

STATE OF ALABAMA)

SHELBY AND WALKER COUNTIES)

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

This **MORTGAGE, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS AND LEASES** (the "Mortgage") is made and entered into this 29th day of December, 1995, by and between **MID-SOUTH RESOURCES CORP.**, an Alabama corporation ("Mid-South"), whose address for notice purposes is 14491 Johns Road, Vance, Alabama 35490, and **COSTAIN COAL INC.**, a Delaware corporation, whose address for notice purposes is 249 East Main Street, Suite 200, Lexington, Kentucky 40507, Attention: President ("Costain").

R E C I T A L S

A. Mid-South has purchased from Costain, and Costain has sold to Mid-South, all of the stock of Alabama Land and Mineral Corp., an Alabama corporation ("ALMC"), and certain assets of Costain located in the State of Alabama and utilized in Costain's and ALMC's coal mining and sales business in Alabama (such stock and assets hereinafter referred to, collectively, as the "Assets"), pursuant to the terms and conditions of a Purchase Agreement dated as of December 15, 1995, by and between Mid-South and Costain (the "Purchase Agreement").

B. As part of the purchase price for the Assets, Mid-South has delivered to Costain its promissory note payable to Costain in the principal amount of \$1,000,000 (the "Note").

C. Costain was willing to sell the Assets to Mid-South and accept the Note as partial consideration for the Assets under certain terms and conditions, one of which is the execution of this Mortgage by Mid-South in favor of Costain.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Mid-South, in order to induce Costain to consummate the sale of the Assets to Mid-South as contemplated by the Purchase Agreement and to accept the Note as partial consideration for the Assets, and to secure the Obligations, as hereinafter defined, Mid-South hereby agrees with Costain as follows:

1. **Obligations Secured.** This Mortgage is given to secure and shall secure the following (hereinafter referred to, collectively, as the "Obligations"):

A. The payment of all amounts now or hereafter becoming due and payable under the Note, including all principal and all fees, charges and costs (including reasonable attorneys' fees) payable in connection therewith.

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SHELBY COUNTY JUDGE OF PROBATE
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- B. The payment of any and all other fees, charges and other sums now or hereafter becoming due and payable by Mid-South to Costain under the terms of this Mortgage, the Purchase Agreement and any other document or instrument now or hereafter evidencing or securing the Note.
- C. The payment of any and all sums now or hereafter becoming due and payable by Mid-South to Costain under the terms of this Mortgage, including, but not limited to, advances made by Costain to or for the benefit of Mid-South, as contemplated by any covenant or provision contained herein.
- D. The compliance by Mid-South with and the complete and full performance by Mid-South of each and every stipulation, covenant, duty, agreement, representation, warranty, obligation and condition contained in the Purchase Agreement, this Mortgage, the Note, or any other document or instrument now or hereafter evidencing or securing the Note, imposed on or agreed to by Mid-South.
- E. Any and all renewals, extensions, modifications and amendments of any or all of the obligations described in the foregoing clauses of A through C, both inclusive, of this paragraph 1, whether or not any renewal, extension, modification or amendment agreement is executed in connection herewith.

2. Granting Clauses. As security for the Obligations, Mid-South does hereby grant, bargain, sell and convey unto Costain, its successors and assigns, the following described property and interests in property and does grant to Costain a security interest in said property and interests in property:

- A. The real estate located in Shelby County, Alabama and in Walker County, Alabama, and more particularly described on Exhibit A attached hereto and incorporated herein by this reference as if set forth in its entirety (the "Real Estate"), together with all improvements, structures, buildings and fixtures now or hereafter situated thereon or therein (the "Improvements").
- B. All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements.
- C. 1. All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate or the Improvements with respect to which Mid-South is the lessor, including but not limited to any existing leases (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or

any part of the Real Estate or the Improvements (all such leases, subleases, agreements and tenancies heretofore mentioned including but not limited to, the Existing Leases being hereinafter collectively referred to as the "Leases");

2. any and all guaranties of the lessee's and any sublessee's performance under any of the Leases;

3. the immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Mid-South may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate or any of the Improvements, or any part thereof, including, but not limited to, minimum rents, additional rents, percentage rents, common area maintenance charges, parking charges, tax and insurance premium contributions, and liquidated damages following default, the premium payable by any lessee upon the exercise of any cancellation privilege provided for in any of the Leases, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Real Estate or the Improvements, together with any and all rights and claims of any kind that Mid-South may have against any such lessee under the Leases or against any subtenants or occupants of the Real Estate or any of the Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; provided, however, so long as no Event of Default has occurred, Mid-South shall have the right under a license granted hereby to collect, receive and retain the Rents (but not prior to accrual thereof); and

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

D. All materials, equipment (excluding any rolling stock or mobile equipment), fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by Mid-South for the purpose of, or used or useful in connection with, the Real Estate or the Improvements, wherever the same may be located, including, without limitation, all lumber and lumber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wires, wiring, engines, boilers, furnaces, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, carpets, rugs, window treatments, lighting, fixtures,

pipes, piping, decorative fixtures, and all other building materials, equipment (excluding any rolling stock or mobile equipment) and fixtures of every kind and character used or useful in connection with the Real Estate or the Improvements.

- E. All proceeds (including insurance proceeds) of any of the foregoing, or any part thereof.

All of the property and interests in property described in the foregoing granting clauses A through E, both inclusive, are herein sometimes collectively called the "Property". The personal property described in granting clause D and all other personal property covered by this Mortgage are herein sometimes collectively called the "Personal Property".

SUBJECT, HOWEVER, to the easements, rights-of-way and other exceptions described on Exhibit B attached hereto and incorporated herein by this reference as if set forth in its entirety ("Permitted Exceptions").

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Costain, its successors and assigns, forever.

3. Warranties of Title. Mid-South covenants with Costain that Mid-South acquired title to the Real Estate, Improvements, Personal Property and other Property by deed and bill of sale, assignment and assumption agreement from Costain both of even date herewith and has a good right to sell, mortgage, grant a security interest in, assign and convey the Property as aforesaid; that the Property is free of all mortgages, liens, security interests, assignments and encumbrances arising by, through or under Mid-South, unless otherwise provided hereinbefore; and that Mid-South will warrant and forever defend the title to the Property unto Costain against the lawful claims of all persons claiming by, through or under Mid-South.

4. Maintenance of Lien Priority. Mid-South shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. Mid-South shall execute, acknowledge and deliver such additional instruments as Costain may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of this Mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by Mid-South.

5. Covenants To Pay Liens and Maintain Insurance. For the purpose of further securing the payment of the Obligations, Mid-South covenants and agrees to: (a) pay all taxes, assessments, and other liens taking priority over this Mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, Costain, at its option, may pay the same; and (b) keep the Property continuously insured, in such manner

and with such companies as may be satisfactory to Costain, against loss by flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to Costain) to Costain, as its interests may appear. Each such policy or policies shall provide that the insurance provided thereby, as to the interest of Costain, shall not be invalidated by any act or neglect of Mid-South, nor by the commencement by or against Mid-South of bankruptcy, insolvency, receivership or other proceedings for the relief of a debtor, nor by any foreclosure, repossession or other proceedings relating to the property insured, nor by any occupation of such property or the use of such property for purposes more hazardous than permitted in the policy. All such insurance shall be replacement cost coverage rather than actual cash value coverage and shall be in an amount at least equal to the full insurable value of the Personal Property and Improvements unless Costain agrees in writing that such insurance may be in a lesser amount. Mid-South agrees that it will not take any action or fail to take any action, which would result in the invalidation of any insurance policy required hereunder. Mid-South shall give Costain immediate written notice of any loss or damage to the Property caused by any casualty. Mid-South shall cause duplicate originals of any and all such insurance policies and all replacements therefor to be deposited with Costain. At least thirty (30) days prior to the date the premiums on each such policy or policies shall become due and payable, Mid-South shall furnish to Costain evidence of the payment of such premiums. The original insurance policy and all replacements therefor must provide that they may not be canceled and shall not lapse without the insurer's giving at least thirty (30) days' prior written notice of such cancellation or lapse, in whole or in part, to Costain. If Mid-South fails to keep the Property insured as above specified, Costain may at its option and sole discretion, insure the Property for its insurable value against loss by fire, wind and other hazards as specified above for the sole benefit of Costain and may procure such insurance at Mid-South's expense.

6. Assignment of Insurance Policies, etc. Mid-South hereby assigns and pledges to Costain, as further security for the payment of the Obligations, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of Mid-South in and to each and every such policy, including, but not limited to, all Mid-South's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums. If Mid-South fails to keep the Property insured as specified above then, at the election of Costain and without notice to any person, Costain may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as Costain may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Obligations, or, at the election of Costain, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements.

Unless otherwise provided in the Purchase Agreement, all amounts spent by Costain for insurance or for the payment of Liens or for environmental testing or remediation

shall become a debt due by Mid-South to Costain and at once payable, without demand upon, or notice to, Mid-South, and shall be secured by this Mortgage. Costain is hereby authorized, but not required, on behalf of Mid-South, to collect for, adjust or compromise any losses under any insurance policy or policies and to apply, at its option, the loss proceeds (less expenses of collection) on the Obligations, in any order and amount, and whether or not due, or hold such proceeds as a cash collateral reserve against the Obligations or apply such proceeds to the restoration of the Property, or to release the same to Mid-South, but no such application, holding in reserve or release shall cure or waive any default by Mid-South. In case of a sale pursuant to the foreclosure provisions hereof, or any conveyance of all or any part of the Property in extinguishment of the Obligations, complete title to all insurance policies held by Costain and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property. If the Property or any part thereof is located within an area that has been, or should such area at any time be, designated or identified as an area having special flood hazards by any governmental authority having jurisdiction, then Mid-South shall obtain such insurance as is required by such governmental authority in amounts required by Costain.

7. Assignment of Condemnation Proceeds, etc. As further security for the Obligations and the full and complete performance of each and every obligation, covenant, agreement and duty of Mid-South contained herein, and to the extent of the full amount of the Obligations secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by Costain in the collection of any award or payment, Mid-South hereby assigns to Costain any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to Mid-South with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property. All such damages, condemnation proceeds and consideration shall be paid directly to Costain, and after first applying said sums to the payment of all costs and expenses (including reasonable attorneys' fees) incurred by Costain in obtaining such sums, Costain may, at its option, apply the balance on the Obligations in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Obligations, or apply such balance to the restoration of the Property, or release the balance to Mid-South. No such application, holding in reserve or release shall cure or waive any default of Mid-South.

8. Covenant Against Waste. Mid-South agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain and preserve such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted. Mid-South (a) shall not remove, demolish or alter the design or structural character in any material respect of any buildings now or hereafter erected on the Real Estate without the express prior written consent of Costain, (b) shall comply with all laws and regulations of any governmental authority with reference to the Property and the manner and use of the same and (c) shall from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained. Mid-South agrees not to remove any of the fixtures or personal property included in the Property without the express

prior written consent of Costain unless the same is immediately replaced with like property of at least equal value and utility.

Costain and other persons authorized by Costain shall have access to and the right, but not the obligation, to enter and inspect the Property at all reasonable times and upon at least twenty-four (24) hours' prior written notice to Mid-South, including monthly inspections if deemed necessary by Costain. In the event Costain finds that Mid-South is not maintaining the Property as required herein, Costain (a) may declare the Obligations to be at once due and payable under the terms of this Mortgage or (b) may, but shall not be obligated to, notify Mid-South in writing of the needed repairs and Mid-South shall have ten (10) business days to make satisfactory arrangements to bring the Property back to good condition. If Mid-South notifies Costain in writing of such needed repairs and, after such time, satisfactory arrangements have not been made by Mid-South to bring the Property back to good condition as determined in the sole discretion of Costain, Costain shall have the right, but not the obligation, (a) to make the repairs required at the expense of Mid-South, or (b) to declare the Obligations to be at once due and payable under the terms of this Mortgage.

9. Hazardous Substances.

(a) No Hazardous Materials (as hereinafter defined) will be while any part of the Obligations secured by this Mortgage remain unpaid or unperformed, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Property, except such Hazardous Materials treated, stored, handled, located on, discharged on or disposed of in the ordinary course of business and in accordance with applicable law and except such Hazardous Materials so contained in, treated, stored, handled, located on, discharged on or disposed of on the Property prior to the date the Property was acquired by Mid-South. As used herein, the term "Hazardous Materials" includes without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, pollutants or other contaminants, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.), the Clean Water Act, as amended (33 U.S.C. § 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. § 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. § 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos and any other toxic or hazardous materials, as amended, or in any other federal, state, or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) The Property will comply in all material respects with applicable environmental laws, rules, regulations and court or administrative orders;

(c) In the event there is hereafter any release, spill, or disposal of Hazardous Materials on the Property, whether or not the same originates or emanates from the Property or any such contiguous real estate, and/or if Mid-South shall fail to comply with any environmental law ordinance, rule, or regulation, Costain may, at its election, but without the obligation so to do, give such notices as may be required by law and/or cause any remediation or response that may be necessary to be performed at the Property and/or take any and all other actions as Costain shall deem necessary or advisable in order to remedy said spill or disposal of Hazardous Materials and return the Property to a condition free of Hazardous Materials or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the default rate (as specified in the Note) from the date of payment by Costain, shall be immediately due and payable by Mid-South to Costain and until paid shall be added to and become a part of the indebtedness secured hereby; and

(d) Mid-South hereby agrees to indemnify and hold Costain harmless from all loss, cost, damage, claim, fine, penalty, and expense (including but not limited to, reasonable attorneys' fees and costs of investigation and litigation) incurred by Costain on account of (i) the violation of any representation, warranty or covenant set forth in this paragraph 9, (ii) Mid-South's failure to perform any obligations of this paragraph 9, (iii) Mid-South's failure to comply fully with all environmental laws, ordinances, rules, and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Property except to the extent such violations, failures or conditions are the subject of a claim of indemnification by Mid-South against Costain pursuant to the Purchase Agreement. This indemnification shall survive payment of the indebtedness secured by this Mortgage, the exercise of any right or remedy hereunder or under any other loan document securing or evidencing said indebtedness, any subsequent sale or transfer of the Property, and all similar or related events or occurrences. Mid-South shall give immediate oral and written notice to Costain of its receipt of any notice of a violation of any law, ordinance, rule or regulation covered by this paragraph 9 or of any notice or other claim relating to the environmental condition of the Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein inaccurate or misleading in any respect.

10. Covenants Related to Rents and Leases. Mid-South covenants and agrees that Mid-South shall:

(a) observe, perform and discharge all obligations, covenants and warranties provided for under the terms of the Leases to be kept, observed and performed by Mid-South, and shall give prompt notice to Costain in the event Mid-South fails to observe, perform and discharge the same;

(b) enforce or secure in the name of Costain the performance of each and every obligation, term, covenant, condition and agreement to be performed by any lessee under the terms of the Leases;

(c) appear in and defend any action or proceeding arising under, occurring out of, or in any manner connected with the Leases or the obligations, duties or liabilities of Mid-South and any lessee thereunder, and, upon request by Costain to do so in the name and on behalf of Costain but at the expense of Mid-South, and to pay all costs and expenses of Costain, including reasonable attorneys' fees, in any action or proceeding in which Costain may appear;

(d) not cancel, terminate or consent to any surrender of any Lease, or modify or in any way alter the terms thereof without, in each such instance, the prior written consent of Costain; and

(e) promptly upon the execution by Mid-South of any Lease, (i) furnish Costain with the name and address of the lessee thereunder, the term of such Lease and a description of the premises covered thereby and, upon request of Costain, a copy of such Lease, and (ii) execute all such further assignments of such Lease and the Rents therefrom as Costain may require.

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

12. Defeasance. This Mortgage is made upon the condition that if Mid-South shall (a) have paid and performed in full (i) the Note and any and every extension and renewal thereof; and (ii) all sums becoming due and payable by Mid-South under the terms of this Mortgage, including but not limited to sums advanced by Costain pursuant to the terms and conditions of this Mortgage; and (b) have caused the Seller Subject Permits (as defined in the Purchase Agreement) to be transferred to Mid-South and Costain to be released therefrom in accordance with the Purchase Agreement; then this Mortgage and conveyance shall become null and void; otherwise, this Mortgage shall remain in full force and effect.

13. Events of Default. Mid-South shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) Mid-South shall fail to pay to Costain when due the principal on the Note or any other Obligation secured hereby; or (b) if Mid-South fails to comply with any of the provisions of this Mortgage, the Note, or the Purchase Agreement; or (c) if any statement, representation or warranty contained in this Mortgage, the Note, the Purchase Agreement or any financial statement, report, schedule, certificate, statement or other instrument or document heretofore, now or hereafter made or furnished to Costain by or on behalf of Mid-South shall prove to be false or misleading in any material respect; or (d) if Mid-South sells, conveys, transfers, mortgages or further encumbers all or part of the Property; or (e) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and Mid-South fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to Costain within thirty (30) days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Real Estate is located or such suit is filed in court; or (f) if any other event of default occurs under the Note, the Purchase Agreement, or that certain Guaranty Agreement dated of even date herewith executed and delivered by Tim McCoy to Costain (the "Guaranty"); or (g) the dissolution, business cessation, merger or consolidation of Mid-South or the entry of a court order which enjoins or restrains the conduct of Mid-South's business in the ordinary course, (h) if Mid-South or any co-maker, endorser, surety, or guarantor of the Note or any of the other Obligations (hereinafter collectively called the "Obligors" and singularly an "Obligor") fails to pay such Obligor's debts generally as they become due, admits in writing any such Obligor's inability to pay such Obligor's debts as they become due, or if a receiver, trustee, liquidator or other custodian is appointed for any Obligor or for any of the property of any Obligor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement or otherwise) is filed by or against any Obligor and such petition is not dismissed within ninety (90) days of its filing, or if any Obligor applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, creditors; or (i) a final judgment for the payment of money in excess of an aggregate of \$50,000 shall be rendered against any Obligor, and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed by appeal or otherwise.

14. Rights and Remedies of Costain Upon Default.

(a) Acceleration of Obligations. Upon the occurrence of an Event of Default or at any time thereafter, Costain may at its option and without further demand or notice to Mid-South, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mid-South, and Costain may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, and applicable law. Mid-South also waives any and all rights Mid-South may

have to a hearing before any judicial authority prior to the exercise by Costain of any of its rights under this Mortgage, the Note and applicable law.

(b) Operation of Property by Costain. Upon the occurrence of an Event of Default or at any time thereafter, in addition to all other rights herein conferred on Costain, Costain (or any person, firm or corporation designated by Costain) may, but will not be obligated to, enter upon and take possession of any or all of the Property, exclude Mid-South therefrom, and hold, use, administer, manage and operate the same to the extent that Mid-South could do so, without any liability to Mid-South resulting therefrom; and Costain may collect, receive and retain all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mid-South with respect to the Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default or at any time thereafter, Costain, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue Mid-South for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Costain shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mid-South or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) Foreclosure Sale. Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Costain shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one (21) days' notice by publication once a week for three (3) consecutive weeks of the time, place and terms of each such sale, together with a description of the property, in some newspaper published in the county where the Property is located (if the property is located in more than one county, publication will be made in all counties where the property is located), to sell the Property (or such part or parts thereof as Costain may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. If no newspaper is published in the county where the property is located, notice will be published in a newspaper of an adjoining county. Costain, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or

without assigning to them any proportion of such proceeds, Mid-South hereby waiving the application of any doctrine of marshalling or like proceeding. In case Costain, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. Upon the occurrence of an Event of Default or at any time thereafter, Costain shall have and may exercise with respect to the Personal Property and fixtures included in the Property (the "Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the Collateral or any other items in which a security interest has been granted herein, including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the Collateral or its value and without the necessity of a court order. Costain shall have, among other rights, the right to take possession of the Collateral and to enter upon any premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby and to take any action deemed appropriate or desirable by Costain; at its option and its sole discretion, to repair, restore or otherwise prepare the Collateral for sale, lease or other use or disposition. At Costain's request, Mid-South shall assemble the Collateral and make the Collateral available to Costain at any place designated by Costain.

Mid-South agrees that Costain may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under this Mortgage with respect to the real property covered hereby. Mid-South hereby grants Costain the right, at its option after the occurrence of an Event of Default hereunder, to transfer at any time to itself or its nominee the Collateral or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Obligations in such order and amounts and manner as Costain may elect. Mid-South covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be full proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by Costain and that all prerequisites of sale shall be presumed conclusively to have been performed or to have occurred.

(f) Rents and Leases. Upon the occurrence of an Event of Default or at any time thereafter:

(i) Costain, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Leases:

a) to terminate the license granted to Mid-South in granting clause C3. hereof to collect the Rents, and, without taking possession, in Costain's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorneys' fees, to apply the net proceeds thereof to the Obligations in such order and amounts as Costain may choose (or hold the same in a reserve as security for the Obligations);

b) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of Mid-South, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses Costain shall deem proper to protect the security hereof, as fully and to the same extent as Mid-South could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorneys' fees) and payment of the Obligations in such order and amounts as Costain may choose (or hold the same in reserve as security for the Obligations);

c) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of Mid-South under this Mortgage.

(ii) The collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not cure or waive any default or waive, modify or affect any notice of default under this Mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by Costain, once exercised, shall continue for so long as Costain shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If Costain shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be reasserted at any time and from time to time following any subsequent default.

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

(b) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, Costain shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Obligations due. Any such sale may be made subject to the unmatured part of the Obligations secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Obligations secured by this Mortgage, but as to such unmatured part of the Obligations this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Obligations whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Obligations without exhausting any power of foreclosure and the power to sell the Property for any other part of the Obligations, whether matured at the time or subsequently maturing.

(c) Waiver of Appraisement Laws. Mid-South waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

(d) Prerequisites of Sales. In case of any sale of the Property as authorized by this paragraph 14, all prerequisites to the sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

(e) Foreclosure Deeds. Mid-South hereby authorizes and empowers Costain or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mid-South, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

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

16. No Obligations with Respect to Leases. Costain shall not by virtue of this Mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to Leases, the Improvements, the Personal Property, the Real Estate or any of the other Property (unless expressly assumed by Costain under a separate agreement in writing), and this Mortgage shall not be deemed to confer on Costain any duties or obligations that would make Costain directly or derivatively liable for any person's negligent, reckless or wilful conduct. Mid-South agrees to defend, indemnify and save harmless Costain from and against any and all claims, causes of action and judgments relating to Mid-South's performance of its duties, responsibilities and obligations under any Leases and with respect to the Real Estate, the Improvements, the Personal Property, or any of the other Property.

17. Construction of Mortgage. This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

18. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to Costain shall inure to the benefit of Costain's successors and assigns.

19. Waiver and Election. The exercise by Costain of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of Costain in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any

single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage, nor consent to any departure by Mid-South therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of Costain, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, Mid-South in any case shall entitle Mid-South to any other or further notice or demand in similar or other circumstances.

20. Landlord-Tenant Relationship. Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and Mid-South.

21. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of Costain to effectuate the provisions hereof.

22. Application of Payments. If the lien, assignment or security interest created by this Mortgage is invalid or unenforceable as to any part of the Obligations or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Obligations shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Obligations, and all payments made on the Obligations, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on, and applied to, the full payment of that portion of the Obligations which is not secured or not fully secured by said lien, assignment or security interest created hereby.

23. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders; and the words "Mid-South" and "Costain" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

24. Advances by Costain. If Mid-South shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair and free of Hazardous Substances, the performance of Mid-South's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, Costain may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. Mid-South agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the

Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Obligations and shall be secured hereby. The making of any such advances shall not be construed as a waiver by Costain of any Event of Default resulting from Mid-South's failure to pay the amounts paid.

25. Release or Extension by Costain. Costain, without notice to Mid-South and without in any way affecting the rights of Costain hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Obligations and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Obligations or to waive the prompt and full performance of any term, condition or covenant of the Note, this Mortgage or any other instrument evidencing or securing the Obligations.

26. Partial Payments. Acceptance by Costain of any payment of less than the full amount due on the Obligations shall be deemed acceptance on account only, and the failure of Mid-South to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Obligations has been paid, Costain shall be entitled to exercise all rights conferred on it by the terms of this Mortgage in case of the occurrence of an Event of Default.

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

28. Titles. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

29. Expenses. Mid-South shall pay all costs and expenses incurred by Costain in connection with preparing and recording this Mortgage and enforcing Costain's rights hereunder, including reasonable attorneys' fees.

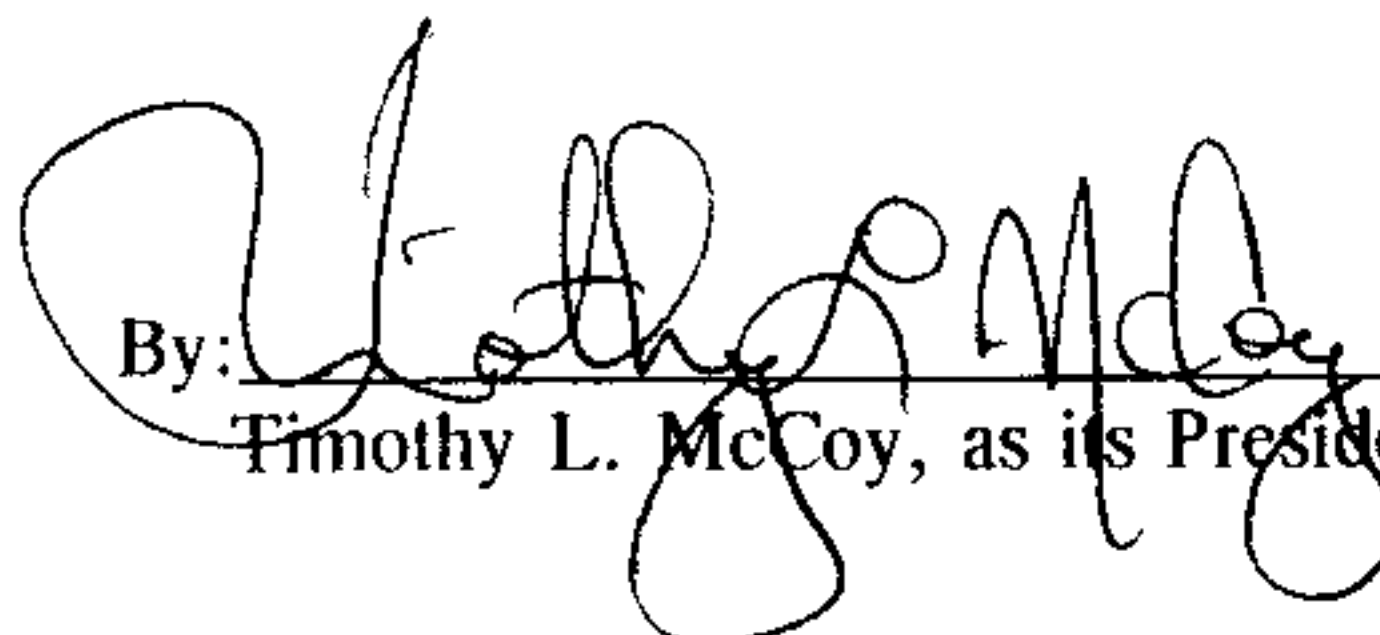
30. Amendments. No amendment, modification or cancellation of this Mortgage shall be valid unless in writing and signed by the party against whom enforcement is sought.

31. Governing Law. This Mortgage shall be governed and construed under the laws of the state of Alabama.

IN WITNESS WHEREOF, Mid-South has caused this Mortgage to be executed in its name and on its behalf and its corporate seal to be affixed, all by its duly authorized officers, on the day and year first above written.

(Corporate Seal)

MID-SOUTH RESOURCES CORP.

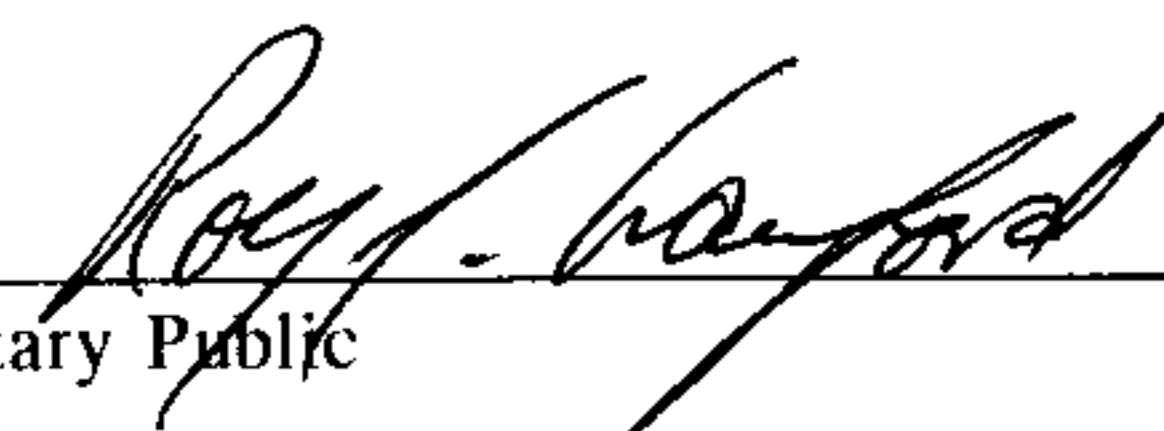
By: 
Timothy L. McCoy, as its President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Timothy L. McCoy, whose name as President of Mid-South Resources Corp., an Alabama corporation, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 29th day of December, 1995.


Notary Public

My Commission Expires:

10/8/98

This instrument prepared by:

Herbert Harold West, Jr.,
CABANISS, JOHNSTON, GARDNER,
DUMAS & O'NEAL
2001 Park Place North, Suite 700
P. O. Box 830612
Birmingham, Alabama 35283-0612
(205) 716-5200

**EXHIBIT A
TO
MORTGAGE, SECURITY AGREEMENT AND
ASSIGNMENT OF RENTS AND LEASES**

PARCEL 1:

- SW ¼ of NE ¼ of Section 26, Township 14 South, Range 6 West and SE ¼ of NW ¼ Section 26, Township 14 South, Range 6 West; Also that part of land in SW ¼ of NW ¼, Section 26, Township 14 South, Range 6 West that lies East of Warrior River. Also that part of the NE ¼ of NW ¼, Section 26, Township 14 South, Range 6 West, more particularly described as follows:

For a point of beginning at Southwest corner of NE ¼ of NW ¼, Section 26, Township 14 South, Range 6 West; thence Northeasterly along riverbank to Sanders Creek; thence East approximately 660 feet; thence North 75 degrees 14' West 566.8 feet to an established corner; thence south 379.0 feet to established northeast corner of SE ¼ of NW ¼, Section 26, Township 14 South, Range 6 west, containing 100 acres, more or less. Surface rights only.

Also the W ½ of the SE ¼ of the NE ¼ of Section 26, Township 14 South, Range 6 West, Minerals and usual mining rights and privileges excepted. Said property being situated in Walker County, Alabama.

EXCEPT the following described tracts, which have been heretofore sold to other parties:

Tract sold to Pauline Skinner described in Deed Record 652 page 382 dated April 23, 1954.

Tract also sold to Pauline Skinner described in Deed Record 856 page 422 dated December 17, 1963.

Tract sold to George McDonald described in Deed Record 808 page 32 dated November 22, 1961.

Tract sold to James and Donie Mae Wilkerson described in Deed Record 857 page 471 dated December 3, 1963.

PARCEL 2: A part of the W $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 26, Township 14 South, Range 6 West, located in Walker County, Alabama. Described as follows: Begin at the NW corner of said forty for a point of beginning; thence E. along the N. boundary line of said forty a distance of 238 feet; thence South 745 feet; thence West 238 feet to the West boundary line of said forty; thence North along the West boundary line of said forty a distance of 745 feet to the point of beginning. Surface only.

Parcel 3:

Commence at the Southeast Corner of Southwest Quarter of Southeast Quarter of Section 23, Township 14 South, Range 6 West; thence west along the South line thereof 524.45 feet to the centerline of a 100 foot right of way lying 50 feet on each side of the following described centerline; thence turn right 148 degrees, 32 minutes, 45 seconds and run northeasterly 116.05 feet to the point of curve to the left having a central angle of 59 degrees, 16 minutes 45 seconds and a radius of 332.13 feet; thence along the arc of said curve 343.62 feet to end of said curve, said point lying 50 feet west of James H. Sanders east property line, as recorded in Volume 846 Page 612 in the Probate Office of Walker County, Alabama; thence northerly and tangent to said curve 145.40 feet to a point on the southerly right of way line right of way. Also, A triangle containing 0.50 acres lying east of the above R.O.W., Total acres 1.89.

Parcel 4:

An undivided one-half interest in the S.E. 1/4 of Section 4, Township 21, Range 4 West, Shelby County, Alabama.

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

None

Inst # 1996-01008

01/11/1996-01008

11:19 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

021 - GMA

1559.50