

✓ This instrument prepared by:
Haskins W. Jones
Johnston, Barton, Proctor, Swedlaw & Naff
1901 Sixth Avenue North
2900 AmSouth/Harbert Plaza
Birmingham, Alabama 35203
(205) 458-9400

STATE OF ALABAMA)
)
COUNTY OF SHELBY)

MORTGAGE

THIS MORTGAGE is made as of the 19th day of December, 1994, between ST. CHARLES PLACE, an Alabama general partnership as mortgagor (the "Mortgagor"), and OAKTREE ENTERPRISES, INC., an Alabama corporation as mortgagee (the "Mortgagee").

WITNESSETH:

That Mortgagor has executed and delivered to Mortgagee Promissory Notes (the "Notes"), of even date herewith, wherein Mortgagor promised to pay Mortgagee the aggregate principal sum of One Hundred Twelve Thousand Three Hundred and 00/100 Dollars (\$112,300.00) to be paid in accordance with the terms and with interest as set forth in the Notes and all modifications, extensions and/or renewals thereof, all of which are incorporated herein by reference.

NOW, THEREFORE, in consideration of the indebtedness evidenced by the Notes and as security for (a) the payment of the principal with interest and all other sums provided for in the Notes, (b) the payment and performance of all indebtedness and obligations of Mortgagor arising under this Mortgage, and (c) payment of any money advanced by Mortgagee to Mortgagor, or its successors and assigns, with interest thereon, evidenced by additional notes (indicating that they are so secured) or by endorsement of the Notes, executed by Mortgagor or its successor Mortgagor (all such indebtedness and obligations, whether now existing or incurred hereafter, together with interest thereon, and all fees, costs, expenses or charges imposed upon or payable by Mortgagor in accordance with the terms of the Notes, this Mortgage, or any other agreement or instrument evidencing or

12/22/1994-37214
12:40 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MCD 230.45

Inst # 1994-37214

collateralizing such indebtedness, shall hereinafter be referred to collectively as the "Indebtedness"), Mortgagor has granted, mortgaged, bargained, sold and conveyed, and by these presents does grant, mortgage, bargain, sell and convey unto Mortgagee, all of its estate, right, title and interest in, to and under any and all of that certain property located in Shelby County, Alabama, and more particularly described in Exhibit A attached hereto and made a part hereof, including all easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging or in anyway appertaining, and all of the estate, right, title, interest, claim, demand, reversion or remainder whatsoever of Mortgagor therein or thereto, either at law or in equity, in possession or expectancy, now or hereafter acquired, including, without limitation, all and singular the ways, waters, water courses, water rights and powers, liberties, privileges, sewers, pipes, conduits, wires and other facilities furnishing utility or other services to the property (collectively, the "Premises");

TOGETHER with all of the right, title and interest of Mortgagor in and to the land lying in the bed of any street, road, highway or avenue in front of or adjoining the Premises;

TOGETHER with any and all award and awards heretofore made or hereafter to be made by any governmental authorities to the present and all subsequent owners of the Premises which may be made with respect to the Premises as a result of the exercise of the right of eminent domain, the alteration of the grade of any street or any other injury to or decrease of value of the Premises, which said award or awards are hereby assigned to Mortgagee, and Mortgagee at its option, is hereby authorized, directed and empowered to collect and receive the proceeds of any such award or awards from the authorities making the same and to give proper receipts and acquittances therefor, and to apply the same as hereinafter provided; and Mortgagor hereby covenants and agrees to and with Mortgagee, upon request by Mortgagee, to make, execute and deliver, at Mortgagor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid award or awards to Mortgagee free, clear and discharged of any and all encumbrances of any kind or nature whatsoever;

TOGETHER with leases of the Premises or any part thereof now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder (whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms), all rights to all insurance proceeds and unearned insurance premiums arising from or relating to the Mortgaged Property (hereinafter defined), all other rights and easements of Mortgagor now or hereafter existing pertaining to the use and enjoyment of the Premises and all right, title and interest of Mortgagor in and to all declarations of covenants, conditions and restrictions as may affect or otherwise relate to the Premises;

TOGETHER with all permits, plans, licenses, specifications, subdivision rights, contracts, contract rights, public utility deposits or other rights as may affect or otherwise relate to the Premises;

TOGETHER with all rents, issues, profits, prepaid municipal and utility fees, bonds, revenues, income and other benefits to which Mortgagor may now or hereafter be entitled from, or which are derived from, the Premises (all of the foregoing issues, titles, interests, awards, easements, rents, revenues, income, benefits, ways, waters, rights, powers, liberties, privileges, utilities, tenements, hereditaments, appurtenances, reversions, remainders, permits, plans, specifications, contracts, contract rights, rents, issues, profits, fees, revenues, bonds, estate, property, rights, possession, claims and demands, are herein collectively referred to as the "Mortgaged Property");

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, its successors and assigns forever.

PROVIDED ALWAYS, and this instrument is upon the express condition that, if Mortgagor pays to Mortgagee the Indebtedness at the times and in the manner specified, without deduction, fraud or delay, and if Mortgagor performs and complies with all the agreements, conditions, covenants, provisions and stipulations contained herein and in the Notes, then this Mortgage and the estate hereby granted shall cease and become void:

ARTICLE 1

COVENANTS

And Mortgagor further covenants with Mortgagee that until the Indebtedness secured hereby is fully repaid:

SECTION 1.01. Title; Hazardous Materials. Mortgagor has good and marketable title to an indefeasible fee estate in the Premises subject to no lien, charge, or encumbrance except such as are approved by Mortgagee; that this Mortgage is and will remain a valid and enforceable lien on the Mortgaged Property subject only to the exceptions referred to in Exhibit A hereto; and that neither the entry nor the performance of and compliance with this Mortgage or the Notes has resulted or will result in any violation of, or be in conflict with, or result in the creations of any mortgage, lien, encumbrance or charge (other than those created by the execution and delivery of, or permitted by, this Mortgage and the Notes) upon any of the properties or assets of Mortgagor, or constitute a default under any deed of trust, indenture, contract, agreement, instrument, franchise, permit, judgment, decree, order, statute, rule or regulation applicable to Mortgagor. Mortgagor has full power and lawful

authority to convey the Mortgaged Property in the manner and form herein done or intended hereafter to be done and will preserve such title, and will forever preserve, warrant and defend the same unto Mortgagee and will forever preserve, warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever. To the best of Mortgagor's knowledge, no portion of the Mortgaged Property constitutes or contains Hazardous Substances (as defined hereinafter). Mortgagor will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the Mortgaged Property or transport to or from the Mortgaged Property any Hazardous Substance or allow any other person or entity to do so. Mortgagor shall give prompt written notice to Mortgagee of: (1) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Mortgaged Property or the migration thereof from or to other property; (2) all claims made or threatened by any third party against Mortgagor or the Mortgaged Property relating to any loss or injury resulting from any Hazardous Substance; and (3) Mortgagor's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Mortgaged Property that could cause the Mortgaged Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Mortgaged Property under any Environmental Law (as hereinafter defined). Mortgagee shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law. The term "Environmental Law" shall include, without limitation, any law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environment (collectively referred to as "Environmental Law"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. §§ 9601 et seq., the federal Resources Conservation and Recovery Act of 1976, as amended ("RCRA"), 42 U.S.C. §§ 6901 et seq., the Alabama Hazardous Wastes Management and Minimalization Act, Code of Alabama §§ 22-30-1 et seq. (1975), and the Act adopted by the State of Alabama establishing the "Alabama Hazardous Substance Cleanup Fund." The term "Hazardous Substance" shall include without limitation: (1) those substances included within the definitions of "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "toxic waste," or "solid waste" in CERCLA, and the Hazardous-Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws; (2) those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," "toxic waste," or "solid waste," under Alabama Law and in the regulations promulgated pursuant to said laws, including, without limitation, the Alabama Hazardous Wastes Management Act, Code of Alabama §§ 22-30-1 et seq. (1975); (3) those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto); and (4) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

SECTION 1.02. Further Assurances, Fees.

(A) Mortgagor will, at its sole cost and expense, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall from time to time require, for the purpose of better assuring, conveying, assigning, transferring, pledging, mortgaging, warranting and confirming unto Mortgagee the real property and rights hereby conveyed or assigned or intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage.

(B) Mortgagor will pay all filing, registration, privilege taxes or recording fees, all federal, state, county and municipal stamp taxes and other fees, taxes, duties, imposts, assessments and all other charges incident to, arising out of or in connection with the preparation, execution, delivery and enforcement of the Notes, this Mortgage, or any instrument of further assurance.

SECTION 1.03. Payment Of Indebtedness. Mortgagor will punctually pay the Indebtedness, including the principal and interest and all other sums to become due in respect of the Notes at the time and place and in the manner specified therein, together with any further advances, all in any coin or currency of the United States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

SECTION 1.04. Compliance With Laws. Mortgagor will, so long as it is the owner of the Mortgaged Property, do all things necessary to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Mortgagor or to the Mortgaged Property or any part thereof.

SECTION 1.05. After Acquired Property. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property, hereafter acquired by, or released to, or constructed, assembled or placed by Mortgagor on the Premises, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further grant, conveyance, assignment or other act by Mortgagor, shall become subject to the lien and security interest of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof, but at any and all times Mortgagor will execute and deliver to

Mortgagee any and all such further assurances, mortgages, conveyances or assignments thereof with respect thereto as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.06. Taxes; Liens.

(A) Mortgagor, from time to time when the same shall become due, will pay and discharge, or cause to be paid and discharged, all taxes and governmental charges of every kind and nature that may at any time be assessed or levied against or with respect to the Indebtedness or any part of the Indebtedness, the Mortgaged Property or any part thereof (including, without limiting the generality of the foregoing, real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, and all other public or governmental charges whether of a like or different nature, imposed upon or assessed or levied against Mortgagor or the Mortgaged Property or any part thereof or interest therein or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof. Mortgagor will, upon the request of Mortgagee, deliver to Mortgagee receipts evidencing the payment, before any penalties accrue thereon, of all such taxes, assessments, levies, fees, rents and other public charges imposed upon or assessed against it, this Mortgage, or the Mortgaged Property or the revenues, rents, issues, income or profits thereof.

(B) Mortgagor will pay from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers, and others which, if unpaid, might result in, or permit the creation of, a lien on the Mortgaged Property or any part thereof, or on the revenues, rents, issues, income and profits arising therefrom and in general will do or cause to be done everything necessary so that the lien hereof shall be fully preserved, at the cost of Mortgagor, without expense to Mortgagee.

SECTION 1.07. Insurance.

(A) Mortgagor will obtain and maintain at its own expense general liability insurance with respect to the Premises with a single limit of liability of One Million (\$1,000,000.00) Dollars to or death of persons or damage to property. Such policy shall be issued by an insurance company authorized to do business in the State of Alabama and acceptable to Mortgagee, naming the Mortgagee as an additional insured, and such policy providing that it may not be canceled unless thirty (30) days' prior written notice shall have been delivered to the additional insured thereunder. Original policies or certificates evidencing such insurance shall be delivered to Mortgagee at least thirty (30) days prior to the expiration of the existing policies. If any such insurance policy is not so delivered to

Mortgagee or in the event any such insurance policy is cancelled, whether or not Mortgagee has the policy in its possession, and no reinstatement or replacement policy is received prior to termination of insurance, Mortgagee, without notice to or demand upon Mortgagor, may (but shall not be obligated to) obtain such insurance with such company as Mortgagee may deem satisfactory, and pay the premium therefor, and the amount of any premium so paid shall be charged to and promptly paid by Mortgagor or at the option of the Mortgagee, may be added to the Indebtedness.

SECTION 1.08. Change In Law. In the event of the passage, after the date of this Mortgage, of any law of the State of Alabama or any other governing entity, deducting from the value of the Mortgaged Property for the purpose of taxation the amount of any lien thereon, or changing in any way the laws now in force for the taxation of mortgages, or debts secured thereby, for state or local purposes, or the manner of operation of any such taxes so as to adversely affect the interest of Mortgagee, then and in such event, Mortgagor shall bear and pay the full amount of such taxes, provided that if for any reason payment by Mortgagor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render the Notes or the Indebtedness wholly or partially usurious under any of the terms or provisions of the Notes, or this Mortgage, or otherwise, Mortgagee may, at its option, upon thirty (30) days' written notice to Mortgagor, (A) declare the entire Indebtedness to be immediately due and payable, or (B) pay that amount or portion of such taxes as renders the Notes or the Indebtedness unlawful or usurious, in which event Mortgagor shall concurrently therewith pay the remaining lawful non-usurious portion or balance of said taxes.

SECTION 1.09. Inspection. Mortgagee shall have access to and the right to inspect the Premises at all reasonable times.

SECTION 1.10. Property Laws; Indemnity. Mortgagor shall comply with any applicable restrictive covenants, zoning and subdivision ordinances and building codes, all health and environmental laws and regulations and all other applicable laws, rules, regulations, requirements, directions, orders and notices of violations issued by any governmental agency, body or officer relating to or affecting the Premises or the business or activity being conducted thereon whether by Mortgagor or by any occupant thereof, including, without limitation any and all Environmental Laws (collectively the "Property Laws"). Further, Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all loss, damage, cost, expense or liability (including attorney's fees and costs) directly or indirectly arising out of or attributable to the failure by Mortgagor to comply with such Property Laws to the full extent provided for therein.

SECTION 1.11. Advance By Mortgagee. If Mortgagor shall fail to perform any of the covenants contained herein on its part to be performed, Mortgagee may, but shall not be required to, make advances to perform the same, or cause the same to be performed, on Mortgagor's behalf, and all sums so advanced shall bear interest, from and after the date advanced until repaid, at two percent (2%) over the rate then payable on the Indebtedness, shall be a lien upon the Mortgaged Property and shall, at Mortgagee's option, be added to the Indebtedness. Mortgagor will repay on demand all sums so advanced on its behalf with interest at the rate herein set forth. This Section 1.11 shall not be construed as preventing any default by Mortgagor in the observance of any covenant contained in this Mortgage from constituting an Event of Default hereunder.

SECTION 1.12. No Waste. Mortgagor will not commit any waste at or with respect to the Mortgaged Property nor will Mortgagor do or fail to do anything which will in any way increase the risk of fire or other hazard to the Improvements or to any part thereof. Mortgagor will, at all times, maintain the Improvements in good order and condition and will promptly make, from time to time, all repairs, renewals, replacements, additions and improvements in connection therewith which are needful or desirable to such end. Improvements shall not be removed, demolished or materially altered without the prior written consent of Mortgagee.

SECTION 1.13. Condemnation. Mortgagor will immediately notify Mortgagee of the institution of any proceeding for the condemnation or taking by eminent domain of the Mortgaged Property, or any portion thereof. The Mortgagee may participate in any such proceeding, and Mortgagor from time to time will deliver to Mortgagee all instruments requested by it to permit such participation. In the event of such condemnation proceedings, or a conveyance in lieu of such taking, the award or compensation payable is hereby assigned to and shall be paid to Mortgagee. Mortgagee shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid, but shall have no right to bind Mortgagor or to make settlement of its claim, except to the extent of the interest of Mortgagee. In any such condemnation proceedings Mortgagee may be represented by legal counsel selected by Mortgagee, the cost of which representation, and all expenses of Mortgagee in such proceeding, to be borne by Mortgagor. The proceeds of any award or compensation so received after reimbursement of any fees and expenses incurred by Mortgagee in connection with such proceedings, shall, at the option of Mortgagee, be applied, to the payment of the Indebtedness in such order as Mortgagee may in its sole discretion elect, or to the cost of restoration of the Improvement so taken under such stage payment, or upon other terms as shall be satisfactory to Mortgagee.

SECTION 1.14. Further Encumbrances; Subordination. If Mortgagor shall grant any lien or mortgage on the Mortgaged Property junior to this Mortgage, such junior lien or mortgage shall expressly provide that it is junior and subordinate to this Mortgage, and all renewals, extensions, modifications, increases, changes or exchanges hereunder, without the consent of such junior lienholder or mortgage holder, and without any obligation of any person to give notice of any kind with respect thereto.

SECTION 1.15. No Usury. This Mortgage and the Notes are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of deferment or advancement of the loan proceeds, acceleration of the maturity of the loan, or otherwise, shall the amount paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the money to be loaned hereunder exceed the maximum rates permissible under applicable law. If, from any circumstances whatsoever, fulfillment of any provisions hereof or the Notes shall involve transcending the limits of validity prescribed by law, then ipso facto, the obligation to be fulfilled by Mortgagor shall be reduced to the limit of such validity. This provision shall never be superseded or waived and shall control every other provision of all agreements between Mortgagor and Mortgagee. If Mortgagor or the transaction represented by the Loan Documents are exempt from applicable usury statutes, or if the defense of usury shall not be available to Mortgagor under applicable law, then none of the provisions of this section shall be construed so as to waive such exemption, or to constitute an agreement on the part of Mortgagee to permit Mortgagor to raise usury as a defense, or to limit or reduce the interest or other consideration for the Indebtedness payable hereunder.

SECTION 1.16. Mortgagor's Representations And Warranties. The Mortgagor represents and warrants to the Mortgagee as follows:

(A) This Mortgage constitutes the valid and legally binding obligation of the Mortgagor enforceable against the Mortgagor in accordance with its terms except as such enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally. No consent or approval of any party is required as a condition to the execution, delivery, performance, enforceability or validity of this Mortgage.

(B) There are no proceedings pending or, to the knowledge of Mortgagor, threatened before any court or arbitration panel or before any governmental body which relates to the transactions contemplated by this Mortgage.

(C) The execution, delivery and performance by Mortgagor of this Mortgage and the Notes does not and will not violate any provision of any existing law or regulation or any order, judgment, award or decree of any court, arbitrator or governmental

instrumentality, or of any existing mortgage, indenture, contract or agreement affecting any of Mortgagor's properties.

(D) The Mortgagor is not in default in the payment or performance of any of its obligations for borrowed money or for the deferred purchase price of property, and no Event of Default nor any act, condition or event which with the giving of notice, the lapse of time or both would constitute an Event of Default has occurred and is continuing hereunder.

ARTICLE 2

EVENTS OF DEFAULT AND REMEDIES

SECTION 2.01. Events Of Default. The occurrence of any one or more of the following events shall constitute an event of default ("Event of Default") hereunder:

(A) If Mortgagor shall not pay (1) any installment of interest and/or principal on the Notes when due, or (2) any other sums required to be paid by Mortgagor within ten (10) days after receipt of written notice from Mortgagee to the effect that such payment(s) are due; or

(B) If Mortgagor shall breach, or be in default of, any of the other covenants or provisions contained herein or in the Notes and such breach or default shall continue for ten (10) days after receipt of written notice thereof from Mortgagee to Mortgagor; or

(C) If Mortgagor shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law or regulation, or shall file any answer admitting or shall fail to deny the material allegations of a petition filed against it for any such relief, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of itself or of all or any substantial part of its properties, or it shall cease doing business as a going concern; or

(D) If, within thirty (30) days after the commencement of any proceeding against Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, or regulation, such proceeding shall not have been dismissed, or if, within thirty (30) days after the appointment, without its consent or acquiescence of any trustee, receiver or liquidator of

itself or of all or any substantial part of its properties, such appointment shall not have been vacated; or

(E) If a final judgment for the payment of money (exclusive of judgments insured against by adequate liability insurance policies), shall be rendered against Mortgagor in any jurisdiction and if, within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal, or if within thirty (30) days after the expiration of any such stay, such judgment shall not have been discharged; or

(F) If any representation or warranty made by Mortgagor herein proves to be untrue, the effect of which is to adversely affect Mortgagee's security hereunder.

SECTION 2.02. Remedies; Power Of Attorney.

Upon the occurrence of an Event of Default, Mortgagee may, at its continuing option, and without notice to or demand upon Mortgagor:

(A) Declare all or any part of the Indebtedness to be due and payable immediately; or

(B) Enter onto and take possession of the Mortgaged Property and manage and operate the same, all as more particularly provided hereafter; or

(C) Collect the Rents (hereinafter defined) as more particularly provided hereinafter; or

(D) Exercise any other right or remedy granted hereunder or in the Notes or available at law or in equity.

Mortgagor hereby appoints Mortgagee as its attorney-in-fact to take such actions, execute such documents and perform such work, with or without entry into possession of the Premises, as Mortgagee may deem appropriate in the exercise of the rights and remedies of Mortgagee granted herein. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the termination of this Mortgage.

SECTION 2.03. Right Of Mortgagee To Enter And Take Possession.

(A) If an Event of Default shall have occurred, upon demand of Mortgagee, Mortgagor shall forthwith surrender to Mortgagee the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Mortgagee may enter and take

possession of all or any part of the Mortgaged Property and may exclude the Mortgagor and its agents and employees wholly therefrom.

(B) Upon every such entering upon or taking of possession, the Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Mortgaged Property insured, (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Mortgagee, all as the Mortgagee from time to time may determine to be to its best advantage, and the Mortgagee may collect and receive all rents, income and other benefits, revenues and proceeds of the Mortgaged Property (collectively "Rents"), including those past due as well as those accruing thereafter.

(C) The Mortgagee may deduct from such Rents (i) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (iii) the cost of such insurance, (iv) such taxes, assessments and other charges prior to the lien of this Mortgage as the Mortgagee may determine to pay, (v) other proper charges upon the Mortgaged Property or any part thereof, and (vi) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Mortgagee. The Mortgagee shall apply the remainder of the moneys so received to the payment of the Indebtedness, whether due or to become due, in whatever order and proportions the Mortgagee elects in its absolute discretion and without regard to the adequacy of its security.

(D) Whenever all such Events of Default have been cured and satisfied, the Mortgagee may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur.

SECTION 2.04. Collection Of Rents. If an Event of Default shall have occurred the Mortgagee may collect the Rents itself or by an agent or receiver. No action taken by the Mortgagee to collect any Rents will make the Mortgagee a "mortgagee-in-possession" of the Mortgaged Property, and possession by a court-appointed receiver will not be considered possession by Mortgagee. All Rents collected by the Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the Indebtedness in

whatever order and proportions Mortgagee elects in its absolute discretion and without regard to the adequacy of its security.

SECTION 2.05. Power Of Sale. If an Event of Default shall have occurred, be continuing and shall not be cured within applicable grace periods, Mortgagee may sell the Mortgaged Property, en masse or in parcels at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Mortgaged Property or the portion thereof to be sold is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county(s). Upon payment of the purchase money, Mortgagee or any person conducting the sale for the Mortgagee is authorized to execute to the purchaser at said sale a deed, bill of sale or other appropriate instrument to the property so purchased. Mortgagee may bid at said sale and purchase said property or any part thereof if the highest bidder therefor. At any foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in parcels or in any other manner the Mortgagee may elect in its sole discretion. Mortgagee may conduct any number of sales from time to time, and the power of sale hereby granted shall not be exhausted by any one or more such sales as to any part of the Mortgaged Property remaining unsold, but shall continue unimpaired until all the Mortgaged Property shall have been sold or all the Indebtedness paid.

SECTION 2.06. Application Of Sale Proceeds. The proceeds of any sale under this Mortgage will be applied in the following manner:

First, to the payment of the costs and expenses of the sale, including but not limited to the Mortgagee's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Mortgagee, together with interest at the rate provided under the Notes on all advances made by the Mortgagee.

Second, to the payment of all sums expended by the Mortgagee under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided herein.

Third, to the payment of the Indebtedness whether due or to become due, in whatever order and proportions the Mortgagee elects in its absolute discretion and without regard to the adequacy of its security.

Fourth, to the remainder, if any, to the parties entitled to receive it.

SECTION 2.07. Mortgagee's Option On Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, and in either event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event the Mortgagee exercises its option to foreclose the Mortgage in equity, the Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendant to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the Indebtedness.

SECTION 2.08. Receiver. If an Event of Default shall have occurred, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Indebtedness or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the Rents ("Receiver"). Mortgagor hereby waives any requirement on Mortgagee or Receiver to post any surety or bond. All expense, including Receiver's fees, attorneys fees, costs and agents compensations, incurred pursuant to the powers herein contained shall be secured by this Mortgage. All rights under this Sub-Section 2.08 shall be cumulative to any other right or remedy hereunder or afforded by law. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee.

SECTION 2.09. Expenses. The Mortgagor will pay to the Mortgagee upon demand all expenses, including Receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this Section. All such expenses will be additional indebtedness of the Mortgagor to the Mortgagee secured by this Mortgage, will bear interest at the highest rate specified in the Notes and will be payable by the Mortgagor upon demand.

SECTION 2.10. Waiver Of Manner Of Sale. Mortgagor waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshalled upon any sale.

SECTION 2.11. Suits To Protect The Mortgaged Property. Mortgagee shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged

Property and in the Rents and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Mortgagee.

SECTION 2.12. Waiver Of Trial By Jury. After the happening of an Event of Default by Mortgagor under this Mortgage and immediately upon the commencement of any action, suit or other legal proceeding by Mortgagee to obtain judgment for the principal of, or interest on, the Notes or other Indebtedness, or of any other nature in aid of the enforcement of the Notes or the provisions hereof, Mortgagor waives trial by jury and will enter its voluntary appearance in such action, suit or proceeding.

SECTION 2.13. No Remedy Exclusive; Cumulative; No Waiver. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power occurring upon the Event of Default shall impair any such right or power or shall be construed to be a waiver thereof or any acquiescence therein, and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. Nothing in this Mortgage or in the Notes shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Notes in the manner and at the time and place therein respectively expressed.

SECTION 2.14. Waivers. To the extent permitted by law, Mortgagor will not at any time insist upon, or plead, or in any manner whatever claim or take any benefit or advantage of, any stay or extension or moratorium law, or any exemption from execution or sale of the Mortgaged Property or any part thereof, whenever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage; nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the marshalling of the Mortgaged Property or the valuation or appraisal of the Mortgaged Property, or any part thereof, prior or subsequent to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such final sale or sales, claim or exercise any right under any statute or otherwise, to the extent that such may be waived, to redeem the property so sold or any part thereof; and Mortgagor hereby expressly waives all benefits or advantages of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted.

Mortgagor hereby waives the right to require any sale to be made in parcels, or the right to select parcels to be so sold, and there shall be no requirement for marshalling of assets. Mortgagor hereby further waives any rights it may have under applicable law relating to the prohibition of the obtaining of a deficiency judgment by Mortgagee against Mortgagor.

SECTION 2.15. Personal Liability Not Affected. Without affecting the personal liability of any person for the payment of the Indebtedness, and without affecting the lien of this Mortgage for the full amount of the Indebtedness, Mortgagee may, at any time and from time to time, and without notice: (A) release any person liable for the payment of any of the Indebtedness, (B) make any agreement extending the time or otherwise altering the terms of payment of any of the Indebtedness, (C) accept additional security of any kind, or (D) release any property, real or personal, securing the Indebtedness. Mortgagee may, without liability therefor and without notice, at any time and from time to time so long as the lien of this Mortgage shall subsist, but only upon the written request of Mortgagor: (A) consent to the making or filing for record of any map or plat of the Property, (B) join in granting any easement thereon or in creating any covenants restricting use or occupancy thereof, (C) reconvey, without warranty, any part of the Mortgaged Property, (D) join in any extension agreement or in any agreement subordinating the lien or charge hereof. Neither the Mortgagor nor any other person now or hereafter obligated for payment of all or any part of the Indebtedness shall be relieved of such obligation by reason of the failure of Mortgagee to comply with any request of Mortgagor or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of the Mortgage or the Notes, or by reason of the release, regardless of consideration, of all or any part of the security held for the Indebtedness, or by reason of any agreement or stipulation between any subsequent owner of the Mortgaged Property and Mortgagee extending the time of payment or modifying the terms of the Mortgage or Notes without first having obtained the consent of Mortgagor or such other person; and in the latter event the Mortgagor and all such other persons shall continue to be liable to make payments according to the terms of any such extension or modification agreement, unless expressly released and discharged in writing by Mortgagee. No release of all or any part of the security as aforesaid shall in any way impair or affect the lien of this Mortgage or its priority over any subordinate lien.

ARTICLE 3

MISCELLANEOUS

SECTION 3.01. Provisions Severable. In the event any one or more of the provisions contained In this Mortgage shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect

any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

SECTION 3.02. Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given when deposited in a United States Post Office if sent by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

(A) If to Mortgagor: St. Charles Place

(B) If to Mortgagee: Weatherly Enterprises, Inc.

Mortgagor and Mortgagee may, by written notice, similarly given, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 3.03. Waiver Of Notice. Whenever in this Mortgage the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person or persons entitled to receive such notice.

SECTION 3.04. Covenants Run With Land. All of the grants, covenants, terms, provisions and conditions herein contained shall run with the land and shall apply to, bind and inure to the benefit of, the successors and assigns of Mortgagee.

SECTION 3.05. Multiple Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same Mortgage.

SECTION 3.06. Waiver Of Benefits. Mortgagor hereby waives and relinquishes unto, and in favor of Mortgagee, all benefit under all laws, now in effect or hereafter passed, to relieve Mortgagor in any manner from the obligations of Mortgagor hereunder.

SECTION 3.07. No Offsets. No offset or claim which Mortgagor now or may in the future have against Mortgagee shall relieve Mortgagor from paying installments of the Indebtedness or performing any other obligation described herein.

SECTION 3.08. Time Of Essence. Time is of the essence of all Mortgagor 's obligations hereunder.

SECTION 3.09. Commercial Loan/Homestead. Mortgagor warrants that this Mortgage is delivered in connection with a business or commercial loan transaction. The Property does not and will not constitute the homestead of the Mortgagor.

SECTION 3.10. Captions Not Part Of Mortgage. The captions to Sections herein contained are for information and indexing purposes only and are not a part of this Mortgage.

SECTION 3.11. Law Of Alabama. This Mortgage shall be construed in accordance with the laws of the State of Alabama.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Mortgagor intending to be legally bound hereby has caused this Mortgage to be executed as of the day and year first above written.

"MORTGAGOR"

ST. CHARLES PLACE

By: Weatherly Enterprises, Inc.
Its: Managing General Partner

By: 
Steven E. Chambers, its President

STATE OF ALABAMA)
)
COUNTY OF Jefferson)

I, the undersigned, a notary public in and for said County in said State, hereby certify that Steven E. Chambers, whose name as President of Weatherly Enterprises, Inc., managing general partner of St. Charles Place, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily and with full authority on behalf of the limited partnership.

Given under my hand and official seal, this 23rd day of December, 1994.

[NOTARIAL SEAL]


Notary Public

My Commission Expires: 5/14/97

DESCRIPTION:

PARCEL I

Commence at the northwest corner of the southeast one-quarter of the northwest one-quarter of Section 21, Township 20 South, Range 3 West; thence run south along the west line of said quarter-quarter section line for a distance of 226.84 feet to the point of beginning; thence turn an angle to the left of 154 degrees 40 minutes 28 seconds and run in a northeasterly direction along the southeasterly right-of-way line of an Alabama Power Company right-of-way for a distance of 555.18 feet; thence turn an angle to the right of 95 degrees 51 minutes 22 seconds and run in a southeasterly direction for a distance of 74.08 feet; thence turn an angle to the right of 20 degrees 35 minutes 56 seconds and run in a southeasterly direction for a distance of 733.00 feet; thence turn an angle to the left of 89 degrees 47 minutes 24 seconds and run in a northeasterly direction for a distance of 244.93 feet; thence turn an angle to the right of 86 degrees 11 minutes 51 seconds to the tangent of the following described course, said course being situated on a curve to the left, having a central angle of 02 degrees 38 minutes 02 seconds and a radius of 2506.06 feet; thence run along the arc of said curve in a southeasterly direction for a distance of 115.20 feet to the end of said curve; thence run along the tangent extended from said curve in a southeasterly direction for a distance of 192.82 feet; thence turn an angle to the right of 90 degrees 00 minutes 46 seconds and run in a southwesterly direction for a distance of 400.00 feet; thence turn an angle to the left of 97 degrees 47 minutes 34 seconds and run in a southeasterly direction for a distance of 604.48 feet; thence turn an angle to the left of 82 degrees 12 minutes 26 seconds and run in a northeasterly direction for a distance of 240.00 feet; thence turn an angle to the right of 90 degrees and run in a southeasterly direction for a distance of 307.83 feet; thence turn an angle to the right of 20 degrees 26 minutes 02 seconds and run in a southeasterly direction for a distance of 28.57 feet to the northeast corner of St. Charles Place as recorded in Map Book 17, Page 6 in the office of the Judge of Probate, Shelby County, Alabama; thence turn an angle to the right of 90 degrees and run in a southwesterly direction along the northwesterly line of St. Charles Place for a distance of 321.44 feet; thence turn an angle to the right of 15 degrees 12 minutes 05 seconds and run in a southwesterly direction along the northwesterly line of St. Charles Place for a distance of 555.71 feet to its intersection with the south line of the southeast one-quarter of the northwest one-quarter of Section 21, Township 20 South, Range 3 West; thence turn an angle to the right of 09 degrees 54 minutes 11 seconds and run in a westerly direction along the south line of said quarter-quarter section for a distance of 909.11 feet to the southwest corner of said quarter-quarter section; thence turn an angle to the right of 88 degrees 53 minutes 40 seconds and run in a northerly direction along the west line of said quarter-quarter section for a distance of 1109.70 feet to the point of beginning. Said parcel contains 34.9523 acres.

Exhibit A .

PARCEL II

Commence at the southwest corner of the northeast one-quarter of the northwest one-quarter of Section 21, Township 20 South, Range 3 West; thence run north along the west line of said quarter-quarter section for a distance of 6.92 feet to a point on the northwest right-of-way line of Alabama Power Company right-of-way and the point of beginning; thence continue north along the west line of the northeast one-quarter of the northwest one-quarter of said Section 21 for a distance of 662.01 feet; thence turn an angle to the right of 45 degrees 12 minutes 06 seconds and run in a northeasterly direction for a distance of 484.71 feet to a point on the southwesterly right-of-way line of Shelby County Highway No. 52; thence turn an angle to the right of 107 degrees 57 minutes 02 seconds and run in a southeasterly direction along the southwesterly right-of-way line of said Highway No. 52 for a distance of 160.46 feet to the point of commencement of a curve to the left, said curve having a central angle of 01 degree 19 minutes 32 seconds and a radius of 2086.99 feet; thence run along the arc of said curve and the southwesterly right-of-way line of said Highway No. 52 for a distance of 48.28 feet to its intersection with the northwesterly right-of-way line of an Alabama Power Company right-of-way; thence turn an angle to the right from tangent extended from last described course of 59 degrees 14 minutes 25 seconds and run in a southwesterly direction along the northwesterly line of said right-of-way for a distance of 474.45 feet; thence turn an angle to the right of 05 degrees 41 minutes 06 seconds and run in a southwesterly direction along the northwesterly line of said right-of-way for a distance of 454.52 feet to the point of beginning. Said parcel contains 4.1932 acres.

DESCRIPTION:

PARCEL III

Lots 1, 2, 9, 10, 11, 12, 13, 14, 15, and 16 according to survey of St. Charles Place, Phase IV as recorded in Map Book 18, Page 106 in the Office of the Judge of Probate, Shelby County, Alabama.

PARCEL IV

Lots 6, 8, 9, and 41 according to survey of St. Charles Place, Jackson Square, Phase Two, Sector One as recorded in Map Book 18, Page 76 in the Office of the Judge of Probate, Shelby County, Alabama.

Inst. # 1994-37214

12/22/1994-37214
12:40 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
022 MCD 230.45