

This Instrument
Prepared By, and After
Recording Return to:

Property:
Address: 460 Crosscut Road
Saginaw, Alabama

Tommy E. Hill
Tommy E. Hill Professional Association
Suite 130
10 Inverness Parkway
Birmingham, AL 35242

Inst # 1992-24698

STATE OF ALABAMA)
SHELBY COUNTY)

10/27/1992-24698
08:34 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
056 WCD 1419.00

MORTGAGE

This Mortgage ("Mortgage") is made as of the 26th day of October, 1992 by Robert Asa Thacker and wife Jamie Mosely Thacker (herein, whether one or more, and if more than one jointly and severally, called "Mortgagor"), whose address is 460 Crosscut Road, Saginaw, Alabama, in favor of Edward L. Osborn and wife Mildred Osborn (herein together with their successors, assigns and legal representatives, including each and every, from time to time, holder of the Note (hereafter defined), called "Mortgagee"], whose address is Suite 130, 10 Inverness Parkway, Birmingham, Alabama 35242.

1. RECITALS.

1.1 NOTE. WHEREAS, Mortgagor has executed and delivered to Mortgagee a Promissory Note ("Note") of even date herewith, wherein Mortgagor promises to pay to the order of Mortgagee the principal amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00) in repayment of a loan ("Loan") from Mortgagee to Mortgagor in like amount, together with interest thereon, from the date thereof, at the rate set forth therein (and if applicable, at the Default Rate ("Default Rate") specified therein), in installments as set forth in the Note, with the entire unpaid principal balance and accrued interest being due and payable by December 1, 2004 (the "Maturity Date"), with the terms and provisions of the Note being incorporated herein and made a part hereof by this reference with the same effect as if set forth herein at length; and

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Handwritten signature: Land Title

1.2 INDEBTEDNESS. WHEREAS, indebtedness of the Loan, evidenced by the Note, including the principal thereof, interest, late charges, and premium, if any, thereon, additional advances, and any extensions and renewals thereof, in whole or in part, and any and all other sums which may be at any time due or owing or required to be paid as provided in this Mortgage, in the Note, or in other Mortgage Documents (hereafter defined) are herein collectively called the "Indebtedness Hereby Secured". As used herein the term "Mortgage Documents" shall mean the Note, this Mortgage and any other documents, whether previously, now or hereafter given to evidence, secure, or govern the Indebtedness Hereby Secured, including any and all extensions, renewals, amendments, modifications and supplements thereof or thereto, and

1.3 MORTGAGOR. WHEREAS, this Mortgage and all provisions hereof shall be binding upon Mortgagor, its successors, assigns, legal representatives, and all other persons or entities claiming under or through Mortgagor, and the word "Mortgagor" when used herein, shall include all such persons and entities and any others liable for the payment of the Indebtedness Hereby Secured or any part thereof, whether or not they have executed the Note or this Mortgage.

2. THE GRANT. NOW, THEREFORE, to secure the payment of the principal and interest and any other sums that may now or hereafter become owing from Mortgagor to Mortgagee under the Mortgage Documents and payment of all other Indebtedness Hereby Secured, and to secure the performance and observance of all covenants, provisions, agreements and obligations contained herein, in the Note and under any of the other Mortgage Documents, in consideration of Ten and No/100 (\$10.00) Dollars, in hand paid by the Mortgagee to the Mortgagor, the recitals stated hereinabove, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

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2.1 CONVEYANCE. Mortgagor does hereby GRANT, BARGAIN, SELL, ASSIGN, PLEDGE, RELEASE, ALIEN, TRANSFER, REMISE, CONVEY AND MORTGAGE unto Mortgagee and its successors and assigns forever all of its estate, right, title and interest in, to and under, and does hereby represent and warrant to Mortgagee and grant to Mortgagee and its successors and assigns forever a continuing security interest in, under, and to all, of the following rights, interests, claims and property, whether now owned or hereafter acquired (collectively the "Premises"):

(a) all of the real estate situated in Shelby County, State of Alabama, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Real Estate");

(b) all buildings, structures and other improvements of every kind and description now or hereafter erected, constructed, situated, placed upon or located at the Real Estate ("Improvements"), together with any and all Personal Property (hereafter defined) and attachments now or hereafter owned or leased by Mortgagor and located in or on, forming part of, attached to, used or intended to be used in connection with, or incorporated in any such Improvements, including all extensions, additions, betterments, renewals, substitutions and placements to any of the foregoing;

(c) all estate, claim, demand, right, title and interest of Mortgagor now owned or hereafter acquired, including, without limitation, any after acquired title, franchise, license, remainder or reversion, in and to: (i) any land or vaults lying within the right-of-way of any street, avenue, way, passage, highway, or alley, open or proposed, vacated or otherwise, adjoining the Real Estate; (ii) any and all alleys, sidewalks, streets, avenues, strips and gores of land belonging, adjacent or pertaining to the Real Estate and Improvements; (iii) storm and sanitary sewer, water, gas, electric, railway and telephone services relating to the Real Estate and improvements; (iv) all development rights, air rights, water, water

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rights, water stock, gas, oil, minerals, coal and other substances of any kind or character underlying or relating to the Real Estate or any part thereof not excepted hereunder; and (v) each and all of the tenements, hereditament, easements, appurtenances, passages, rights of way, other rights, liberties, reservations, allowances, and privileges relating to the Real Estate or the Improvements or in any way now or hereafter appertaining thereto, including homestead and any other claim at law or in equity; and (vi) any and all rights, interests, estate or other claims of every name, kind or nature, both in law and in equity, forming part of or used or useful in connection with the Real Estate and/or the use and maintenance of the Improvements, which Mortgagor now has or may hereafter acquire;

(d) all right, title and interest of Mortgagor in and to all options to purchase or lease the Real Estate or Improvements or any portion thereof or interest therein, and payments and rentals due thereon, or any other rights, interests or greater estates in the rights and properties comprising the Premises, now owned or hereafter acquired by the Mortgagor;

(e) all rights, title and interest of the Mortgagor, in and to any and all plans and specifications, designs, drawings and other matters prepared for any construction on the Real Estate or to the Improvements;

(f) all rights of the Mortgagor under any contracts executed by the Mortgagor with any provider of goods or services for or in connection with any construction undertaken on or services performed or to be performed in connection with the Real Estate Improvements ("Third Party Agreements);

(g) all rights of the Mortgagor as seller or borrower under any agreement, contract, understanding or arrangement pursuant to which the Mortgagor has, with the prior written consent of the Mortgagee, obtained the agreement of any person or entity to pay or disburse any money for the Mortgagor's sale (or borrowing on the security) of the Premises or any part thereof;

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(h) all right, title and interest of Mortgagor in and to all tangible personal property ("Personal Property") owned or leased by Mortgagor and now or at any time hereafter located in, on or at the Real Estate or Improvements or used or useful in connection therewith, including, but not limited to:

- (1) all furniture, furnishings and equipment owned by Mortgagor and used upon the Real Estate or Improvements;
- (2) all building materials and equipment located upon the Real Estate and intended for construction, reconstruction, alteration, repair or incorporation in or to the Improvements now or hereafter to be constructed thereon, whether or not yet incorporated in such Improvements (all of which shall be deemed to be included in the Premises upon delivery thereto);
- (3) all machines, machinery, fixtures, apparatus, equipment or articles used in supplying heating, gas, electricity, air-conditioning, water, light, power, plumbing, sprinkler, waste removal, refrigeration, ventilation and protection, and all fire sprinklers, alarm systems, and electronic monitoring equipment and devices;
- (4) all window, structural, and swimming pool maintenance and cleaning equipment and rigs and all equipment relating to the exclusion of vermin, pests or insects and the removal of dust, refuse or garbage;
- (5) all indoor and outdoor furniture, including, without limitation, tables, chairs, planters, desks, sofas, shelves, lockers and cabinets, wall beds, wall sofas, television sets and other furnishings;
- (6) all rugs, carpets and other floor coverings, curtains, draperies, drapery rods and brackets, awnings, window shades, blinds and

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other window coverings;

- (7) all lamps, chandeliers and other lights and lighting fixtures;
- (8) all recreational equipment and materials;
- (9) all kitchen equipment, including, without limitation, refrigerators, ovens, stoves, dishwashers, range hoods, exhaust systems, disposal units and other appliances, and all dining room, lounge, bar and restaurant equipment and property, including without limitation, tables, chairs, silverware, glasses, pots and pans, utensils, bar equipment and inventory;
- (10) all laundry equipment and supplies, including, without limitation, washers and dryers;
- (11) all office furniture, equipment and supplies;
- (12) all tractors, mowers, sweepers, snow removal equipment, motor vehicles and other equipment, supplies and inventories used in the maintenance of the Real Estate or Improvements;
- (13) all fixtures, personal property and other tangible property of any kind or character now or hereafter owned by Mortgagor and attached to or contained in and used or useful in connection with the Premises or the aforesaid Improvements thereon, including, without limitation, any and all antennae, appliances, apparatus, basins, bathtubs, boilers, bookcases, cabinets, compactors, coolers, dehumidifiers, doors, ducts, elevators, engines, equipment, escalators, fans, fittings, furnaces, growing plants, hardware, heaters, humidifiers, incinerators, machinery, maintenance supplies and inventories, motors, pipes, pumps, radiators, screens, sinks, toilets, tools, ventilators, wall coverings, water fountains, windows, wiring, non-structural additions to the Real Estate, and all renewals or

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replacements thereof or articles in substitution therefor, whether or not the same be attached to such Improvements, it being intended, agreed, and declared that all such property owned by Mortgagor and placed by it on the Premises or used in connection with the use or maintenance thereof shall, so far as permitted by law, be deemed for the purposes of this Mortgage to be a part of the Real Estate constituting and located on the Premises and covered by this Mortgage, and as to any of the aforesaid property that is not part of such Real Estate or does not constitute a "fixture", as such term is defined in the Uniform Commercial Code of the State of Alabama ("Code"); this Mortgage shall be deemed to be, as well, a security agreement under such Code for the purpose of creating hereby a security interest in such property, which Mortgagor hereby grants to the Mortgagee as Secured Party, as such term is defined in such Code; provided that the enumeration of any specific articles of Personal Property set forth above shall in no way exclude or be held to exclude any items of property not specifically enumerated;

(i) all the estate, interest, right, title or other claim or demand which Mortgagor now has or may hereafter have or acquire with respect to (i) proceeds of insurance in effect with respect to the Premises; and (ii) any and all awards, claims for damages, judgments, settlements and other compensation made for or consequent upon the taking by condemnation, eminent domain or any like proceeding, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Premises, including, without limitation, any awards and compensation resulting from a change of grade of streets and awards and compensation for severance damages (collectively "Awards");

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(j) all other property or rights of the Mortgagor of any kind or character related to the Premises;

(k) any interests, estates or other claims of every name, kind or nature, both in law and in equity, which Mortgagor now has or may hereafter acquire in the Real Estate and Improvements or other rights, interests or properties comprising the Premises now owned or hereafter acquired;

(l) all general intangibles of the Mortgagor relating to the Real Estate or Improvements, and all accounts, contract rights, instruments, chattel paper, credit card agreements, accounts receivable, cash and other rights of the Mortgagor for payment of money, for property sold or lent, for services rendered, for money lent, or for advances or deposits made relating to the Real Estate or Improvements;

(m) all rents, issues, profits, royalties, income, receipts, revenues, claims against guarantors, avails and other benefits now or hereafter derived, directly or indirectly, from the Real Estate and Improvements under Leases or otherwise (all generally called "Rents").

TO HAVE AND TO HOLD the Premises hereby mortgaged and conveyed or so intended, together with the rents, issues and profits thereof, unto the Mortgagee, its successors and assigns, forever, free from all rights and benefits under and by virtue of the Homestead Exemption Laws of the State of Alabama (which rights and benefits are hereby expressly released and waived), for the uses and purposes herein set forth, together with all right to retain possession of the Premises after any default in the payment of all or any part of the Indebtedness Hereby Secured, or the breach of any covenant or agreement herein contained, or upon the occurrence of any Event of Default (as hereafter defined).

PROVIDED, HOWEVER, that if and when Mortgagor has fully paid all of the Indebtedness Hereby Secured, and has strictly performed and observed all of the agreements, terms, conditions, provisions and warranties contained in the Borrower's Initials RSJMT

Note, this Mortgage and in all of the other Mortgage Documents, then this Mortgage and the estate, right and interest of Mortgagee in and to the Premises shall cease and shall be released at the cost of Mortgagor. Mortgagee shall be entitled to charge a reasonable release fee.

3. REPRESENTATIONS AND WARRANTIES OF MORTGAGOR. To induce the Mortgagee to make the Loan secured hereby, in addition to any representations and warranties in the Note, in this Mortgage and in the other Mortgage Documents, Mortgagor hereby further covenants with, represents and warrants to the Mortgagee, its successors and assigns and to and with the Purchaser at any foreclosure sale (and Mortgagor acknowledges and agrees Mortgagee has a right to rely thereon), all of which representations and warranties are true and correct, as of the date hereof and until the Indebtedness Hereby Secured is paid in full and all obligations under the Note, this Mortgage and the other Mortgage Documents are performed, as follows:

3.1 WARRANTY OF TITLE. Mortgagor owns the Premises and has good and marketable title to the Premises in fee simple absolute; Mortgagor is lawfully seized and possessed of the Premises; the Premises are free from all liens, defects or encumbrances of any nature whatsoever, whether or not of record and whether or not customarily shown on title insurance policies other than those encumbrances described on Exhibit "B" attached hereto and incorporated herein by reference ("Permitted Exceptions"); Mortgagor has good and lawful right to sell, mortgage and convey the Premises; and Mortgagor and its successors and assigns shall forever warrant and defend the Premises against all claims and demands whatsoever.

3.2 RECITALS. The recitals above are true and correct and are incorporated by reference herein.

3.3 COMPLIANCE WITH LAW. Mortgagor, to date, has fully complied,

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and shall comply, with all laws, ordinances, statutes, rules, rulings, regulations, decrees and orders of all federal, state district, county, municipal and local governmental authorities affecting or relating to the Premises (including, but not limited to, zoning, land use and environmental)

3.4 POWER AND AUTHORITY. Mortgagor has full power and authority to execute, deliver and perform this Mortgage and all other Mortgage Documents in accordance with their terms. and the obligations of Mortgagor are legal, valid and binding obligations, enforceable by the Mortgagee in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws applicable to the enforcement of creditors' rights generally.

3.5 NO EVENT OF DEFAULT OR VIOLATIONS. No "Event of Default" (as hereafter defined) or event which, with notice or passage of time or both, would constitute an Event of Default has occurred or is continuing under the Note, this Mortgage or any of the other Mortgage Documents. Mortgagor is not in violation of any governmental regulation or in default under any agreement to which it is bound, or which affects it or any of its property; and the use and occupancy of the Premises and the execution, delivery and performance of the Note, this Mortgage or any of the other Mortgage Documents, in accordance with their terms, shall not violate any governmental requirement (including, without limitation, any applicable usury law), or conflict with, be inconsistent with or result in any default under any of the representations or warranties, covenants, conditions or other provisions of any indenture, mortgage, deed of trust, easement, restriction of record, contract, document, agreement or instrument of any kind to which Mortgagor is bound or which affects it or any of its property, except as identified in writing to and previously approved by Mortgagee.

3.6 NO LITIGATION OR GOVERNMENTAL CONTROLS. There are no actions, suits, litigation or proceedings of any kind pending, or threatened against or affecting Mortgagor, the Premises (including any attempt or threat by any

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governmental authority to condemn or re-zone all or any portion of the Premises), or involving the validity, enforceability or priority of this Mortgage, or any other of the Mortgage Documents; or enjoining or preventing or threatening to enjoin or prevent the use and occupancy of the Premises or the performance by Mortgagor of its obligations hereunder; and there are no rent controls, governmental moratorium or environmental controls presently in existence, threatened, or affecting the Premises, except as identified in writing to and previously approved by Mortgagee.

3.7 OTHER STATEMENTS TO MORTGAGEE. Neither this Mortgage, the Note, any other Loan Document, nor any document, agreement, report, schedule, notice or other writing furnished to the Mortgagee by or on behalf of any party constituting Mortgagor, contains any misleading or untrue statement of any fact material to any of the foregoing; or omits any fact which would, in the circumstances, make the said statements misleading.

4. COVENANTS AND AGREEMENTS OF MORTGAGOR. The Mortgagor further covenants and agrees as follows:

4.1 PAYMENT OF SUMS DUE. Mortgagor shall pay promptly when due each and every installment of the principal of and interest and any other sums required to be paid (including fees and late charges), if any, on the Note at the times and in the manner provided in the Note, this Mortgage, or any of the other Mortgage Documents and shall pay all other Indebtedness Hereby Secured, as same becomes due, and shall duly and punctually perform and observe all of the covenants, agreements and provisions contained herein, in the Note, or in the other Mortgage Documents to be performed and observed by Mortgagor. All sums payable by Mortgagor shall be paid without demand, counterclaim, offset, deduction or defense. Mortgagor hereby waives all rights now or hereafter conferred by statute or otherwise to any such demand, counterclaim, offset,

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deduction or defense.

4.2 MAINTENANCE, REPAIR, RESTORATION, PRIOR LIENS.

Mortgagor will:

(a) Keep and maintain the Premises in good condition and repair, and free from mechanics', materialmen's or like liens or claims or other liens or claims for lien and commit or suffer no waste of the Premises;

(b) Promptly repair, restore, replace or rebuild any Improvements now or hereafter on the Premises which may become damaged or be destroyed or which may be affected by any eminent domain or similar proceeding, whether or not proceeds of insurance or of any Awards (hereafter defined) are available or sufficient for the purpose, with replacements at least equal in quality and condition as existed prior thereto, free from any security interest in, encumbrances on, or reservation of title thereto;

(c) Pay when due any indebtedness which may be secured by a lien or charge on the Premises on a parity with or superior to the lien hereof, and upon request exhibit satisfactory evidence of the discharge of such lien to the Mortgagee;

(d) comply with or cause to be complied with all Present and future laws, statutes, ordinances, rules, rulings, regulations, orders, decrees, and other requirements of all federal, state, county, district, municipal, local and other governmental agencies and authorities relating to the Premises, or any part thereof or the use thereof, as well as all covenants, conditions, and restrictions affecting same; shall not permit any unlawful use or nuisance to exist upon the Premises, and shall refrain from any action and correct any condition which would increase the risk of fire or other hazard to the Improvements or any portion thereof.

(e) Observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, without

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limitation, zoning privileges, franchises and concessions that are applicable to the Premises or that have been granted to or contracted for by the Mortgagor in connection with any existing or presently contemplated use of the Premises.

(f) suffer or permit no change in the general nature of the occupancy of the Premises, without the Mortgagee's prior written consent;

(g) Pay when due all operating costs of the Premises;

(h) Initiate, acquiesce or join in or consent to no change in any private restrictive covenant or zoning reclassification with respect to the Premises or other public or private restriction, limiting or defining the uses which may be made of the Premises or any part thereof, without the Mortgagee's prior written consent;

(i) Do nothing whatsoever, including without limitation, abandoning the Premises, which would depreciate or impair the value of the Premises or any part thereof; and

4.3 NO ALTERATION. No structures, now or hereafter covered by the lien of this Mortgage shall be removed, demolished, diminished in any respect or materially altered or enlarged, nor shall any new Improvement be constructed, nor shall any material alteration be made in the Premises without the prior written consent of Mortgagee, except as required by applicable law or municipal ordinances.

Mortgagee's consent shall not be given unless (i) plans and specifications, contracts, cost estimates, evidence of ability to pay, lien waivers and other documents and information requested by Mortgagee concerning the aforesaid have been first submitted to Mortgagee and approved by it, in the exercise of its sole judgment, as entailing no prejudice to the Loan secured hereby or the security therefor, and (ii) any alterations performed by Mortgagor (a) shall not change the general character or use of the Premises, or reduce the fair market value thereof below its value immediately before such Mortgagor's alteration, or

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impair the usefulness of the Premises; (b) shall be effected with due diligence, in a good and workmanlike manner and in compliance with all applicable legal requirements, insurance requirements, and approved plans and specifications and contracts approved by Mortgagee; (c) shall be promptly and fully paid for by mortgagor; (d) shall be made under the supervision of a qualified architect or engineer, pursuant to plans and specifications approved by Mortgagee and only after Mortgagor shall have furnished to Mortgagee, if requested by Mortgagee, a bond or other security, satisfactory to Mortgagee; (e) shall be constructed entirely within the boundaries of the Premises or any permanent encroachment easement approved by Mortgagee; and (f) upon such other terms, conditions and requirements that Mortgagee may request or deem necessary. Any and all alterations and improvements shall immediately become and remain subject to the lien of this Mortgage.

4.4 TAXES.

(a) MORTGAGOR'S OBLIGATION AND CHANGE IN TAX LAWS.

Mortgagor will pay when due and before any penalty attaches and in the manner required by law, all taxes and assessments (general or special), water charges, sewer charges, and other fees, taxes, charges, claims, levies, expenses, liens and assessments of every kind and nature whatsoever that may be asserted against the Premises or any part thereof or any interest therein, or against the Indebtedness Hereby Secured, or any obligation or agreement secured hereby (all herein generally called "Taxes"), whether or not assessed against the Mortgagor, and Mortgagor will furnish to the Mortgagee duplicate receipts therefor within five (5) days after the due date thereof. Provided, however that (a) in the event that any applicable law, statute, rule, ruling, regulation, order or court decree has the effect of deducting from the value of land for the purposes of taxation any lien thereon, or imposing upon the Mortgagee the payment in whole or any part of the Taxes or liens herein required to be paid by Mortgagor, or imposing a tax in

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respect of the issuance of the Note or the recording of this Mortgage, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the interest of the Mortgagee in the Premises or the manner of collection of Taxes, so as to affect this Mortgage or the Indebtedness Hereby Secured or the holder thereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, will pay such Taxes, or reimburse the Mortgagee therefor unless Mortgagee determines in Mortgagee's sole and exclusive judgment that such payment or reimbursement by Mortgagor is unlawful; in which event the Indebtedness Hereby Secured shall be due and payable within thirty (30) days after written demand by Mortgagee to Mortgagor; and (b) nothing in this paragraph contained shall require Mortgagor to pay any income, franchise or excise tax imposed upon Mortgagee, excepting only such which may be levied substitute for Taxes to be paid by Mortgagor pursuant hereto.

(b) **TAX PAYMENTS BY MORTGAGEE.** Mortgagee is hereby authorized to make or advance, in the place and stead of Mortgagor, any payment relating to Taxes, that may be asserted against the Premises, or any part thereof, and may do so according to any bill, statement, or estimate procured from the appropriate public office without inquiry into the accuracy thereof or into the validity of any Taxes, sales forfeiture, or title or claim relating thereto. Mortgagee is further authorized to make or advance, in the place and stead of Mortgagor, any payment relating to any apparent or threatened adverse title, lien, statement of lien, encumbrance, claim, charge, or payment otherwise relating to any other purpose herein and hereby authorized, but not enumerated in this Article 4, whenever, in its judgment and discretion, such advance seems necessary or desirable to protect the full security intended to be created by this Mortgage.

In connection with any such advance, Mortgagee is further authorized, at its option, to obtain a continuation report of title or title insurance policy prepared by a title insurance company of Mortgagee's choosing. All such advances

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and indebtedness authorized by this provision shall constitute additional Indebtedness Hereby Secured and shall be immediately due and payable by Mortgagor without notice, together with interest at the Default Rate.

4.5 INSURANCE. Mortgagor shall insure and keep insured the Premises and each and every part and parcel thereof against such perils and hazards and in such amounts and with such limits as Mortgagee may, from time to time require, and in any event including:

(a) Insurance against loss to the Improvements caused by fire, lightning, windstorms, vandalism, malicious mischief, and risks covered by the so-called "all perils" or "all risk" endorsement and such other risks as Mortgagee may reasonably require, in amounts (but in no event less than the initial stated principal amount of the Note) equal to the full replacement value of the Improvements, fixtures and equipment from time to time on the Premises, plus the cost of debris removal, with full replacement cost, "agreed amount" and inflation guard endorsement, and Mortgagor shall at, its own expense, furnish such insurance appraisals as may be required by Mortgagee from time to time to ascertain the full replacement cost of the Improvements;

(b) Comprehensive general public liability insurance against bodily injury and property damage in any way arising in connection with the Premises with such limits as Mortgagee may reasonably require and in any event not less than \$500,000.00 per occurrence, \$1,000,000.00 annual aggregate (combined single limits), and \$850,000.00 property damage; provided it is specifically agreed this liability insurance requirement may be satisfied by Mortgagor making the subject property a named insured or loss payee under its existing umbrella policy which has at least these amounts of coverage;

(c) During any period of construction or the making of any alterations or improvements to the Premises, (i) insurance covering claims based on the owner's or employer's contingent liability not covered by the insurance provided in

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subsection (b) above; (ii) Workmen's Compensation insurance covering all persons engaged in making such alterations or improvements in the amounts required by applicable state laws; and (iii) extended coverage casualty insurance in the form of a "Builder's Risk" nonreporting policy in an amount not less than that to be determined by Mortgagee as the insurable value of the improvements to be constructed, with an endorsement naming Mortgagee as mortgagee without subjecting Mortgagee to defenses which may be available against Mortgagor;

(d) Federal Flood insurance in the maximum obtainable amount up to the amount of the Indebtedness Hereby Secured evidenced by the Note, if the Premises are in a "flood plain area" or "flood hazard area" as defined by the Federal Insurance Administration pursuant to the Federal Flood Disaster Protection Act of 1973, as amended;

(e) Any other insurance coverage required under the Mortgage Documents, and such other insurance with companies of the type and in amounts Mortgagee may reasonably require from time to time, but in any event not less than that customarily carried by persons owning or operating property of the same type and use as the Premises.

(f) All policies of insurance to be maintained and provided as require herein shall:

- (1) be in forms, companies and amounts reasonably satisfactory to Mortgagee, and all policies of casualty insurance shall have attached thereto waiver of subrogation and mortgagee clauses or endorsements in favor of and with loss payable to Mortgagee;
- (2) contain endorsements that no act or negligence of the insured or any occupant and no occupancy or use of the Premises for purposes more hazardous than permitted by the terms of the policies will affect the validity or enforceability of such

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policies as against Mortgagee.

- (3) be written in amounts sufficient to prevent Mortgagor from becoming a co-insurer; and
- (4) provide for thirty (30) days' prior written notice of cancellation or modification to Mortgagee. Mortgagor shall deliver all policies, including additional and renewal policies, to Mortgagee marked "paid" or together with paid receipts or other satisfactory evidence of premiums paid, and, in case of insurance policies about to expire, Mortgagor shall deliver renewal policies not less than thirty (30) days prior to the respective dates of expiration.

Mortgagor shall not carry any separate insurance, concurrent in kind or form and contributing in the event of a loss, with any insurance required herein. Mortgagee may, at any time and in its sole discretion, upon written notice to the Mortgagor, procure and substitute for any and all of the policies of insurance required herein, in such amounts and with such companies as Mortgagee may select, the cost of which shall be paid by Mortgagor to Mortgagee upon demand. In the event of a change in ownership or of occupancy of the Premises (if approved in writing by Mortgagee), immediate notice thereof shall be delivered to all insurers. All monies paid by Mortgagee in procuring said insurance that are not reimbursed by Mortgagor shall be additional Indebtedness Hereby Secured and shall be immediately due and payable without the requirement of notice, together with interest thereon at the Default Rate. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the Indebtedness Hereby Secured, all right, title and interest of Mortgagor in and to any insurance policies then in force and any claims or proceeds thereunder shall pass to the Mortgagee or any purchaser or grantee at the foreclosure sale or after entry of decree of foreclosure.

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Mortgagor shall give Mortgagee prompt written notice of any damage to or destruction of the Premises or any part thereof. In case of loss covered by policies of insurance, Mortgagee (or, after entry of decree of foreclosure, the purchaser at the foreclosure sale or decree creditor, as the case may be or, after exercise of the power of sale contained herein, the purchaser at the sale) is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of Mortgagor, or (ii) allow Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss; provided that Mortgagor may itself adjust losses aggregating not in excess of Five Thousand Dollars (\$5,000), and provided further that in any case Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds. The expenses incurred by Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional Indebtedness Hereby Secured and shall be reimbursed by Mortgagor to Mortgagee upon demand.

4.6 CONDEMNATION AND EMINENT DOMAIN. Mortgagor shall give Mortgagee prompt notice of any proceedings, instituted or threatened, seeking condemnation or taking by eminent domain or any like process (generally "Taking"), of all or any part of the Premises or affecting any easement thereon or appurtenance thereof (including severance of, consequential damage to, or change in grade of streets), and shall deliver to Mortgagee copies of any and all papers served in connection with any such proceeding.

Mortgagor hereby assigns, transfers and sets over unto Mortgagee the entire proceeds of any and all awards resulting from any Taking. Mortgagee is hereby authorized to collect and receive from the condemnation authorities said Awards and is further authorized to give appropriate receipts and acquittances therefor.

Mortgagor agrees to make, execute and deliver to Mortgagee, at any time upon request, free, clear, and discharged of any encumbrances of any kind whatsoever, any and all further assignments and other instruments deemed

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necessary by the Mortgagee for the purpose of validly and sufficiently assigning all Awards and other compensation heretofore and hereafter made to Mortgagor for any Taking, either permanent or temporary, under any such proceeding.

4.7 INSURANCE PROCEEDS AND AWARDS. In any event, Mortgagee may, at its option, allow any insurance proceeds or Awards, as the case may be, to be used to rebuild or restore the Premises or may apply the same to the indebtedness Hereby Secured in the Order of Priority, whether then matured or to mature in the future, and prior to this application. Mortgagee may allow the proceeds of insurance or the Awards, as the case may be, to be applied to reimburse Mortgagor for the costs of restoring, repairing, replacing, or rebuilding (herein generally called "Restoring" or "Restoration") the Premises or any part thereof so long as, in the event of any insured damage to or destruction of the Premises or any part thereof ("Insured Casualty") or in the event of a Taking, if in the reasonable judgment of Mortgagee, (i) less than fifty percent (50%) of the Improvements have been damaged or destroyed or is affected by the Taking, as the case may be; (ii) the general area of the Premises is not incompatible for the use of the Premises as of the date hereof or as contemplated in the Mortgage Documents, and the Premises can be Restored to an architectural and economic unit of the same character and not less valuable than existed prior to the Insured Casualty or Taking, as the case may be, and adequately securing the outstanding balance of the indebtedness Hereby Secured; (iii) the insurers do not deny liability to the insurers; (iv) no Event of Default shall have occurred and be then continuing and no circumstance or event shall exist which, with the giving of notice or passage of time, or both, would constitute an Event of Default and there shall have been no Event of Default at the time of the casualty or Taking, as the case may be; (v) Mortgagee is given an architect's certificate acceptable to Mortgagee indicating the Premises may be Restored at least 180 days prior to the Maturity Date; (vi) Mortgagee receives evidence satisfactory to Mortgagee that

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the insurance proceeds or the Awards, as the case may be, are sufficient to pay the costs of Restoring, or if not adequate, Mortgagor shall deposit with Mortgagee any deficiency (or otherwise provide Mortgagee with evidence satisfactory to Mortgagee that adequate funds are available to Mortgagor), that throughout the period of restoration (and for an additional period of time subsequent to completion of the Restoration, for lease-up) Mortgagor has adequate means to make payments when due under the Loan, that Mortgagor's ability to repay the Loan not adversely affected and that Mortgagee continues to receive payments when due under the Note; and (vii) the proposed Restoration can and will be done in accordance with all applicable laws; then the proceeds of insurance or the Awards, as the case may be, shall be applied, consistent with the provisions of paragraph 4.8 hereof, to reimburse the Mortgagor for the cost of Restoring the Premises or any part thereof.

If, in the reasonable judgment of Mortgagee, the conditions for Restoring set forth immediately above shall not have been satisfied then, at any time from and after the Insured Casualty or the Taking, upon thirty (30) days' written notice to Mortgagor, Mortgagee may declare the entire balance of the Indebtedness Hereby Secured to be due, and at the expiration of such thirty (30) day period the Indebtedness Hereby Secured shall be and become immediately due and payable, and Mortgagee is hereby authorized to collect all such insurance proceeds or Awards and apply same as specified in the next following paragraph.

Except as may be otherwise provided herein, Mortgagee shall apply the proceeds of insurance or Awards (including amounts not required for Restoring) resulting from any Insured Casualty or Taking upon the Indebtedness Hereby Secured, in such order or manner as the Mortgagee may elect; provided, that no premium or penalty shall be payable in connection with any prepayment of the indebtedness Hereby Secured made out of insurance proceeds or any Award as aforesaid.

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In the event that insurance proceeds or an Award, if any, shall be made available to the Mortgagor for the Restoring of the Premises, Mortgagor hereby covenants and agrees to (i) restore the same to be of at least equal value and of substantially the same character as prior to such damage or destruction in accordance with plans and specifications, contracts, budgets and other construction documents, to be first submitted to and approved by the Mortgagee; (ii) comply with all applicable laws, rules, regulations and ordinances and to obtain all necessary permits and approvals; (iii) continue to make payments when due under the Note; and (iv) continue to satisfy all other covenants and agreements set forth in this Mortgage, the Note and the other Mortgage Documents. In the event Mortgagor shall fail within a reasonable time, subject to delays beyond its control (but in no event in excess of sixty (60) days), to restore or rebuild the Improvements, then Mortgagee, at its option, may, but under no circumstance shall be obligated to, restore and rebuild said Improvements, for or on behalf of the Mortgagor, and for such purpose may do all necessary acts including, without limitation, using the insurance proceeds or any Award or any other amounts deposited by the Mortgagor. The insufficiency of such proceeds shall not relieve Mortgagor of its obligation to repair and Restore the Improvements as aforesaid after an Insured Casualty or a Taking.

Any portion of the insurance proceeds or Awards, as the case may be, remaining after deduction for all expenses incurred in the collection and administration of the insurance proceeds and Awards (including attorneys' fees and costs) and after payment in full of the Indebtedness Hereby Secured shall be paid to Mortgagor or as ordered by a court of competent jurisdiction. No interest shall be payable by Mortgagee on account of any insurance proceeds or any Award at any time held by Mortgagee. Nothing contained in this Mortgage shall create any responsibility or liability upon Mortgagee to (i) collect any proceeds

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of any insurance policies or Awards, or (ii) restore any portion of the Premises damaged or destroyed through any cause.

4.8 DISBURSEMENT OF INSURANCE PROCEEDS AND AWARDS. In the event the Mortgagor is entitled to reimbursement out of insurance proceeds or any Award held by the Mortgagee, such proceeds or Award shall be disbursed from time to time upon the Mortgagee being furnished with (i) satisfactory evidence of the estimated cost of completion of the Restoring, (ii) funds (or assurances satisfactory to the Mortgagee that such funds are available) sufficient in addition to the proceeds of insurance or Award, to complete the proposed Restoring, and (iii) such architect's certificates, waivers of lien, contractor's sworn statements and such other evidences of costs and of payment as the Mortgagee may require and approve; and the Mortgagee may require that all contractors and subcontractors, in addition to all plans and specifications for such Restoring, be approved by the Mortgagee prior to commencement of work. No payment made prior to the final completion of the Restoring shall exceed ninety percent (90%) of the value of the work performed from time to time. Funds other than proceeds of insurance or Awards shall be disbursed prior to disbursement of such proceeds, except as may otherwise be provided in any loan agreement expressly approved by the Mortgagee. At all times, the undisbursed balance of such proceeds remaining in the hands of the Mortgagee, together with funds deposited for the purpose or irrevocably committed to the satisfaction of the Mortgagee by or on behalf of the Mortgagor for the Restoring, shall be at least sufficient, in the reasonable judgment of the Mortgagee, to pay for the cost of completion of the Restoring, free and clear of all liens or claims for liens. The insufficiency of such proceeds shall not relieve Mortgagor of its obligations to repair and restore the Improvements.

4.9 RESTRICTIONS ON TRANSFER, LIENS AND ENCUMBRANCES. Except for the Permitted Transfers (hereinafter defined), it shall be an immediate

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Event of Default if without the prior written consent of Mortgagee (which consent may be withheld for any reason whatsoever), any of the following shall occur:

(a) If the Mortgagor shall create, effect, contract for, commit to or consent to or suffer or permit any conveyance, sale (including an installment sale of the Premises), assignment, collateral assignment, transfer, exchange, disposition, hypothecation, lien, pledge, mortgage, security interest, removal or other encumbrance or alienation (or any agreement to do any of the foregoing) of the Premises or any part thereof, or any interest therein or title thereto, in any manner or way, except for sales or dispositions of collateral no longer useful in connection with the Premises ("Obsolete Collateral"); provided that prior to the sale or other disposition thereof, such Obsolete Collateral has been replaced by Collateral of at least equal value and utility, subject to the prior lien and with the same priority hereof; provided that the foregoing provisions of this Paragraph shall not apply to any transfers of the Premises, or part thereof, or interest therein, by or on behalf of any owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisee, executors, administrators, estate, personal representatives and/or committee. The provisions of this paragraph shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises. Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of the Mortgagee in the future to insist upon strict compliance with the provisions hereof. Mortgagee may condition any consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require.

In the event Mortgagee gives its written consent to the sale or transfer, whether by operation of law, voluntarily or otherwise, of all or any part of the

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Premises, (i) Mortgagee shall be authorized and empowered to deal with the vendee or transferee general partner or shareholder of Mortgagor, as the case may be); provided that the foregoing provisions of this Paragraph shall not apply to any transfers of the Premises, or part thereof, or interest therein, by or on behalf of any owner thereof who is deceased or declared judicially incompetent, to such owner's heirs, legatees, devisee, executors, administrators, estate, personal representatives and/or committee. The provisions of this Paragraph shall be operative with respect to, and shall be binding upon, any persons who, in accordance with the terms hereof or otherwise, shall acquire any part of or interest in or encumbrance upon the Premises. Any waiver by Mortgagee of the provisions of this Paragraph shall not be deemed to be a waiver of the right of the Mortgagee in the future to insist upon strict compliance with the provisions hereof. Mortgagee may condition any consent upon such increase in rate of interest payable upon the Indebtedness Hereby Secured, change in monthly payments thereon, change in maturity thereof and/or the payment of a fee, all as Mortgagee may in its sole discretion require.

In the event Mortgagee gives its written consent to the sale or transfer, whether by operation of law, voluntarily or otherwise, of all or any part of the Premises, (i) Mortgagee shall be authorized and empowered to deal with the vendee or transferee with regard to the Premises, the Indebtedness Hereby Secured, and any of the terms or conditions hereof as fully and to the same extent as it might with Mortgagor, without in any way releasing or discharging Mortgagor from any of its covenants hereunder, and without waiving Mortgagee's right of acceleration as provided herein; (ii) the proposed documents of transfer shall be submitted to Mortgagee and, within ten (10) business days following such transfer, copies of the executed documents of transfer shall be delivered to Mortgagee.

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4.10 INSPECTION OF PREMISES. Mortgagor shall, at all reasonable times, permit Mortgagee and its agents, employees and designees, to enter on and inspect the Premises.

4.11 MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting the Mortgagee as a mortgagee in possession in the absence of the actual taking of possession of the Premises by Mortgagee.

4.12 SECURITY AGREEMENT. Mortgagor and Mortgagee agree that this Mortgage constitutes a Security Agreement within the meaning of the Uniform Commercial Code as enacted in the State of Alabama with respect to (i) any and all sums at any time on deposit for the benefit of Mortgagee or held by the Mortgagee (whether deposited by or on behalf of the Mortgagor or anyone else) pursuant to any of the provisions of this Mortgage or any of the other Mortgage Documents; and (ii) any part of the Premises which may or might now or hereafter be or be deemed to be personal property, fixtures or property other than real estate (including all replacements of such property, substitutions for such property, additions to such property, and the proceeds thereof) collectively the "Collateral"). A security interest in and to the Collateral is hereby granted to the Mortgagee, and the collateral and all of Mortgagor's right, title and interest therein are hereby assigned to the Mortgagee, all to secure payment of the Indebtedness Hereby Secured, and to secure performance by the Mortgagor of all of the Mortgagor's obligations hereunder. All of the terms, provisions, covenants, conditions, and agreements contained in this Mortgage pertain and apply to the Collateral as fully and to the same extent as to any other property comprising the Premises, and the following provisions of this paragraph shall not limit the generality or applicability of any other provisions of this Mortgage, but shall be in addition thereto:

- a) Mortgagor (being the Debtor as that term is used in the Code) is and

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will be the true and lawful owner of the Collateral, subject to no liens, charges or encumbrances other than the lien hereof.

b) The Collateral will be kept at the Real Estate and will not be removed therefrom without the consent of Mortgagee (being the Secured Party as that term is used in the Code) by Mortgagor or any other person; and the Collateral may be affixed to any Real Estate but will not be affixed to any other real estate.

c) The only persons having any interest in the Premises are the Mortgagor.

d) No financing statement covering any of the Collateral or any proceeds thereof is on file in any public office except pursuant hereto; and Mortgagor will at its own cost and expense, upon demand, furnish to the Mortgagee such further information and will execute and deliver to the Mortgagee such financing statements and other documents in form satisfactory to the Mortgagee and will do all such acts and things as the Mortgagee may at any time or from time to time reasonably request or as may be necessary or appropriate to establish and maintain a perfected security interest in the Collateral as security for the Indebtedness Hereby Secured, subject to no adverse liens or encumbrances; and the Mortgagor will pay the cost of filing the same or filing or recording such financing statements or other documents, and this instrument, in all public offices wherever filing or recording is deemed by the Mortgagee to be necessary or desirable.

e) Upon the occurrence of any Event of Default hereunder and at any time thereafter (such default not having previously been cured), the Mortgagee at its option may declare the Indebtedness Hereby Secured immediately due and payable, all as more fully set forth hereinafter, and thereupon Mortgagee shall have the remedies of a secured party under the Code, including without limitation, the right to take immediate and exclusive possession of the Collateral,

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or any part thereof, and for that purpose may, so far as the Mortgagor can give authority therefor, with or without judicial process, enter (if this can be done without breach of the peace), upon any place where the Collateral or any part thereof may be situated and remove the same therefrom (provided that if the Collateral is affixed to real estate, such removal shall be subject to the conditions stated in the Code); and the Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale, until disposed of, or may propose to retain the Collateral subject to Mortgagor's right of redemption if any, in satisfaction of the Mortgagor's obligations, as provided in the Code; provided that (i) the Mortgagee, without removal, may render the Collateral unusable and dispose of the Collateral on the Premises, and (ii) Mortgagee may require Mortgagor to assemble the Collateral and make it available to the Mortgagee for its possession at a place to be designated by Mortgagee which is reasonably convenient to both parties. The Mortgagee will give Mortgagor at least five (5) days' notice of the time and place of any public sale thereof or of the time after which any private sale or any other intended disposition thereof is made, and the requirements of reasonable notice shall be met if such notice is mailed, by certified mail or equivalent, postage prepaid, to the address of Mortgagor herein below in this Mortgage, at least five (5) days before the time of the sale or disposition. The Mortgagee may buy at any public sale and, if the Collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations, Mortgagee may buy at private sale, and any such sale may be held as part of and in conjunction with any foreclosure sale of the Real Estate, the Collateral and Real Estate to be sold as one lot if Mortgagee so elects. The net proceeds realized upon any such disposition, after deduction for the expenses of retaking, holding, preparing for sale, selling or the like, and the reasonable attorneys' fees and legal expenses incurred by Mortgagee, shall be applied in satisfaction of the Indebtedness

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Hereby Secured; and the Mortgagee will account to the Mortgagor for any surplus realized on such disposition.

f) The remedies of the Mortgagee hereunder are cumulative and the exercise of any one or more of the remedies provided for herein or under the Code shall not be construed as a waiver of any of the other remedies of the Mortgagee, including having the Collateral deemed part of the realty upon any foreclosure thereof so long as any part of the Indebtedness Hereby Secured remains unsatisfied.

g) The terms and provisions contained in this paragraph shall, unless the context otherwise requires, have the meanings and be construed as provided in the Code.

4.13 PREPAYMENT PRIVILEGE. At such time as there is no Event of Default under the terms of the Note, this Mortgage or any of the other Mortgage Documents, the Mortgagor shall have the privilege of prepaying the principal of the Note without penalty at anytime on any regular payment date (but not part thereof) in accordance with the terms and conditions, if any, set forth in the Note, but not otherwise.

4.14 EFFECT OF EXTENSIONS OF TIME, AMENDMENTS ON JUNIOR LIENS AND OTHERS. If the payment of the Indebtedness Hereby Secured, or any part thereof, shall be extended, modified, amended or varied, or if any of the security shall be released, all persons now or at any time hereafter liable therefor, or interested in the Premises, shall be held to assent to such extension, modification, amendment, variation or release, and their liability, if any, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Mortgagee, notwithstanding any such extension, modification, amendment, variation or release. Any person, firm or corporation taking a junior mortgage or other lien upon the Premises or any interest therein, shall take the said lien subject to the

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rights of the Mortgagee herein to amend, modify, extend and supplement this Mortgage, the Note, the Mortgage Documents or any other document or instrument evidencing, securing or guaranteeing the Indebtedness Hereby Secured and to vary the rate of interest and the method of computing the same and to impose additional fees and other charges, and to extend the maturity of the Indebtedness Hereby Secured, in each and every case without obtaining the consent of the holder of such junior lien and without the lien of this Mortgage losing its priority over the rights of any such junior lien. Notwithstanding anything in this Paragraph to the contrary, it shall constitute an Event of Default if the Premises be sold, conveyed, transferred or encumbered.

4.15 MORTGAGEE'S RIGHT TO MODIFY. Mortgagor consents to any and all renewals and extensions in the time of payment of the Indebtedness Hereby Secured, and agrees further that at any time and from time to time without notice, the terms of payment provided for in the Note may be modified or the security described in this Mortgage released (in whole or in part) or increased, changed or exchanged by agreement between the Mortgagee and any owner of the Premises affected by this Mortgage without affecting the liability of any party to the Note, or any person liable or to become liable with respect to the Indebtedness Hereby Secured. No sale of the Premises, or any forbearance by Mortgagee in exercising any right or remedy hereunder or otherwise afforded by applicable law, shall be a waiver of or preclude the exercise of any right or remedy hereunder, nor shall any sale of the Premises affect the liability of any party to the Note, or any person liable or to become liable with respect to the Indebtedness Hereby Secured.

4.16 INTEREST LAWS. Notwithstanding anything to the contrary in the Note or in any other agreement entered into in connection herewith or securing the Indebtedness Hereby Secured whether now existing or hereafter arising and whether written or oral, Mortgagor and Mortgagee agree that the Loan shall be

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in strict compliance with applicable usury laws. If at any time any interest contracted for, charged or received under the Note or otherwise in connection with the Loan would be usurious under applicable law, then, regardless of any provision contained in the Note, in this Mortgage or in any of the other Mortgage Documents or any action or event which may occur with respect to the Note or the Loan, it is agreed that the aggregate of all consideration which constitutes, or is

adjudicated as constituting, interest under applicable law that is taken, reserved, contracted for, charged or received under the Note, this Mortgage or under any of the Mortgage Documents or otherwise in connection with the Note shall under no circumstances exceed the maximum non-usurious interest rate, if any, that at any time or from time to time, may be contracted for, taken, reserved, charged or received on the indebtedness Hereby Secured under the laws which are presently in effect of the United States (including, without limitation, any federal usury ceiling or other federal laws preempting state usury laws which from time to time, are applicable to the Loan as evidenced by the Note, this Mortgage and the other Mortgage Documents) and the State of Alabama (or of any other evidenced by the Note, the Mortgage and the other Mortgage Documents, notwithstanding the other provisions of any of such documents); applicable to Mortgagee and the Indebtedness Hereby Secured, or, to the extent permitted by applicable law, under such applicable laws of the United States of America and the State of Alabama (or of any other jurisdiction whose laws may be mandatorily applied to the Loan as evidenced by the Note, the Mortgage and the other Mortgage Documents, notwithstanding the other provisions of any of such documents), which may hereafter be in effect and which allow a higher maximum nonusurious interest rate than applicable laws now allow (the "Maximum Legal Rate"), and any excess shall be applied to the principal balance of the Note, and if the principal balance of the Note has been paid in full, any remaining excess shall be

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forthwith paid to Mortgagor. In determining whether or not the interest paid or payable under, any specific contingency exceeds the Maximum Legal Rate, Mortgagor and Mortgagee shall, to the maximum extent permitted under applicable law, (1) characterize any nonprincipal payment as an expense, fee, or premium rather than as interest; (2) exclude voluntary prepayments and the effects thereof; and (3) amortize, prorate, allocate, and spread all compensation which constitutes interest under applicable law in connection with the Loan over the full period of time any part of the Indebtedness Hereby Secured is owing by Mortgagor. In the event that maturity of this Note is accelerated by reason of an election by Mortgagee resulting from any Event of Default hereunder or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest may never include more than the maximum amount allowed by applicable law, and excess interest, if any, provided for in the Note, this Mortgage or otherwise shall be canceled automatically as of the date of such acceleration or prepayment and, if theretofore prepaid, shall be credited on the principal balance of the Note by Mortgagee, and if the principal balance of the Note shall have been paid in full, any remaining excess shall be forthwith paid to Mortgagor; provided, always, however, that in no event and under no circumstance shall Mortgagor be liable for the payment of interest in excess of the Maximum Legal Rate from time to time in effect.

4.17 MECHANIC'S LIENS. Mortgagor shall not permit any mechanic's, laborer's or materialmen's liens to stand against the Premises. If any such lien shall at any time be recorded against the Premises, then Mortgagor shall (i) give written notice thereof promptly to Mortgagee; and (ii) cause the same to be discharged of record within thirty (30) days after the date of recording of the same, either by payment, deposit or bond. If Mortgagor fails to discharge any such lien within such period, then Mortgagee, in addition to any other right or remedy hereunder, shall have the option (but not the obligation) to procure the discharge

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of such lien either by depositing the amount claimed to be due In court, or by bonding. Any amount paid or deposited by Mortgagee to discharge such lien, and all costs and other expenses, including all reasonable attorneys' fees, incurred in defending any action to foreclose such lien shall be deemed a part of the Indebtedness Hereby Secured, shall be immediately due and payable, without demand, and shall bear interest at the Default Rate.

4.18 MORTGAGOR'S RIGHT TO CONTEST TAXES AND OTHER LIENS.

In the event Mortgagor desires to contest the validity of any Taxes as well as any mechanic's, materialmen's or other liens or claim for lien upon the Premises (collectively, the "Contested Liens"), it shall:

(a) on or before fifteen (15) days prior to the due date thereof, notify Mortgagee, in writing, that it intends to so contest the same;

(b) on or before the due date thereof, deposit with Mortgagee either a title insurance endorsement over such Contested Liens insuring the Mortgagee against loss or damage by reason of the existence of such Contested Liens or deposit with Mortgagee, at such place as Mortgagee may from time to time in writing designate, a sum of money or other security acceptable to Mortgagee that, when added to the monies or other security, if any, deposited with Mortgagee as required hereinabove, is sufficient in Mortgagee's judgment, to pay in full such Contested Liens and all penalties and interest that might become due thereon, and shall keep on deposit an amount sufficient, in Mortgagee,s judgment, to pay in full such Contested Liens, increasing such amount to cover additional penalties and interest whenever, in Mortgagee,s judgment, such increase is advisable;

(c) diligently prosecute the contest of such Contested Liens by appropriate legal proceedings and shall permit Mortgagee to be represented in any such contest and shall pay all expenses incurred by Mortgagee in so doing, including fees and expenses of Mortgagee's counsel (all of which shall constitute so much additional Indebtedness Hereby Secured, bearing interest at the interest rate as

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set forth in the Note until paid, and be payable upon demand); and if the foregoing deposits are made and Mortgagor continues, in good faith, to contest the validity of such Contested Liens by appropriate legal proceedings, which shall operate to prevent the collection thereof and the sale of the Premises, or any part thereof, to satisfy the same, (a) Mortgagor shall be under no obligation to pay such Contested Liens until such time as the same has been decreed, by court order, to be a valid lien on the Premises; (b) Mortgagee shall have full power and authority to reduce any such security or indemnity to cash and apply the amount so received to the payment of any unpaid Contested Liens, to prevent the sale or forfeiture of the Premises for non-payment of such Contested Liens, without liability on Mortgagee for any failure to apply the security or indemnity so deposited, unless Mortgagor, in writing, requests the application thereof to the payment of the particular Contested Liens for which such deposit was made; (c) any surplus deposit retained by Mortgagee, after the payment of the Contested Liens for which the same was made, shall be repaid to Mortgagor, unless an Event of Default exists, in which event, such surplus shall be applied by Mortgagee to the Indebtedness Hereby Secured in such order and manner as Mortgagee may elect. If Mortgagor fails to diligently prosecute such contest or fails to maintain sufficient funds on deposit with Mortgagee, Mortgagee may, at its option, apply the money and liquidate any securities held by Mortgagee, in payment of, or on account of, such Contested Liens, or any portion thereof then unpaid, including all penalties and interest thereon. If the amount of the money and any such security so deposited is insufficient for the payment in full of such Contested Liens, together with all penalties and interest thereon, Mortgagor shall immediately, upon demand, either deposit with Mortgagee a sum that, when added to such funds then on deposit is sufficient to make such payment in full, or, if Mortgagee has applied funds on deposit on account of such Contested Liens, restore such deposit to an amount satisfactory to Mortgagee. Mortgagee may, but

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shall not be required to, pay such deficiency in said deposit for Contested Liens and interest and penalties thereon and such other sums as may be necessary in the judgment of the Mortgagee to obtain the release and discharge of such Contested Liens; and any amount expended by Mortgagee in so doing shall be so much additional Indebtedness Hereby Secured bearing interest at the Default Rate until paid. Provided that there is not an Event of Default hereunder, Mortgagee shall, if so requested in writing by Mortgagor, after final disposition of such contest and upon Mortgagor's delivery to Mortgagee of an official bill of such Contested Liens, apply the money so deposited in full payment of such Contested Liens or that part thereof then unpaid, together with all penalties and interest thereon.

4.19 PARTIAL PAYMENTS. Acceptance by the Mortgagee of any payment which is less than payment in full of all amounts due and payable at the time of such payment, shall not constitute a waiver of Mortgagee's right to exercise its option to declare the whole of the principal sum then remaining unpaid, together with all accrued interest thereon, immediately due and payable without notice, or any other rights of the Mortgagee at that time or any subsequent time, nor nullify any prior exercise of such option or such rights of Mortgagee without its express consent, except and to the extent otherwise provided by law.

4.20 RELEASES. Mortgagee, without notice and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens thereon, may release from the lien of the Mortgage all or any part of the Premises, or release from liability any person obligated to repay any Indebtedness Hereby Secured, without in any way affecting the liability of any party to any of the Note, this Mortgage, or any of the other Mortgage Documents, and without in any way affecting the priority of the lien of this Mortgage. Any such agreement shall not in any way release or impair the lien created by this Mortgage or reduce or modify the liability of any person or entity

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obligated personally to repay the Indebtedness Hereby Secured, but shall extend the lien hereof as against the title of all parties having any interest, subject to the Indebtedness Hereby Secured, in the Premises.

5. EVENT OF DEFAULT AND REMEDIES

5.1 EVENT OF DEFAULT. The occurrence of any of the following shall constitute an event of default ("Event of Default") under this Mortgage:

(a) Failure of Mortgagor to pay any amount due herein or secured hereby, interest thereon, or any installment of principal thereof or interest thereon as and when same becomes due and payable whether at maturity or by acceleration or otherwise under the Note, this Mortgage, or any of the other Mortgage Documents; or

(b) Failure of Mortgagor to perform or observe any other covenant, agreement, representation, warranty or other provision contained in the Note, this Mortgage (including, but not limited to the restrictions on transfer contained in paragraph 4.9 hereof), or any of the other Mortgage Documents after the expiration of any grace period expressly allowed in said instrument relative to the cure of such default; or

(c) Untruth or material deceptiveness of any representation, covenant or warranty contained in any of the Note, this Mortgage, or the other Mortgage Documents, or Mortgagor's omission of any act which under the circumstances made said statements misleading; or

- (1) The filing by Mortgagor of a voluntary petition in bankruptcy, insolvency, debtor relief or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Act or any similar law, state or federal, now or hereafter in effect; or the Mortgagor's consent to the appointment of or taking possession by a receiver, liquidator, assignee, trustee,

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custodian, sequestrator (or similar official) of the Mortgagor or for any part of the Premises, or any substantial part of the Mortgagor's property; or the Mortgagor's general assignment for the benefit of Mortgagor's creditors, or the failure by the Mortgagor generally to pay its debts as they become due; or the taking of any action in furtherance of any of the foregoing;

(2) The admission by Mortgagor in writing or the filing of an answer or other pleading in any proceeding admitting insolvency, bankruptcy, or inability to pay its debts as they mature;

(3) A court having jurisdiction shall enter a decree or order for relief in respect of the Mortgagor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Mortgagor's consent to or failure to oppose any such proceeding; or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Mortgagor, or for any part of the Premises, or any substantial part of the Mortgagor's property; or ordering the winding up or liquidation of the affairs of the Mortgagor; and, in the case of any of the foregoing, such decree or order shall not be dismissed within thirty (30) days after the entry thereof;

(4) Mortgagor's failure to pay any money judgment against it within thirty (30) days following the day it becomes a lien against the Premises; and

(5) All or a substantial part of Mortgagor's assets are attached, seized, subjected to a writ or distress warrant, or are levied

upon, unless such attachment, seizure, writ, warrant or levy is vacated within thirty (30) days;

(6) Mortgagor shall abandon the Premises; or

(d) Any other event occurring (including, without limitation, default in order to avoid prepayment penalty or premium) or failing to occur which, under this Mortgage, under the Note, under any of the other Mortgage Documents or under any document or Instrument referenced herein or related hereto, constitutes a default by Mortgagor or gives Mortgagee the right to accelerate the maturity or any part thereof of the Indebtedness Hereby Secured.

5.2 ACCELERATION OF MATURITY. At any time during the existence of any Event of Default, Mortgagee is hereby authorized and empowered, at its option, and without affecting the lien hereby created or the priority of said lien or any right of the Mortgagee hereunder, to declare, without further notice, all Indebtedness Hereby Secured (which shall include any prepayment premium or penalty provided for in the Note) to be immediately due and payable, whether or not such Event of Default is thereafter remedied by the Mortgagor, with interest thereon at the Default Rate of Interest, and the Mortgagee may, whether or not the said declaration is made, immediately proceed to foreclose this Mortgage and/or exercise any right, power or remedy provided by this Mortgage, the Note the Assignment of Rents or any of the other Mortgage Documents, or by law or in equity conferred.

5.3 FORECLOSURE OF MORTGAGE. Upon occurrence of any Event of Default, or at any time thereafter, Mortgagee may, at its option, proceed: (a) to sell the Premises or any part of the Premises at public outcry, in front of the courthouse door of the county where the Premises are located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the

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payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the Mortgage indebtedness, appointing said auctioneer to make such sale, shall be prime facie evidence of his authority in the premises; or (b) the equity of redemption from this Mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law.

5.4 REMEDIES CUMULATIVE AND NON-WAIVER. No remedy or right of the Mortgagee hereunder, or under the Note, or under any other of the Mortgage Documents or otherwise available under applicable law, shall be exclusive of any other right or remedy, but each such remedy or right shall be in addition to every other remedy or right now or hereafter existing under any such document or under applicable law. No delay in the exercise of, or omission to exercise, any remedy or right accruing on any Event of Default shall impair any such remedy or right or be construed to be a waiver of any such Event of Default or an acquiescence therein, nor shall it affect any subsequent Event of Default of the same or a different nature, nor shall it extend or affect any grace period or independently, when and as often as may be deemed expedient by the Mortgagee. All obligations of the Mortgagor, and all rights, powers and remedies of the Mortgagee expressed herein shall be in addition to, and not in limitation of, those provided by law or in the Note or any other of the Mortgage Documents or any other written agreement or instrument relating to any of the Indebtedness Hereby Secured or any security therefor.

5.5 LITIGATION EXPENSES. In any suit or proceeding to foreclose the lien of this Mortgage or enforce any other remedy of Mortgagee under any of the Note, this Mortgage, and the other Mortgage Documents, or in any other proceeding whatsoever in connection with any of the Mortgage Documents or any of the Premises in which Mortgagee is named as a party, there shall be allowed

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and included, as additional indebtedness in the judgment or decree for sale resulting therefrom, all expenses paid or incurred in connection with such proceeding by or on behalf of Mortgagee including, without limitation, attorneys' fees and costs, appraiser's fees, outlays for documentary and expert evidence, photocopy expenses, stenographers' charges, mail and telephone costs, publication costs, survey costs, and costs (which may be estimated as to items to be expended after entry of such judgment or decree) of procuring all abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and any similar data and assurances with respect to title to the Premises as Mortgagee may deem reasonably necessary either to prosecute or defend in such proceeding or to evidence to bidders at any sale pursuant to such decree the true condition of the title to or value of the Premises. All expenses and fees of the foregoing nature, and such expenses and fees as may be incurred in the protection of any of the Premises and the maintenance of the lien of this Mortgage thereon in any litigation affecting the Note, this Mortgage, the other Mortgage Documents or the Premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding in connection therewith, shall be immediately due and payable by Mortgagor with interest thereon at the Default Rate.

5.6 MORTGAGEE'S PERFORMANCE OF MORTGAGOR'S OBLIGATIONS.

In case of any Event of Default herein, the Mortgagee, either before or after acceleration of the Indebtedness Hereby Secured, or the foreclosure of the lien hereof and during the period of redemption, if any, may, but shall not be required to, make any payment or perform any act herein, in the Note, in any other of the Mortgage Documents, or in any document or instrument related thereto which is required of the Mortgagor (whether or not the Mortgagor is personally liable therefor) in any form and manner deemed expedient to the Mortgagee; and the Mortgagee may, but shall not be required to, make full or partial payments of

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principal or interest on any permitted prior mortgage or encumbrances; purchase, discharge, compromise or settle any tax lien or other prior lien or title or claim thereof, or redeem from any tax sale or forfeiture affecting the Premises, or contest any Taxes. The Mortgagee may, but shall not be required to, notify any person obligated to the Mortgagor under or with respect to any Third Party Agreements of the existence of the Event of Default and require that performance be made directly to the Mortgagee at the Mortgagor's expense and advance such sums as are necessary or appropriate to satisfy the Mortgagor's obligations thereunder; and Mortgagor agrees to co-operate with the Mortgagee to accomplish the foregoing. The Mortgagee is hereby authorized to make any payment with respect to: (a) Taxes, according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) the purchase, discharge, compromise or settlement of any other prior lien, without inquiry as to the validity or amount of any claim for lien which may be asserted; and may do so in such amounts and to such persons as Mortgagee may deem appropriate, and may either enter into such contracts therefor as Mortgagee may deem appropriate or may perform the same itself.

5.7 RIGHT OF POSSESSION. In any case in which, under the provisions of this Mortgage, Mortgagee has a right to institute foreclosure proceedings, whether or not the entire Indebtedness Hereby Secured becomes immediately due and payable as aforesaid, or whether before or after the institution of proceedings to foreclose the lien hereof or before or after sale thereunder, Mortgagor shall, forthwith upon demand of Mortgagee, surrender to Mortgagee, and Mortgagee shall be entitled to take actual possession of the Premises or any part thereon, personally or by its agent or attorneys, and Mortgagee, in its discretion, may enter upon and take and maintain possession of all or any part of the Premises, and may exclude Mortgagor, such owner, and any agents and servants thereto wholly therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in

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therefrom and may, as attorney-in-fact or agent of Mortgagor or such owner, or in its own name as Mortgagee and under the powers herein granted:

(a) hold and control all or any part of the Premises either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary;

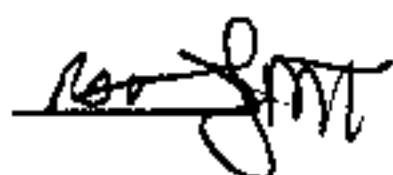
(b) cancel or terminate any Lease or sublease of all or any part of Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(c) elect to disaffirm any Lease or sublease of all or any part of the Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(d) make all necessary or proper repairs, decoration, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Premises as may seem judicious to Mortgagee, to insure and reinsure the Premises and all risks incidental to Mortgagee's possession.

5.8 APPOINTMENT OF RECEIVER. Upon occurrence of any Event of Default, or at any time thereafter, Mortgagee, upon application to a court of competent jurisdiction, shall be entitled as a matter of strict right; without notice; without regard to the solvency or insolvency, at the time of application for such receiver, of the person or persons, if any, liable for the payment of the Indebtedness Hereby Secured; without regard to the value of the Premises at such time and whether or not the same is then occupied as a homestead; and without bond being required of the applicant. Mortgagee or any employee or agent thereof may be appointed as such receiver. Such receiver shall have the power to take possession, control, and care of the Premises and to collect all Rents thereof during the pendency of any foreclosure proceedings, and, in the event of a sale and a deficiency where Mortgagor has not waived its statutory rights of redemption, during the full statutory period of redemption, as well as during any

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further times when Mortgagor or its devisee, legatees, heirs, executors, administrators, legal representatives, successors, or assigns, except for the intervention of such receiver, would be entitled to collect such Rents and shall have all other powers that may be necessary or useful in such cases for the protection, possession, and control of the Premises during the whole of any such period. To the extent permitted by law, such receiver may be authorized by the court with such rights and powers as are provided herein.

5.9 FORECLOSURE SALE. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

5.10 APPLICATION OF PROCEEDS. The proceeds of any foreclosure sale of the Premises, or any part thereof, shall be distributed and applied in the following order of priority; (a) on account of all costs and expenses incident to the foreclosure proceedings; (b) all other items that, under the terms of this Mortgage, constitute Indebtedness Hereby Secured additional to that evidenced by the Note, with interest thereon at the Default Rate; (c) all principal and interest remaining unpaid under the Note, in the order of priority specified by Mortgagee in its sole discretion; and (d) the balance, if any, to Mortgagor or its successors or assigns, as their interests and rights may appear.

5.11 APPLICATION OF DEPOSITS. In the event of any Event of Default, Mortgagee may, at its option, without being required to do so, apply any monies or securities that constitute deposits made to or held by Mortgagee or any depository pursuant to any of the provisions of this Mortgage toward payment of any of Mortgagor's obligations under the Note, this Mortgage, or any of the other Mortgage Documents, in such order and manner as Mortgagee may elect. When the Indebtedness Hereby Secured has been fully paid, any remaining deposits shall be paid to Mortgagor or to the then owner or owners of the Premises.

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5.12 INSURANCE UPON FORECLOSURE. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in Restoring the Improvements at Mortgagee's option, shall be used to pay the amount due in accordance with any decree of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct in the case of a judicial foreclosure of this Mortgage, the court, in its decree, may provide that the Mortgagee's clause attached to each of the casualty insurance policies may be canceled and that the decree creditor may cause a new loss clause to be attached to each of said casualty policies making the loss thereunder payable to said decree creditors; and any such foreclosure decree may further provide that in case of one or more redemptions under said decree, pursuant to the statutes in each such case made and provided, then in every such case, each and every successive redemtor may cause the preceding loss clause attached to each casualty insurance policy to be canceled and a new loss clause to be attached thereto, making the loss thereunder payable to such redemtor. In the event of foreclosure sale, the Mortgagee is hereby authorized, without the consent of the Mortgagor, to assign any and all Insurance policies to the purchaser at the sale, or to take such other steps as the Mortgagee may deem advisable to cause the Interest of such purchaser to be protected by any of the said Insurance policies without credit or allowance to Mortgagor for prepaid premiums thereon.

5.13 WAIVER OF REDEMPTION RIGHTS, NO MARSHALING. The Mortgagor hereby covenants and agrees on behalf of itself and on behalf of each and every person that it shall not at any time insist upon or plead, or in any manner whatever claim or take advantage of, any stay, exemption or extension law, including, but not by way of limitation, any Homestead Exemption Law, or any so called "Moratorium Law" now or at any time hereafter in force, nor claim, take or insist upon any benefit or advantage of or from any law now or hereafter

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in force providing for the valuation or appraisement of the Premises, or any part thereof, prior to any sale or sales thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale or sales claim or exercise any rights under any statute now or hereafter in force to redeem the Premises so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof, it being the intent hereof that any and all such rights of redemption of the Mortgagor and of all other persons shall be deemed to be hereby waived to the full extent permitted by the provisions of applicable law or replacement statutes. Mortgagor agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action upon the Note.

6. ENVIRONMENTAL COMPLIANCE.

6.1 DEFINITIONS. For the purposes of this Mortgage, Mortgagor and Mortgagee agree that, unless the context otherwise specifies or requires, the following terms shall have the meaning herein specified:

(a) "Hazardous Materials" shall mean (1) any "hazardous waste" and/or "hazardous substance" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sec 6901, et seq.) ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.) ("CERCLA"), Section 311 (6) (2) (A) of the Federal Water Pollution Control Act, 33 U.S.C. 1321 (b) (2) (A), the Superfund Amendment and Reauthorization Act, the Federal Environmental Pesticides Act, the Clean Water Act, the Clean Air Act, any so-called federal, state or local "superfund" or "superlien" statute and the rules, rulings, regulations and publications promulgated pursuant to said laws, all as may be amended from time to time; (2) asbestos or any substance containing asbestos; (3) polychlorinated biphenyls; (4) underground storage tanks, whether

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empty, filled or partially filled with any substance; (5) any substance the presence of which on the Premises is prohibited by any Legal Requirement (hereafter defined); and (6) any other substance, material or waste which, (i) by any Legal Requirement requires special handling or notification of any Governmental Authority (hereafter defined) in its collection, storage, treatment, or disposal or (ii) is defined or classified as hazardous, dangerous or toxic pursuant to any Legal Requirement.

(b) "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Real Estate, Improvements, facilities, soil, ground-water, air, or other elements on or of the Premises by Hazardous Materials, or the contamination of the buildings, facilities, soil, ground-water, air, or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date of this Mortgage) emanating from the Premises.

(c) "Legal Requirements" shall mean any and all present and future judicial decisions, orders, decrees, laws, statutes, rules, rulings, regulations, permits, certificates, codes or ordinances of any Governmental Authority in any way applicable to Mortgagor, or the Premises, including the ownership, use, occupancy, possession, operation, maintenance, alteration, repair or reconstruction thereof, or regulating, relating to or imposing liability (including strict liability), or standards of conduct concerning any Hazardous Waste, regardless of whether or not caused by, on behalf of, or within the control of Mortgagor, including, without limitation, the statutes, laws, rules, rulings, regulations, orders and decisions described above in (6.1)(a).

(d) "Governmental Authority" shall mean any and all courts, boards, agencies, commissions, bodies, councils, offices or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence.

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6.2 MORTGAGOR'S WARRANTIES. Mortgagor hereby covenants, represents and warrants that:

(a) No Hazardous Materials are now located on the Premises, and neither Mortgagor nor, to the best of Mortgagor's knowledge after due inquiry, any other person (including prior owners, tenants and subtenants) has ever caused or permitted any Hazardous Materials to be placed, held, stored, treated, manufactured, handled, produced, transported, located or disposed of on, under or at the Premises or any part thereof, including the ground-water located thereon;

(b) No part of the Premises is being used or, to the knowledge of Mortgagor after due inquiry, has been used at any previous time for the disposal, storage, treatment, processing or handling of Hazardous Materials or as a dump site or storage site (whether permanent or temporary) for any Hazardous Materials, nor is any part of the Premises affected by any Hazardous Materials Contamination;

(c) To the best of Mortgagor's knowledge and belief after due inquiry, no property adjoining the Premises is being used or has ever been used at any previous time for the disposal, storage, treatment, processing, or other handling of Hazardous Materials nor is any other property adjoining the Premises affected by Hazardous Materials Contamination; and

(d) No investigation, administrative order, consent, order, agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated, or in existence with respect to the Premises. The Premises is not currently on, and to Mortgagor's knowledge, after diligent investigation and inquiry, has never been on, any federal, state or local "Superfund" or "Superlien" list.

6.3 MORTGAGOR'S COVENANTS. Mortgagor covenants and agrees:

(a) that Mortgagor shall not, nor shall Mortgagor permit any other person

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or entity to, place, hold, locate, generate, manufacture, refine, process or dispose of any Hazardous Materials on, under, about, or at the Premises or any part thereof and that no storage or use will otherwise be allowed on the Premises which will cause or increase the likelihood of causing the release of Hazardous Materials onto the Premises or onto any other property, nor shall Mortgagor cause or permit, as a result of any intentional or unintentional act or omission on the part of Mortgagor or any tenant or subtenant, a release of Hazardous Materials onto the Premises or onto any other property;

(b) to promptly comply with and ensure compliance by all tenants and subtenants with all applicable Legal Requirements relating to Hazardous Materials, and ensure that all tenants and subtenants obtain and comply with any and all approvals, registrations or permits required thereunder;

(c) to give notice to Mortgagee immediately upon Mortgagor's acquiring knowledge of the presence of any Hazardous Materials on the Premises or of any Hazardous Materials Contamination with a full description thereof;

(d) to promptly comply with any Legal Requirements of any Governmental Authority requiring the removal, treatment, transportation, storage, containment, handling, or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Mortgagee with satisfactory evidence of such compliance;

(e) to provide Mortgagee, within thirty (30) days after demand by Mortgagee, with a bond, letter of credit or similar financial assurance evidencing to Mortgagee's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Premises as a result thereof; and

(f) to pay to Mortgagee upon demand any fees, costs, and expenses imposed upon or incurred by Mortgagee at any time and from time to time on account of

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any breach of any of the covenants, representations, or warranties contained in this Article 6, and any such fees, costs, and expenses shall (together with interest thereon at the Default Rate accruing from the date such fees, costs, and expenses are so imposed upon or incurred by Mortgagee) become part of the Indebtedness Hereby Secured.

6.4 SITE ASSESSMENTS. Mortgagee (by its officers, employees and agents) at any time and from time to time (but not more often than annually and upon notice or reasonable belief of the existence of any environmental condition which could reasonably be expected to result in liability, cost or expense to the owner of the Premises arising under any Legal Requirement relating to Hazardous Materials), may contract for the services of persons (the "site Reviewers") to perform environmental site assessments ("Site Assessments") on the Premises for the purpose of determining whether there exists on the Premises any environmental condition which could reasonably be expected to result in any liability, cost or expense to the owner of such Premises arising under any Legal Requirement relating to Hazardous Materials. The Site Assessments may be performed at any time or times, upon reasonable notice, and under reasonable conditions established by Mortgagor which do not impede the performance of the Site Assessments. The Site Reviewers are further authorized to perform both above and below the ground testing for environmental damage or the presence of Hazardous Materials on the Premises and such other tests on the Premises as may be necessary to conduct the Site Assessments in the reasonable opinion of the Site Reviewers. Mortgagor will supply to the Site Reviewers such historical and operational information regarding the Premises as may be reasonably requested by the Site Reviewers to facilitate the Site Assessments and will make available for meetings with the Site Reviewers appropriate personnel having knowledge of such matters. On request, Mortgagee shall make the results of such Site Assessments fully available to Mortgagor, which (prior to an Event of Default)

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may at its election participate under reasonable procedures in the direction of such Site Assessments and the description of tasks of the Site Reviewers. The cost of performing such Site Assessments shall be paid by Mortgagor upon demand of Mortgagee and any such obligations shall be included in the Indebtedness Hereby Secured.

6.5 INDEMNIFICATION. Mortgagor hereby agrees to defend, indemnify and hold harmless the Mortgagee from and against any and all losses, liabilities (including strict liability), damages, injuries, penalties, fines, actions, demands, penalties, losses, suits, settlements, fees, expenses and costs of whatever kind or nature, known or unknown, contingent or otherwise, including, without limitation, reasonable attorneys' fees and costs, costs of any settlement or judgment and claims of any and every kind whatsoever which may now or in the future (whether before or after the release of this Mortgage) be paid, incurred or suffered by, or asserted against, the Mortgagee by any person or entity or Governmental Authority, for, with respect to, or as a direct or indirect result of (i) at any time, the incorrectness or breach of any covenant, warranty or representation set forth in this Mortgage; or (ii) the presence on or under, or the escape, seepage, leakage, disposal, spillage, emission, storage, discharge or release from the Premises of any Hazardous Materials or any Hazardous Materials Contamination, or arise out of or result from the environmental condition of the Premises, or the applicability of or compliance with any Legal Requirements relating to Hazardous Materials [including, without limitation, RCRA, CERCLA, any federal, state or local so-called "Superfund" or "Superlien" law, statute, ordinance, code, rule, regulation, order or decree or any of the other laws, statutes, ordinances, codes, rules, regulations, orders or decrees described above in 6.1(a)], regardless of whether or not caused by or within the control of Mortgagor or Mortgagee. The representations, covenants, warranties, and indemnifications contained in this Article 6 shall survive the release of this Mortgage.

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7. MISCELLANEOUS.

7.1 NOTICES, CONSENTS AND APPROVALS. Any notice, consent or approval that Mortgagee or Mortgagor may desire or be required to give to the other shall be in writing and shall be personally delivered (with proof of service endorsed thereon) or sent by a nationally recognized overnight courier service, or by certified mail, return receipt requested, with postage prepaid to the parties at the following addresses (or to such other or further addresses as the parties may hereafter designate by like notice similarly sent):

(a) If to Mortgagee:

Edward L. Osborn
Suite 130
10 Inverness Parkway
Birmingham, AL 35242

(b) If to Mortgagor:

Robert Asa Thacker
460 Crosscut Road
Saginaw, AL

All notices shall be deemed effectively given on the date of receipt (if personally delivered), on the first (1st) day following deposit (if sent by a nationally recognized overnight courier service), or on the third (3rd) day following posting (if sent by certified or registered mail, return receipt requested, with postage prepaid). Except as otherwise specifically required herein, notice of the exercise of any right or option granted to Mortgagee by this Mortgage is not required to be given.

7.2 TIME OF ESSENCE. It is specifically agreed that time is of the essence of this Mortgage and all of its provisions.

7.3 COVENANTS RUN WITH LAND. All of the covenants of this Mortgage shall run with the land constituting the Premises.

7.4 LAW; VENUE; JURISDICTION. This Mortgage is, and shall be deemed to be, a contract entered into and pursuant to the laws of the State of

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Alabama, and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said state; and no defense given or allowed by the laws of any other state or country shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of said State and the undersigned agrees to submit to personal jurisdiction in said State in any action or proceeding arising out of this Mortgage and, in furtherance of such agreement, the undersigned hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the undersigned in any such action or proceeding may be obtained within or without the jurisdiction of any court located in said state and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the undersigned by certified mail to or by personal service at the last known address of the undersigned, whether such address be within or without jurisdiction of any such court.

7.5 SEVERABILITY. If any provision of this Mortgage or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of its provisions to other entities, persons, or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

7.6 HEADINGS. The headings of articles, sections, paragraphs and subparagraphs in this Mortgage are for convenience or reference only and shall not be construed in any way to limit or define the content, scope, or intent of the provisions hereof.

7.7 GRAMMAR. As used in this Mortgage, the singular shall include the plural, and masculine, feminine, and neuter pronouns shall be fully interchangeable, where the context so requires.

7.8 INDEMNIFICATION. Mortgagor does hereby covenant and agree that Mortgagee shall have no responsibility for the control, care, use, or repair of the

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Premises and shall not be responsible or liable for any negligence in the use, upkeep, repair, care or control of the Premises resulting in loss, injury or death to any licensee, invitee or other person; no liability shall be asserted or enforced against Mortgagee arising out of Mortgagee's exercise of the rights and powers hereby granted to the Mortgagee; and Mortgagor hereby expressly waives and releases Mortgagee from any such liability (except for gross negligence or willful and wanton misconduct); and Mortgagor shall and does hereby indemnify and hold Mortgagee harmless from any liability, loss or damage which Mortgagee may or might incur by reason of (i) exercise by Mortgagee of any right hereunder; and (ii) any and all claims and demands whatsoever which may be asserted against Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms, covenants or agreements contained herein or in any instrument evidencing, securing or relating to the Indebtedness Hereby Secured or in any contracts, agreements or other instruments relating to or affecting the Premises; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys' fees and costs incurred by Mortgagee in the defense (including preparation for defense) of any claims or demands therefor (whether successful or not) shall be so much additional Indebtedness Hereby Secured, and the Mortgagor shall reimburse the Mortgagee therefor on demand, together with interest thereon at the Default Rate from the date of demand to the date of payment.

7.9 NO AGENCY, PARTNERSHIP, OR JOINT VENTURE. Nothing contained in the Note, this Mortgage or the other Mortgage Documents nor the acts of the parties hereto shall be construed to create a relationship of principal and agent, partnership, or joint venture between Mortgagor and Mortgagee.

7.10 ASSIGNMENT BY MORTGAGEE. Mortgagee shall have the right, in its sole discretion, to sell, assign, syndicate or otherwise transfer or dispose of all

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or any portion of its interest In the Note, this Mortgage, and the other Mortgage Documents, and Mortgagor shall permit Mortgagee to submit to Mortgagee's assignee any and all financial data and other information furnished by or on behalf of Mortgagor to Mortgagee in connection with the Loan.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed under seal this 26th day of October, 1992.


Robert Asa Thacker, Mortgagor


Jamie Mosely Thacker, Mortgagor

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for the County and state aforesaid, do hereby certify that Robert Asa Thacker and wife, Jamie Mosely Thacker personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me in person and acknowledged that they signed, sealed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 26th day of October, 1992.


Notary Public

My Commission Expires:

7-93

Borrower's Initials 

EXHIBIT "A"

LEGAL DESCRIPTION

Part of the SW 1/4 of Section 4, Township 21 South, Range 2 West and part of the NW 1/4 of Section 9, Township 21 South, Range 2 West, situated in Shelby County, Alabama and being more particularly described as follows:

Begin at the NW corner of the SW 1/4 of Section 4, Township 21 South, Range 2 West; thence run S 02° 03' 49" E along the west line thereof for a distance of 2618.79 feet to the SW corner of said 1/4; thence continue S 02° 03' 49" E for a distance of 311.32' to a point in the center line of a paved county road; thence run S 89° 56' 10" E along said center line for a distance of 271.26'; thence run N 80° 38' 13" E for a distance of 312.41 feet; thence run S 79° 48' 09" E for a distance of 391.23'; thence run N 69° 57' 38" E for a distance of 242.23'; thence run N 56° 56' 43" E for a distance of 564.17'; thence run N 28° 25' 34" E for a distance of 244.52'; thence run N 51° 39' 12" E for a distance of 179.38'; said point being the intersection of said paved county road and the center line of a gravel road; thence run N 15° 03' 13" E along said center line of said gravel road for a distance of 339.34'; thence run N 01° 12' 02" W for a distance of 56.87'; thence run N 21° 43' 58" E for a distance of 163.14'; thence run N 33° 17' 02" E for a distance of 117.38'; thence run N 13° 29' 40" E for a distance of 61.04'; thence run N 04° 06' 47" W for a distance of 54.29'; thence run N 05° 51' 06" E for a distance of 47.44'; thence run N 19° 48' 40" E for a distance of 85.24'; thence run N 26° 41' 52" E for a distance of 79.86'; thence run N 12° 30' 37" E for a distance of 76.57'; thence run N 04° 39' 40" W for a distance of 136.35'; thence run N 35° 57' 58" W for a distance of 69.35'; thence run N 54° 55' 55" W for a distance of 17.07'; thence run N 59° 15' 02" W for a distance of 73.13';

CONTINUED...

thence run N 39° 30' 08" W for a distance of 19.81'; thence run N 32° 36' 28" W for a distance of 27.14'; thence run N 17° 59' 26" W for a distance of 40.54'; thence run N 10° 43' 25" E for a distance of 133.50'; thence run N 20° 05' 52" E for a distance of 45.63'; thence run N 11° 45' 52" W for a distance of 147.35'; thence run N 16° 53' 31" W for a distance of 94.18'; thence run N 18° 13' 15" W for a distance of 109.30'; thence run N 20° 10' 01" W for a distance of 92.39'; thence run N 14° 08' 10" W for a distance of 98.84'; thence run N 03° 40' 13" E for a distance of 110.38'; thence run N 03° 40' 13" E for a distance of 67.87' to a point on the North line of said 1/4 section; thence leaving said center line run N 89° 27' 09" W along said North line for a distance of 2072.45' to the point of beginning.

Borrower's Initials

Car Jmt

EXHIBIT "B"

PERMITTED ENCUMBRANCES

Any and all restrictions of record including but not limited to the following:

1. Taxes and assessments for the year 1993, and subsequent years, which are not yet due and payable. Tax information has been based on the present assessment roles, but is subject to any future adjustments that may be made by either the Tax Assessor or the Board of Equalization of Shelby County, Alabama.
2. Right of Way granted to Alabama Power Company by instrument recorded in Volume 342, page 72, in the Probate Office of Shelby County, Alabama.
3. Right of Way granted to South Central Bell by instrument recorded in Volume 342, page 225, in the Probate Office of Shelby County, Alabama.
4. Mining and mineral rights and rights incident thereto, restrictions, conditions and Release of Damages as recorded in Volume 333, page 621, in the Probate Office of Shelby County, Alabama.
5. Less and except any part within county paved road and gravel road right of way.

Inst # 1992-24698

10/27/1992-24698
08:34 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
056 MCD 1419.00

Borrower's Initials RA-gmt