

STATE OF ALABAMA)

COUNTY OF SHELBY)

627

**MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES**

THIS INSTRUMENT (hereinafter, with all amendments thereto, being referred to as "this Mortgage"), made and entered into on the 7th day of December, 1988, between WILLIAM R. TURNER AND DR. RUSSELL TURNER, an Alabama general partnership (the "Mortgagor"), whose address is 1432 White Cap Circle, Alabaster, Alabama 35007, and First Commercial Bank (the "Mortgagee"), whose address is Post Office Box 11746, Birmingham, Alabama 35202-1746, Attention: Commercial Loan Department.

RECITALS:

The Mortgagor has applied to the Mortgagee for, and the Mortgagee has agreed to make available to the Mortgagor pursuant to that certain Construction and Term Loan Agreement of even date herewith by and between the Mortgagor and the Mortgagee (the "Loan Agreement"), a loan of \$105,000.00 the proceeds of which are to be applied by the Mortgagor for the acquisition of real property, fixtures, equipment, machinery and other property to be used in a dental office facility in Pelham, Alabama.

The loan from the Mortgagee to the Mortgagor shall be evidenced by a promissory note of even date herewith (the "Note"). The Note shall be further secured by this Mortgage (said documents, together with any and all of the documents and agreements heretofore or hereafter executed and delivered by the Mortgagor or the Guarantor to the Mortgagee as security for all or any part of the Indebtedness (as hereinafter defined) shall be referred to herein collectively as the "Security Documents").

The Mortgagee requires, among other things, as a condition precedent to making the above loan, that the Mortgagor execute and deliver this Agreement securing the obligations of the Mortgagor to the Mortgagee in connection therewith.

In consideration of the foregoing the Mortgagor has agreed to execute and deliver this Agreement to the Mortgagee in order to induce the Mortgagee to make the aforesaid loan available to the Mortgagor in order that the Mortgagor may obtain the benefits and advantages to be derived from the aforesaid transactions.

NOW, THEREFORE, in order to secure the prompt payment of the following (hereinafter sometimes referred to collectively as the "Indebtedness"):

- (1) The principal evidenced by the Note, together with any and all interest and agreed charges, becoming due and payable by the

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Mortgagor to the Mortgagee under or with respect to the Notes; and

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

and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Mortgagor contained in this Mortgage and of the Mortgagor and the Guarantor made in connection with the indebtedness secured hereby:

I. GRANTING CLAUSES

The Mortgagor has bargained and sold and does hereby grant, bargain, sell, assign and convey to the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through E, both inclusive, and has granted and does hereby grant to the Mortgagee, its successors and assigns, a security interest in said property and interests in property:

- A. The real estate and premises described on Exhibit A attached hereto (the "Real Estate"), together with all improvements, buildings, structures and fixtures now or hereafter located thereon or therein.
- 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 and subleases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate with respect to which the Mortgagor is the lessor or sublessor, 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 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 the Mortgagor

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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 Section F(1) of Article VII hereof) to collect, receive and retain the Rents, but no Rents shall be collected in advance of the due date thereof.

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- D. All fixtures and articles of personal property and all appurtenances and additions thereto and substitutions or replacements therefor, owned by the 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 fiberglass processing and assembling facilities, table saws, band saws, drill presses, air compressors, drills, air guns, shelving, power driven tools, jack lifts, drafting tables and accessories, tools, engines, and fiberglass fabrication facilities, all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, office furniture and furnishings, heating, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment, computers, printers, software, communications equipment, disk systems, air compressors, switchboards, stoves, ranges, vacuum cleaning systems, garbage disposers, refrigerators, dishwashers, hot water heaters, trash compactors, other appliances, paging systems, alarm systems, generators, sprinkler systems and other fire prevention and extinguishing apparatus and all other goods, materials, motors, machinery, pipes, equipment, inventory, fittings and fixtures now or hereafter affixed to or located on the Real Estate, and the trade name or names, good will and books and records relating to the business or businesses 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 the Mortgagee as and for additional security hereunder by the

Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

SUBJECT, HOWEVER, to the easements, rights-of-way and other exceptions described on Exhibit B hereto ("Permitted Exceptions").

All of the property described in the foregoing Granting Clauses A through E, both inclusive, 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 the Mortgagee, its successors and assigns, forever.

II. ASSIGNMENT OF CONDEMNATION AWARDS

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of the 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 the Mortgagee in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the 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 the Mortgagee, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in obtaining such sums, the Mortgagee may, at its option, apply the balance on the Indebtedness in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Indebtedness, or apply such balance to the restoration of the Mortgaged Property, or release the balance to the Mortgagor. No such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

III. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants that:

A. Valid Title, etc. The 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, grant a security interest in, and assign, the Mortgaged Property; the Mortgaged Property is subject to no mortgages, liens, encumbrances, assignments or security interests; and the Mortgagor will forever warrant and defend the title to the Mortgaged Property unto the Mortgagee against the claims of all persons whomsoever, except those claiming under Permitted Exceptions.

B. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on,

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security interests in, and assignments of, the Mortgaged Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the Mortgagee may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, 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, security interests and assignments hereby created shall be paid by the Mortgagor.

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

(i) The 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) Except as may be set forth in Exhibit B, the Mortgagor has not previously encumbered, sold, assigned, transferred, mortgaged or pledged the Leases or the Rents, whether now due or hereafter to become due.

(iii) 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.

(iv) The 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.

IV. COVENANTS OF MORTGAGOR

The Mortgagor covenants and agrees that, until the Indebtedness is paid in full and this Mortgage is satisfied in writing by the Mortgagee:

A. Payment of Taxes and Other Assessments. The 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 or with respect to the filing of 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 at least ten days before said taxes, assessments and other governmental charges are due the Mortgagor will deliver receipts therefor to the Mortgagee, or, in the case of mortgage filing privilege taxes, pay to the Mortgagee an amount equal to such taxes. The Mortgagor may, at the Mortgagor's 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

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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 and the security interest of the Mortgagee herein is not impaired thereby. If any tax or assessment (other than state and federal income taxes) is levied, assessed or imposed by any governmental authority on the Mortgagee as a legal holder of the Note, any interest in this Mortgage or any of the other Security Documents (as hereinafter defined), then unless all such taxes and assessments are paid by the Mortgagor as they become due and payable, but in any case before they become delinquent (and in the opinion of counsel for the Mortgagee, such payment by the Mortgagor is lawful and does not place the Mortgagee in violation of any law), the Mortgagee may, at its option, declare an Event of Default under this Mortgage.

B. Insurance. The 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 the Mortgagee in such manner and in such companies and amounts as the Mortgagee may approve. All such policies shall name the Mortgagee as a named insured and provide that any losses payable thereunder shall (pursuant to loss payable clauses, in form and content acceptable to the Mortgagee, to be attached to each policy) be payable to the Mortgagee, subject to the rights of the holders of any prior mortgages, and provide that the insurance provided thereby, as to the interest of the Mortgagee, shall not be invalidated by any act or neglect of the Mortgagor, nor by the commencement of any proceedings by or against the Mortgagor in bankruptcy, insolvency, receivership or any other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. The Mortgagor shall cause duplicate originals of any and all such insurance policies to be deposited with the Mortgagee. At least thirty days prior to the date the premiums on each such policy or policies shall become due and payable, the Mortgagor shall furnish to the Mortgagee evidence of the payment of such premiums. The Mortgagor will cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Mortgagee) to give the Mortgagee at least thirty business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Mortgagor agrees that the Mortgagor will not take any action or fail to take any action, which action or inaction would result in the invalidation of any insurance policy required hereunder.

With respect to all such insurance policies, subject to the rights of the holders of any prior mortgages, the Mortgagee is hereby authorized, but not required, on behalf of the 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 amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Indebtedness or apply such proceeds to the restoration of the Mortgaged Property, or to release the same to the Mortgagor, but no such application, holding in reserve or release shall cure or waive any default by the

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 the 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. The Mortgagor shall cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, shall not commit or permit waste thereon, shall not remove, demolish or alter the design or structural character of any building now or hereafter erected on the Real Estate with the express prior written consent of the Mortgagee, shall 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 shall 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. The Mortgagor agrees not to remove any of the fixtures or personal property included in the Mortgaged Property without the express prior written consent of the 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. The Mortgagor covenants and agrees that the 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 the Mortgagor fails to observe, perform and discharge the same;

(ii) enforce or secure in the name of the 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 the Mortgagor and any lessee thereunder, and, upon request by the Mortgagee to do so in the name and on behalf of the Mortgagee but at the expense of the Mortgagor, and to pay all costs and expenses of the Mortgagee, including reasonable attorneys' fees, in any action or proceeding in which the 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 the Mortgagee;

(vii) promptly upon the execution by the Mortgagor of any future Lease, (a) furnish the 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 the 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.

V. DEFEASANCE

If the Mortgagor shall: (A) pay in full (i) all of the Indebtedness (as defined herein), including but not limited to all sums (principal, interest and charges) payable under or with respect to the Note and any and all extensions and renewals of the same; and (ii) all sums becoming due and payable by the Mortgagor under the terms of this Mortgage, including but not limited to advancements made by the 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 the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

VI. EVENTS OF DEFAULT

The happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in the Note or in the Loan Agreement or in this Mortgage (hereinafter collectively referred to as "Events of Default") shall constitute a default under this Mortgage:

- (a) any warranty, representation, schedule, report, certificate, financial statement or other instrument now or hereafter made or furnished in connection with this Mortgage or any of the Indebtedness or in the Note or in the Loan Agreement or in any of the Security Documents shall prove to be false or misleading in any material respect; or
- (b) default shall be made in the payment of the principal of or interest of the Note or any of the other Indebtedness, or any part thereof, as and when due and payable; or
- (c) default shall be made with respect to any indebtedness (other than the Indebtedness) of the Mortgagor or the Guarantor when due and after the expiration of any applicable grace period or with respect to the performance of any other obligation incurred in connection

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with any indebtedness for borrowed money of the Mortgagor or the Guarantor, 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; or

- (d) violation of, or default in or failure to comply with the observance or performance of any term, agreement, covenant, condition or stipulation on the part of the Mortgagor or any Obligor (as hereinafter defined) to be observed or performed pursuant to the terms of this Mortgage or in any note, instrument, endorsement, guaranty or other document evidencing or securing or executed in connection with any of the Indebtedness; or
- (e) the Mortgagor, the Guarantor, or any maker, endorser, surety or guarantor of any of the Indebtedness (the Mortgagor, the Guarantor, and any such maker, endorser, surety or guarantor being hereinafter individually called an "Obligor") shall (i) die or apply for or consent to the appointment of a receiver, trustee, custodian, or liquidator of any such Obligor or of any of such Obligor's properties or assets, (ii) fail or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) be adjudicated a bankrupt or insolvent or have an order for relief entered against it in any proceeding under the federal Bankruptcy Code, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or 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 any Obligor for the purpose of effecting any of the foregoing; or
- (f) a petition shall be filed, without the application, approval or consent of any Obligor by any court of competent jurisdiction, seeking reorganization, rearrangement, dissolution or liquidation of such Obligor or of all or a substantial part of the properties or assets of such Obligor, or seeking any other relief under any law or statute of the type referred to in clause (v) of paragraph (e) above against such Obligor, or the appointment of a receiver, trustee or liquidator of such Obligor or of all or a substantial part of the properties or assets of such Obligor and such petition shall not be dismissed within thirty days after the filing thereof; or
- (g) the issuance of a writ of execution, attachment or garnishment against any Obligor; the adjudication of any Obligor as a bankrupt or insolvent, or the entry of an order for relief against any Obligor in any voluntary or involuntary bankruptcy or reorganization case by or against such Obligor; dissolution or liquidation of any Obligor, or failure of any Obligor generally to pay such Obligor's debts as they become due, or business failure of or by any Obligor; or

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- (h) final judgment for the payment of money in excess of an aggregate of \$10,000 shall be rendered against any Obligor and the same shall remain undischarged for a period of thirty days during which execution shall not be effectively stayed; or
- (i) any guarantor shall unilaterally terminate the obligations of such guarantor under any guaranty agreement pertaining to any of the Indebtedness; or
- (j) any of the stipulations contained in this Mortgage or in the Note or in the Loan Agreement or in any of the Security Documents is declared invalid or inoperative by any court of competent jurisdiction; or
- (k) any event of default should occur under the Note or under the Loan Agreement or under any one of the Security Documents; or
- (l) the loss, theft, damage, sale, destruction or encumbrance of any material portion of the Collateral, or the sale or encumbrance or the issuance of any execution or the making of any levy, seizure or attachment thereof or thereon; or
- (m) failure by the Mortgagor to pay when due any premium on any insurance policy required in connection with this Mortgage, or any assessment, or any taxes when due; or
- (n) 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; or
- (o) the interest of the Mortgagee in the Mortgaged Property shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon; or
- (p) the Real Estate, or any part thereof, or any interest therein, is sold, conveyed, transferred or encumbered.

VII. RIGHTS OF MORTGAGEE UPON DEFAULT

Upon the occurrence of an Event of Default the Mortgagee shall give written notice to the Mortgagor and the Mortgagor shall have a period of ten days from the date of such notice to cure said default; provided, however, that if the default cannot be cured within said 10-day period through no fault of the Mortgagor, the Mortgagor shall have a reasonable additional period of time thereafter so long as Mortgagor is actively pursuing a cure, but in no event longer than thirty days from the date of such notice. If upon the expiration of such time period the Event of Default has not been cured, or at any time thereafter, Mortgagee may at its option and without demand or notice to Mortgagor and without additional notice to anyone take any or all of the following actions:

A. Acceleration of Indebtedness. The Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the

Indebtedness immediately due and payable, whereupon all such Indebtedness shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Mortgagor, and the Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, the Loan Agreement, or any of the other Security Documents and applicable law. The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any judicial authority prior to the exercise by the Mortgagee of any of its rights under this Mortgage, the Note, the Loan Agreement, any of the other Security Documents and applicable law.

B. Operation of Property by Mortgagee. In addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but shall not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the 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 the Mortgagor with respect to the Mortgaged Property.

C. Judicial Proceedings: Right to Receiver. The Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Mortgaged Property, to sue the 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. The 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 the 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. 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, at its option, whether or not possession of the Mortgaged Property is taken, after giving twenty-one 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 any part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the 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. The 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, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the 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. The Mortgagee shall have and may exercise with respect to the personal property and fixtures included in the Mortgaged Property (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 hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. The 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 the Mortgagee, at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At the Mortgagee's request, the 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, the Mortgagor expressly waives any notice of sale or any other disposition of the Collateral and any rights or remedies of the 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 the Mortgagee existing after default. To the extent that such notice is required and cannot be waived, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Section I of Article VIII below, at least five 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.

The Mortgagor agrees that the 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. The Mortgagor hereby grants the Mortgagee the right, at its option after default hereunder, 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 amounts and manner as the Mortgagee may elect. The 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 the 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.

(i) The 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 the Mortgagor in granting Clause C (iii) of Article I hereof to collect the Rents, and, without taking possession, in the 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 the Mortgagee may choose (or hold the same in a cash collateral 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 to do any act or incur any cost or expenses the Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as the 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 attorneys' fees) and payment of any Indebtedness in such order and amounts as the Mortgagee may choose (or hold the same in a cash collateral 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 the 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 the Mortgagee, once exercised, shall continue for so long as the Mortgagee shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the Mortgagee shall

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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. Foreclosure Deeds. The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the 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.

H. Application of Proceeds. All payments received by the Mortgagee as proceeds of the Mortgaged Property, or any part thereof, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Mortgagee as follows: (i) to the payment of all reasonable and necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this Mortgage, including reasonable attorneys' fees as provided herein, (ii) to the payment in full of any of the Indebtedness that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein, (iii) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Indebtedness that is not then due and payable, and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

I. Multiple Sales. The 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. Any 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. The 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).

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K. Prerequisites of Sales. In case of any sale of the Mortgaged Property as authorized by this Article VII, 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 any of the Indebtedness 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.

VIII. MISCELLANEOUS PROVISIONS

A. Waiver and Election. The exercise by the 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, security interest and assignment granted by this Mortgage, either on any matured portion of the Indebtedness or for the whole of the Indebtedness, shall not be considered an election so as to preclude the foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage, in Note, in the Loan Agreement, and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage, the Loan Agreement, or any of the Security Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by a duly authorized officer of the Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

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 the 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 the Mortgagee to effectuate the provisions hereof.

D. Application of Payments. If the lien, assignment or 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 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 that is not secured or not fully secured by said lien, assignment or security interest created hereby.

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 heirs, personal representatives, successors and assigns. The term "Mortgagor" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, partnerships, corporations, associations, trusts or other entities or organizations.

F. Advances by Mortgagee. If the 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 the Mortgagor's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, the 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. The 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 Note, 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.

G. Release or Extension by Mortgagee. The Mortgagee, without notice to the Mortgagor and without in any way affecting the rights of the Mortgagee hereunder as to any part of the Mortgaged Property not expressly released, may release any part of the Mortgaged Property or any person liable for any of the Indebtedness 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 Note, the Loan Agreement or any of the Security Documents, this Mortgage or any other instrument evidencing or securing any of the Indebtedness.

H. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of the 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, the 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.

I. Addresses for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing or by telex, telegram or cable and mailed or sent or delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other parties thereto.

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J. No Obligations With Respect to Leases. The 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 the Mortgagee under a separate agreement in writing), and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagee from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of the Mortgagor's duties, responsibilities and obligations under Leases and with respect to the Real Estate.

K. Expenses. The Mortgagor shall pay all costs and expenses incurred by the Mortgagee in connection with preparing and recording this Mortgage and enforcing the Mortgagee's rights hereunder, including reasonable attorneys' 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, security interest and assignment created hereby and the purposes and agreements herein set forth.

N. Hazardous Substances. Except for the hazardous materials and substances and the use thereof required to construct and to operate and maintain the improvements to be located on the Real Estate, Mortgagor shall not make store, use, treat, release or dispose of any hazardous substances, pollutants or other contaminants on or under the Real Estate. If any such substances are nonetheless made, stored, used, treated, released, disposed of or found to exist on or under the Real Estate, Mortgagor shall give immediate written notice to Mortgagee of such occurrence or existence. Mortgagor hereby warrants that (i) there are no civil, criminal or administrative environmental proceedings involving the Real Estate that are pending or to Mortgagor's knowledge threatened; (ii) Mortgagor knows of no facts or circumstances that might give rise to such a proceeding in the future; (iii) the Real Estate are in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (iv) the Real Estate are free from any and all "hazardous substances," "pollutants" and other "contaminants," as those terms are defined in the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and rules and regulations thereunder. Mortgagor shall give immediate written notice to Mortgagee of any actual or threatened "release" (as defined in CERCLA and rules and regulations thereunder) of such substances on or from the Real Estate or any portion thereof at any time during or preceding Mortgagor's ownership of the Real Estate. Mortgagor shall indemnify and hold Mortgagee harmless from and against all loss, damages, fines, penalties, liability and expenses (including but not limited to reasonable attorneys' fees

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and costs of investigation and litigation) caused by or in any manner resulting from such substances on or under the Real Estate or any portion thereof at any time during or preceding Mortgagor's ownership of the Real Estate. The indemnity provisions of this Section N shall survive the satisfaction of this Mortgage and shall continue in full force and effect notwithstanding the payment of the Indebtedness in full.

IN WITNESS WHEREOF, the Mortgagor, by its general partners (who represent, by execution hereof, that they are all of the general partners), has executed this instrument on and as of the day and year first above written.

WILLIAM R. TURNER AND
DR. RUSSELL TURNER, an
Alabama general partnership

By: William R. Turner
WILLIAM R. TURNER

By: Russell Turner
RUSSELL TURNER, D.M.D.

STATE OF ALABAMA)

JEFFERSON COUNTY)

I the undersigned authority, a Notary Public in and for said county in said state, hereby certify that William R. Turner and Russell Turner, D.M.D., whose names as general partners of William R. Turner and Dr. Russell Turner, an Alabama general partnership, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such general partners and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 7th day of December, 1988.

Carol Coper Cone
Notary Public
My Commission Expires: 12/16/91

This instrument was prepared by:

Mr. Jackson M. Payne
Leitman, Siegal, Payne & Campbell, P.C.
425 First Alabama Bank Building
Birmingham, Alabama 35203
(205) 251-5900

EXHIBIT "A"

Part of the NW 1/4 of NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: From the Southwest corner of said NW 1/4 of NE 1/4, run in an easterly direction along the south line of said 1/4-1/4 section for a distance of 627.74 feet; thence turn an angle to the left of $89^{\circ}58'40''$ and run in a northerly direction for a distance of 130.10 feet; thence turn an angle to the right of $90^{\circ}00'26''$ and run in an easterly direction for a distance of 318.04 feet; thence turn an angle to the left of $64^{\circ}07'50''$ and run in a northeasterly direction for a distance of 169.26 feet; thence turn an angle to the left of $90^{\circ}00'44''$ and run in a northwesterly direction for a distance of 210.67 feet; thence turn an angle to the right of $103^{\circ}47'50''$ and run in a northeasterly direction for a distance of 128.72 feet; thence turn an angle to the left of $26^{\circ}29'04''$ and run in a northerly direction for a distance of 181.48 feet, more or less, to an existing iron pin, being on the southwest right-of-way line of Chandalar Drive; said southwest right-of-way line being on a curve, said curve being concave in a northeasterly direction and having a radius of 230.57 feet; thence turn an angle to the left ($51^{\circ}19'47''$ to chord) and run along the arc of said curve for a chord distance of 50.00 feet to an existing iron pin, being the point of beginning; thence continue in a northwesterly direction along the curved southwesterly right-of-way line of said Chandalar Drive (Deflection = $10^{\circ}24'08''$, chord = 83.26 feet, said chord line being obtained by turning an angle to the right from last mentioned chord line with a deflection angle of $16^{\circ}37'37''$) for an arc distance of 83.72 feet to the point of ending of said curve; thence run in a northerly direction along a tangent line to end of said curve for a distance of 64.22 feet to a point of second curve; said second curve being concave in a southerly direction, having a radius of 25.0 feet and a central angle of $104^{\circ}08'47''$; thence run in a northerly, northwesterly, westerly and southwesterly direction along the arc of said curve for a distance of 45.44 feet to a point of ending of said curve and a point of beginning of a third curve; said third curve being concave on a southeasterly direction, having a radius of 161.01 feet and a central angle of $43^{\circ}21'39''$; thence run in a southwesterly direction along the arc of said curve for a distance of 121.85 feet to a point of ending of said curve; thence turn an angle to the right of $90^{\circ}00'$ from the tangent to said curve, and run in a northwesterly direction for a distance of 6.0 feet; thence turn an angle to the left of $90^{\circ}00'$ and run in a southwesterly direction for a distance of 54.88 feet; thence turn an angle to the left of $88^{\circ}17'34''$ and run in a southeasterly direction for a distance of 178.48 feet; thence turn an angle to the left of $89^{\circ}36'08''$ and run in a northeasterly direction for a distance of 51.88 feet, more or less, to the point of beginning, containing 22,000 square feet, more or less.

EXHIBIT "B"

Right-of-way granted to Alabama Power Company as recorded in Deed Book 101, Page 512, Deed Book 223, Page 357, Deed Book 179, Page 375, and Deed Book 264, Page 28 in the Office of the Judge of Probate of Shelby County, Alabama.

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

88 DEC -8 PM 2: 53

Thomas A. Jennings, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$	
2. Mtg. Tax		<u>157.50</u>
3. Recording Fee		<u>50.00</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>208.50</u>