

STATE OF ALABAMA)
JEFFERSON COUNTY)

774

MORTGAGE AND SECURITY AGREEMENT

THIS INDENTURE, made and entered into on this the 16th day of May, 1983, by and between CAHABA WATER RENOVATION SYSTEMS, INC., an Alabama corporation (herein called the "Mortgagor") and CITY FEDERAL SAVINGS AND LOAN ASSOCIATION, a federal savings and loan association (herein called "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee for money being loaned in advances as construction progresses, as evidenced by promissory note of even date herewith, in the amount of Eight Hundred Fifty Thousand and no/100 (\$850,000.00) Dollars; and

WHEREAS, the said Eight Hundred Fifty Thousand Dollars indebtedness shall be advanced by Mortgagee in accordance with a Construction Loan Agreement of even date herewith, the terms of which agreement are made a part of this mortgage; and

WHEREAS, Mortgagor is desirous of securing the prompt payment of the indebtedness evidenced by said note, and the payment of principal and interest therein provided for;

WHEREAS, Mortgagor may hereafter become indebted to the Mortgagee for additional sums loaned and/or on account of indebtedness which may accrue to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee under the provisions of this mortgage, and Mortgagor wishes to execute this



Savings and Loan Association

2030 2nd Avenue North
Birmingham, Alabama 35203

BOOK 431 PAGE 235

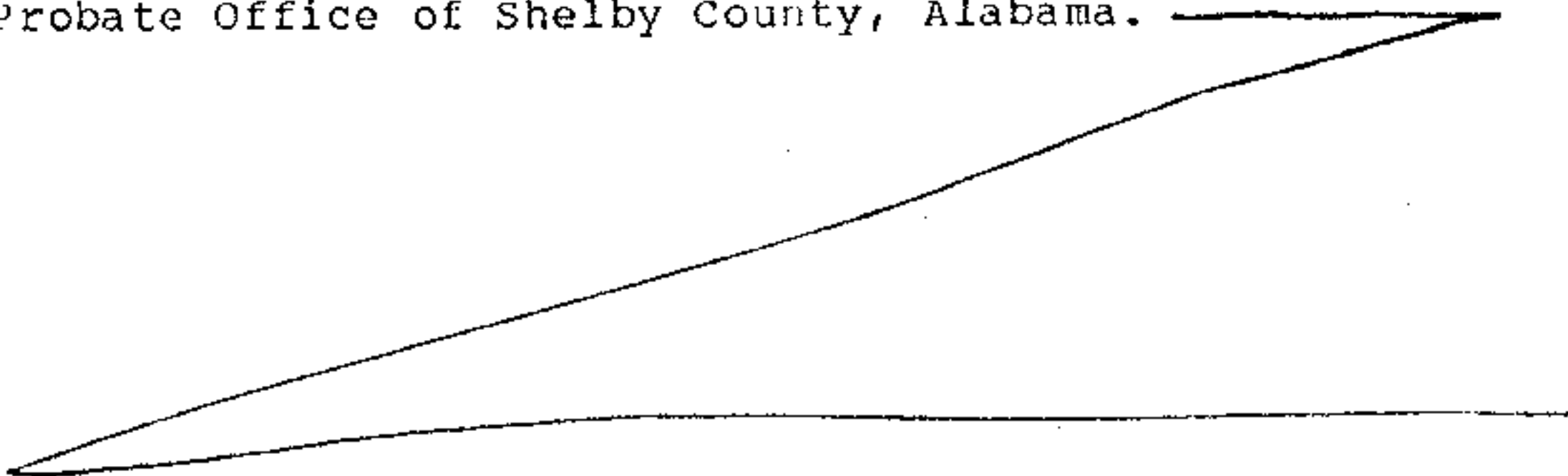
conveyance for the security and enforcement of the payment both of said present and any such future indebtedness;

WHEREAS, as a condition of advancing the monies under the aforementioned Construction Loan Agreement, Mortgagee has required Mortgagor to grant to Mortgagee a first mortgage lien on the real property hereinafter described;

NOW, THEREFORE, the undersigned, Mortgagor in consideration of the premises, the ultimate disbursement to Mortgagee of the aforesaid sum of Eight Hundred Fifty Thousand and no/100 (\$850,000.00) Dollars, to secure the prompt payment of said indebtedness with interest thereon, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and, further, to secure the performance of the covenants, conditions and agreements hereinafter and in said note set forth, Mortgagor has bargained and sold and hereby grants, bargains, sells and conveys to Mortgagee, its successors and assigns, following described real estate, lying and being in the County of Shelby, State of Alabama, to-wit:

That certain parcel of land situated in Shelby County, Alabama, and more particularly described as follows:

Lot 2-E according to a resurvey of Lot 2-D, Cahaba River Park, as recorded in Map Book 8, Page 110 in the Probate Office of Shelby County, Alabama.



TOGETHER WITH all and singular the rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining, and all rights, title and interests, if any, of Mortgagor in and to any streets, alleys, roads or highways abutting the described premises; and

TOGETHER WITH structures, now or hereafter constructed thereon, and all building materials, equipment and fittings of every kind or character now owned or hereafter acquired by Mortgagor for the purpose of constructing facilities and structures thereon, whether or not such materials, equipment and fittings are located on or adjacent to the mortgaged property or whether in storage or otherwise; such personal property being conveyed and mortgaged includes, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring equipment and appliances, pipes all piping, fixtures and in general all building materials and equipment of every kind and character used or intended for use in

BOOK 431 PAGE 237

connection with said improvements, also all improvements, fixtures and articles of personal property now or hereafter attached to or used or adapted for use in the operation of the mortgaged premises, all of which shall be deemed part of the realty;

TOGETHER WITH any awards hereafter made for any taking of or injury to said premises through eminent domain or otherwise, including awards or damages for change of grade, and also any return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, premiums and payments are hereby assigned to Mortgagee and may be at any time collected by it.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto Mortgagee, its successors and assigns, forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of a fee simple interest in said premises and has a good right to sell and convey the same as aforesaid, and Mortgagor covenants with said Mortgagee that the said premises are free of all encumbrances except as herein set out, and that it will warrant and forever defend the title to said premises unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

THIS IS A FUTURE ADVANCE MORTGAGE. The said indebtedness of Eight Hundred Fifty Thousand and no/100 (\$850,000.00) Dollars which is secured hereby is being advanced by Mortgagee to Mortgagor in accordance with a Construction Loan Agreement of even date herewith between Mortgagor and Mortgagee, the terms of which are incorporated as a part hereof. In the event of default in the

terms of said Construction Loan Agreement, such default shall be an event of default entitling the Mortgagee herein to exercise the remedies provided herein, including the right to foreclose this mortgage in accordance with the terms hereof.

This mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

(1) Mortgagor shall pay the said indebtedness and interest thereon when and as they shall become due, whether in course or under any condition, covenant or agreement herein set forth, together with any other indebtedness which Mortgagor may owe to Mortgagee, it being further agreed that any statement, any note or obligation that is secured by this mortgage shall be conclusive evidence of such fact. Any indebtedness secured hereby and interest thereon if not paid when due shall bear interest at the rate of fifteen percent (15%) per annum and such additional interest shall be secured hereby.

(2) That, for the benefit of Mortgagee, Mortgagor will constantly keep in force fire and extended coverage and malicious malice insurance policies and, when available and required by Mortgagee, war damage and other hazard insurance with respect to any and all improvements on said premises, such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as its interest may appear, and Mortgagor hereby

transfers, assigns, sets over and delivers to Mortgagee the fire and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified, then Mortgagee may, at its option, insure said property for its insurable value against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest at the rate of 15% per annum from the date of payment by Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be applied in payment for any repair or replacement of such building, or buildings, without affecting the lien of this mortgage for the full amount hereby secured. Mortgagor agrees to

give Mortgagee notice in writing of any damage to the mortgaged premises caused by fire or other casualty within ten (10) days after the occurrence of any such damage.

If the property mortgaged hereby is at any time included within an area identified by the Secretary of Housing and Urban Development as having special flood or mud slide hazards for which the sale of flood insurance has been made available under the National Flood Insurance Act of 1973, Mortgagor shall promptly purchase a flood insurance policy acceptable to Mortgagee. Such policy shall insure Mortgagee to the extent of its interest and shall be promptly delivered to Mortgagee.

BOOK 431 PAGE 241
(3) That said premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted. Taxes and assessments or other charges which may be levied upon or accrue against said premises, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this mortgage.

(4) No improvement on the premises shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the premises be removed at any time without like consent unless actually replaced by an article of equal suitability owned by

Mortgagor. In the event of any breach of this covenant, the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(5) That any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens, such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

(6) If Mortgagor fails to insure said property as hereinabove provided, or fails to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure said property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall

have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specifically secured, shall be secured by this mortgage, shall bear interest at the rate of 15% per annum from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable.

(7) In the event the indebtedness hereby secured is converted from a construction loan to a term loan, Mortgagor agrees to pay to Mortgagee on each September 1 and March 1 (in addition to paying the principal and interest provided for in the Note, a sum equal to 1/2 of the annual real estate taxes and insurance premiums for insurance applicable to the property herein mortgaged. Mortgagor shall deposit at least thirty (30) days prior to the due date of any such real estate tax or insurance premium, such additional amount as may be necessary to provide Mortgagee with sufficient funds in such deposit account to pay such tax or insurance premium when due. All such deposits shall be held in escrow by Mortgagee without interest and be applied by the Mortgagee to the payment of said real estate taxes and insurance premiums.

(8) No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its

right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges.

(9) If Mortgagee shall be made a party to any suit involving the title to the property hereby conveyed and employs an attorney to represent it therein, or if the Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the property hereby conveyed that purports to be superior to the lien of this mortgage in any respect, Mortgagor will pay to Mortgagee, when the same becomes due, such attorney's fee as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee, the same shall be secured by the lien of this mortgage in addition to the indebtedness specially secured hereby, and shall bear interest at the rate of 15% per annum from the date it is paid or incurred and shall be at once due and payable.

(10) All expenses incurred by Mortgagee, including attorney's fees, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured.

(11) Mortgagor agrees to pay a reasonable attorney's fee to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness secured by this Mortgage or to appear in any bankruptcy proceeding affecting the Mortgagee under this Mortgage.

(12) In the event damages are paid or awarded for the taking of or injury to the property herein mortgaged, whether such taking or injury be done under the power of eminent domain or otherwise, any and all such payments, awards and damages arising thereunder shall be paid to Mortgagee to be applied at the option of Mortgagee toward the satisfaction of any and all indebtedness secured hereby.

(13) If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect the income and profits from the premises, either with or without the appointment of a receiver; any income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to the interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

(14) It is further agreed that if Mortgagor shall fail to pay, or cause to be paid by the Subscribers following seven days notice by the Mortgagee to the Mortgagor, the whole or any portion of the principal sum or any installment of interest thereon, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein set forth, or should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment now,

or which may hereafter be, levied against, or which may become a lien on, said property, or should default be made in the Construction Loan Agreement, or should default be made in any of the covenants, conditions and agreements herein set forth, then and in that event, the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of said property and after, or without, taking such possession of the same, sell the mortgaged property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises, or the equity of redemption from this mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee,

BOOK 431 PAGE 247
or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosure of this mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interested in the mortgaged premises, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

(15) It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and

that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of said lands and premises and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

(16) Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor that if it or any one or more of them shall hold possession of the above-described property or any part thereof subsequent to foreclosure hereunder, they or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of wrongful detainer and shall be liable to such purchaser or purchasers for reasonable rental of said premises, and shall be subject to eviction and removal, forcible or otherwise, with or without

process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(17) When and if Mortgagor and Mortgagee shall respectively become the Debtor and Secured Party in any Uniform Commercial Code Financing Statement with regard to property either referred to or described herein, or in any way connected with the use and enjoyment of the premises hereby mortgaged, this mortgage shall be deemed to be a Security Agreement as defined in the Alabama Uniform Commercial Code and the remedies for any violation of the covenants, terms and conditions of the agreements herein set forth shall be (i) as prescribed herein, or (ii) by general law, or (iii) as to such part of the security which is also reflected in said financing statement by the specific statutory consequences now or hereafter enacted and specified in said Uniform Commercial Code, all at Mortgagee's sole election. Mortgagor and Mortgagee agree that the filing of such a financing statement in the records normally having to do with personal property shall never be construed as in anywise derogating from or impairing this declaration and hereby stated intention of the parties hereto, that everything used in connection with the production of income from the mortgaged property and/or adapted for use therein and/or which is described or reflected in this mortgage is, and at all times and for all purposes and in all proceedings both legal and equitable shall be, regarded as part of the real estate irrespective of whether (i) any such item is physically attached to the improve-

ments, (ii) serial numbers are used for the better identification of certain equipment items capable of being thus identified in a recital set forth herein or in any list filed with the Mortgagee, or (iii) any such item is referred to or reflected in any such financing statement so filed at any time. Similarly, the mention in any such financing statement of (1) the rights in or the proceeds of any fire and/or hazard insurance policy, or (2) any award, in eminent domain proceedings for a taking or for loss of value, or (3) the debtor's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the property mortgaged hereby, whether pursuant to lease or otherwise, shall never be construed as in anywise altering any of the rights of Mortgagee as determined by this instrument or impugning the priority of the Mortgagee's lien granted hereby or by any other recorded document, but such mention in the financing statement is declared to be for the protection of the Mortgagee in the event any court or judge shall at any time hold with respect to (1), (2) and (3) that notice of Mortgagee's priority of interest to be effective against a particular class of persons, including, but not limited to, the Federal government and any subdivisions or entity of the Federal government, must be filed in the Commercial Code Records.

(18) Provided always that if Mortgagor pays the indebtedness secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amounts it may have expended pursuant to the

authorization of this mortgage, including, without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

(19) Wherever and whenever in this mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be deemed to have been given or served when deposited in the United States Mail by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: Cahaba Water Renovation Systems, Inc.
5354 Highway 280, South
Birmingham, Alabama 35243

To Mortgagee: City Federal Savings and Loan
Association
2030 North Second Avenue
Birmingham, Alabama 35203

or to such other address as either party may have given to the other by written notice.

(20) Singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons, and all covenants and agreements herein set forth shall bind the heirs, successors and assigns of the Mortgagor; and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

(21) The unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, the parties hereto have executed this Indenture, all as of the day and year first above written.

CAHABA WATER RENOVATION
SYSTEMS, INC.

By: Charles J. [Signature]
Its PRESIDENT

ATTEST:

James E. [Signature]
Its Sec.

CITY FEDERAL SAVINGS AND LOAN
ASSOCIATION

By: Shirley B. [Signature]
Its Vice President

ATTEST:

Patricia C. [Signature]
Its Assistant Secretary

This Instrument Was Prepared By:
Samuel E. Upchurch, Jr.
1700 First Alabama Bank Building
Birmingham, Alabama 35203

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Charles G. Bueltnan, whose name as President of Cahaba Water Renovation Systems, Inc., a corporation, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 16th day of May, 1983.

Helen Hays Richardson
Notary Public

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned Notary Public in and for said County in said State, hereby certify that Shirley B. Woods, whose name as Vice President of City Federal Savings and Loan Association, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand and official seal this the 16th day of May, 1983.

Helen Hays Richardson
Notary Public

Mtg TAX 1275.00
Rec 28.50
Jud 1.00
1304.50

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
DOCUMENT WAS FILED
1983 MAY 18 AM 9 17

Thomas A. Slaughter, Jr.
CLERK OF PROBATE