

939
Filed as additional security for mortgage recorded in Real Volume 3556, page 68, of Jefferson County, upon which mortgage tax has been paid.

STATE OF ALABAMA)
SHELBY COUNTY)

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

This mortgage, security agreement and assignment of rents and leases (the "mortgage") is made and entered into this 16th day of February, 1989, by and between Curtis A. Massey, Sr.; Curtis A. Massey, Jr.; Douglas R. Massey; Timothy A. Massey and James Edward Seal, all married men (collectively, the "Mortgagor"), whose address is U.S. Highway 11, P.O. Box 68, Trussville, Alabama 35173, and AmSouth Bank N.A., a national banking association (the "Mortgagee"), whose address is P. O. Box 11007, Birmingham, Alabama 35288, Attention: Commercial Loan Department.

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WHEREAS, the Mortgagor is, or hereafter shall be, together with Jefferson Memorial Companies, Inc., justly indebted to the Mortgagee in the principal sum of One Million Two Hundred Fifty-Three Thousand and 00/100 (\$1,253,000), as evidenced by a promissory note of even date herewith, which note is payable in full on March 1, 1994 and bears interest as provided therein (the "Note");

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

NOW, THEREFORE, in consideration of the premises, and to secure the payment of the following (hereinafter collectively referred to as the "Debt"):

(1) the payment of the debt evidenced by the Note, and interest thereon and any and every extension, renewal and modification thereof, or of any part thereof, and all interest on all such extensions, renewals and modifications;

(2) 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, and any and all extensions, renewals and modifications of any of the same, specifically including that certain note in the amount of \$350,000 dated of even date herewith and that certain note in the amount of \$818,462.63 dated of even date herewith; and

(3) the compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in this mortgage;

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

- A. The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements"). The Real Estate is not the homestead of any of the Mortgagors.
- B. All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements.
- C. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate or the Improvements with respect to which the Mortgagor is the lessor, 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 or the Improvements (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;

(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 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 of the Improvements, 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 the Improvements, 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 or any of the Improvements, 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, the Mortgagor shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof); and

(iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the Mortgagee as the Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment.

- D. All building materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of, or used or useful in connection with, the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.
- 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, or in which the Mortgagee is granted a security interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

(All of the property and interests in property described in the foregoing Granting Clauses A through E, both inclusive, are herein sometimes collectively called the "Property". The personal property described in Granting Clause D and all other personal property covered by this mortgage are herein sometimes collectively called the "Personal Property".)

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

To have and to hold the Property unto the Mortgagee, its successors and assigns forever.

1. Future Advance Mortgage. This mortgage is a future advance mortgage and the \$1,253,000 debt evidenced by the Note is to be advanced by the Mortgagee to the Mortgagor in accordance with the terms of a loan agreement of even date herewith, entered into by and between the Mortgagor and the Mortgagee (the "Loan Agreement").

2. Warranties of Title. The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Personal Property, Improvements and other Property and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances; and that the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagee against the lawful claims of all persons.

3. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the 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 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.

4. Representations and Warranties Related to Rents and Leases.

(a) 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.

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

5. Covenants To Pay Liens and Maintain Insurance. For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (a) pay 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; (b) keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content

satisfactory to the Mortgagee) to the Mortgagee, as its interests may appear. Such insurance shall be in an amount at least equal to the full insurable value of the Personal Property and Improvements unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefor, shall be delivered to, and held by, the Mortgagee until the Debt is paid in full. The original insurance policy and all replacements therefor must provide that they may not be canceled without the insurer's giving at least fifteen days' prior written notice of such cancellation to the Mortgagee.

6. Assignment of Insurance Policies, etc. The Mortgagor hereby assigns and pledges to the Mortgagee, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of the Mortgagor in and to each and every such policy, including, but not limited to, all the Mortgagor's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums. If the Mortgagor fails to keep the Property insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Debt, or, at the election of the Mortgagee, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements. All amounts spent by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Mortgagor to the Mortgagee and at once payable, without demand upon, or notice to, the Mortgagor, and shall be secured by this mortgage, and shall bear interest at the rate of interest set forth in the Note, or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by the Mortgagee until paid by the Mortgagor.

7. Assignment of Condemnation Proceeds, etc. As further security for the Debt 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 Debt secured hereby and of the costs and expenses (including reasonable attorney's 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 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 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 Debt in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Debt, or apply such balance to the restoration of the 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.

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

9. Hazardous Substances. Except for the hazardous materials and substances and the use thereof required to construct and to operate and maintain the Improvements, 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 is in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (iv) the Real Estate is 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 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 paragraph 9 shall survive the satisfaction of this Mortgage and shall continue in full force and effect notwithstanding the payment of the Debt in full.

10. Covenant Against Sale, Lease or Transfer, etc.

Notwithstanding any other provision of this mortgage or the Note, if the Real Estate or the Improvements, or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagee's prior written consent, or if the Real Estate or the Improvements, or any part thereof, or any interest therein, becomes subject to any additional lien, mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagee's prior written consent, the Mortgagee may, at its sole option: (a) declare the Debt immediately due and payable in full; or (b) require the payment, after the date of such sale, lease, conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option to accelerate the Debt, whether such rights be exercised by the Mortgagee to obtain a higher rate of interest on the Debt or to protect the security of this mortgage.

11. Defeasance. This mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this mortgage (which Debt includes without limitation the debt evidenced by the Note, and interest thereon, and all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagee of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), and reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of Liens or insurance premiums, and interest thereon, and fulfills all of its other obligations under this mortgage, this conveyance shall be null and void.

12. Events of Default. The Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) the Mortgagor shall fail to pay to the Mortgagee when due the principal or interest on the Debt evidenced by the Note or any other sum due under the Loan Agreement or any of the other Security Documents (as defined in the Loan Agreement), or any other Debt secured hereby; or (b) if in the judgment of the

Mortgagee the proceeds of the loan evidenced by the Note (hereinafter called the "Loan") or any part thereof are being, or shall at any time have been, diverted to a purpose other than the payment or discharge of expenses related to the Project (as defined in the Loan Agreement), which expenses have been approved by the Mortgagee; or (c) if the Mortgagor fails to comply with any of the provisions of this mortgage or of the Note, the Loan Agreement or the other Security Documents; or (d) if any statement, representation or warranty contained in this mortgage, the Loan Agreement or any of the other Security Documents or any report, certificate or other instrument delivered to Mortgagee in connection with any of the same shall be untrue in any material respect; or (e) if the Mortgagor conveys or further encumbers all or part of the Property; or (f) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and the Mortgagor fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to the Mortgagee within ten days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Real Estate is located or such suit is filed in court; or (g) if the Mortgagor at any time prior to completion of the Project abandons the Project, or ceases to work thereon for a period of more than ten consecutive calendar days, or fails diligently to prosecute the work on the Project; or (h) if any other event of default occurs under the Note, the Loan Agreement or any of the other Security Documents; or (i) the interest of the Mortgagee in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; or (j) any law is passed imposing, or authorizing the imposition of, any specific tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of this mortgage; or (k) any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction.

13. Rights and Remedies of Mortgagee Upon Default.

(a) Acceleration of Debt. Upon occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or notice to the Mortgagor, declare all or any part of the Debt immediately due and payable, whereupon all such Debt 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, 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, any of the other Security Documents and applicable law.

(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 the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee) may, but will not be obligated to, enter upon and take possession of any or all of the 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 Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default or at any time thereafter, 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 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 Property, with power to lease and control the 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 the Mortgagee shall be authorized, at its option, whether or not possession of the 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 Property or any part thereof is located, to sell the

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 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 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 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 Property not previously sold shall have been sold or all the Debt 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, the Mortgagee shall have and may exercise with respect to the Personal Property and fixtures included in the 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 Mortgagee in accordance with the provisions of paragraph 25 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 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 Debt 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) Application of Proceeds. All payments received by the Mortgagee as proceeds of the 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 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 and in the Note, the Loan Agreement and the other Security Documents, (ii) to the payment in full of any of the Debt 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 and in the Note, (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 Debt 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

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entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(g) 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 Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Debt (commonly known as stay laws and redemption laws).

(h) Prerequisites of Sales. In case of any sale of the Property as authorized by this paragraph 13, 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 Debt 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.

14. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing, or attempting to collect or secure, the Debt, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any Lien on the Property, unless this mortgage is herein expressly made subject to any such Lien; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Debt and shall be secured by this mortgage.

15. Construction of Mortgage. This mortgage is and may be construed as a mortgage, deed of trust, 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 the assignment and security interest created hereby and the purposes and agreements herein set forth.

16. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the 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.

17. 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 Debt or for the whole of the Debt, 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 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 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 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 an executive 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.

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

19. 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.

20. Application of Payments. If the lien, assignment or security interest created by this mortgage is invalid or unenforceable as to any part of the Debt or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Debt, and all

payments made on the Debt, 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 Debt which is not secured or not fully secured by said lien, assignment or security interest created hereby.

21. 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. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

22. Advances by the Mortgagee. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the 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 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 Debt and shall be secured hereby. The making of any such advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid.

23. Release or Extension by the 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 Property not expressly released, may release any part of the Property or any person liable for any of the Debt and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Debt or to waive the prompt and full performance of any term, condition or covenant of the Note, any of the Security Documents, this mortgage or any other instrument evidencing or securing the Debt.

24. Partial Payments. Acceptance by the Mortgagee of any payment of less than the full amount due on the Debt 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 Debt 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.

25. 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 hereto.

26. 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.

IN WITNESS WHEREOF, the undersigned Curtis A. Massey, Sr.; Curtis A. Massey, Jr.; Douglas R. Massey; Timothy A. Massey and James Edward Seal have executed this instrument on the date first written above.


Curtis A. Massey, Sr.


Curtis A. Massey, Jr.


Douglas R. Massey


Timothy A. Massey


James Edward Seal

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Curtis A. Massey, Sr.; Curtis A. Massey, Jr.; Douglas R. Massey; Timothy A. Massey and James Edward Seal, whose names 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 executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 16th day of February, 1989 .

AFFIX SEAL

Kay K. Bains
Notary Public

My commission expires: 10/16/92

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 227 PAGE 114

EXHIBIT "A"

to.

Mortgage, Security Agreement

and Assignment of Rents and Leases

PARCEL I: Begin at a Point on the South right of way line of the Calera-Montevallo Highway at a Point on said Highway 550 feet West of the East boundary of SW quarter of NW quarter of Section 4, Township 24, Range 13 East, and which said Point constitutes the NE corner of the land belonging to Orval and Vera Jones; run thence South parallel with the East boundary of said Quarter-Quarter Section 600 feet; thence turn an angle of 90 degrees left and run thence Easterly 300 feet to a Point; thence turn an angle of 90 degrees to the left and run thence Easterly 300 feet to a Point; thence turn an angle of 90 degrees to the left and run thence Northerly parallel with the East boundary of said Quarter-Quarter Section 600 feet, more or less, the South boundary of said Calera-Montevallo Highway; thence Westerly along the South boundary of said Highway 300 feet, more or less, to Point of Beginning.

PARCEL II: Commence at the Northeast corner of the NW quarter of SE quarter of Section 25, Township 21 South, Range 1 West; thence South 89 degrees 03 minutes 30 seconds West, along the North boundaries of the NW quarter of SE quarter of the NE quarter of SW quarter and NW quarter of SW quarter of said Township and Range, a distance of 3341.36 feet to a Point; thence South 0 degrees 14 minutes West along the East boundary of the Columbiana Housing project an addition to the Columbiana Cemetery, a distance of 1095.75 feet to a Point; thence South 89 degrees 27 minutes West along the South boundary of the Columbiana Cemetery a distance of 892.72 feet to a Point on the East right of way of County Highway 47; thence South 57 degrees 10 minutes West a distance of 57.70 feet to a Point on the West right of way of said County Highway 47; thence South 71 degrees 23 minutes West along the South boundary of Columbiana Cemetery a distance of 181.45 feet to a Point on the East right of way line of the L & N Railroad Company; thence South 20 degrees 29 minutes 30 seconds East along the said East right of way line of the L & N Railroad Company a distance of 834.60 feet to a Point thence South 85 degrees 03 minutes East a distance of 122.80 feet to a Point on the East right of way line of the said County Highway 47 being the Point of Beginning of the property herein described; thence continue South 85 degrees 03 minutes East along the South boundary of Pine Lawn Gardens a distance of 37.75 feet to a Point; thence North 89 degrees 56 minutes East along the South boundary of the said Pine Lawn Gardens a distance of 353.23 feet to a Point; thence North 13 degrees 34 minutes West along the East boundary of the said Pine Lawn Gardens a distance of 617.77 feet to a Point on the South right of way line of Pitts Drive; thence South 76 degrees 26 minutes West along the South right of way of the said Pitts Drive a distance of 376.00 feet, more or less, to a Point on the East right of way line of County Highway 47; thence Southeasterly along the said East right of way of said County Highway 47; a distance of 522.20 feet more or less, to the Point of Beginning. Said property lying in the SW quarter of SW quarter Section 25, Township 21 Range 1 West, and in the SE quarter of SE quarter Section 26, Township 21 South, Range 1 West, in the City of Columbiana, Alabama.

EXHIBIT "A"
(continued)

PARCEL III: Begin at the present SE corner of Pine Lawn Gardens Cemetery and proceed North 13 degrees 34 minutes West (MB) along the East boundary of the said Pine Lawn Gardens Cemetery, a distance of 617.77 feet to the Point of Intersection with the South right of way line of Pitts Drive (present Northeast corner of Pine Lawn Gardens); thence turn an angle of 90 degrees 00 minutes to the right and proceed North 76 degrees 26 minutes East (MB) along the said South right of way line of Pitts Drive a distance of 67.0 feet, more or less, to a Point (being the beginning of a 10 degree 00 minute curve to the left); thence Northeasterly along the Southeast right of way line of the said Pitts Drive a distance of 110.0 feet, more or less, to the Point of Intersection with the South right of way line of Bolton Lane; thence Easterly along the said South right of way line of Bolton Lane a distance of 65.0 feet, more or less, to a Point (being the Beginning of a 3 degree 00 minute curve to the right), thence Easterly along the said South right of way line of Bolton Lane (along said 3 degree 00 minute curve of the right), a distance of 245.00 feet, more or less, to a Point; thence proceed South 0 degrees 04 minutes East (MB) a distance of 702.2 feet, more or less, to the Point of Intersection with the South boundary of the JBL Property; thence turn an angle of 90 degrees 00 minutes to the right and proceed South 89 degrees 56 minutes West (MB) along the said South boundary of the JBL Property a distance of 318.72 feet to the Point of Beginning. The above described property is lying in the NW quarter of SW quarter and SW quarter of SW quarter Section 25, Township 21 South, Range 1 West.

BOOK 227 PAGE 116
PARCEL IV: A part of the SW quarter of NW quarter and a part of the NW quarter of SW quarter of Section 4, Township 24 North, Range 13 East, described as follows: Begin at the intersection of the South right of way line of Calera-Montevallo Highway with the East line of SW quarter of NW quarter of Section 4 and run in a Westerly direction along South right of way line of said Highway a distance of 550 feet, more or less, to the NE corner of lands belonging to Orval and Vera Jones; thence run South and Parallel with East Line of said Forty acres and along East line of Jones Land 1600 feet more or less to the North line of S 1/2 of NW quarter of SW quarter of said Section 4; thence East a distance of 550 feet more or less to East line of NW quarter of SW quarter of said Section 4; thence North along the East line of NW quarter of SW quarter and of SW quarter of NW quarter of Section 4, a distance of 1600 feet more or less to the Point of Beginning.

EXHIBIT B
TO
MORTGAGE, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS AND LEASES

1. Right of Way granted to Alabama Power Company by instrument(s) recorded in Volume 146, page 4, and Volume 164, page 393.
2. Right of Way to Shelby County as recorded in Volume 146, page 369.
3. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges, immunities and release of damages relating thereto.
4. The right of any person or persons, or of the public generally in and to the use of any public or private road, alley, path, street or way which is situated upon any portion of the subject property.
5. The right of any persons, corporation, firms and associations, as shown by the records contained in the Office of Cemeteries Company, as of the date hereof, to use any portion of the subject property as a burial site for deceased persons.
6. Except part conveyed to Shelby Memory Gardens, Inc., recorded in Deed 233, Page 1.

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

89 FEB 20 AM 8:19

Thomas A. Snowden, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$
2. Mtg. Tax	<i>Add Security</i>
3. Recording Fee	<u>50.00</u>
4. Indexing Fee	<u>4.00</u>
TOTAL	<u>\$4.00</u>