inc. on May 2, 1977. The note is repayable in 36 equal monthly installments of $322.68 each and is personally endorsed by T. H. Benners, II and W. T. Manderson. The outstanding balance due on the note is $2,565.31 less a rebate of interest from the date of payoff to the maturity date.

The undersigned further states that the same in every item thereof is lawfully and justly due; that the consideration thereof was and is money loaned to the above named persons by the First Alabama Bank of Tuscaloosa,N.A.; that there are no setoffs nor counterclaims whatever against the same; that there is no usury therein; that the undersigned has personal knowledge of the correctness of these facts and knows that the said notes are in every respect as recited above.

Sam P. Faucett, III, President
First Alabama Bank of Tuscaloosa, N.A.

SWORN to and subscribed before me on this the 28th day of August 1979.

Barbara A. Mooney
Notary Public
MY COMMISSION EXPIRES 2-14-82

BOOK 36 PAGE 653

Aug 29 9 33 AM '79

00.50
00.50
00.50

Claim Book 8 P. 64

19800710000075330 26/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

This document was prepared by
Thad G. Long
Bradley, Arant, Rose & White
1500 Brown-Marx Building
Birmingham, Alabama 35203

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

TUSCALOOSA COUNTY PROBATE COURT

NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

PETITION OF ELIZABETH McDAVID BENNERS
FOR LETTERS OF ADMINISTRATION

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE, COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA:

Comes now your petitioner, the undersigned Elizabeth McDavid Benners, and, upon information and belief, respectfully represents unto your Honor as follows:

(1) Thomas H. Benners, II ("the Decedent") who, at the time of his death was an inhabitant of Tuscaloosa County, Alabama, departed this life in the City of Tuscaloosa, Tuscaloosa County, Alabama on the 23rd day of June, 1979.

(2) The death of the Decedent has been known for more than five days, and the Decedent left no last will and testament.

(3) The Decedent left assets in Tuscaloosa County, Alabama. All of the properties of which the Decedent died seized and possessed are estimated to be worth approximately $200,000, and probably not more.

(4) The Decedent left no lineal descendant of his surviving him. The names, ages, conditions, relationships

BOOK 36 PAGE 654

FILED 7-22- 1979
W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

19800710000075330 27/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 150 PAGE 289

and present addresses of the widow, heirs and next of kin of the Decedent are as follows:

Elizabeth McDavid Benners, wife, over the age of 19 years, an adult of sound mind, residing at 1110 East Hargrove Road, Tuscaloosa, Alabama 35401;

Morris C. Benners, father, over the age of 19 years, an adult of sound mind, residing at 3808 Forest Glen Drive, Mountain Brook, Alabama 35213; and

Anne Jones Benners, mother, over the age of 19 years, an adult of sound mind, residing at 3808 Forest Glen Drive, Mountain Brook, Alabama 35213.

(5) Your petitioner is the widow of the Decedent, is a resident of the State of Alabama, is over nineteen years of age and is in no respect disqualified under the law from serving as administratrix of the estate of the Decedent. Your petitioner is entitled by statutory right of priority to administer the said estate.

Wherefore, believing that the said estate should be immediately administered to the end that said properties may be collected and preserved for those who shall appear to have a legal right or interest therein, your petitioner prays that your Honor grant letters of administration on the said estate to your petitioner upon your petitioner's entering into bond in such sum as is required by statute and with such security as shall be approved by your Honor.

Elizabeth McDavid Benners

Elizabeth McDavid Benners

Attorney for Petitioner
Thad G. Long
Bradley, Arant, Rose & White
1500 Brown-Marx Building
Birmingham, Alabama 35203

19800710000075330 28/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

FILED 7-27 1979

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 36 PAGE 655

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, Sarah B Jones, a Notary Public in and for said county in said state personally appeared Elizabeth McDavid Benners, who, being first duly sworn, makes oath that she has read the foregoing petition and knows the contents thereof, and that she is informed and believes, and, upon such information and belief, avers that the facts alleged therein are true and correct.

Elizabeth McDavid Benners
Elizabeth McDavid Benners

Subscribed and sworn to before me this the 12 day of July, 1979.

Sarah B Jones
Notary Public

[NOTARIAL SEAL]

My Commission Expires: Oct. 28, 1981

BOOK 36 PAGE 656

19800710000075330 29/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 150 PAGE 291

FILED 7-27 1979
W. Hoy McCown
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA)

JEFFERSON COUNTY)

TUSCALOOSA COUNTY PROBATE COURT

NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

WAIVER OF NOTICE OF
PETITION FOR LETTERS OF ADMINISTRATION

I, Morris C. Benners, hereby accept service of notice of the filing of the petition for letters of administration in the matter of the estate of Thomas H. Benners, II, deceased, and hereby waive all other and further notice thereof, either by publication or otherwise, and do hereby enter my appearance in Court on the day set for hearing said matter.

Dated this 25th day of July, 1979.

Morris C. Benners
Morris C. Benners

WITNESS:

19800710000075330 30/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

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BOOK 150 PAGE 292

FILED 7-27 1979

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

STATE OF ALABAMA)

JEFFERSON COUNTY)

TUSCALOOSA COUNTY PROBATE COURT

NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

WAIVER OF NOTICE OF
PETITION FOR LETTERS OF ADMINISTRATION

I, Anne Jones Benners, hereby accept service of notice of the filing of the petition for letters of administration in the matter of the estate of Thomas H. Benners, II, deceased, and hereby waive all other and further notice thereof, either by publication or otherwise, and do hereby enter my appearance in Court on the day set for hearing said matter.

Dated this 25th day of July, 1979.

Anne Jones Benners
Anne Jones Benners

WITNESS:

Lee Hampton

19800710000075330 31/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

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BOOK 150 PAGE 293

FILED 7-27 1979

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

IN THE PROBATE COURT OF TUSCALOOSA COUNTY, ALABAMA

IN THE MATTER OF THE ESTATE OF)
: CASE NO. 10181
THOMAS H. BENNERS, II, DECEASED)

BOND

KNOW ALL MEN BY THESE PRESENTS that I, Elizabeth McDavid Benners, as principal, and St. Paul Fire & Marine Insurance Company, as surety, are held and firmly bound unto W. Hardy McCollum, Judge of Probate of Tuscaloosa County, Alabama, and his successors in office, in the penal sum of Four Hundred Thousand Dollars ($400,000) for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. And we waive in favor of this bond all right to claim any exemption of personal property allowed by the laws of the State of Alabama.

Sealed with our seals and dated this 20th day of July, 1979.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas, the above bound Elizabeth McDavid Benners has been appointed as the administratrix of the estate of Thomas H. Benners, II, deceased, now, if the said Elizabeth McDavid Benners shall well and truly perform all the duties which are or may be required of her as such fiduciary, then the above obligation shall be void; otherwise it shall remain in full force and effect.

Elizabeth McDavid Benners (L.S.)
Elizabeth McDavid Benners

ST. PAUL FIRE & MARINE INSURANCE COMPANY
BY: Lee McGriff
Lee McGriff, Attorney-in-Fact

19800710000075330 32/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 36 PAGE 659

BOOK 150 PAGE 294

FILED 7-27 1979
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

Class 1

Fidelity and Surety Department

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

(A Capital Stock Company)

ST. PAUL, MINNESOTA

CERTIFIED COPY OF POWER OF ATTORNEY

Original on File at Home Office of Company. See Certification.

KNOW ALL MEN BY THESE PRESENTS: That the St. Paul Fire and Marine Insurance Company, a corporation organized and existing under the laws of the State of Minnesota, and having its principal office in the City of Saint Paul, Minnesota, does hereby constitute and appoint

H. G. Seibels, Jr., Lee McGriff, Malcolm K. Miller, Jr., Ralph A. Miller, Charles H. Garrison
Richard Womack, individually, Birmingham, Alabama

19800710000075330 33/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

its true and lawful attorneys(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said St. Paul Fire and Marine Insurance Company, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by its regularly elected officers at its principal office.

This Power of Attorney is executed, and may be certified to and may be revoked, pursuant to and by authority of Article V,—Section 6(C), of the By-Laws adopted by the Board of Directors of the ST. PAUL FIRE AND MARINE INSURANCE COMPANY at a meeting called and held on the 23rd day of January, 1970, of which the following is a true transcript of said Section 6(C).

"The President or any Vice President, Assistant Vice President, Secretary or Resident Secretary, shall have power and authority

(1) To appoint Attorneys-in-fact, and to authorize them to execute on behalf of the Company, and attach the Seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, and
(2) To appoint Special Attorneys-in-fact, who are hereby authorized to certify to copies of any power-of-attorney issued in pursuance of this section and/or any of the By-Laws of the Company, and
(3) To remove, at any time, any such Attorney-in-fact or Special Attorney-in-fact and revoke the authority given him."

Further, this Power of Attorney is signed and sealed by facsimile pursuant to resolution of the Board of Directors of said Company adopted at a meeting duly called and held on the 6th day of May, 1959, of which the following is a true excerpt:

"Now therefore the signatures of such officers and the seal of the Company may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached."

IN TESTIMONY WHEREOF, the St. Paul Fire and Marine Insurance Company has caused this instrument to be signed and its corporate seal to be affixed by its authorized officer, this 2nd day of Feb. A. D. 19 76

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

STATE OF MINNESOTA
County of Ramsey } s s.

Vice President.

On this 2nd day of Feb. 1976, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said that he is the therein described and authorized officer of the St. Paul Fire and Marine Insurance Company; that the seal affixed to said instrument is the Corporate Seal of said Company; that the said Corporate Seal and his signature were duly affixed by order of the Board of Directors of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at the City of Saint Paul, Minnesota, the day and year first above written.

V. C. INNES
Notary Public, Ramsey County, Minn.
My Commission Expires April 27, 1976

CERTIFICATION

I, the undersigned officer of the St. Paul Fire and Marine Insurance Company, do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Section of the By-Laws of said Company as set forth in said Power of Attorney,* with the ORIGINALS ON FILE IN THE HOME OFFICE OF SAID COMPANY, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 20TH day of JULY 19 79.

Secretary.

*Unlimited as to character and amount.

10870 CPS Rev. 10-74 Printed in U.S.A.

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BOOK 150 PAGE 295

STATE OF ALABAMA

TUSCALOOSA COUNTY

TUSCALOOSA COUNTY PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

ORDER GRANTING LETTERS OF ADMINISTRATION

This day came Elizabeth McDavid Benners and filed her petition in writing and under oath, alleging that Thomas H. Benners, II (the "Decedent"), who at the time of his death was an inhabitant of Tuscaloosa County, Alabama, died, intestate, on or about the 23rd day of June, 1979, leaving asset in Tuscaloosa County, the estimated value of which are approximately $200,000. That the death of the Decedent has been known for more than five days; and that the petitioner is the widow of said Decedent and is over the age of nineteen years; and praying that letters of administration may be granted to her upon her entering into bond in such sum and with such securities as are required by law; and said Elizabeth McDavid Benners having filed bond as such administratrix in the sum of four hundred thousand dollars ($400,000), with St. Paul Fire & Marine Insurance Company as surety thereon, payable and conditioned as the law directs, and approved by the Judge of this Court:

BOOK 36 PAGE 661

19800710000075330 34/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

It is ORDERED, ADJUDGED and DECREED by the Court, that said Elizabeth McDavid Benners be and she is hereby appointed administratrix of said estate, and that letters of administration on said estate do issue to her forthwith.

It is further ORDERED, ADJUDGED and DECREED by the Court, that said Elizabeth McDavid Benners as such administratrix, proceed immediately to collect and take into her

FILED 7-27- 1979
BOOK 150 PAGE 296
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

possession the goods and chattels, money, books, papers and evidences of debt of the decedent, except the personal property specifically exempted from administration under Section 6-10-63 of the Code of Alabama, 1975, and to make and return to this Court within two months, a full and complete inventory of the same.

DONE and ORDERED this 27th day of July, 1979.

Judge of Probate of
Tuscaloosa County, Alabama

19800710000075330 35/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 36 PAGE 662

BOOK 150 PAGE 297
FILED 7-27 1979
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

LETTERS OF ADMINISTRATION

THE STATE OF ALABAMA, TUSCALOOSA COUNTY

PROBATE COURT

10181

LETTERS OF ADMINISTRATION

On the Estate of Thomas H. Benners, II, deceased,

are hereby granted to Elizabeth McDavid Benners

who has duly qualified and given bond as Such Administrator/administratrix; and is authorized to administer such estate.

Witness my hand, and dated on this date: July 27, 19 79.

W. Hardy McCollum

W. Hardy McCollum, Judge of Probate,
Tuscaloosa County, Alabama

Code 1923—5743.

BOOK 36 PAGE 663

THE STATE OF ALABAMA
TUSCALOOSA COUNTY

19800710000075330 36/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

I, W. Hardy McCollum, Judge of Probate in and for Tuscaloosa County, Alabama, hereby certify that the foregoing is a true and correct copy of Letters of Administration granted to

Elizabeth McDavid Benners

as the ~~administrator~~/administratrix of the estate of Thomas H. Benners, II, deceased, as same appears of record in my office.

Given under my hand and official seal on this date _____, 19____.

FILED 7-27-1979

W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 150 PAGE 298

W. Hardy McCollum, Judge of Probate,
Tuscaloosa County, Alabama.

This document was prepared by
Thad G. Long
Bradley, Arant, Rose & White
1500 Brown-Marx Building
Birmingham, Alabama 35203

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

PETITION OF ELIZABETH McDAVID BENNERS, ADMINISTRATRIX, FOR THE SALE OF CERTAIN REAL PROPERTY OF THE ESTATE

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE, COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA:

Comes now your petitioner, the undersigned Elizabeth McDavid Benners, as Administratrix of the Estate of Thomas H. Benners, II, deceased (the "decedent"), and respectfully represents unto your Honor as follows:

BOOK 36 PAGE 664

(1) The personal property of the estate of the decedent is insufficient to pay the debts of the decedent.

(2) The decedent died seized and possessed of the following described real estate, to-wit:

19800710000075330 37/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

Lot 26, according to the map and survey of Mountain View Lake Company Second Sector as recorded in Map Book 3, Page 150 in the Probate Office of Shelby County, Alabama, certified by Sydney H. Keel according to his survey dated May 15, 1979, less and excepting therefrom a twenty-five foot by thirty foot parcel and being more particularly described as follows: Commence at the northwest corner of Lot 26 of said Mountain View Lake Company Second Sector and run east along the north line of said Lot 26 for 110.0 feet to the point of beginning; thence continue east along the north line of said Lot 26 for 30.0 feet; thence 90° 00' right and run south

FILED 5-17 1980
W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 154 PAGE 85

for 25.0 feet; thence 90° 00' right and run west for 30.0 feet; thence 90° 00' right and run north for 25.0 feet to the point of beginning, containing 750 square feet.

(3) The sale of the aforedescribed real property of the estate is necessary to pay the debts of the decedent.

(4) Your petitioner has an offer from Leland Hall to purchase the aforedescribed property for Twenty-Five Thousand Dollars ($25,000) which the petitioner avers to be a fair and equitable price for the said real estate. The property was appraised on March 17, 1980 by Hubert W. Goings, Jr. for Twenty Thousand Dollars ($20,000), and a copy of that appraisal, designated as Exhibit A, is attached hereto and made a part hereof.

BOOK 36 PAGE 665

(5) Your petitioner avers that the entire net proceeds from such sale will be used first, to pay off the decedent's indebtedness to Birmingham Trust National Bank, loan number 2159007 in the principal amount of $10,154.91 with interest accrued in the amount of $260.25 as of April 25, 1980, and second, to reduce the decedent's indebtedness to The First National Bank of Tuskaloosa, Tuscaloosa, Alabama, for a loan which has a balance due as of April 25, 1980 of approximately $70,000.

(6) The decedent left no lineal descendant of his surviving him. The names, ages, conditions, relations and present addresses of the widow, heirs and next of kin of the decedent are as follows:

19800710000075330 38/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 154 PAGE 36

Elizabeth McDavid Benners, wife, over the age of 19 years, an adult of sound mind, residing at 1110 East Hargrove Road, Tuscaloosa, Alabama 35401;

Morris C. Benners, father, a married man, over the age of 19 years, an adult of sound mind, residing at 3808 Forest Glen Drive, Mountain Brook, Alabama 35213; and

Anne Jones Benners, mother, a married woman, over the age of 19 years, an adult of sound mind, residing at 3808 Forest Glen Drive, Mountain Brook, Alabama 35213.

(7) Morris C. Benners and Anne Jones Benners have consented to the sale of the real property as more fully described in this petition, provided that the proceeds therefrom be applied strictly in accordance with paragraph (5) of this petition and have waived all notice of the hearing thereon as evidenced by their Consent and Waiver, Exhibits B and C, respectively, which are attached hereto and made a part hereof.

WHEREFORE, your petitioner prays that your Honor will grant an order and decree authorizing and directing the the sale of the real estate as more fully described in this petition, by private sale, to Leland Hall for the purchase price of Twenty-Five Thousand Dollars ($25,000), and the application of the proceeds therefrom to the payment of the debts of the decedent as set forth in paragraph (5) hereinabove.

19800710000075330 39/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

Elizabeth McDavid Benners
Elizabeth McDavid Benners

Attorney for Petitioner:

Jamie Chambless

Thad G. Long
Bradley, Arant, Rose & White
1500 Brown-Marx Building
Birmingham, Alabmaa 35203
(205) 252-4500

BOOK 36 PAGE 666

STATE OF ALABAMA)

TUSCALOOSA COUNTY)

Before me, Jamie Chambless, a notary public in and for said county in said state personally appeared Elizabeth McDavid Benners, who, being first duly sworn, makes oath that she has read the foregoing petition and knows the contents thereof, and that she is informed and believes, and, upon such information and belief, avers that the facts alleged therein are true and correct.

Elizabeth McDavid Benners
Elizabeth McDavid Benners

Subscribed and sworn to before me this the 7th day of May, 1980.

Jamie Chambless
Notary Public

[NOTARIAL SEAL] My Commission Expires: 1/13/81

BOOK 36 PAGE 667

19800710000075330 40/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

HUBERT W. GOINGS, JR.
P. O. BOX 9024
BIRMINGHAM, ALABAMA 35213

March 17, 1980

Mr. Thad G. Long
Bradley, Arant, Rose & White
1500 Brown Marx Bldg.
Birmingham, Ala. 35203

Re: Lot 27, Mt. View Lake
Shelby County, Ala.

Dear Thad:

As per your request, I have inspected and evaluated the above property, which is in the estate of Thomas H. Benners, II.

The last recorded sale of comparable property, which I can locate, was at Hollybrook Lake, which is adjacent to Mt. View Lake (Smyer Lake) in June, 1979. Dr. Albert Tully sold a 1½ acre unimproved lot to Mike Shaw for $22,000.00.

As the subject property is similar in size and location, I would feel comfortable with an appraisal of $20,000.00 market value.

If you need any further information, please advise.

Very truly yours,

Hubert W. Goings, Jr.

BOOK 36 PAGE 668

19800710000075330 41/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

EXHIBIT A

BOOK 154 PAGE 39

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE
ESTATE OF THOMAS H. BENNERS, II, DECEASED

CONSENT AND WAIVER OF
MORRIS C. BENNERS

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA

I, the undersigned, Morris C. Benners, as one of the heirs of Thomas H. Benners, II, deceased (the"decedent") do hereby consent to the filing of the petition of Elizabeth McDavid Benners, Administratrix of the decedent's estate, for the sale of certain real property of the estate (the "petition"), as more particularly described in the said petition, provided that the proceeds from such sale shall be applied strictly in accordance with the averments set forth in paragraph (5) of said petition; do hereby accept service of notice of the filing of the said petition; either by publication or otherwise; and do hereby enter my appearance in Court on the day set for hearing said matter.

Dated this 30 day of April, 1980.

Morris C. Benners

WITNESS:

Linda Neal

19800710000075330 42/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

FILED 5-2-1980

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 36 PAGE 609

EXHIBIT B

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE
ESTATE OF THOMAS H. BENNERS, II, DECEASED

CONSENT AND WAIVER OF
ANNE JONES BENNERS

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA

I, the undersigned, Anne Jones Benners, as one of the heirs of Thomas H. Benners, II, deceased (the "decedent") do hereby consent to the filing of the petition of Elizabeth McDavid Benners, Administratrix of the decedent's estate, for the sale of certain real property of the estate (the "petition"), as more particularly described in the said petition, provided that the proceeds from such sale shall be applied strictly in accordance with the averments set forth in paragraph (5) of said petition; do hereby accept service of notice of the filing of the said petition; do hereby waive all other and further notice thereof, either by publication or otherwise; and do hereby enter my appearance in Court on the day set for hearing said matter.

BOOK 36 PAGE 670

Dated this 10 day of April, 1980.

Anne Jones Benners
Anne Jones Benners

WITNESS:

Linda Neal

19800710000075330 43/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

FILED 5-7-1980
W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

EXHIBIT C

NOTICE BY PUBLICATION

STATE OF ALABAMA PROBATE COURT

TUSCALOOSA COUNTY CASE NO. 10181

IN THE MATTER OF THE
ESTATE OF THOMAS H. BENNERS, II, DECEASED

Whereas Elizabeth McDavid Benners, Administratrix of the estate of Thomas H. Benners, II, deceased, has filed her application in writing, under oath, for an order to sell certain lands belonging to said estate and described in said application, for the payment of the debts of said estate, upon the grounds that the personal property of the said deceased is not sufficient for the payment of the debts of said estate.

Whereupon, it is ordered that the 29 day of May, 1980, 10:30 AM be appointed a day on which to hear such application, at which time all persons interested can appear and contest the said application if they think proper.

Witness my hand this, the 7 day of May, 1980.

W. Hardy McCollum
W. Hardy McCollum
Judge of Probate

To The Graphic, Publisher: Please publish the above notice for there successive weeks.

W. Hardy McCollum
W. Hardy McCollum
Judge of Probate

FILED 5-7 1980
W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 3 PAGE 674

BOOK 154 PAGE 42

19800710000075330 44/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE
ESTATE OF THOMAS H. BENNERS, II, DECEASED

WAIVER AND CONSENT BY CLAIMANT

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA:

Comes now the undersigned, George S. Shirley, in his capacity as President of The First National Bank of Tuskaloosa, as a creditor of the estate of Thomas H. Benners, II, deceased (the "decedent"), and being first duly sworn hereby states:

1. The estate of the decedent is indebted to the undersigned on a promissory note in the principal amount of $65,450, plus interest, which claim has heretofore been timely filed in this proceeding.

BOOK 36 PAGE 672

19800710000075330 45/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

2. The undersigned has been informed that the administratrix of the estate of the decedent, Elizabeth McDavid Benners, has petitioned this Court for the sale of certain real property of the estate and has prayed that the Court grant an order allowing the private sale of said property and directing that the proceeds therefrom be applied first to pay off the estate's indebtedness to Birmingham Trust National Bank, Birmingham, Alabama, and the remainder therefrom be applied to reduce the estate's principal indebtedness to The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

FILED 6-19- 1980

W. Hardy McCollum

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

PG 154 INS 43

NOW, THEREFORE, the undersigned hereby agrees that upon the sale of that certain real property by the estate the proceeds therefrom shall first be paid to Birmingham Trust National Bank, Birmingham, Alabama, to pay off the claim against the estate of the decedent by Birmingham Trust National Bank, and the remainder therefrom be applied to reduce the claim against the estate by The First National Bank of Tuskaloosa, Tuscaloosa, Alabama; hereby consents to such disposition of the proceeds; and hereby waives any claim it may now have or may at any time hereafter have in and to any such proceeds from the said sale that may be paid to Birmingham Trust National Bank, Birmingham, Alabama.

BOOK 36 PAGE 673

THE FIRST NATIONAL BANK OF TUSKALOOSA

By: George S. Shirley

Its President

19800710000075330 46/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

STATE OF ALABAMA

TUSCALOOSA COUNTY

Before me, the undersigned authority, a notary public in and for said County in said State, personally appeared George S. Shirley, whose name as President of The First National Bank of Tuskaloosa is signed to the foregoing Waiver and Consent, and who is known to me, acknowledged before me on this date that, being informed of the contents of said Waiver and Consent, he as such officer and with full authority executed the same voluntarily for and as the act of The First National Bank of Tuskaloosa.

Given under my hand and official seal of office, on this the 16th day of June, 1980.

Barbara J. Neal
Notary Public
My Commission Expires: February 15, 1983

[NOTARIAL SEAL]

BOOK 154 PAGE 44

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA

I, the undersigned, Elizabeth McDavid Benners, as administratrix of the estate of Thomas H. Benners, II, deceased, being first duly sworn do hereby declare as follows:

1. I am the administratrix of the estate of Thomas H. Benners, II, deceased (the "decedent").

2. The estate of the decedent owns twenty-one and three-tenths percent (21.3%) of the stock of Druid City Omelet Shoppes, Inc., an Alabama corporation.

3. The undersigned files this declaration to clarify the estate's liability as lessee on that certain lease dated August 15, 1978 with respect to the claim timely filed by E. Earl Rhyne in this Court.

Elizabeth McDavid Benners
Administratrix of the Estate of
Thomas H. Benners II

Elizabeth McDavid Benners, as
Administratrix of the Estate of
Thomas H. Benners, II, Deceased

19800710000075330 47/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

STATE OF ALABAMA

TUSCALOOSA COUNTY

Before me, the undersigned authority, a notary public in and for said County in said State, personally appeared Elizabeth McDavid Benners, who is known to me, and who, being first duly sworn makes oath that she has read the foregoing affidavit and knows the contents thereof, and that she is informed and believes and upon such information and belief, avers that the facts alleged therein are true and correct.

Elizabeth McDavid Benners
Elizabeth McDavid Benners

Sworn to and subscribed to before me on this the 20th day of June, 1980.

Notary Public
My Commission Expires: Not [illegible]

FILED 6-20- 1980
W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 36 PAGE 674

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE
ESTATE OF THOMAS H. BENNERS, II, DECEASED

WAIVER AND CONSENT BY CLAIMANT

TO THE HONORABLE W. HARDY McCOLLUM, JUDGE OF PROBATE COURT OF PROBATE, TUSCALOOSA COUNTY, ALABAMA:

Comes now the undersigned, S.P. Faucett, III, in his capacity as President of the First Alabama Bank of Tuscaloosa, as a creditor of the estate of Thomas H. Benners, II, deceased (the "decedent"), and being first duly sworn hereby states:

1. The estate of the decedent and William T. Manderson are jointly and severally indebted to the undersigned on a promissory note dated June 4, 1979 and due September 4, 1979 in the amount of $5,314.79, plus interest at twelve per cent (12%) per annum payable from June 4, 1979, which claim has heretofore been timely filed in this proceeding.

BOOK 36 PAGE 675

19800710000075330 48/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

2. The undersigned has been informed that the administratrix of the estate of the decedent, Elizabeth McDavid Benners, has petitioned this Court for the sale of certain real property of the estate and has prayed that the Court grant an order allowing the private sale of said property and directing that the proceeds therefrom be applied first to pay off the estate's indebtedness to Birmingham Trust National Bank, Birmingham, Alabama and the remainder therefrom be applied to reduce the estate's principal indebtedness to The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

FILED, 6-24 1980

W. Hardy McCollum
Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 154 PAGE 46

3. The undersigned has heretofore received from the administratrix of the estate of the decedent a certification that the assets of the estate will be sufficient to pay the said claim of the First Alabama Bank of Tuscaloosa within a reasonable time.

4. The undersigned has heretofore received from William T. Manderson his certified consent to the disposition of the proceeds from that certain private sale of real property by the estate as hereinabove set forth.

NOW, THEREFORE, the undersigned hereby agrees that upon the sale of that certain real property by the estate the proceeds therefrom shall first be paid to Birmingham Trust National Bank , Birmingham, Alabama,to pay off the claim against the estate of the decedent by Birmingham Trust National Bank, Birmingham, Alabama, and the remainder therefrom be applied to reduce the claim against the estate by The First National Bank of Tuskaloosa, Tuscaloosa, Alabama; hereby consents to such disposition of the proceeds;and hereby waives any claim it may now have or may at any time hereafter have in and to any such proceeds from the said sale that may be paid to Birmingham Trust National Bank, Birmingham, Alabama, and to The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

BOOK 36 PAGE 676

FIRST ALABAMA BANK OF TUSCALOOSA

By: [illegible]

Its President

19800710000075330 49/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

STATE OF ALABAMA

TUSCALOOSA COUNTY

Before me, the undersigned authority, a notary public in and for said County in said State, personally appeared S.P. Faucett, III, whose name as President of First Alabama Bank of Tuscaloosa is signed to the foregoing Waiver and Consent, and who is known to me, acknowledged before me on this date that, being informed of the contents of said Waiver and Consent, he as such officer and with full authority executed the same voluntarily for and as the act of the First Alabama Bank of Tuscaloosa.

Given under my hand and official seal of office on this the 23rd day of June, 1980.

Barbara A. Maxey
Notary Public
My Commission Expires: MY COMMISSION EXPIRES 2-14-82

[NOTARIAL SEAL[

BOOK 36 PAGE 677

19800710000075330 50/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

STATE OF ALABAMA

TUSCALOOSA COUNTY

PROBATE COURT

CASE NO. 10181

IN THE MATTER OF THE ESTATE OF
THOMAS H. BENNERS, II, DECEASED

ORDER AUTHORIZING THE PRIVATE
SALE OF CERTAIN REAL PROPERTY OF THE ESTATE

This cause, coming on for hearing, is submitted upon the Petition of Elizabeth McDavid Benners, Administratrix of the Estate of Thomas H. Benners, II, deceased (the "decedent"), for the sale of certain real property of the said estate on the ground that the personal property of the said estate is insufficient to pay the debts of the decedent; upon the consent to filing of the said petition by Morris C. Benners, father of the decedent, and by Anne Jones Benners, mother of the decedent; upon the acceptance of process and of notice of the filing of the said petition and of the hearing thereof, waiver of further service of process or notice and entrance of appearance in Court on the day set for hearing of the said petition by Morris C. Benners, father of the decedent, and by Anne Jones Benners, mother of the decedent; upon the waiver and consent filed by claimant, First Alabama Bank of Tuscaloosa; upon the waiver and consent filed by claimant, The First National Bank of Tuskaloosa; and upon the records concerning notice, including publication of notice in The Graphic once a week for three consecutive weeks, to-wit: May 15, 1980, May 22, 1980 and May 29, 1980, on file in this Court.

BOOK 36 PAGE 678

Upon consideration of all thereof by the Court, the following findings are hereby made by the Court:

1. The decedent died seized and possessed of the following described real property:

> Lot 26, according to the map and survey of Mountain View Lake Company Second Sector as recorded in Map Book 3, Page 150 in the Probate Office of Shelby County, Alabama, certified by Sydney H. Keel according to his survey dated May 15, 1979, less and excepting therefrom a twenty-five foot by thirty foot parcel and being more particularly described as follows: Commence at the northwest corner of Lot 26 of said Mountain View Lake Company Second Sector and run east along the north line of said Lot 26 for 110.0 feet to the point of beginning; thence continue east along the north line of said Lot 26 for 30.0 feet; thence 90°00' right and run south for 25.0 feet; thence 90°00' right and run west for 30.0 feet; thence 90°00' right and run north for 25.0 feet to the point of beginning, containing 750 square feet;

2. The personal property of the said estate is insufficient to pay the debts thereof, and the sale of said real property is necessary for the payment of said debts;

3. The decedent left no lineal descendants of his surviving him, and all of the heirs and next of kin of

FILED 6-27-1980

W. King McCollum

Judge of Probate
TUSCALOOSA COUNTY, ALABAMA

BOOK 154 PAGE 49

19800710000075330 51/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

the decedent, namely the widow, Elizabeth McDavid Benners, the father of the decedent, Morris C. Benners, and the mother of the decedent, Anne Jones Benners, are over the age of nineteen years and of sound mind and have consented to the sale of the said real property; and

4. The offer to purchase the said real property by Leland Hull, Jr., for Twenty-Five Thousand Dollars ($25,000) is a fair and equitable price for the said real property.

5. Claimant, First Alabama Bank of Tuscaloosa, has waived any rights it might have in and to the proceeds from the sale of said property and has consented to the disposition of such proceeds as set forth hereinafter.

6. Claimant, The First National Bank of Tuskaloosa has waived any rights it might have in and to the proceeds from the sale of said property and has consented to the disposition of such proceeds as set forth hereinafter.

It is ORDERED, ADJUDGED and DECREED that the said petition for the sale of said real property be granted; the said Elizabeth McDavid Benners is hereby ordered to sell said real property at private sale to Leland Hull, Jr. for a purchase price of Twenty-Five Thousand Dollars ($25,000); the entire net proceeds from such sale shall first be applied to pay off the indebtedness of the estate of the decedent to Birmingham Trust National Bank loan number 2159007; and the remainder of the net proceeds from such sale shall next be applied to reduce the indebtedness of the estate of the decedent to The First National Bank of Tuskaloosa, Tuscaloosa, Alabama.

It is further ORDERED that the said Elizabeth McDavid Benners, within thirty days after such sale shall report on oath her proceedings to this Court in strict compliance with all the terms, conditions and requirements of this order, whereupon a confirmation of the sale of such real property shall be issued by this Court.

DONE this 27th day of June, 1980.

W. Hardy McCollum
Judge of Probate

19800710000075330 52/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

BOOK 36 PAGE 680

19800710000075330 53/53 $.00
Shelby Cnty Judge of Probate, AL
07/10/1980 12:00:00 AM FILED/CERT

THE STATE OF ALABAMA)
)
COUNTY OF TUSCALOOSA)

I, W. HARDY McCOLLUM, JUDGE OF PROBATE, HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT IS A TRUE AND CORRECT COPY OF Probate Proceedings on the Estate of Thomas H. Benners II

THAT APPEARS ON RECORD IN MY OFFICE IN Probate Minutes BOOK NO. 154 (150) PAGE 35 (289).

GIVEN UNDER MY HAND AND OFFICIAL SEAL THIS THE 30 DAY OF June, 1980.

Claim Bk. 8.

W. Hardy McCollum
W. HARDY McCOLLUM
JUDGE OF PROBATE
TUSCALOOSA COUNTY, ALABAMA

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
FILED
1980 JUL 10 AM 9: 34
JUDGE OF PROBATE

Rec. 79.50
Incl. 1.00
80.50