

1178

STATE OF ALABAMA     )  
SHELBY COUNTY         )

Lot 23, Block 1 Survey of  
Willow Glen 2nd Sector,  
Shelby County, Alabama

This instrument prepared by  
Robert E. Moorer, Atty. at Law  
2010 City Federal Bldg.  
Birmingham, AL 35293

CONSTRUCTION LOAN MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That Whereas ENMAR CORPORATION, (hereinafter called "Mortgagor") has this day become justly indebted to SERVICE CORPORATION OF ALABAMA, Birmingham, Alabama (hereinafter called the "Mortgagee") in the principal sum of Thirty Five Thousand One Hundred Sixty (\$ 35,160<sup>00</sup> Dollars) [N/A of which represents purchase money indebtedness for the real estate described below] as evidenced by negotiable note of even date herewith. no/06

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NOW THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any renewals or extensions of same and any other indebtedness now or hereafter owed by "Mortgagor" to "Mortgagee" and compliance with all the stipulations, hereinafter contained, the said ENMAR CORPORATION, does hereby Grant, Bargain, Sell and Convey into the said "Mortgagee" the real estate situated in Shelby County, Alabama, and described in Exhibit "A" attached hereto, together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by the "Mortgagor" in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric and other heating, lighting, ventilating, air conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, waste disposal systems, and other equipment and fixtures attached or appertaining to said premises, all of which (hereinafter designated as the "Mortgaged Property") shall be deemed realty and conveyed by this Mortgage.

~~OFFICE~~  
SERVICE CORPORATION OF Alabama  
518 CITY Federal Bldg  
Birmingham AL. 35263

TO HAVE AND TO HOLD the same and every part thereof unto the "Mortgagee", SERVICE CORPORATION OF ALABAMA, its successors and assigns forever.

And for the purpose of further securing the payment of said indebtedness, the "Mortgagor" covenants and agrees as follows:

1. That it is lawfully seized in fee and possessed of said "Mortgaged Property" and has a good right to convey the same as aforesaid, that it will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

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This Mortgage, by Agreement between "Mortgagee" and "Mortgagor", shall be superior to that certain Blanket Mortgage lien given by said "Mortgagor" to "Mortgagee" on the 5<sup>th</sup> day of April, 1983, and recorded with the Judge of Probate of Shelby County, Alabama, in Volume 431, Page 579.

2. That it will pay all taxes, assessments, or other liens taking priority over this Mortgage when imposed legally upon said "Mortgaged Property" and should default be made in the payment of same, or any part thereof, said "Mortgagee" may pay the same.

3. That is will keep the buildings on said premises continuously insured in such amounts, in such manner and in such companies as may be satisfactory to the "Mortgagee" against loss of fire and such other hazards as "Mortgagee" may specify, with loss, if any, payable to said "Mortgagee", and will deposit with "Mortgagee" policies for such insurance and will pay premiums therefor as the same become due.

"Mortgagor" shall give immediate notice in writing to "Mortgagee" of any loss or damages to said premises caused by any casualty. If "Mortgagor" fails to keep said property insured as above specified, the "Mortgagee" may insure said

property for its insurable value against loss by fire and other hazards for the benefit of the "Mortgagee". The proceeds of such insurance shall be paid by insurer to "Mortgagee" which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the indebtedness secured by this Mortgage, less cost of collecting same, or to be used in repairing or reconstructing the premises as the "Mortgagee" may elect; all amounts so expended by said "Mortgagee" for insurance or for the payment of taxes, assessments or any other prior liens shall become a debt due said "Mortgagee" additional to the indebtedness herein

BOOK 431 PAGE 571 described and at once payable without demand upon or notice to any person, and shall be secured by the lien of this Mortgage and shall bear interest at the highest legal rate from date of payment by said "Mortgagee" and at the election of the "Mortgagee" and without notice to any person, the "Mortgagee" may declare the entire indebtedness secured by this Mortgage due and payable and this Mortgage subject to foreclosure as hereinafter provided.

4. To take good care of the "Mortgaged Property" above described and not to commit or permit any waste thereon, and to keep the same repaired and at all times to maintain the same in as good condition as it now is, reasonable wear and tear alone excepted.

5. That no delay or failure of the "Mortgagee" to exercise any option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of said "Mortgagor", and that the procurement of insurance or payment of taxes by the "Mortgagee" shall not be taken or deemed as a waiver of the right to declare the maturity of the

indebtedness hereby secured by reason of the failure of the "Mortgagor" to procure such insurance or to pay such taxes, it being agreed that no terms or conditions contained in this Mortgage can be waived, altered, or changed except as evidenced in writing signed by the "Mortgagor" and by the "Mortgagee".

6. That it will well and truly pay and discharge any indebtedness hereby secured as it shall become due and payable including the note or notes above described, any renewals or extensions thereof, and any other notes or obligations of "Mortgagor" to "Mortgagee" whether now or hereafter incurred.

7. That after any default on the part of the "Mortgagor", the "Mortgagee" shall, upon bill filed or other proper legal proceeding being commenced for the foreclosure of this Mortgage, be entitled as a matter of right to the appointment by any competent Court or tribunal without notice to any party, of a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises and with such other powers as may be deemed necessary, and that a reasonable attorney's fee shall, among other expenses and costs, be fixed, allowed and paid out of such rents, issues and profits or out of the proceeds of the sale of said "Mortgaged Property".

8. That all the covenants and agreements of the "Mortgagor" herein contained shall extend to and bind its successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein give, granted or secured to the "Mortgagee" shall inure to the benefit of its successors and assigns.

9. That the debt hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard

to the form and contents of such statement and without regard to the existence or non-existence of the debt or any part thereof, or of the lien on which such statement is based.

10. This is a Construction Loan Mortgage and the said \$ 35,160<sup>00</sup> is being advanced to the "Mortgagor" by the "Mortgagee" in accordance with a Construction Loan Agreement between "Mortgagor" and "Mortgagee" dated the 6<sup>th</sup> day of May, 1983. Notwithstanding anything to the contrary contained in this Mortgage or in the Note secured hereby, or in any other instrument securing the loan evidenced by said Note, the "Mortgagor" may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by "Mortgagee" hereunder, immediately due and payable in the event of a breach by the "Mortgagor" of any covenant contained in this Mortgage, the Note secured hereby, of the said Construction Loan Agreement between the "Mortgagor" and the "Mortgagee", in that Agreement dated the 6<sup>th</sup> day of May, 1983, which said Construction Loan Agreement is, by reference thereto, herein incorporated in the same extent and effect as though said Construction Loan Agreement were set forth herein in full.

11. In addition to the said \$ 35,160<sup>00</sup> principal amount with interest secured hereby, this Mortgage shall also secure any and all other and additional indebtedness now or hereafter owing by "Mortgagor" to "Mortgagee". During the period of construction of the improvements contemplated to be constructed upon the "Mortgaged Property", this Mortgage covers and the undersigned, in consideration of the said indebtedness, and to secure the prompt payment of the same, with the interest thereon, and further to secure the performance of the covenants, conditions and agreements set forth in this Mortgage, and in said Construction Loan Agreement, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the "Mortgagee", its successors and assigns,

the following described additional property, situated or to be situated on the real estate hereinabove described and mortgaged:

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All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the "Mortgagor" for the purpose of being used or useful in connection with the improvements located on or to be located on the hereinabove described real estate, whether such materials, equipment,, fixtures and fittings are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, where-soever the same may be located. Personal property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing materials, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

12. Plural or singular words used herein to designate the undersigned "Mortgagor" shall be construed to refer to the maker or makers of this Mortgage, whether one or more persons or a corporation.

UPON CONDITION, HOWEVER, that if the "Mortgagor" shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void, but should default be made in the payment of the indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by said "Mortgagee" under the authority of any of the provisions of this Mortgage or should the interest of said "Mortgagee" in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon so as to endanger the debt hereby secured, or should a petition to condemn any part of the

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"Mortgaged Property" be filed by any authority having power to, eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this Mortgage or the debt hereby secured, or permitting or authorizing the deduction of any such tax from the principal or interest secured by this Mortgage or by virtue of which any tax or assessment upon the "Mortgaged Property" shall be charged against the owner of this Mortgage or should at any time any of the stipulations contained in this Mortgage be declared invalid or inoperative by any Court of competent jurisdiction or should the "Mortgagor" fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part of same may not as said date have been paid, with interest thereon, shall at once become due and payable and this Mortgage subject to foreclosure at the option of the "Mortgagee", notice of the exercise of such option being hereby expressly waived, and the "Mortgagee" shall have the right to enter upon and take possession of the property hereby conveyed and after or without taking such possession to sell the same before the main entrance of the Shelby County Courthouse, in Columbianna, Alabama, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in such County, and upon the payment of the purchase money the "Mortgagee", or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the "Mortgagor" a good and sufficient deed to the property sold; the "Mortgagee" shall apply the proceeds of said sale: First, to the expenses of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance,

taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; fourth, the balance, if any, to be paid over to the said "Mortgagor" or to whomsoever then appears of record to be the owner of said property. The "Mortgagee" may bid and become the purchaser of the "Mortgaged Property" at any foreclosure sale thereunder.

IN WITNESS WHEREOF, the undersigned, by and through its Vice President does hereby set its hand and seal, this the 6<sup>th</sup> day of May, 1983.

ENMAR CORPORATION,

BY:

Its

Gregg Ruskton  
Vice President

ATTEST:

Jane W. Elliott  
Its Secretary

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, Joyce W. Dill

a Notary Public in and for said County,

in said State, hereby certify that

Gregg Ruskton

whose name as Vice President of Enmar Corp. a corporation,, is signed the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed the contents of the conveyance, 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 6<sup>th</sup> day of May, 1983.

Joyce W. Dill  
Notary Public

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EXHIBIT "A"

Willow Glen Subdivision, Second Sector, as recorded in the office of the Judge of Probate, Shelby County, Alabama on the 21st day of February, 1983, in Map Book 8 at page 102 and being situated in the NE 1/4 of Section 22, Township 21 South, Range 3 West, Shelby County, Alabama and containing the following designated lot, to-wit:

Lot 23 Block 1

LESS AND EXCEPT:

- (1) Permit to Alabama Power Company as recorded in Deed Book 101, Page 80;
- (2) Utility easements and building setback as shown in Record Map of said subdivision;
- (3) Restrictions and covenants dated February 15, 1983, as recorded in Miscellaneous Book 48, Page 799.

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
1983 MAY 27 PM 12:54

*Thomas A. Shawlin, Jr.*  
JUDGE OF PROBATE

*Qty. Tax - 5280*

*Rec 1350*  
*100*

*6730*