

STATE OF ALABAMA)
COUNTY OF SHELBY)

LOAN ASSUMPTION AGREEMENT

THIS LOAN ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of the 11th day of July, 1997, by and between **Scotch Building & Development Co., Inc.**, an Alabama corporation (the "Borrower"), **Marengo Building & Development, Inc.**, an Alabama corporation (the "Assumptor"), **Wayne J. Scotch and Joe A. Scotch, Jr.** (collectively, the "Guarantors"), and **National Bank of Commerce of Birmingham**, a national banking association (the "Lender").

Recitals

A. The Lender previously made a loan to the Borrower in the original principal amount of \$590,000 (the "Loan"), as evidenced by that certain Master Note - Commercial Loans dated as of January 16, 1997 in said principal amount (the "Note").

B. The Loan is secured by, among other things, (i) a certain Mortgage dated January 16, 1997 on certain property located in Shelby County, Alabama and more particularly described on Exhibit A attached hereto (the "Property"), which Mortgage is filed for record in the Office of the Judge of Probate of Shelby County, Alabama (the "Recording Office") in Instrument #1997-02467 (the "Mortgage"); and (ii) various guaranty agreements dated January 16, 1997 executed by each of the Guarantors (the "Guaranty Agreements", and collectively with the Note, the Mortgage and any other documents executed in connection therewith, the "Loan Documents").

C. The Borrower desires to sell the Property to the Assumptor.

D. The Lender has been asked to consent to the transfer of the Property to the Assumptor and the assumption by the Assumptor of the obligations of the Borrower under the Note and the other Loan Documents, and to waive any right that the Lender may have as a mortgagee under the Mortgage to declare a default under the terms of the Loan Documents based solely on the transfer of the Property by the Borrower to the Assumptor, and to release the Borrower from the Loan, on the terms hereinafter provided.

E. The Lender has agreed to consent to the transfer of the Property subject to the terms and conditions of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assumption of Loan. As of the date of this Agreement, the Assumptor agrees to and does hereby unconditionally assume and agree to perform all of the obligations, covenants, agreements and liabilities of the Borrower set forth in the Note, the Mortgage and under each of the other Loan Documents, whether as "Borrower", "Maker", "Grantor", "Debtor", "Assignor", or "Indemnitor", including without limitation, payment of all sums due under the Note. As of the date of this Agreement, the Assumptor further agrees to abide by and be bound by all of the terms of the Loan Documents, all as though each of the Loan Documents had been made, executed and delivered by the Assumptor. The Assumptor acknowledges that it is purchasing the Property subject to the Lender's interest therein as created and governed by the Mortgage and the other Loan Documents. As of the date of this Agreement, the Assumptor agrees to perform each and every term, covenant and condition of and as Borrower under the Mortgage and the other Loan Documents. Nothing in this Agreement shall (i) release or impair the Note, (ii) prevent the Lender from exercising any other remedy against the Property, (iii) constitute a substitution or novation of any of the Loan Documents, or (iv) prevent or in any way hinder the Lender from exercising its remedies in respect to any collateral securing the Loan or against any obligors or guarantors of the Loan except as otherwise set forth herein. The Assumptor further agrees to assume all indemnification obligations of the Borrower that are contained in the Loan Documents.

2. Representations and Warranties. Without limitation of any of the obligations, representations, warranties and liabilities assumed by the Assumptor in and pursuant to this Agreement and the Loan Documents, each of the Borrower, the Assumptor and the Guarantors represents and warrants to the Lender as of the date of this Agreement that:

- (a) As of the date hereof, the Note has an unpaid principal balance of \$167,865.22;
- (b) The Mortgage is a valid first priority lien on the Property;
- (c) There are no defenses, offsets or counterclaims to the Note, the Mortgage or the other Loan Documents;
- (d) All provisions of the Note, the Mortgage and the other Loan Documents, as of the date hereof, are in full force and effect and are, by virtue thereof, enforceable against the Assumptor in accordance with their respective terms;
- (e) There are no defaults by the Borrower or the Assumptor under the provisions of the Note, the Mortgage or the other Loan Documents, nor does such party know of any facts or circumstances, which, with the passage of time, or the giving of notice, or both, would result in a default of the Loan Documents;
- (f) The Guarantors are the sole shareholders of the Assumptor;
- (g) The Assumptor is not insolvent and shall not be rendered insolvent as a consequence of the acquisition of the Property and the other transactions that are the subject of this Agreement;

(h) The Assumptor is and shall remain an Alabama corporation which is duly organized, validly existing and in good standing in the State of Alabama and is qualified and in good standing in all other jurisdictions where qualification is necessary. The Assumptor has all requisite power and authority and has taken or caused to be taken all necessary corporate actions necessary to execute, deliver, enter into and perform in accordance with this Agreement, the Note, the Mortgage and all of the other Loan Documents. Upon execution and delivery hereof and thereof, this Agreement, the Note, the Mortgage and the other Loan Documents will constitute valid and binding obligations of the Assumptor and other parties thereto, enforceable in accordance with their respective terms, except to the extent the validity and binding nature may be limited or otherwise affected by bankruptcy, moratorium or similar laws affecting creditor's rights, and the Note will be entitled to the benefits of this Agreement, and the other Loan Documents;

(i) Each of such parties has filed or caused to be filed all federal, state and local tax returns, which are required to be filed by them, and have paid or caused to be paid all taxes as shown on said returns or on any assessment received by them, to the extent that such taxes have become due;

(j) Upon transfer of the Property pursuant to this Agreement, the Assumptor shall be the owner in fee of the Property as well as the owner of the personal property described in the Loan Documents and all leases affecting the Property. The Assumptor is unaware of any leases affecting the Property except as described on Exhibit B attached hereto (the "Leases");

(k) The Assumptor possesses such licenses and permits as are required for the conduct of its business. No approval, consent, or authorization of any governmental authority which has not heretofore been obtained is necessary for the execution or delivery by the Assumptor of this Agreement or the other Loan Documents or for the performance by the Assumptor of any of the terms or conditions hereof or thereof;

(l) The Property and the use which the Assumptor contemplates therefor comply with all applicable restrictive covenants, zoning ordinances, building codes, applicable health and environmental laws and regulations, and all other applicable laws, rules and regulations. There are no suits, proceedings or investigations pending or threatened against or affecting the Assumptor which, if adversely determined, would have a material adverse affect on the Assumptor; nor is such party aware of any suits, proceedings or investigations pending or threatened against or affecting the Property at law or in equity, or before or by a governmental or administrative agency or instrumentality, which, if adversely determined, would have a material adverse affect on the Assumptor or the Property;

(m) The execution, delivery and performance of this Agreement and the assumption of the Note and the other Loan Documents, do not contravene any law, order, decree, rule, or regulation to which such party is subject; and

(n) Each of said parties hereby certifies that it has thoroughly reviewed the provisions of this Agreement, the Mortgage and the other Loan Documents, that it has been advised and represented by counsel of its own choice in this transaction, and that it understands and consents to the provisions of such instruments.

3. Consent to Transfer. In reliance upon the representations and warranties of the Assumptor, the Borrower and the Guarantors contained in this Agreement, the Lender hereby consents to the Borrower's transfer of the Property to the Assumptor and waives the violations, if any, of provisions of the Mortgage resulting therefrom, subject to the strict performance by the Assumptor of each and every term of this Agreement; provided, however, this consent and waiver shall constitute neither a waiver of any other provision of the Mortgage or the other Loan Documents nor a waiver of the provisions of the Mortgage with respect to future transactions involving the Property.

4. Guaranty. To induce the Lender to allow the assumption of the Loan by the Assumptor, each of the Guarantors simultaneously herewith has executed a certain Continuing Guaranty Agreement in favor of the Lender guaranteeing all of the obligations of the Assumptor under the Loan Documents. The term "Loan Document" as used throughout all instruments evidencing, securing or executed in connection with the Loan shall hereafter be expanded to include each of said Continuing Guaranty Agreements.

5. Release of Borrower. As of the date of this Agreement, the Borrower is and shall be released by Lender of all of its obligations under the Note, the Mortgage, and the other Loan Documents; provided, however, the Borrower is not and shall not be released of its obligations with respect only to the following, each and all of which shall survive the transfer of the Property to the Assumptor and remain in full force and effect:

(a) All liabilities, obligations and undertakings of Borrower arising under and pursuant to the Loan Documents, to the extent that such continuing liability of the Borrower shall pertain solely to conditions existing, activities occurring or claims arising on or prior to the date hereof; and

(b) The liabilities, obligations and undertakings of the Borrower shall continue to be effective or shall be reinstated, as the case may be, if at any time payment, or any part thereof, of principal of or interest on the Note or the Loan received by the Lender from the Borrower through and including the date hereof is rescinded or must otherwise be restored upon the bankruptcy or reorganization of the Borrower.

6. Costs. The Assumptor, the Borrower and the Guarantors agree to pay all fees and costs (including attorneys' fees) incurred by the Lender in connection with the Lender's consent to and approval of the transfer of the Property.

7. Waiver. By entering into this Agreement or any other agreement executed in connection herewith, the Lender is not and shall not be construed as waiving any event of default or breach now or hereafter existing or occurring under the Loan Documents. Regardless of when the parties' respective obligations begin to accrue or end, with respect to facts or events having occurred prior to the date hereof, which with the passage of time or the giving of notice, or both, could result in a default under the Loan Documents (a "Prior Default"), the Lender shall not be estopped from accelerating the Loan if such Prior Default had, or could have, a material adverse affect on the Property and such Prior Default remains uncured following written notice to the Assumptor, specifying the fact or event giving rise to the Prior Default and providing the Assumptor thirty (30) days to cure same.

8. Addresses. The Lender's address remains as set forth in the Loan Documents, and the Borrower's, the Guarantors' and the Assumptor's addresses for notice hereunder and under the Loan Documents are:

If to Borrower: _____

If to Guarantors: _____

If to the Assumptor: _____

9. General Provisions.

(a) This Agreement shall be construed according to and governed by the laws of the State of Alabama, without regard to its conflicts of law principles;

(b) If any provision of this Agreement is adjudicated to be invalid, illegal or unenforceable, in whole or in part, such invalid, illegal or unenforceable provision will be deemed omitted and all other provisions of this Agreement shall remain in full force and effect;

(c) This Agreement contains the entire agreement between all of the parties hereto and is intended to be an integration of all prior agreements, conditions or undertakings between all the parties hereto with respect to the transfer of the Property by the Borrower to the Assumptor;

(d) No change or modification of this Agreement shall be valid unless the same is in writing and signed by all parties hereto;

(e) The captions contained in this Agreement are for convenience of reference only and in no event define, describe or limit the scope or intent of this Agreement or any of the provisions or terms thereof;

(f) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns;

(g) The Assumptor and the Borrower by their execution of this Agreement, hereby acknowledge and covenant that a default, a breach of a representation or warranty, or the failure to fulfill any covenant under this Agreement by the Assumptor or the Borrower, will constitute an event of default under the Loan Documents and the Lender shall be entitled to all remedies provided and contained in the Loan Documents as if such remedies were fully set out herein.

(h) This Agreement and the other documents now or hereafter executed in connection with this Agreement are deemed to be "Loan Documents" as that term is defined in the Note.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"BORROWER":

SCOTCH BUILDING & DEVELOPMENT CO., INC.

By: _____

Joe A. Scotch, Its Vice President

"ASSUMPTOR":

MARENGO BUILDING & DEVELOPMENT, INC.

By: _____

Joe A. Scotch, Its Vice President

"GUARANTOR":

Joe A. Scotch, Jr.

Wayne J. Scotch

"LENDER":

NATIONAL BANK OF COMMERCE OF BIRMINGHAM

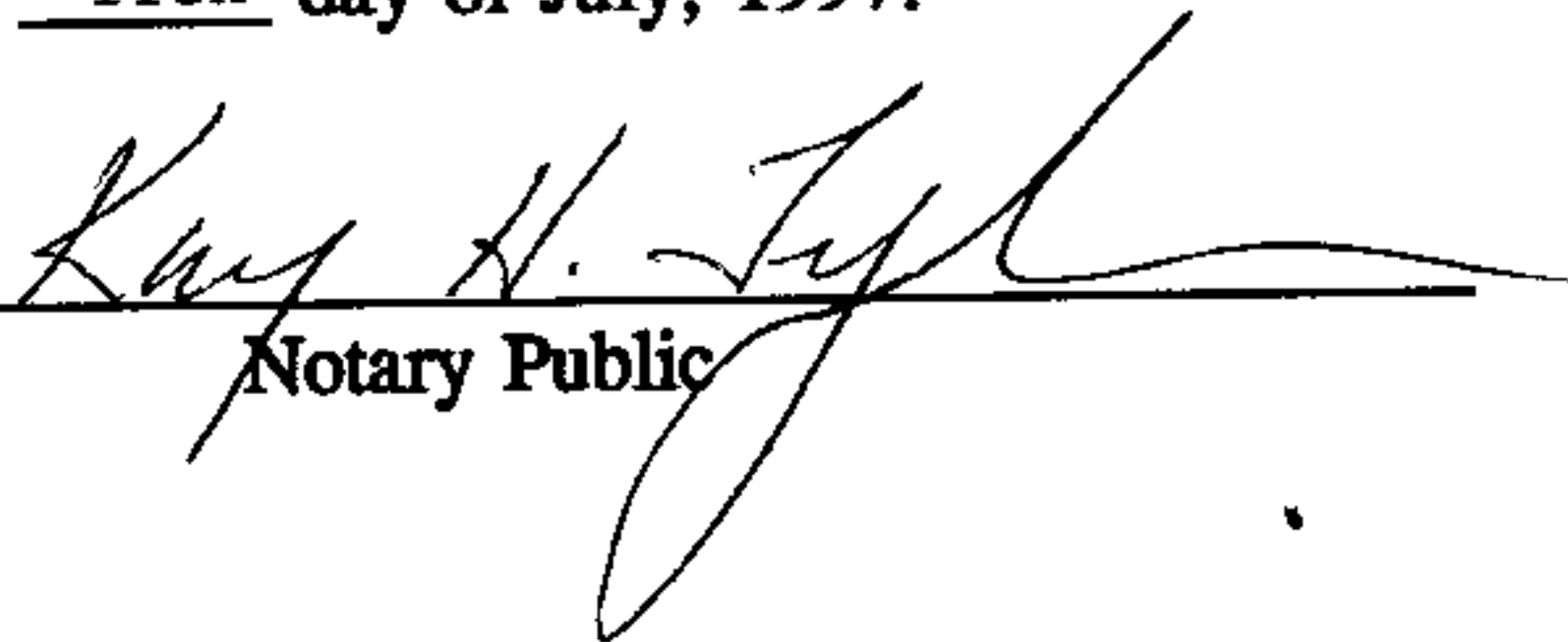
By: _____

C. Houston Gillespy,
Assistant Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joe A. Scotch, Jr., whose name as Vice President of Scotch Building & Development Co., Inc., 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 11th day of July, 1997.



Notary Public

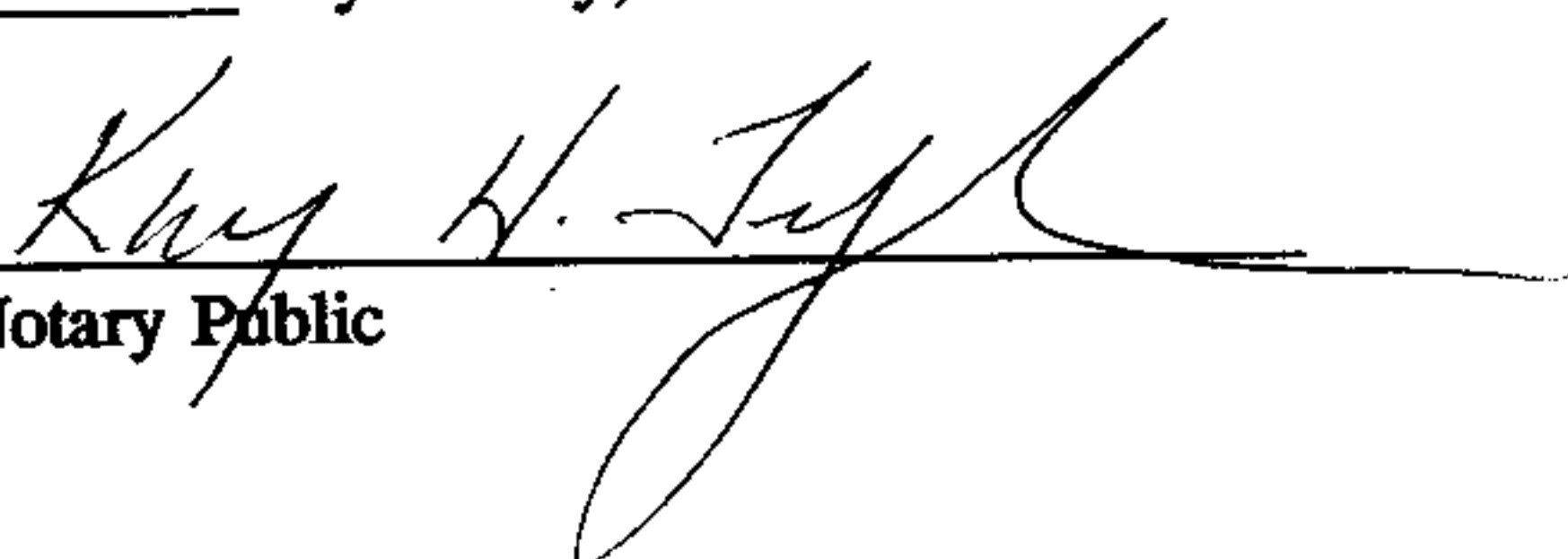
[AFFIX SEAL]

My Commission Expires: 11/6/00

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joe A. Scotch, Jr., whose name as Vice President of Marengo Building & Development, Inc., 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 11th day of July, 1997.



Notary Public

[AFFIX SEAL]

My Commission Expires: 11/6/00

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joe A. Scotch, Jr., whose name 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 on the day the same bears date.

Given under my hand and official seal, this 11th day of July, 1997.



Notary Public

[AFFIX SEAL]

My Commission Expires: 11/6/00

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Wayne J. Scotch, whose name 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 on the day the same bears date.

Given under my hand and official seal, this 11th day of July, 1997.



Notary Public

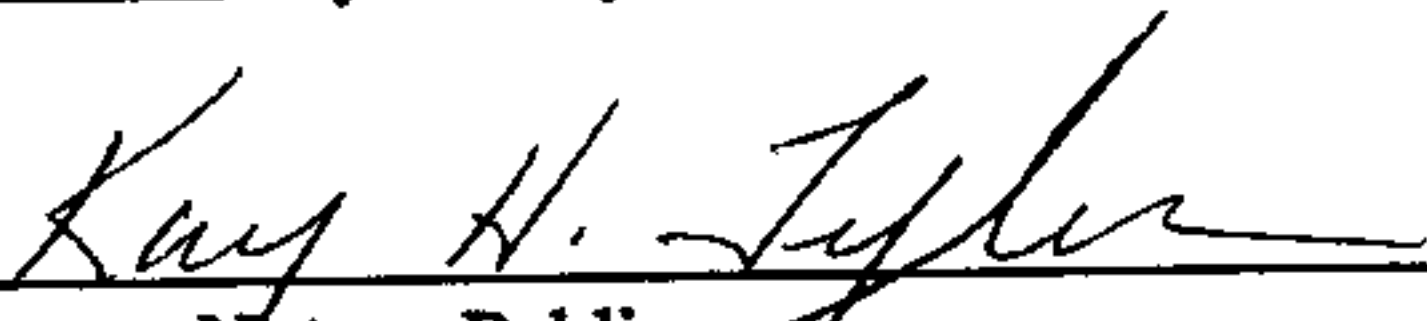
[AFFIX SEAL]

My Commission Expires: 11/6/00

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that C. Houston Gillespy, whose name as Assistant Vice President of National Bank of Commerce of Birmingham, a national banking association, 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 national banking association. . . .

Given under my hand and official seal, this 11th day of July, 1997.



Notary Public

[AFFIX SEAL]

My Commission Expires: 11/6/00

This instrument was prepared by:
Thomas C. Clark III, Esq.
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000

Exhibit A

(Legal Description)

A PARCEL OF LAND BEING LOCATED IN SECTION 23, TOWNSHIP 22 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 23, TOWNSHIP 22 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA; THENCE SOUTH 00 DEG. 09 MIN. 09 SEC. EAST, 310.00 FEET TO THE NORTHEAST CORNER OF THE SHADY HILLS SUBDIVISION, AND THE POINT OF BEGINNING; THENCE NORTH 64 DEG. 02 MIN. 58 SEC. EAST, 796.73 FEET; THENCE SOUTH 29 DEG. 53 MIN. 34 SEC. EAST, 134.59 FEET; THENCE SOUTH 09 DEG. 53 MIN. 34 SEC. EAST, 230.00 FEET; THENCE SOUTH 00 DEG. 06 MIN. 26 SEC. WEST 620.02 FEET; THENCE SOUTH 00 DEG. 06 MIN. 26 SEC. WEST 209.98 FEET; THENCE SOUTH 34 DEG. 51 MIN. 39 SEC. WEST 270.00 FEET; THENCE SOUTH 50 DEG. 08 MIN. 21 SEC. EAST, 420.00 FEET; THENCE SOUTH 1 DEG. 50 MIN. 49 SEC. EAST 498.84 FEET TO THE NORTHEASTERLY RIGHT OF WAY OF SHELBY COUNTY ROAD NO. 306; THENCE NORTH 50 DEG. 29 MIN. 13 SEC. WEST, 1490.71 FEET TO THE P.C. OF A CURVE TO THE RIGHT WITH A RADIUS OF 25.00 FEET AND A CHORD BEARING OF NORTH 15 DEG. 49 MIN. 36 SEC. WEST; THENCE RUN ALONG THE ARC OF SAID CURVE 30.64 FEET TO THE PRC OF THE CURVE TO THE LEFT WITH A RADIUS OF 511.10 FEET AND A CHORD BEARING OF NORTH 18 DEG. 30 MIN. 15 SEC. EAST; THENCE RUN ALONG THE ARC OF SAID CURVE 13.39 FEET TO THE SOUTHWEST CORNER OF LOT 14 OF THE SHADY HILLS SUBDIVISION; THENCE SOUTH 72 DEG. 38 MIN. 27 SEC. EAST, 26.71 FEET; THENCE NORTH 58 DEG. 58 MIN. 29 SEC. EAST 144.89 FEET TO THE SOUTHEAST CORNER OF LOT 14; THENCE NORTH 00 DEG. 09 MIN. 35 SEC. WEST, 758.37 FEET TO THE POINT OF THE BEGINNING; BEING SITUATED IN SHELBY COUNTY, ALABAMA.

Exhibit B

(Leases)

NONE

Inst # 1997-22413

Inst # 1997-22413

339157.02\CLARKT3-13

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**07/17/1997-22413
08:38 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 MCD 33.50**