

② 601078

REAL 605 PAGE 674

45

13.50

STATE OF Alabama)

Shelby COUNTY)

MORTGAGE

This indenture is made and entered into this 14th day of January, 1988, by and between Betty G. Habshey, a single woman, (hereinafter called "Mortgagor"), and M. Charles Sterne, as Trustee of the estate of Terry Marone Habshey, Pro Tire Trading Company, Inc., Aquinas Management Services, Inc., Autobahn Imports, Inc., Mid Con Trucking Company, Inc., Pro Tire, Inc., and Pro Tyre International, Inc., (hereinafter called "Mortgagee").

Whereas, pursuant to the Settlement Agreement dated November 3, 1987 ("the Settlement Agreement"), by and between Terry Marone Habshey, American Jawa, Ltd. and the Mortgagee, Terry Marone Habshey is justly indebted to the Mortgagee in the principal sum of ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (\$175,000), which is hereinafter referred to as the "Debt". Said Debt, as evidenced by the Settlement Agreement, is payable in accordance with the terms and provisions of the Settlement Agreement. This mortgage is provided by Betty G. Habshey to the Trustee as part of the security for payment of the Debt owed by Terry Marone Habshey under the Settlement Agreement.

Now, therefore, in consideration of the premises, and for other good and valuable consideration, and to secure the payment of the Debt evidenced by said Settlement Agreement and any and all extensions and renewals thereof, or of any part thereof, and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, the following described real estate, situated in Shelby County, Alabama (said real estate being hereinafter called "Real Estate"):

PARCEL II: A part of the West half of the Northwest quarter of Section 20, Township 20 South, Range 3 West of the Huntsville principle meridian, more particularly described as follows: Commerce at the Northwest corner of said section, thence south along the West line 284.0 feet to the center line of Cahaba River and the point of beginning of tract of land herein

This mortgage is additional security to secure the indebtedness

ENGEL, HAIRSTON AND JOHANSON, P. C.
ATTORNEYS AT LAW
109 NORTH 20TH STREET
FOURTH FLOOR
BIRMINGHAM, ALABAMA 35203

169 PAGE 490

BOX 169 PAGE 491

described, continue along last mentioned course 1524.65 feet to the center line of the Helena-Bessemer paved road, thence 140 degrees twelve minutes left along a straight line being said center line 236.52' to the point of beginning of the arc of a curve turning to the right and having a tangent of 182.98' said straight line being tangent to said arc, said arc being subtended by a central angle of 28 degrees 22 minutes; thence in a northeasterly direction and along said center line along said arc 358.50 feet to the point of beginning of a straight line being tangent to said arc; thence along said straight line 107.03 feet to the point of beginning of the arc of a curve turning to the right and having a tangent of 149.03 feet, said straight line being tangent to said arc, said arc being subtended by a central angle of 7 degrees 25 minutes; thence along said center line, along said arc 297.64 feet to the point of beginning of a straight line being tangent to said arc; thence along said straight line 278.45 feet to the point of beginning of the arc of a curve turning to the left and having a tangent of 77.23 feet said straight line being tangent to said arc, said arc being subtended by a central angle of 2 degrees 04 minutes; thence along said center line, along said arc 154.44 feet to a point in the center line of said road, thence 89 degrees 48 minutes left from long chord of last mentioned curve a distance of 1062.19 feet to a point on the north line of said section, said point being 350.00 feet West of the Northeast corner of the Northwest quarter of the Northwest quarter of said section; thence 74 degrees 00 minutes left along section line in a westerly direction 764 feet to the center line of Cahaba River, thence south and west along center line of said river to the point of beginning of tract of land herein described:

All coal, oil, gas and other minerals are reserved.

Situated in Shelby County, Alabama.

Together with all the rights, privileges, tenements, appurtenances and fixtures appertaining to the Real Estate, all of which shall be deemed Real Estate and shall be conveyed by this mortgage.

To have and to hold the Real Estate unto the Mortgagee, its successors and assigns forever. The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and has a good right to sell and convey the Real Estate as aforesaid; that the Real Estate is free of all encumbrances, except those presently appearing on the public records, and the Mortgagor will warrant and forever defend the title to the Real Estate unto the Mortgagee, against the lawful claims of all persons.

The Mortgagor agrees to pay promptly when due all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same but the Mortgagee shall have no obligation to do so.

As further security for the payment of the Debt, the Mortgagor hereby assigns and pledges to the Mortgagee the following described property, rights, claims, rents, profits, issues and revenues:

1. all rents, profits, issues, and revenues of the Real Estate from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;

2. all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto, including any award for change of grade of streets, and all payments for the voluntary sale of the Real Estate, or any part thereof, in lieu of the exercise of the power of eminent domain. The Mortgagee is hereby authorized on behalf of, and in the name of, the

Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses in connection with any proceeding or transaction described in this subparagraph 2, including court costs and attorneys' fees, on the Debt in such manner as the Mortgagee elects, or, at the Mortgagee's option, the entire amount, or any part thereof, so received may be released or may be used to rebuild, repair or restore any or all of the improvements located on the Real Estate.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereon, and at all times to maintain such improvements in as good condition as they now are, reasonable wear and tear excepted.

BOOK 169 PAGE 493 The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Mortgagee's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this mortgage may be waived, altered or changed except by a written instrument signed by the Mortgagor and the Mortgagee.

BOOK Upon the happening of the event of default as provided in the Settlement Agreement, the Mortgagee, having first complied with the provisions of the Settlement Agreement, may at his option declare the unpaid balance of the Debt to be at once become due and payable and this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages; and the Mortgagee shall be authorized to take possession of the Real Estate and, after giving at least twenty-one days notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Real Estate is located, to sell the Real Estate in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Real Estate and foreclosing this mortgage, and any other necessary expenses of foreclosure including the payment of Liens; second, to the payment in full of the balance of the Debt whether the same shall or shall not have fully matured at the date of said sale; and, third, the balance, if any, to be paid to the party or parties appearing of record to be entitled to such balance. The Mortgagor agrees that the

Mortgagee may bid at any sale had under the terms of this mortgage and may purchase the Real Estate if the highest bidder therefor. At the foreclosure sale the Real Estate may be offered for sale and sold as a whole without first offering it in any other manner or it may be offered for sale and sold in any other manner the Mortgagee may elect. The Mortgagor hereby waives the application of any doctrine of marshalling or like proceeding.

Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this mortgage, whether one or more natural persons, corporations, associations, partnerships or other entities. All covenants and agreements herein made by the undersigned shall bind the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee, shall inure to the benefit of the Mortgagee's successors and assigns.

In witness whereof, the undersigned Mortgagor has executed this instrument on the date first written above.

Betty G. Habshey
Betty G. Habshey

ACKNOWLEDGMENT

STATE OF ALABAMA, JEFFERSON COUNTY
I hereby certify that no mortgage tax or deed tax has been collected on this instrument

Offy Lore
"NO TAX COLLECTED" Judge of Probate

STATE OF Florida
Okaloosa COUNTY)

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Betty G. Habshey whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14th day of January, 1988.

Cindy D. Clark
Notary Public

My commission expires:

11/6/89

STATE OF ALA, JEFFERSON CO.
RESENER DIV. CERTIFY
THIS INSTRUMENT FILED ON

JAN 19 4 32 PM '88

Offy Lore
Judge of Probate

BOOK 169 PAGE 494

6.

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

BOOK 169 PAGE 495

TS:OHA. 1-23783

304 344 601 1600

STATE OF ALA. JEFFERSON CO.
BESSEMER CIV. COURT
THIS INSTRUMENT FILED ON

JAN 19 4 38 PM '88

100-443887-100
JUL 10 1964
JUL 10 1964

BOOK 169 PAGE 496

BOOK 169 PAGE 496

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

88 FEB -1 AM 10:27

Rec - 17.50
Ind. 1.00
18.50

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

I, *O. H. Thorne*, Judge of the Probate,
Court Bessemer Division, Jefferson County, Alabama, hereby
certify that the foregoing is a true, correct and full copy of the
Instrument herewith set out as appears of record in said Court.
Witness my hand and seal of said Court, this 19
Day of January 1988
O. H. Thorne
Judge of Probate