

STATE OF ALABAMA )  
MADISON COUNTY )  
and  
SHELBY COUNTY )

BOOK PAGE  
\$72 1332 0303  
052331

'84 AUG 22 P4:32

MORTGAGE, SECURITY AGREEMENT  
AND ASSIGNMENT OF RENTS AND LEASES

THIS INDENTURE, made and entered into on August 22<sup>nd</sup>, 1984, between Eugene M. McLain, a married man ("Mortgagor") and AMSOUTH BANK, NATIONAL ASSOCIATION, a national banking association ("Mortgagee").

WITNESSETH, That

WHEREAS, the Mortgagor is or hereinafter shall be justly indebted to the Mortgagee in the amount of One Million Two Hundred Thousand and 00/100 Dollars (\$1,200,000) as evidenced by the following promissory notes (the "Notes"):

<u>AMOUNT</u>	<u>MAKER</u>	<u>MATURITY DATE</u>
\$730,000	Eugene M. McLain	On demand, but not later than February 1, 1986
\$470,000	Eugene M. McLain	On demand, but not later than February 1, 1986

WHEREAS, Mortgagor, in order to secure the Notes, and in order to induce Mortgagee to extend credit to Mortgagor on the strength of the security provided by this Mortgage, has agreed to execute and deliver this Mortgage and convey the property described herein to Mortgagee as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and in order to induce Mortgagee to extend credit to Mortgagor, and in order to secure the prompt payment of the following (hereinafter sometimes referred to collectively as the "Indebtedness"):

(1) Any and all sums, principal, interest and agreed charges, becoming due and payable by the Mortgagor under or with respect to the Notes; and

CABANISS, JOHNSTON, GARDNER,  
DUMAS & O'NEAL

1900 FIRST NATIONAL SOUTHERN NATURAL BUILDING  
BIRMINGHAM, ALABAMA 35203

004 AUG 886

75.00  
50  
25  
1800.00  
300  
1878.7

(2) Any and all sums becoming due and payable by Mortgagor to Mortgagee under the terms of this Mortgage, including but not limited to advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage; and

(3) All renewals and extensions of any or all of the obligations of the Mortgagor described in (1) and (2) above, whether or not any renewal or extension agreement is executed in connection therewith;

(4) All other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, arising directly between the Mortgagor and the Mortgagee or acquired outright, as a participation or as collateral security from another by the Mortgagee, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, in any and all extensions, renewals and modifications of any of the same, including, but not limited to, that certain promissory note executed by the Mortgagor in favor of the Mortgagee in the amount of \$500,000 dated January 13, 1984;

and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of Mortgagor contained in this Mortgage:

#### I. GRANTING CLAUSES

Mortgagor has bargained and sold and does hereby grant, bargain, sell, assign and convey to Mortgagee, and does hereby grant to Mortgagee a security interest in, the property and interests in property described in the following Granting Clauses A, B, C, D and E:

- A. The real estate described on Exhibit A attached hereto (the "Real Estate"); none of which is the homestead of the Mortgagor.
- B. All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate.

C. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate with respect to which Mortgagor is the lessor, including but not limited to the existing leases described on Exhibit B attached hereto and made a part hereof (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate, all such leases, subleases, agreements and tenancies heretofore mentioned (including but not limited to the Existing Leases) being hereinafter collectively referred to as the "Leases";

(ii) any and all guaranties of the lessee's and any sublessee's performance under any of the Leases; and

(iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate, or any part thereof, including but not limited to minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or any improvements thereon, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred under this Mortgage, the Mortgagor shall have the right under a license granted hereby (but limited as provided in Article VIII hereof) to collect, receive and retain the Rents (but not prior to accrual thereof).

- D. All fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements therefor, owned by Mortgagor and now or hereafter attached to, contained in, or used in connection with the Real Estate or placed on any part thereof, though not attached thereto, and all proceeds thereof, including, but not limited to, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and all other goods, materials, motors, machinery, pipes, appliances, equipment, inventory, fittings and fixtures now or hereafter located on the Real Estate, and the trade name, good will and books and records relating to the business operated on the Real Estate.
- E. Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to Mortgagee as and for additional security hereunder by Mortgagor, or by anyone on behalf of, or with the written consent of, Mortgagor.

All of the property described in the foregoing Granting Clauses A, B, C, D and E is herein sometimes collectively referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, forever.

## II. PRIOR MORTGAGES

This mortgage is subordinate to the following mortgages:

1. In regard to Parcel II, mortgage from Textile Hardwood Manufacturing Co., Inc., to Janet Hasty and James Hasty dated July 11, 1984, and recorded in Mortgage Book 1327, at page 168, in the Probate Office of Madison County, Alabama.
2. In regard to Parcel III, mortgage from Eugene M. McLain and Geraldine P. McLain to Central Bank of Alabama, N.A. dated October 31, 1981 and recorded in Mortgage Book 1236, at page 876, and as amended on December 27, 1982, and

recorded in Mortgage Book 1261, page 975, and assigned to First American Savings and Loan Association by instrument recorded in Mortgage Book 1281, page 1085, in the Probate Office of Madison County, Alabama.

3. In regard to Parcel IV, mortgage from Eugene M. McLain to AmSouth Bank N.A. dated January 13, 1984 and recorded in Mortgage Book 1303, at page 568, in the Probate Office of Madison County, Alabama.

4. In regard to Parcel V, mortgage from Eugene M. McLain and Geraldine P. McLain to First American Federal Savings and Loan Association dated February 9, 1976 and recorded in Mortgage Book 1095, at page 285, in the Probate Office of Madison County, Alabama.

5. In regard to Parcel VII, mortgage from Eugene M. McLain and Geraldine P. McLain to Lawrence B. Goldsmith, Jr. dated May 21, 1979 and recorded in Mortgage Book 1179, at page 731, and as amended by instrument dated December 30, 1982, and recorded in Mortgage Book 1262, page 735 in the Probate Office of Madison County, Alabama.

6. In regard to Parcel VIII, mortgage from Eugene M. McLain to AmSouth Bank N.A. dated January 13, 1984 and recorded in Book 442, at page 294, in the Probate Office of Shelby County, Alabama.

The mortgages described in II.1--6 above will hereinafter be collectively called the "Prior Mortgages."

The Mortgagor hereby authorizes the holders of the Prior Mortgages to disclose to the Mortgagee the following information:

- (1) The amount of indebtedness secured by such mortgage;
- (2) The amount of such indebtedness that is unpaid;
- (3) Whether any amount owed on such indebtedness is, or has been, in arrears;
- (4) Whether there is, or has been, any default with respect to such mortgage or the indebtedness secured thereby; and
- (5) Any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may request from time to time.

### III. ASSIGNMENT OF CONDEMNATION AWARDS

As further security for the Indebtedness and the full and complete performance of each and every obligation,

BOOK 004 PAGE 890

covenant, agreement and duty of Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in the collection of any award or payment, Mortgagor hereby assigns to Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to Mortgagor with respect to the Mortgaged Property as a result of (A) the exercise of the right of eminent domain, (B) the alteration of the grade or of any street or (C) any other injury to or decrease in value of the Mortgaged Property. All such damages, condemnation proceeds and consideration shall be paid directly to Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Mortgagee in obtaining such sums, Mortgagee may, at its option, apply the balance on the Indebtedness in any order and whether or not then due, or to the restoration of the Mortgaged Property, or release the balance to Mortgagor. Said application or release shall not cure or waive any default of Mortgagor.

#### IV. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

In order to induce Mortgagee to extend credit to Mortgagor, Mortgagor represents and warrants that:

A. Valid Title, etc. Mortgagor is lawfully seized of an indefeasible estate in fee simple in and to the property described in Granting Clauses A and B above; it has a good right to sell and mortgage the Mortgaged Property; the Mortgaged Property is subject to no mortgages, liens, encumbrances, assignments or security interests other than as set forth herein; and Mortgagor will forever warrant and defend the title to the Mortgaged Property unto Mortgagee against the claims of all persons whomsoever, except those claiming under Prior Mortgages.

B. Maintenance of Lien Priority. Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on and security interest in the Mortgaged Property created hereby. Mortgagor shall execute, acknowledge and deliver such additional instruments as Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens and security interests created hereby as first liens on and security interests in the Mortgaged Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens



and security interests hereby created shall be paid by Mortgagor.

C. Representations and Warranties Specifically Relating to Rents and Leases.

(i) Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein.

(ii) Mortgagor has duly and punctually performed all and singular the terms, covenants, conditions and warranties of the Existing Leases on the Mortgagor's part to be kept, observed and performed.

(iii) Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(iv) No Rents due for any period subsequent to the month next succeeding the date of this Mortgage have been collected, and no payment of any of the Rents has otherwise been anticipated, waived, released, discounted, set-off or otherwise discharged or compromised.

(v) Mortgagor has not received any funds or deposits from any lessee in excess of one month's rent for which credit has not already been made on account of accrued rents.

(vi) To the best of Mortgagor's knowledge, the lessees under the Existing Leases are not in default under any of the terms thereof.

V. COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees that, until the Indebtedness is paid in full:

A. Payment of Taxes and Other Assessments. Mortgagor will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Mortgaged Property or on the interests created by this Mortgage, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the lien and other interests created by this Mortgage, and

BOOK 004 PAGE 892

at least ten days before said taxes, assessments and other governmental charges are due Mortgagor will deliver receipts therefor to Mortgagee. Mortgagor may, at its own expense, in good faith contest any such taxes, assessments and other governmental charges and, in the event of any such contest, may permit the taxes, assessments or other governmental charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed. If any tax or assessment is levied, assessed or imposed by any governmental authority on Mortgagee as a legal holder of any of the Notes or any interest in this Mortgage or in any other documents securing the Notes, then unless all such taxes and assessments are paid by Mortgagor as they become due and payable (and in the opinion of counsel for Mortgagee, such payment by Mortgagor is lawful and does not place Mortgagee in violation of any law), Mortgagee may, at its option, declare the Indebtedness immediately due and payable.

B. Insurance. Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by Mortgagee in such manner and in such companies as Mortgagee may approve and in an amount sufficient to cover the sum of the Indebtedness and the amount secured by any prior mortgage on the Real Estate that constitutes a Permitted Encumbrance. All such policies shall provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses, without contribution, to be attached to each policy) be payable to Mortgagee. Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with Mortgagee. At least ten days prior to the date the premiums on each such policy or policies shall become due and payable, Mortgagor shall furnish to Mortgagee evidence of the payment of such premiums. Each of such policies shall contain an agreement by the insurer that the same shall not be cancelled without at least ten days' prior written notice to Mortgagee. With respect to all such insurance policies, Mortgagee is hereby authorized, but not required, on behalf of Mortgagor, to collect for, adjust or compromise any losses under any such insurance policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Indebtedness, in any order and whether due or not, or to the restoration of the Mortgaged Property, or to release the same to Mortgagor, but any such application or release shall not cure or waive any default by Mortgagor. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the



Mortgaged Property in extinguishment of the Indebtedness, complete title to all insurance policies held by Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Mortgaged Property.

C. Waste, Demolition, Alteration or Replacement.

Mortgagor will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Real Estate without the express prior written consent of Mortgagee, will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mortgagor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the express prior written consent of Mortgagee and unless the same is immediately replaced with like property of at least equal value and utility.

D. Covenants Relating to Rents and Leases. Mortgagor covenants and agrees that Mortgagor shall:

(i) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by the Mortgagor, and shall give prompt notice to the Mortgagee in the event Mortgagor fails to observe, perform and discharge the same;

(ii) enforce or secure in the name of Mortgagee the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases;

(iii) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Mortgagor and any lessee thereunder, and, upon request by Mortgagee to do so in the name and on behalf of Mortgagee but at the expense of Mortgagor, and to pay all costs and expenses of Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which Mortgagee may appear;

(iv) not receive or collect any Rents from any present or future lessee of the Real Estate or any part thereof for a period of more than one month in advance, or pledge, transfer, mortgage or otherwise encumber or assign future payments of the Rents;

(v) not waive, excuse, condone, discount, set off, compromise, or in any manner release or discharge any lessee of the Real Estate of and from any obligations, covenants, conditions and agreements by said lessee to be kept, observed and performed, including the obligation to pay rent in the manner and at the place and time specified in any Lease;

(vi) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of Mortgagee;

(vii) not renew or otherwise extend the term of the Existing Leases; provided, however, that nothing herein contained shall prevent Mortgagor, upon expiration of the now-current term (or other expiration or termination) of the Existing Leases, from leasing the property covered thereby to the lessee thereunder by a lease or leases expressly subject and fully subordinate to the lien of this Mortgage; and

(viii) promptly upon the execution by Mortgagor of any future Lease, (a) furnish Mortgagee with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of Mortgagee, a copy of such Lease, and (b) execute all such further assignments of such Lease and the Rents therefrom as the Mortgagee may require.

## VI. DEFEASANCE

If Mortgagor shall: (A) (i) pay in full all of the Indebtedness (as defined herein), including but not limited to, all sums (principal, interest and charges) payable under the Notes and any and all extensions and renewals of the same; and (ii) all sums becoming due and payable by Mortgagor under the terms of this Mortgage, including but not limited to, advancements made by Mortgagee pursuant to the terms and conditions of this Mortgage; and (B) have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to Mortgagor, and the entire

BOOK 004 PAGE 895

estate, right, title and interest of Mortgagee will thereupon cease; and Mortgagee in such case shall, upon the request of Mortgagor and at Mortgagor's cost and expense, deliver to Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

#### VII. EVENTS OF DEFAULT

Mortgagor shall be in default under this Mortgage upon the happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default"):

- (a) any representation or warranty made herein or in any loan agreement related to the Indebtedness or in any other document or instrument evidencing or securing the Indebtedness (any such loan agreement and any such document or instrument evidencing or securing the Indebtedness being hereinafter collectively referred to as the "Loan Documents") shall prove to be false or misleading in any material respect;
- (b) any report, certificate, financial statement or other instrument finished in connection with the Indebtedness or any Loan Document shall prove to be false or misleading in any material respect;
- (c) default shall be made in the prompt payment of the principal of and interest payable on any of the Notes as and when due and payable;
- (d) default shall be made with respect to any indebtedness (other than the Notes) of Mortgagor when due or the performance of any other obligation incurred in connection with any indebtedness for borrowed money of Mortgagor, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity; or any such indebtedness shall not be paid when due;
- (e) default shall be made in the due observance or performance of any other covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of any Loan Document;

BOOK 004 PAGE 897

- (f) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Mortgagor to be observed or performed pursuant to the terms of this Mortgage;
- (g) any other event of default shall occur under any Loan Document;
- (h) the Mortgagor or any maker, endorser, surety or guarantor of any of the Notes (hereinafter collectively called the "Obligors" and individually an "Obligor") shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of the Mortgagor or of any Obligor or of any of their respective properties or assets, (ii) admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking reorganization or an arrangement with creditors, or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or file an answer admitting the material allegations of a petition filed against it in any proceeding under any such law, or if corporate action shall be taken by Mortgagor or any Obligor for the purpose of effecting any of the foregoing;
- (i) an order, judgment or decree shall be entered, without the application, approval or consent of the Mortgagor or any Obligor by any court of competent jurisdiction, approving a petition seeking reorganization of the Mortgagor or any Obligor or of all or a substantial part of the respective properties or assets of the Mortgagor or of any Obligor, or appointing a receiver, trustee or liquidator of the Mortgagor or of any Obligor, and such order, judgment or decree shall continue unstayed and in effect for any period of 60 days;
- (j) final judgment for the payment of money in excess of an aggregate of \$5,000 shall be rendered against the Mortgagor or any Obligor, and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed;
- (k) a default or event of default, or an event which upon notice or lapse of time or both would constitute an event of default under any prior mortgage on the Real Estate, or part thereof, shall occur and be continuing;

- (1) the interest of Mortgagee in the Mortgaged Property shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the Indebtedness; or
- (m) any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction.

#### VIII. RIGHTS OF MORTGAGEE UPON DEFAULT

BOOK 004 PAGE 898

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor, declare the Indebtedness, all or any part thereof, immediately due and payable. Unless otherwise provided herein and to the extent permitted by law, Mortgagor hereby waives demand, presentment for payment, protest, notice of protest, dishonor and default, notice of intent to declare the Indebtedness immediately due and payable and notice of declaration that the Indebtedness is immediately due and payable, and any and all rights it may have to a hearing before any judicial authority prior to the exercise by Mortgagee of any of its rights under this Mortgage or any other agreements securing or executed in connection with the Indebtedness.

B. Operation of Property by Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee), may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; and Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to Mortgagor, provided there has been no foreclosure sale. This provision is a right created by this Mortgage and is cumulative of, and shall in no way affect, the right of Mortgagee to the appointment of a receiver given Mortgagee by law.

C. Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit for a foreclosure of its lien on and security interest in the Mortgaged Property, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Upon the occurrence of an Event of Default, Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

D. Foreclosure Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving 21 days' notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in the county wherein the Mortgaged Property or part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Mortgaged Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Mortgaged Property not previously sold shall have



been sold or all the Indebtedness secured hereby shall have been paid in full.

E. Personal Property and Fixtures. On the happening of any Event of Default or at any time thereafter, Mortgagee shall have and may exercise with respect to the personal property and fixtures covered by this Mortgage (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including without limitation the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default by Mortgagor, without regard to preservation of the Collateral or its value and without the necessity of a court order, and apply the proceeds thereof first toward the payment of all costs and expenses and reasonable attorneys' fees incurred by Mortgagee and the balance toward the payment of the Indebtedness in such order or manner as Mortgagee may elect. Mortgagee shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale or lease or other use or disposition. At Mortgagee's request, Mortgagor shall assemble the Collateral and make the Collateral available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, Mortgagor expressly waives (1) any notice of sale or any other disposition of the Collateral and any rights or remedies of Mortgagee with respect to, and the formalities prescribed by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Mortgagee existing after default. To the extent that such notice is required and cannot be waived, Mortgagor agrees that if such notice is mailed postage prepaid to Mortgagor at 720 Clinton Avenue West, Post Office Box 2209, Huntsville, Alabama 35804, at least five (5) days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

Mortgagor agrees that Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Mortgaged Property in accordance with the rights and remedies granted under this Mortgage with respect to the

real property covered hereby. Mortgagor hereby grants Mortgagee the right, at its option after default by Mortgagor, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Indebtedness in such order and manner as Mortgagee may elect. Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Mortgagee and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

F. Rights of Mortgagee With Respect to Rents and Leases.

Upon the occurrence of an Event of Default, or at any time thereafter:

(i) Mortgagee, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

(a) to terminate the license granted to Mortgagor in granting Clause C of Article I hereof to collect the Rents, and, without taking possession, in Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Indebtedness in such order and amounts as Mortgagee may choose (or hold the same in a reserve as security for the Indebtedness);

(b) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Mortgaged Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses Mortgagee shall deem proper to protect the security hereof, as fully and

to the same extent as Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Mortgaged Property (including payment of reasonable management, brokerage and attorney's fees) and payment of any Indebtedness in such order and amounts as Mortgagee may choose (or hold the same in reserve as security for the Indebtedness);

(c) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of Mortgagor under this Mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Mortgaged Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Mortgagee, once exercised, shall continue for so long as Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If Mortgagee shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

G. Mortgagor's Warranties After Sale. Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto, and the title of such purchaser or purchasers when so made by Mortgagee or such auctioneer. Mortgagor binds itself to warrant and forever defend to the extent of the right, title and interest therein of Mortgagor.

H. Application of Proceeds. The proceeds of any and all foreclosure sales of the Mortgaged Property shall be applied as follows: (i) to the payment of all necessary expenses incident to the execution of said sale or sales, (ii) to the payment of the Indebtedness, to the amount of the accrued interest and principal legally due thereon and all other sums secured hereby and to the payment of attorneys' fees as provided herein and in the Notes, and (iii) the remainder, if any, shall be paid to Mortgagor or such other person or persons as may be entitled thereto by law.

I. Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Indebtedness due, and provided that if any sale is made because of such Event of Default, such sale may be made subject to the unmatured part of the Indebtedness secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness secured by this Mortgage, but as to such unmatured part of the Indebtedness this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

J. Waiver of Appraisement Laws. Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Mortgaged Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Indebtedness (commonly known as stay laws and redemption laws).

K. Prerequisites of Sales. In case of any foreclosure sale of the Mortgaged Property, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of money secured or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

#### IX. MISCELLANEOUS PROVISIONS

A. Waiver and Election. The exercise by Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien and security interest granted by this Mortgage, either on any matured portion of the Indebtedness or

BOOK 004 PAGE 903

for the whole of the Indebtedness, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication or necessary notices for foreclosure, as provided in this Mortgage, preclude the prosecution of a later suit thereon.

B. Landlord-Tenant Relationship. Any sale of the Mortgaged Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Mortgagor.

C. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Mortgagee to effectuate the provisions hereof.

D. Application of Payments. If the lien or the security interest created by this Mortgage is invalid or unenforceable as to any part of the Indebtedness or is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Indebtedness which is not secured or not fully secured by said lien or security interest created hereby.

E. Payment of Amounts under Prior Mortgages. Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any of the Prior Mortgages, Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to Mortgagor. Mortgagor agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Notes, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Indebtedness secured by this Mortgage; and if such amount is not paid in full immediately by Mortgagor, then, at the option of the Mortgagee, this Mortgage shall be in default and subject to immediate foreclosure in all respects as provided by law and by the provisions hereof.

F. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural

the singular, and pronouns of one gender shall include all genders; and the words "Mortgagor" and "Mortgagee" shall include their respective successors and assigns.

G. Advances by Mortgagee. If Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, the performance of Mortgagor's obligations under any Lease or any other term or covenant herein contained, Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Notes, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Indebtedness and shall be secured hereby.

H. Release or Extension by Mortgagee. Mortgagee, without notice, may release any part of the Mortgaged Property or any person liable for the Indebtedness without in any way affecting the rights of Mortgagee hereunder as to any part of the Mortgaged Property not expressly released and may agree with any party with an interest in the Mortgaged Property to extend the time for payment of all or any part of the Indebtedness or to waive the prompt and full performance of any term, condition or covenant of the Notes, this Mortgage or any other instrument evidencing or securing the Indebtedness.

I. Partial Payments. Acceptance by Mortgagee of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of Mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Indebtedness has been paid, Mortgagee shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

J. No Obligations With Respect to Leases. Mortgagee shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases or the Real Estate (unless expressly assumed by Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on Mortgagee any duties or obligations that would make Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. Mortgagor agrees to

004 005



defend, indemnify and save harmless Mortgagee from and against any and all claims, causes of action and judgments relating to Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Real Estate.

K. Expenses. Mortgagor shall pay all costs and expenses incurred by Mortgagee in connection with preparing and recording this Mortgage and enforcing Mortgagee's rights hereunder, including reasonable attorney's fees.

L. Titles. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

M. Construction of Mortgage. This Mortgage may be construed as a mortgage, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation, or contract, or any one or more of them, in order fully to effectuate the lien hereof and security interest created hereby and the purposes and agreements herein set forth.

IN WITNESS WHEREOF, Mortgagor has executed this instrument on the day and year first above written.

Eugene M. McLain  
EUGENE M. McLAIN

STATE OF ALABAMA )

Madison COUNTY )

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

Given under my hand and official seal, this 22<sup>nd</sup> day of August, 1984.



Melecia S. Dunton  
Notary Public

MY COMMISSION EXPIRES 10/15/85

BOOK PAGE 004 906

BOOK PAGE

1332 0324

22.

This instrument was prepared by:

Kay K. Bains

Cabaniss, Johnston, Gardner,  
Dumas & O'Neal  
1900 First National-Southern  
Natural Building  
Birmingham, Alabama 35203.  
(205) 252-8800

BOOK 004 PAGE 907

## EXHIBIT "A"

## PARCEL I (Church)

BOOK 004 PAGE 308

All that part of the Northwest Quarter of Section 34, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as beginning at a point on the North right-of-way of Highway 72 West By-Pass, which is North 170.00 feet from the center of said Section 34; thence from the point of beginning along the North right-of-way of Highway 72 West By-Pass, South 89 degrees 30 minutes West, a distance of 250.00 feet to a point; thence leaving the North right-of-way of Highway 72 West By-Pass, North 00 degrees 30 minutes West, a distance of 300.00 feet to a point; thence south 89 degrees 30 minutes West, a distance of 248.80 feet to a point; thence North 19 degrees 12 minutes West, a distance of 140.00 feet to a point; thence North 00 degrees 58 minutes East, a distance of 281.40 feet to a point; thence South 89 degrees 55 minutes East, a distance of 556.40 feet to a point; thence South 00 degrees 58 minutes West, a distance of 708.50 feet to the point of beginning and containing 6.92 acres more or less.

## PARCEL II (Textile)

All that part of the northwest quarter of Section 11, Township 4 South, Range 1 West, of the Huntsville Meridian as shown on the plat or map of West Huntsville as recorded in Plat Book 1, page 39, Probate Records, Madison County, Alabama, particularly described as beginning at a concrete monument on the south margin of Bob Wallace Avenue (formerly 13th Avenue); said point of true beginning is further described as being South 00 degrees 32 minutes 33 seconds East, 5.00 feet and South 89 degrees 51 minutes 15 seconds West, 1023.00 feet from the northeast corner of Block 133 of the Huntsville Land, Building and Manufacturing Association Addition to the City of Huntsville, Alabama, as recorded in Plat Book 1, Page 39, Probate Records, Madison County, Alabama, thence from the point of true beginning, South 00 degrees 32 minutes 33 seconds East, 701.49 feet to a concrete monument on the North margin of Fifteenth Avenue; thence along the Northerly margin of Fifteenth Avenue, South 89 degrees 51 minutes 15 seconds West 607.00 feet to a concrete monument on the east margin of Fifth Street; thence along the margin of said street North 00 degrees 32 minutes 33 seconds West, 701.49 feet to a concrete monument on the south margin of Bob Wallace Avenue; thence along the south margin of Bob Wallace Avenue, North 89 degrees 51 minutes 15 seconds East, 607.00 feet to the point of true beginning and containing 9.775 acres more or less.

## PARCEL III (MAYFAIR)

TRACT I All that part of the Southwest Quarter of Section 10, Township 4 South, Range 1 West in the City of Huntsville, Madison County, Alabama, particularly described as beginning at a point South 89 degrees 28 minutes West 2614.85 feet; South 0 degrees 41 minutes West 580.00 feet from the center of Section 10, Township 4 South, Range 1 West; thence from the place of true beginning along the East right-of-way of Patton Road South 0 degrees 41 minutes West 736.4 feet; thence South 89 degrees 42 minutes East 287.2 feet to the West margin of Ashland Drive; thence along the West margin of Ashland Drive North 5 degrees 20 minutes East 126.3 feet; North 0 degrees 41 minutes East 608.8 feet to the South margin of Freemont Avenue; thence North 89 degrees 19 minutes West 298.24 feet to the place of true beginning and containing 4.96 acres more or less.

TRACT II ALSO all that part of Lot 12, Block 11 according to the plat of Bon Air Estates Fourth Addition, Huntsville, Alabama, as of record in Plat Book 3, Page 7, in the office of the Probate Judge of Madison County, Alabama, more particularly described as beginning at the Southwest corner of said Lot 12, Block 11; said point is further described as the intersection of the East margin of Patton Road with the North margin of Fremont Avenue; thence from the place of true beginning along the North margin of Fremont Road South 89 degrees 19 minutes East 125.0 feet; thence North 0 degrees 41 minutes East 532.65 feet to the North boundary of Lot 12, Block 11; thence along the boundary of Lot 12, Block 11, South 89 degrees 28 minutes West 125.03 feet; thence South 0 degrees 41 minutes West 530.0 feet to the place of true beginning and containing 1.525 acres more or less.

TRACT III ALSO all of Lot 12, Block 11 according to the plat of Bon Air Estates, Fourth Addition, Huntsville, Alabama, as of record in Plat Book 3, Page 7, in the office of the Probate Judge of Madison County, Alabama, LESS AND EXCEPT THEREFROM, the 1.525 acre tract described above.

## PARCEL IV (WALMART)

A parcel of land situated in the City of Huntsville, State of Alabama, Madison County, and is described as follows: All that part of the Southwest Quarter of Section 12, Township 4 South, Range 1 West, in the City of Huntsville, Madison County, Alabama, more particularly described according to survey by Raymond B. Jones, Registered Land Surveyor, dated June 24, 1975, as follows:

Beginning at a point being located North 89 degrees 26 minutes East 330.7 feet and South 0 degrees 34 minutes East 355.0 feet, and North 89 degrees 26 minutes East 70.0 feet from the center of the West boundary of said Section 12; thence from the place of beginning North 89 degrees 26 minutes East 279.04 feet; thence South 24 degrees 52 minutes East 284.25 feet; thence South 10 degrees 53 minutes West 375.0 feet; thence North 79 degrees 07 minutes West 390.42 feet thence North 10 degrees 53 minutes East 130.39 feet to the Southeast corner of the Herbert Building; thence continuing North 10 degrees 53 minutes East along the exterior building line of said Herbert Building a distance of 112.60 feet thence South 79 degrees 07 minutes East 7.5 feet; thence North 0 degrees 32 minutes East 312.0 feet to the place of beginning and containing 5.03 acres, more or less.

## PARCEL V (McLain)

All that part of the Southwest Quarter of Section 26, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama. Particularly described as beginning at a point that is North 0 degrees 20 minutes East 1555.27 feet from the center of the South boundary of Section 26, Township 3 South, Range 1 West. Thence from the point of true beginning, South 88 degrees 53 minutes West 212.27 feet to a point on the East margin of Memorial Parkway; thence along the East margin of Memorial Parkway around a curve to the right having a chord bearing and distance of North 15 degrees 31 minutes East, 74.34 feet to a point; thence North 88 degrees 53 minutes East, 192.80 feet to a point; thence South 00 degrees 20 minutes West 71.24 feet to the point of true beginning and containing 14,423.25 square feet or 0.33 acres more or less.

ALSO: A non-exclusive easement for ingress and egress across 30 feet of property adjoining above described tract belonging to John M. Glenn and wife, Barbara N. Glenn described as follows: All that part of the Southwest Quarter of Section 26, Township 3 South, Range 1 West of

BOOK PAGE

1332 0328

the Huntsville Meridian, Madison County, Alabama, particularly described as beginning at a point that is North 0 degrees 20 minutes East 1466.61 feet from the center of the South boundary of Section 26, Township 3 South, Range 1 West. Thence from the point of true beginning, South 89 degrees 11 minutes West 30.0 feet; thence North 00 degrees 20 minutes East 88.66 feet; thence North 88 degrees 53 minutes East 30.0 feet; thence South 00 degrees 20 minutes West 88.66 feet to the point of true beginning; this property being 30.0 feet evenly off the East side of a larger tract that belonged to the owner's predecessor in title.

PARCEL VI (STRUVE)

Lot 2, Block 29, according to the Quigley Map of the City of Huntsville, Alabama, as of record in the Tax Assessor's Office, Madison County, Alabama.

PARCEL VII

All that part of the Southeast Quarter of Section 17, Township 3 South, Range 1 West of the Huntsville Meridian, Madison County, Alabama, more particularly described as follows:

Commencing at the Southeast Corner of Section 17, Township 3 South, Range 1 West, thence run North 00 degrees 23' East for 33.47 feet to the North Margin of Mastin Lake Road and the point of true beginning; thence from the point of true beginning run North 00 degrees 23' East for 2567.93 feet to the South Margin of Stringfield Road; thence run North 89 degrees 48' West along the North Margin of Stringfield Road for 2672.18 feet to the East Margin of Blake Bottom Road thence run South 00 degrees 23' West along the East Margin of Blake Bottom Road for 1876.02 feet; thence run South 8 degrees 08' East along the East margin of said Blake Bottom Road for 197.0 feet to the East Margin of Ardmore Highway thence run South 34 degrees 58' along the East Margin of Ardmore Highway for 41.30 feet to a curve to the right, the chord bearing and distance of which is South 34 degrees 24' East 452.95 feet; thence run South 59 degrees 27' 30" East along the East Margin of Ardmore Highway for 189.42 feet to the North Margin of Mastin Lake Road; thence South 89 degrees 55' East along the North Margin of Mastin Lake Road for 2154.11 feet to a curve to the right the chord bearing and distance of which is North 89 degrees 16' East 42.85 feet to the point of true beginning and containing 155.21



acres, more or less. SUBJECT TO a 50 foot drainage easement extending in a Westerly and Southwesterly direction through said property. SUBJECT ALSO to a 20 foot drainage easement of even width adjacent to the East right-of-way line for Alabama Highway 53.

LESS AND EXCEPT from the foregoing 151.21 acre tract that certain 70.81 acre tract conveyed by Eugene M. McLain to Huntsville Jaycees, Inc., as recorded in Deed Book 610, Page 57, Probate Records of Madison County, Alabama, and more particularly described as follows:

A tract or parcel of land lying and being in the SE 1/4 of Section 17, Township 3 South, Range 1 West, being more particularly described as commencing at the SE corner of said Section 17; thence N 0 degrees 40' 44" East 40 feet to the point of beginning. Thence North 89 degrees 43' 26" West, along the North right-of-way of Mastin Lake Road, 304.09 feet; thence along the center line of a ditch the following bearings and distances: North 55 degrees 13 minutes 33 seconds West, 170.92 feet; thence North 42 degrees 57' 16" West, 396.23 feet; thence North 21 degrees 16' 47" West, 509.75 feet; thence North 36 degrees 31' 44" West, 100.80 feet; thence North 47 degrees 41' 52" West, 135.21 feet; thence North 52 degrees 27' 55" West, 103.41 feet; thence North 70 degrees 16' 16" West, 154.04 feet; thence North 77 degrees 28' 16" West, 230.49 feet; thence North 51 degrees 20' 25" West, 43.61 feet; thence leaving said center line, North 0 degrees 40' 44" East, 34.01 feet to an iron pin; thence continuing North 0 degrees 40' 44" East 1303.26 feet to a concrete monument on the South right-of-way of Stringfield Road; thence along said right-of-way South 89 degrees 32' 46" East 1559.99 feet to a point on the East line of said Section 17; thence along said East line, South 0 degrees 40' 44" West, 2553.19 feet to the point of beginning. Said tract containing 70.81 acres, more or less.

#### PARCEL VIII

The real estate described in that certain deed from Robert A. Hodges and Helen Viars Hodges to Eugene M. McLain, dated March 31, 1972, and recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Book 273, page 559, and

The real estate conveyed in that certain deed from Colonial Pipeline Company to Eugene M. McLain, dated November 9, 1977, and recorded in Deed Book 309, page 105, of said Probate Office.

Less and except:

1. That certain portion conveyed in Special Warranty Deed from Eugene M. McLain and Geraldine P. McLain to Colonial Pipeline Company, dated November 9, 1977, and recorded in Book 309, page 114 of said Probate Office; and

2. That portion of the real estate condemned by the State of Alabama for I-65 Highway purposes; and

3. All that part of the SE1/4 of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as beginning at a point which is located North 88 deg. 06 min. West 999.76 feet and North 14 deg. 38 min. East 288.0 feet from the Southeast corner of said Section 13; thence from the point of beginning South 88 deg. 06 min. West 49.8 feet to a point on the East margin of Interstate Highway 65; thence along the East margin of said Interstate Highway No. 65 run North 19 deg. 20 min. East 750.17 feet to a point; thence South 87 deg. 24 min. East 186.0 feet to a point on the West margin of a County Road; thence along the West margin of said County Road South 28 deg. 51 min. West 796.65 feet to the point of beginning; being situated in Shelby County, Alabama. Subject to a 50' easement for gas line.

PARCEL IX

All that part of the NE quarter of the SE quarter of Section 32, Township 4 South, Range 1 East, particularly described as follows:

Commence at the Southeast corner of said Section 32, thence due North, and along the East boundary of said Section 32 a distance of 2,608.10 feet to a point; thence North 89° 32' West a distance of 260.00 feet to the point of beginning of the property herein described; said point of beginning is further described as being on the South margin of Weatherly Road; thence due South 200.00 feet to the point; thence South 89° 32' East, and parallel with Weatherly Road a distance of 200.00 feet to the point on the West margin of Bailey Cove Road; thence due South and along the West margin of said Bailey Cove Road, a distance of 260.02 feet to a point, thence North 89° 32' West, a distance of 448.93 feet to a point; thence North 12° 41' West a distance of 472.40 feet to the point on the south margin of said Weatherly Road; thence South 89° 32' East and along the said South margin of Weatherly Road, a distance of 352.70 feet to the point of beginning, containing 4.37 acres more or less.

BOOK PAGE

1332 0331

LESS AND EXCEPT:

All that part of the NE quarter of the SE quarter of Section 32, Township 4 South, Range 1 East, particularly described as follows:

Commence at the Southeast corner of said Section 32, thence due North, and along the East boundary of said Section 32 a distance of 2,608.10 feet to a point; thence North 89° 32' West a distance of 260.00 feet to a point on the South margin of Weatherly Road and the point of beginning of the property herein described; thence from the point of beginning due South a distance of 200.00 feet to a point; thence South 89° 32' East a distance of 200.00 feet to a point on the West margin of Bailey Cove Road; thence due South and along the West margin of Bailey Cove Road a distance of 117.81 feet to a point; thence North 89° 32' West a distance of 400.00 feet to a point; thence due North a distance of 317.81 feet to a point on the South margin of said Weatherly Road; thence South 89° 32' East a distance of 200.00 feet to the point of beginning. The herein described property contains 2.00 acres more or less.

BOOK 004 PAGE 014

BOOK PAGE

1332 0332

EXHIBIT B

1. That certain Ground Lease from Eugene M. McLain to Wal-Mart Stores, Inc., dated May 12, 1982, recorded in Deed Book 626, page 821 in the Probate Office of Madison County, Alabama.
2. That certain Lease between Eugene M. McLain and Mid-America Leasing, Inc., dated April 17, 1981.
3. That certain Lease between Eugene M. McLain and G. Q., dated May 24, 1983.

BOOK 004 PAGE 915

STATE OF ALABAMA MADISON COUNTY PROBATE OFFICE

I hereby certify that the foregoing instrument was filed for record in the office on 8-22-84 at 4:32 o'clock P.M. and duly recorded  
Deed Tax \_\_\_\_\_ Mortgage Tax 1800.00 FRANK H. RIDDICK, Judge of Probate

1984 OCT -9 PM 12:56

Tax Pd in Madison Co.

RECORDING FEES

Recording Fee \$ 75.00  
Index Fee 1.00  
TOTAL \$ 76.00

Return to:  
Key K. Bains  
Cabaniss, Johnston, Gardner, Dumas & O'Neal  
1900 First National-Southern Natural Building  
Birmingham, Alabama 35203

84 AUG 22 PM 4:32