

STATE OF ALABAMA     )  
SHELBY COUNTY        )

## MORTGAGE

**THIS MORTGAGE** (this "Mortgage") dated as of January 7, 1998 is between **Schilling, Incorporated**, a Texas corporation (herein called the "Mortgagor"), as mortgagor, and **Ferguson Enterprises, Inc.**, a Virginia corporation (herein called the "Mortgagee"), as mortgagee.

### Recitals

(1) Capitalized terms used in these Recitals have the meanings defined for them above or in Section 1.2.

(2) The Mortgagor and Mortgagee have entered into the Agreement for the sale by Mortgagor to Mortgagee of certain assets of Mortgagor in accordance with an Asset Purchase Agreement between Mortgagor and Mortgagee of even date herewith.

(3) Under Section 13 of the Agreement, Mortgagor agreed to indemnify Mortgagee against any Indemnified Losses resulting from the Indemnified Events.

(4) To secure the Obligations, and to induce the Mortgagee to enter into the Agreement, the Mortgagor has agreed to execute this Mortgage.

(5) Notwithstanding anything to the contrary contained herein: (1) the maximum indemnified amount of Indemnified Loss secured by this Mortgage shall not exceed \$2,000,000.00 (the "Maximum Indemnified Amount"); (2) the Maximum Indemnified Amount of Indemnified Loss secured by this Mortgage shall be deemed to be the first Indemnified Loss to be advanced and any subsequent Indemnified Loss to be advanced, and the last Indemnified Loss to be repaid; (3) the security afforded by this Mortgage for the Indemnified Loss shall not be reduced by any payments or other sums applied to the reduction of an Indemnified Loss; and (4) the limitation contained in this paragraph shall only pertain to the Indemnified Loss secured by this Mortgage, and shall not be construed as limiting the amount of interest, fees, expenses, or other indebtedness (except Indemnified Loss) secured hereby.

## **Agreement**

**NOW, THEREFORE,** in consideration of the foregoing Recitals, and to induce the Mortgagee to enter into the Agreement with the Mortgagor, the Mortgagor agrees with the Mortgagee as follows:

### **ARTICLE 1**

#### **Rules of Construction and Definitions**

**SECTION 1.1 Rules of Construction.** For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.

(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and do not limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All Recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.

(f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.

(g) All references in this Mortgage to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

**SECTION 1.2 Definitions.** As used in this Mortgage, capitalized terms that are not otherwise defined herein have the meanings defined for them in the Agreement and the following terms are defined as follows:

(a) **Agreement** means that certain Asset Purchase Agreement dated as of January 7, 1998, between Mortgagor, as "Seller" and Mortgagee, as "Purchaser", for the sale and purchase of certain assets of the Mortgagor located in Pelham, Shelby County and Mobile, Mobile County, Alabama.

(b) **Business Day** means any day, excluding Saturday and Sunday, on which the Mortgagee's main office in Newport News, Virginia, is open to the public for carrying on substantially all of its business.

(c) **Default Rate** means a floating rate of interest equal to the rate of interest designated by Wachovia Bank of North Carolina, NA (the "Bank"), from time to time as its "Prime Rate" (the "Prime Rate"), it being expressly understood and agreed that the Prime Rate is merely an index rate used by the Bank to establish lending rates and is not necessarily the Bank's most favorable lending rate, and that changes in the Prime Rate are discretionary with the Bank. Each change in the Prime Rate shall become effective hereunder on the day the change in the Prime Rate as designated by the Bank occurs, without notice to the Mortgagor.

(d) **Event of Default** is defined in Section 5.2. An Event of Default "exists" if the same has occurred and is continuing.

(e) **Governmental Authority** means any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

(f) **Governmental Requirements** means all laws, rules, regulations, ordinances, judgments, decrees, codes, orders, injunctions, notices and demand letters of any Governmental Authority.

(g) **Hazardous Substance Law** means any Governmental Requirement relating to environmental conditions, industrial hygiene, pollution, or the protection of human health or the environment, including the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 741 *et seq.*, the Clean Water Act, 33 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j (all as heretofore or hereafter amended from time to time), all applicable statutes of the State in which the Real Property is located, including any so-called "Superfund" or "Superlien" law, and all Governmental Requirements now or hereafter promulgated under any of the foregoing, including any Governmental Requirement relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the workplace or the environment.



(h) **Hazardous Substances** means all pollutants, effluents, contaminants, emissions, toxic or hazardous wastes and other substances, the removal of which is required or the manufacture, use, maintenance, handling, discharge or release of which is regulated, restricted, prohibited or penalized by any Governmental Requirement, or even if not so regulated, restricted, prohibited or penalized, might pose a hazard to the health and safety of the public or the occupants of the property on which it is located or the occupants of the property adjacent thereto, including (1) asbestos or asbestos-containing materials, (2) urea formaldehyde foam insulation, (3) polychlorinated biphenyls (PCBs), (4) flammable explosives, (5) radon gas, (6) laboratory wastes, (7) experimental products, including genetically engineered microbes and other recombinant DNA products, (8) petroleum, crude oil, natural gas, natural gas liquid, liquefied natural gas, other petroleum products and synthetic gas usable as fuel, (9) radioactive materials and (10) any substance or mixture listed, defined or otherwise determined by any Governmental Authority to be hazardous, toxic or dangerous, or otherwise regulated, affected, controlled or giving rise to liability under any Governmental Requirement.

(i) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the Liens or other interests created by this Mortgage, or the Obligations.

(j) **Improvements** is defined in Section 2.1(b).

(k) **Indemnified Event(s)** means any one or more events that are described in Section 13.1.1 through 13.1.6, inclusive, of the Agreement.

(l) **Indemnified Loss or Losses** means any and all losses, damages or expenses incurred by Mortgagee, or any of its affiliated corporations, and Mortgagee's and such affiliated corporations' successors, officers, directors, employees and agents, that result from an Indemnified Event, whether one or more, but in no event shall such Indemnified Losses, in the cumulative, exceed Five Million Dollars.

(m) **Land** is defined in Section 2.1(a).

(n) **Lien** means any mortgage, pledge, assignment, charge, encumbrance, lien, security title, security interest or other preferential arrangement.

(o) **Obligations** means (1) the payment by Mortgagor of all Indemnified Losses now or hereafter becoming due and payable under the Agreement in accordance with the terms of the Agreement which are incorporated herein by reference; (2) the observance and performance by the Mortgagor of all indemnity provisions contained in the Agreement and all of the provisions of the Mortgage; (3) the payment of all sums advanced or paid by the Mortgagee in exercising any of its rights, powers or remedies under the Agreement and the Mortgage, and all interest (including post-bankruptcy petition interest, as aforesaid) on such sums provided for herein or

therein; and (4) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

(p) **Permitted Encumbrances** means any Liens and other matters affecting title to the Property that are described in Exhibit B.

(q) **Person** (whether or not capitalized) includes natural persons, sole proprietorships, corporations, trusts, unincorporated organizations, associations, companies, institutions, entities, joint ventures, partnerships, limited liability companies and Governmental Authorities.

(r) **Personal Property** is defined in Section 2.1(c).

(s) **Property** is defined in Section 2.1.

(t) **Real Property** is defined in Section 2.1(b).

(u) **UCC Property** means the Personal Property and all other personal property and fixtures included in the Property.

## ARTICLE 2

### Granting Clauses

**SECTION 2.1 Granting Clauses.** As security for the Obligations, the Mortgagor hereby grants, bargains, sells, assigns and conveys unto the Mortgagee, and hereby grants to the Mortgagee a security interest in, all of the Mortgagor's right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) **Land.** The land located in Shelby County, Alabama more particularly described in Exhibit A, and all reversions and remainders in and to said land and all tenements, hereditaments, easements, rights-of-way, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title and interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any other property, and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land; and all claims or demands of the Mortgagor, at law or in equity, in possession or expectancy of, in or to any of the same (all of the foregoing hereinafter collectively called the "Land").

(b) **Improvements.** All buildings, structures, facilities and other improvements now or hereafter located on the Land, and all building materials, building equipment and fixtures of



every kind and nature now or hereafter located on the Land or attached to, contained in, or used in connection with, any such buildings, structures, facilities or other improvements, and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof, now owned or hereafter acquired by the Mortgagor (all of the foregoing hereinafter collectively called the "Improvements," and together with the Land called the "Real Property").

(c) **Personal Property.** All goods, equipment, inventory, supplies and other items or types of tangible personal property (including additions and accessions thereto and replacements and substitutions therefor) now owned or hereafter created or acquired by the Mortgagor and attached to the Real Property (other than fixtures); or placed on the Real Property and used or useful in connection with, or in any way pertaining or relating to, the Real Property or the use and occupancy thereof, though not attached to the Real Property (all of the foregoing hereinafter collectively called the "Personal Property").

(d) **Rents and Leases.** All leases, subleases, lettings and licenses, and other use and occupancy agreements, now or hereafter pertaining to any of the Real Property or Personal Property, and all rents, profits, issues and revenues of the Real Property and Personal Property now or hereafter accruing, whether accruing before or after the filing of any petition by or against the Mortgagor under the federal Bankruptcy Code; provided, however, that if no Event of Default exists, the Mortgagor shall have a license (but limited as set forth in Section 5.3(f)) to collect and receive all of such rents, profits, issues and revenues.

(e) **Insurance Policies.** All policies of hazard insurance now or hereafter in effect that insure the Real Property, the Personal Property or any other property conveyed or encumbered hereby, together with all right, title and interest of the Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(f) **Litigation Awards.** All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to the Mortgagor or any subsequent owner of any of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property, the Personal Property, or any other such property.

(g) **General Intangibles and Agreements.** (1) All general intangibles relating to the development or use of the Real Property, the Personal Property or any other property conveyed or encumbered hereby, or the management and operation of any business of the Mortgagor thereon, including all patents, patent applications, trade names, trademarks, trademark applications, knowledge and process, licensing arrangements, blueprints, technical specifications, manuals and other trade secrets; (2) the good will of any business conducted or operated by the Mortgagor on the Real Property, all governmental licenses and permits relating to the construction, renovation or operation thereof, all names under or by which the same may at any time be operated or known and all rights to carry on business under any such names or any variant

thereof; and (3) all contracts and agreements (including construction, renovation, maintenance, engineering, architectural, leasing, management, operating and concession agreements) affecting the Real Property, the Personal Property or any other property conveyed or encumbered by this Mortgage, or used or useful in connection therewith, whether now or hereafter entered into.

(h) **Supplemental Documents.** All changes, additions, supplements, modifications, amendments, extensions, renewals, revisions and guaranties to, of or for any agreement or instrument included in the foregoing.

(i) **Proceeds.** All proceeds of any of the foregoing.

**SUBJECT, HOWEVER,** to Permitted Encumbrances and all other provisions contained in this Mortgage.

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

### **ARTICLE 3**

#### **Representations and Warranties**

The Mortgagor represents and warrants to the Mortgagee that:

**SECTION 3.1 Valid Title, Debt, etc.** (a) The Mortgagor is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and the Mortgagor has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (b) the Property is free of all Liens other than Permitted Encumbrances; (c) the Mortgagor has full power to encumber, assign and convey the Property as provided herein; (d) this Mortgage is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (e) the Mortgagor shall forever warrant and defend the title to the Property unto the Mortgagee against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

**SECTION 3.2 Hazardous Substances.** (a) to the best knowledge of the Mortgagor, there are not now, nor have there ever been, any Hazardous Substances installed, used, generated, manufactured, treated, handled, refined, produced, processed, transported, stored or disposed of, or otherwise present in, on or under the Property, and there are no Hazardous Substances present on real property adjoining or in the vicinity of the Property that could migrate, to, through or under the Property, in a manner that would cause a violation of, or that would support a claim under any Hazardous Substance Law; (b) to the best knowledge of the Mortgagor, no activity has been nor is now being undertaken with respect to the Property that would cause a violation of, or support a claim under any Hazardous Substance Law; (c) to the best knowledge of the Mortgagor,



no Hazardous Substance has been nor is now present in, on or under the Property, and no activity has been nor is now being undertaken with respect to the Property, that would cause (1) the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of any Hazardous Substance Law, (2) a release or threatened release of Hazardous Substances from the Property within the meaning of any Hazardous Substance Law, (3) the discharge of Hazardous Substance into any watercourse, body or surface or subsurface water or wetland, or into the atmosphere, that would be prohibited by or require a permit under any Hazardous Substance Law, or (4) the Property otherwise to be subject to special remediation, regulation, restriction or treatment under any Hazardous Substance Law; (d) to the best knowledge of the Mortgagor, no underground storage tanks or underground deposits of Hazardous Substances have ever been located in, on or under the Property and subsequently removed or filled; (e) to the best knowledge of the Mortgagor, no investigation, inquiry, hearing, action, administrative order, litigation or settlement with respect to any Hazardous Substance or Hazardous Substance Law is threatened or in existence with respect to the Property; (f) no notice has been served on the Mortgagor from any person claiming any violation of any Hazardous Substance Law with respect to the Property, or asserting any claim under any Hazardous Substance Law with respect to the Property, or requiring compliance with any Hazardous Substance Law with respect to the Property, or demanding payment or contribution for environmental damage or injury to any person, property or natural resources as the result of the presence of any Hazardous Substance in, on, under or from the Property or any violation of any Hazardous Substance Law with respect to the Property; and (g) the intended use of the Property will not result in any environmental activity that would cause a violation of, or that would support a claim under any Hazardous Substance Law.

## **ARTICLE 4**

### **Covenants and Agreements of Mortgagor**

**SECTION 4.1 Payment of Impositions.** Mortgagor shall pay or cause to be paid all Impositions and at the Mortgagee's request shall furnish evidence of the payment thereof at least 10 business days before the Impositions are due and delinquent. The Mortgagor may, at the Mortgagor's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed.

**SECTION 4.2 Insurance.** The Mortgagor shall keep or cause to be kept the Property insured against loss or damage by flood (if the Property is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties and other contingencies as from time to time may be reasonably required by the Mortgagee, all in such manner and with such companies and in such amounts as the Mortgagee may approve. All such policies shall be subject to the Mortgagee's approval and shall name the Mortgagee as Loss Payee and containing a standard Loss Payee clause or endorsement. The



Mortgagor shall cause duplicate originals of such insurance policies (or, at the Mortgagee's option, certificates satisfactory to the Mortgagee) to be deposited with the Mortgagee. If requested by the Mortgagee, the Mortgagor shall furnish to the Mortgagee evidence of the payment of the premiums for such policies. The Mortgagor shall cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Mortgagee) to give the Mortgagee at least 10 business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. The Mortgagor shall not take any action or fail to take any action that would result in the invalidation of any insurance policy required hereunder. 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 the Mortgagee and the unearned premiums with respect thereto shall pass to and vest in the purchaser or grantee of the Property.

#### **SECTION 4.3 Damage and Destruction.**

(a) **Mortgagor's Responsibilities.** In the event of any damage to or loss or destruction of the Property, the Mortgagor shall (1) promptly notify the Mortgagee of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (2) unless otherwise instructed by the Mortgagee, promptly, regardless whether any insurance proceeds are sufficient for the purpose or (unless such insurance proceeds are otherwise applied by the Mortgagee as provided herein), commence and diligently pursue to completion the restoration, replacement or rebuilding of the Property as nearly as possible to the value, condition and character thereof immediately prior to such damage, loss or destruction and in accordance with plans and specifications approved, and with other provisions for the preservation of the security hereunder established, by the Mortgagee, which approval shall not be unreasonably withheld.

#### **SECTION 4.4 Condemnation.**

(a) **Mortgagor's Responsibilities; Proceedings.** The Mortgagor, immediately upon obtaining knowledge thereof, shall notify the Mortgagee of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. The Mortgagee may participate in any such proceedings, and the Mortgagor from time to time shall execute and deliver to the Mortgagee all instruments requested by the Mortgagee to permit such participation. The Mortgagor shall, at the Mortgagor's expense, diligently prosecute any such proceedings, deliver to the Mortgagee copies of all papers served in connection therewith and consult and cooperate with the Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by the Mortgagor without the Mortgagee's consent, not to be unreasonably withheld.

(b) **Mortgagee's Rights to Proceeds.** If any Event of Default exists and is continuing, all proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all

judgments, decrees and awards for injury or damage to the Property shall be paid to the Mortgagee. The Mortgagor authorizes the Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. The Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** The Mortgagee shall have the right to apply any proceeds, judgments, decrees or awards referred to in Section 4.4(b), first, to reimburse the Mortgagee for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, and second, the remainder thereof to cure any Event of Default and then any excess to Mortgagor.

#### **SECTION 4.5 Liens and Liabilities.**

(a) **Discharge of Liens.** The Mortgagor shall pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others that, if unpaid, might result in, or permit the creation of, a Lien on any of the Property, and in general, the Mortgagor shall do, or cause to be done, at the Mortgagor's sole cost and expense, everything necessary to fully preserve the Lien and priority of this Mortgage.

(b) **Creation of Liens.** The Mortgagor shall not, without the Mortgagee's consent, create, place or permit to be created or placed, or allow to remain, any voluntary or involuntary Lien on any of the Property, whether prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances. If any such Lien is created or placed on the Property without the Mortgagee's consent, the Mortgagor shall cause the same to be discharged, released or bonded off to the Mortgagee's satisfaction within 10 days after the filing thereof.

(c) **No Consent.** Nothing in the Agreement and the Mortgage shall be deemed or construed as constituting the consent or request by the Mortgagee, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, renovation, alteration or repair of the Property. The Mortgagor agrees that the Mortgagee does not stand in any fiduciary relationship to the Mortgagor by reason of the transactions contemplated by the Agreement and the Mortgage.

#### **SECTION 4.6 Operations; Utilities; Waste, Demolition, Alteration or Replacement.**

The Mortgagor shall (a) continuously operate the Mortgagor's business (if any) on the Improvements in accordance with sound business practices; (b) not engage in any activity that would diminish the value of the Property or decrease the income from the Property; (c) pay or cause to be paid all bills for utilities and other materials and services used on or in connection with the Property; (d) cause the Property and every part thereof to be maintained and kept in good and safe repair, working order and condition; (e) not commit or permit waste thereon; (f) not



remove, demolish or alter the design or structural character of any Improvements; and (g) 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. The Mortgagor shall not remove from the Real Property any of the fixtures or Personal Property included in the Property unless the same are immediately replaced with like property of at least equal value and utility.

#### **SECTION 4.7 Sale, Lease or Transfer, etc.**

(a) **Real Property.** Except for Permitted Encumbrances, the Mortgagor shall not (1) sell, assign, transfer, convey, lease with an option to purchase (which option may be exercised prior to the expiration of this Mortgage), exchange or otherwise dispose of, any of the Real Property or any interest therein; (2) contract with any person for any of the foregoing; or (3) subject any of the Real Property or any interest therein to any additional Lien, either voluntarily or involuntarily.

(b) **Equity Interests in Mortgagor.** The Mortgagor (if a partnership or corporation) shall not be dissolved, liquidated or terminated, whether by operation of law or otherwise.

(c) **Mortgagee's Rights.** The occurrence of any of the events described in Section 4.7(a) or 4.7(b) will constitute an Event of Default under this Mortgage, and the Mortgagee may, in its sole discretion, exercise any of its rights and remedies on default under Section 5.3 or require the payment after the date of such occurrence of a higher rate of interest on the unpaid principal portion of the Obligations as a condition to not exercising such rights and remedies, whether such rights and remedies be exercised by the Mortgagee to obtain a higher rate of interest on the Obligations or to protect the security afforded by this Mortgage.

(d) **Mortgagee's Reliance.** The Mortgagor acknowledges the Mortgagee's express reliance on this Section 4.7.

**SECTION 4.8 Use, Governmental Compliance, etc.** The Mortgagor shall (a) use the Property solely for the uses contemplated by the Agreement and the Mortgage or otherwise permitted in writing by the Mortgagee; (b) maintain all material certificates, licenses, authorizations, registrations, permits and other approvals of Governmental Authorities necessary for the use of the Property and the conduct of any business or activity on the Real Property, including all required zoning, building, land use, environmental, occupancy, fire and utility approvals; (c) comply with all Governmental Requirements now or hereafter affecting the Property or any business or activity conducted on the Real Property; and (d) not permit any act to be done on the Property in violation of any Governmental Requirements or that constitutes a public or private nuisance, or that makes void or cancelable, or increases the premium of, any insurance then in force with respect thereto.

**SECTION 4.9 Zoning; Title Matters.** The Mortgagor shall not: (a) initiate or support any zoning reclassification of the Property or seek any variance under existing zoning laws or use



or permit the use of the Property in a manner that would result in such use becoming a non-conforming use under, or otherwise violate, applicable zoning laws; (b) modify, amend or supplement any Permitted Encumbrances in any manner that would materially increase the obligations or decrease the rights of the Mortgagor or adversely affect the rights of the Mortgagee under the Agreement and the Mortgage; (c) subject the Property to any restrictive covenants or encumbrances (other than the Permitted Encumbrances), execute or file any subdivision plat affecting the Property or consent to the annexation of the Property to any municipality; or (d) permit the Property to be used by the public or any person in any manner that might make possible a claim of adverse possession or of any implied dedication easement or easement by prescription.

**SECTION 4.10 Maintenance of Lien Priority.** The Mortgagor shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property purported to be created by this Mortgage. The Mortgagor shall execute, acknowledge, deliver, file and record such additional instruments as the Mortgagee may deem necessary in order to perfect, preserve, protect, continue, extend or maintain the Liens created hereby as first priority Liens on the Property, subject to Permitted Encumbrances, or to subject after-acquired property or proceeds to such Liens. If the Liens, validity or priority of this Mortgage, or if title to any of the rights of the Mortgagor or the Mortgagee in or to the Property shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against the Mortgagor or the Mortgagee with respect thereto, the Mortgagor shall promptly notify the Mortgagee thereof and shall diligently endeavor to cure any defect that may be claimed, and shall take all necessary and proper steps for the defense of such action or proceeding, including the employment of counsel, the prosecution or defense of the litigation, and subject to the Mortgagee's approval, the compromise, release or discharge of any and all adverse claims other than Permitted Encumbrances. The Mortgagee (whether or not named as a party to such actions or proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it may reasonably deem necessary or proper for the defense of any such action or proceeding or the protection of the Liens, validity or priority of this Mortgage, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of adverse claims, and the removal of prior Liens. The Mortgagor shall, on demand, reimburse the Mortgagee for all expenses (including attorneys' fees and disbursements) reasonably incurred by the Mortgagee in connection with any of the foregoing matters. The foregoing notwithstanding, Mortgagee shall pay all recording fees, taxes and stamps to any governmental authority required for the initial recordation and perfection of the lien created by this instrument.

**SECTION 4.11 Permitted Encumbrances.** The Mortgagor shall not permit any default or violation to occur with respect to any agreement, covenant or restriction included in Permitted Encumbrances.

## ARTICLE 5

### Defeasance, Default and Remedies

**SECTION 5.1 Defeasance.** This Mortgage is made upon the condition that if (a) all of the Obligations (as defined in Section 1.2(o), including all future advances and other future indebtednesses, obligations and liabilities included therein) are paid in full, and (b) the Mortgagor reimburses the Mortgagee for any amounts the Mortgagee has paid in respect of Liens, Impositions, prior mortgages, insurance premiums, repairing or maintaining the Property, performing the Mortgagor's obligations under any lease related to the Real Property, and any other advancements hereunder, and interest thereon, and (c) the Mortgagor fulfills all of the Mortgagor's other obligations under this Mortgage, and (d) the Mortgagor has no obligation to extend any further indemnification to or for the account of the Mortgagee and there is in existence no contingent liability of the Mortgagor that is secured by this Mortgage, this conveyance shall be null and void upon the filing by the Mortgagee of the written instrument of termination described in Section 6.19. **ANY AND ALL PROVISIONS OF THIS ARTICLE OR ANY OTHER PROVISION OF THIS MORTGAGE NOTWITHSTANDING, THIS MORTGAGE SHALL EXPIRE ON A DATE WHICH IS TEN (10) YEARS FROM THE DATE OF EXECUTION HEREOF UNLESS THERE ARE ON THAT DATE ANY ACTIVE PENDING CLAIMS UNDER THE OBLIGATIONS.**

**SECTION 5.2 Events of Default.** The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Mortgage (whatever the reason for such event and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any Governmental Requirement):

(a) any representation or warranty made in this Mortgage shall prove to be false or misleading in any material respect as of the time made; or

(b) default shall be made in the payment when due of any of the Obligations; or

(c) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of this Mortgage (other than any covenant, condition or agreement, default in the observance or performance of which is elsewhere in this Section 5.2 specifically dealt with) and such default shall continue unremedied for a period of thirty (30) days after written notice by the Mortgagee to the Mortgagor; or

(d) Mortgagor shall (1) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian of Mortgagor or any of Mortgagor's properties or assets (including the Property), (2) fail or admit in writing Mortgagor's inability to pay Mortgagor's debts generally as they become due, (3) make a general assignment for the benefit of creditors, (4) suffer or permit an order for relief to be entered against Mortgagor in any proceeding under



the federal Bankruptcy Code, or (5) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against Mortgagor in any proceeding under any such law or statute, or if corporate action shall be taken by Mortgagor for the purpose of effecting any of the foregoing; or

(e) a petition shall be filed, without the application, approval or consent of Mortgagee in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of Mortgagor or of all or a substantial part of the properties or assets of Mortgagor, or seeking any other relief under any law or statute of the type referred to in Section 5.2(d)(5) against Mortgagor, or the appointment of a receiver, trustee, liquidator or other custodian of Mortgagor or of all or a substantial part of the properties or assets of Mortgagor, and such petition shall not have been stayed or dismissed within 90 days after the filing thereof; or

(f) Mortgagor shall be dissolved or liquidated or become insolvent; or

(g) any writ of execution, attachment, garnishment or filing of a judgment, any of which must directly effect and relate to the Property and such writ of execution, attachment, garnishment or judgment shall not be dismissed, discharged or quashed within 30 days of issuance or filing in the case of a judgment.

Any and all provisions of this Article notwithstanding, no action or inaction by Mortgagee in its capacity as Lessee under its Lease of the Property from Mortgagor as Landlord of even date herewith shall constitute or be interpreted to create the existence of an Event of Default under this Mortgage.

### **SECTION 5.3 Rights and Remedies of Mortgagee Upon Default.**

(a) **Acceleration of Obligations.** If an Event of Default exists under Section 5.2(d) or 5.2(e), all of the Obligations shall automatically become immediately due and payable. If any other Event of Default exists, the Mortgagee shall have the right without further notice to the Mortgagor to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** If an Event of Default exists, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person designated by the Mortgagee) may, but will not be obligated to, (1) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; (2) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (3) make repairs and purchase needed additional property; (4) insure or reinsure the Property; (5) maintain and restore the Property; (6) prepare the Property for resale, lease or other



disposition; (7) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (8) exercise every power, right and privilege of the Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** If an Event of Default exists, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property, to sue the Mortgagor for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagee shall be entitled, as a matter of right (upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the extent required by law), to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** If an Event of Default exists, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to the Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Mortgagee may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(e) **Personal Property and Fixtures.** If an Event of Default exists, the Mortgagee shall have with respect to the UCC Property all rights and remedies of a secured party under the Alabama Uniform Commercial Code, including the right to sell it at public or private sale or otherwise dispose of, lease or use it, without regard to preservation of the UCC Property or its value and without the necessity of a court order. At the Mortgagee's request, the Mortgagor shall assemble the UCC Property and make it available to the Mortgagee at any place designated by the Mortgagee. To the extent permitted by law, the Mortgagor expressly waives notice and any other formalities prescribed by law with respect to any sale or other disposition of the UCC Property or exercise of any other right or remedy upon default. The Mortgagor agrees that the Mortgagee may sell or dispose of both the Real Property and the UCC Property in accordance with the rights and remedies granted under this Mortgage with respect to Real Property.

(f) **Rents and Leases.** If an Event of Default exists, the Mortgagee, at its option, shall have the right, power and authority to terminate the license granted to the Mortgagor in Section 2.1(d) to collect the rents, profits, issues and revenues of the Real Property, whether paid or accruing before or after the filing of any petition by or against the Mortgagor under the federal Bankruptcy Code, and, without taking possession, in the Mortgagee's own name to demand, collect, receive, sue for, attach and levy all of such rents, profits, issues and revenues, to give proper receipts, releases and acquittances therefor, and to apply the proceeds thereof as set forth in Section 5.3(h).

(g) **Foreclosure Deeds.** To the extent permitted by applicable law, the Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, 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.

(h) **Order of Application of Proceeds.** All payments received by the Mortgagee as proceeds of any of the Property, as well as any and all amounts realized by the Mortgagee in connection with the enforcement of any right or remedy under this Mortgage, shall be applied by the Mortgagee as follows: (1) to the payment of all expenses incident to the exercise of any remedies under this Mortgage, including attorneys' fees and disbursements as provided in the Agreement and the Mortgage, appraisal fees, environmental site assessment fees, title search fees and foreclosure notice costs, (2) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) in such order as the Mortgagee may elect in its sole discretion, (3) to a cash collateral reserve fund to be held by the Mortgagee in an amount equal to, and as security for, any of the Obligations that are not then due and payable, and (4) the remainder, if any, shall be paid to the Mortgagor or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(i) **Multiple Sales.** If an Event of Default exists, the Mortgagee shall have the option to proceed with foreclosure, either through the courts or by power of sale 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, and such sale, if so made, shall not affect the unmatured part of the Obligations, 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 this Section 5.3(i). Several sales may be made hereunder 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 the 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.

(j) **Waiver of Certain Laws.** The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (1) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (2) 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). The Mortgagor also waives any and all rights the Mortgagor may have to a hearing before any Governmental Authority prior to the exercise by the Mortgagee of any of its rights or remedies under the Agreement and the Mortgage and applicable law.

(k) **Prerequisites of Sales.** In case of any sale of the Property as authorized by this Section 5.3, 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 rebuttably presumptive evidence that the facts so stated or recited are true.

**SECTION 5.4 Default Rate.** If an Event of Default exists, the Obligations shall bear interest at the Default Rate, until the earlier of (a) such time as all of the Obligations are paid in full or (b) no such Event of Default exists. For purposes of this paragraph only and the application of the Default Rate of interest, the term "Obligations" is absolutely limited to those Obligations which are not otherwise subject to judicial or administrative interest imposed by statute or regulation.

**SECTION 5.5 Remedies Cumulative.** The rights, powers and remedies of the Mortgagee under this Mortgage are cumulative and not exclusive of any other rights, powers or remedies now or hereafter existing at law or in equity.



## ARTICLE 6

### Miscellaneous

#### SECTION 6.1 Notices.

(a) Methods. Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, the Mortgagor or the Mortgagee must (except as otherwise expressly provided in this Mortgage) be in writing and be delivered by one of the following methods: (1) by personal delivery at the hand delivery address specified below, (2) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (3) if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) Addresses. The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

(1) Mortgagor:

By hand            7516 Entrprise  
or mail:           Germantown, Tennessee 38138  
                      Attention: Harry L. Smith  
By facsimile: (901) 751-1818

(2) Mortgagee:

By hand            12500 Jefferson Avenue  
or mail:           Newport News, Virginia 23602  
                      Attention: General Counsel

By facsimile: (757) 874-7795

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 6.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer,

director, partner or other legal representative of the party) at the address or number specified pursuant to Section 6.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

(d) Five Business Days' written notice to the Mortgagor as provided above shall constitute reasonable notification to the Mortgagor when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

**SECTION 6.2 Expenses.** The Mortgagor shall promptly on demand pay all costs and expenses, including the fees and disbursements of counsel to the Mortgagee, incurred by the Mortgagee in connection with, (a) the enforcement of this Mortgage, (b) the custody and preservation of the Property, (c) the protection or perfection of the Mortgagee's rights and interests under this Mortgage in the Property, (d) the exercise by or on behalf of the Mortgagee of any of its rights, powers or remedies under this Mortgage, and (e) the prosecution or defense of any action or proceeding by or against the Mortgagee or the Mortgagor, or any one or more of them, concerning any matter related to this Mortgage, any of the Property, or any of the Obligations. All such amounts shall bear interest from the date demand is made at the Default Rate and shall be included in the Obligations secured hereby. The Mortgagor's obligations under this Section 6.2 shall survive the payment in full of the Obligations and the termination of this Mortgage.

**SECTION 6.3 Heirs, Successors and Assigns.** Whenever in this Mortgage any party hereto is referred to, such reference shall be deemed to include the heirs, successors and assigns of such party, except that the Mortgagor may not assign or transfer this Mortgage without the prior written consent of the Mortgagee; and all covenants and agreements of the Mortgagor contained in this Mortgage shall bind the Mortgagor's heirs, successors and assigns and shall inure to the benefit of the successors and assigns of the Mortgagee.

**SECTION 6.4 Joint and Several Liability.** If the Mortgagor is comprised of more than one person, all of the Mortgagor's representations, warranties, covenants and agreements under this Mortgage shall be joint and several and shall be binding on and enforceable against either, any or all of such persons comprising the Mortgagor. If any one or more of the persons comprising the Mortgagor is in default, the Mortgagee may exercise its remedies on default against any or all of the persons comprising the Mortgagor.

**SECTION 6.5 Independent Obligations.** The Mortgagor agrees that each of the obligations of the Mortgagor to the Mortgagee under this Mortgage may be enforced against the Mortgagor without the necessity of joining any other holders of Liens in any Property or any other person, as a party.

**SECTION 6.6 Governing Law.** This Mortgage shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

**SECTION 6.7 Date of Mortgage.** The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

**SECTION 6.8 Separability Clause.** If any provision of this Mortgage shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 6.9 Counterparts.** This Mortgage may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

**SECTION 6.10 No Oral Agreements.** This Mortgage is the final expression of the agreement between the parties hereto, and this Mortgage may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Mortgage and the Agreement, and there is no unwritten oral agreement between the parties hereto in existence.

**SECTION 6.11 Waiver and Election.** The exercise by the Mortgagee of any option given under this Mortgage shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the Liens 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; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose by judicial foreclosure the Liens granted by this Mortgage. No failure or delay on the part of the Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of the Mortgage, nor consent to any departure by the Mortgagor therefrom, shall be effective unless in writing and signed by an authorized officer of the Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

**SECTION 6.12 No Obligations of Mortgagee; Indemnification.** The Mortgagee does not by virtue of this Mortgage or any of the transactions contemplated by the Agreement and the



Mortgage assume any duties, liabilities or obligations with respect to any of the Property unless expressly assumed by the Mortgagee under a separate agreement in writing, and this Mortgage shall not be deemed to confer on the Mortgagee any duties or obligations that would make the Mortgagee directly or derivatively liable for any person's negligent, reckless or wilful conduct. The Mortgagor agrees to indemnify and hold the Mortgagee harmless against and with respect to any damage, claim, action, loss, cost, expense, liability, penalty or interest (including attorney's fees) and all costs and expenses of all actions, suits, proceedings, demands, assessments, claims and judgments (collectively, "claims and losses") directly or indirectly resulting from, occurring in connection with, or arising out of: (a) any inaccurate representation made by the Mortgagor in this Mortgage and (b) any breach of any of the warranties or obligations of the Mortgagor under this Mortgage or the Agreement. Without limiting the generality of the foregoing, the Mortgagor agrees that the Mortgagor's obligation to defend, indemnify and save harmless the Mortgagee set forth in this Section 6.12 shall specifically include all claims and losses asserted against or suffered by the Mortgagee that are related to or arise out of any representations or warranties in Section 3.2 that prove to be false or untrue in any material respect. The provisions of this Section 6.12 shall survive the payment of the Obligations in full and the termination, satisfaction, release (in whole or in part) and foreclosure of this Mortgage.

**SECTION 6.13 Advances by the Mortgagee.** If the Mortgagor shall fail to comply with any of the provisions of this Mortgage, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing the Mortgagor's obligations under any such provision. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made at the Default Rate, and all sums so advanced with interest shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by the Mortgagee of any Event of Default resulting from the Mortgagor's failure to pay such amounts.

**SECTION 6.14 Rights, Liens and Obligations Absolute.** All rights of the Mortgagee hereunder, all Liens granted to the Mortgagee hereunder, and all obligations of the Mortgagor hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Agreement and the Mortgage as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

**SECTION 6.15 Construction of Mortgage.** This Mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, fixture filing, hypothecation or contract, or any one or more of them, in order fully to effectuate the Liens created hereby and the purposes and agreements herein set forth.

**SECTION 6.16 Fixture Filing.** This Mortgage shall be effective as a financing statement filed as a fixture filing for purposes of Article 9 of the Uniform Commercial Code. The fixture filing covers all goods that are or are to become affixed to the Real Property. The goods are described by item or type in Section 2.1. The Mortgagor is the debtor, and the Mortgagee is the secured party. The names of the debtor (Mortgagor) and the secured party (Mortgagee) are given in the first paragraph of this Mortgage. This Mortgage is signed by the debtor (Mortgagor) as a fixture filing. The mailing address of the Mortgagee set out in Section 6.1(b)(2) is an address of the secured party from which information concerning the security interest may be obtained. The mailing address of the Mortgagor set out in Section 6.1(b)(1) is a mailing address for the debtor. A statement indicating the types, or describing the items, of collateral is set forth in this Section 6.16 and in Section 2.1. The real estate to which the goods are or are to be affixed is described in Exhibit A. The Mortgagor is a record owner of the real estate.

**SECTION 6.17 Landlord-Tenant Relationship.** Any sale of the Property under this Mortgage shall, without further notice, create the relationship of landlord and tenant at sufferance between the purchaser and the Mortgagor.

**SECTION 6.18 Other Mortgages Encumbering the Real Property.**

(a) **Authorization to Disclose.** The Mortgagor hereby authorizes the holder of any other mortgage encumbering any of the Real Property to disclose to the Mortgagee at any time the following information: (1) the amount of debt secured by such mortgage; (2) the amount of such debt that is unpaid; (3) whether such debt is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the debt secured thereby; and (5) any other information regarding such mortgage or the debt secured thereby that the Mortgagee may request from time to time.

(b) **No Amendments; Default, etc.** The Mortgagor agrees to comply with the terms of any other mortgage encumbering any of the Real Property and agrees not to consent to or permit any amendment or modification thereof without the prior written consent of the Mortgagee. The Mortgagor further agrees not to permit any default to occur under any other mortgage encumbering any of the Real Property, but that if any default should be made in the payment of principal, interest or any other sum secured by any such mortgage, the Mortgagee may (but shall not be required to) pay all or any part of such amount in default, without notice to the Mortgagor. Any such action by the Mortgagee shall not cure any Event of Default created under this Mortgage by virtue of the default in the other mortgage.

**SECTION 6.19 Termination.** This Mortgage and the Mortgagee's Liens under this Mortgage in the Property will not be terminated until a written mortgage satisfaction instrument executed by one of the Mortgagee's officers is filed for record in the county in which the Land is located. Except as otherwise expressly provided in this Mortgage, no satisfaction of this Mortgage shall in any way affect or impair the representations, warranties, agreements or other obligations of the Mortgagor or the powers, rights and remedies of the Mortgagee under this



Mortgage with respect to any transaction or event occurring prior to such satisfaction, all of which shall survive such satisfaction. Even if all of the Obligations owing to the Mortgagee at any one time should be paid in full, this Mortgage will continue to secure any Obligations that might later be owed to the Mortgagee until such mortgage satisfaction instrument has been executed and recorded. In no event shall the Mortgagee be obligated to satisfy its Liens under this Mortgage or return or release any of the Property to the Mortgagor (a) until the payment in full of all Obligations then outstanding, (b) if the Mortgagor is obligated to indemnify the Mortgagee under the Agreement, (c) if any contingent obligation of the Mortgagor to the Mortgagee remains outstanding or (d) until the expiration of any period for avoiding or setting aside any payment to Mortgagee under bankruptcy or insolvency laws.

**SECTION 6.20 Reinstatement.** This Mortgage, the obligations of the Mortgagor hereunder, and the Liens, rights, powers and remedies of the Mortgagee hereunder, shall continue to be effective, or be automatically reinstated, as the case may be, if at any time any amount applied to the payment of any of the Obligations is rescinded or must otherwise be restored or returned to the Mortgagor (or paid to the creditors of any of them, or to any custodian, receiver, trustee or other officer with similar powers with respect to any of them, or with respect to any part of their property) upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Mortgagor or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with respect to any of them, or with respect to any part of their property, or otherwise, all as though such payment had not been made.

**IN WITNESS WHEREOF,** the undersigned Schilling, Incorporated has caused this Mortgage to be executed by its duly authorized President on the date of the acknowledgment of the Mortgagor's signature below.

**SCHILLING, INCORPORATED**  
a Texas corporation

By \_\_\_\_\_

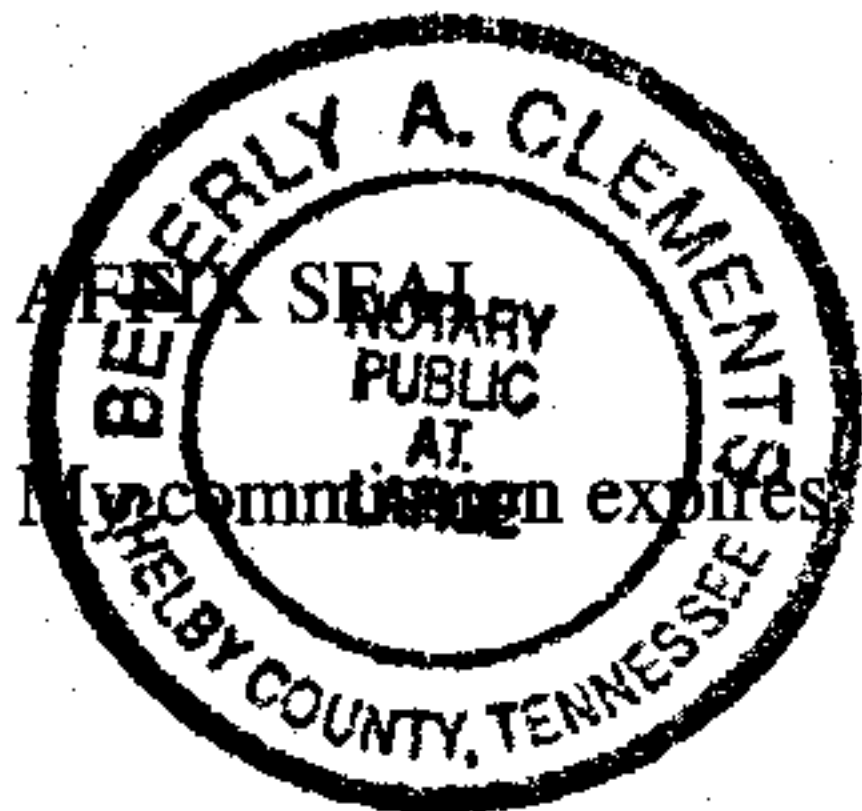
  
Harry L. Smith, President

STATE OF TENNESSEE                   )  
COUNTY OF SHELBY                   )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that HARRY L. SMITH whose name as President of Shilling, Incorporated, a Texas 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/she, 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 7<sup>th</sup> day of January, 1998.

  
Notary Public



6-19-2001

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



## EXHIBIT "A"

### REAL PROPERTY DESCRIPTION

Part of Block 1 of Cahaba Valley Park North as recorded in Map Book 13 page 140, in the Office of the Judge of Probate, Shelby County, Alabama, being situated in Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the centerline of point of tangent station 15+73.05 of Cahaba Valley Parkway; thence run Northwesterly along the centerline of said Cahaba Valley Parkway for 6.92 feet; thence 90 deg. 00 min. 00 sec. left and run Southwesterly for 30.00 feet to a point on the Westerly right of way of said Cahaba Valley Parkway, said point being the point of beginning of the property herein described; thence continue Southwesterly along the last described course for 210.00 feet to a point on the Southwesterly line of said Block 1; thence 90 deg. 00 min. 00 sec. left and run Southeasterly along said line of Block One for 400.00 feet; thence 90 deg. 00 min. 00 sec. left and run Northeasterly for 213.31 feet to a point on the Westerly right of way line of said Cahaba Valley Parkway; thence 89 deg. 58 min. 36 sec. left and run Northeasterly along the said right of way line for 192.12 feet; thence 1 deg. 57 min. 23 sec. left to become tangent to a curve to the right; said curve subtending a central angle of 1 deg. 56 min. 00 sec. and having a radius of 3,956.59 feet; thence run 200.99 feet Northwesterly along the arc of said curve and along said right of way line to the end of said curve; thence at tangent to said curve; run Northwesterly along said right of way line for 6.92 feet to the point of beginning; being situated in Shelby County, Alabama.

## **EXHIBIT "B"**

### **(Permitted Encumbrances)**

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.
2. Public easements as shown by recorded plat, including 3 feet on the Northeasterly; 15 feet on the Southwesterly; 10 feet on the Northwesterly sides and irregular easement on Northerly corner as shown on the survey of Joseph A. Miller, Jr. dated 01/26/95.
3. Restrictions, covenants and conditions as set out in instrument(s) recorded in Real 268 page 140 as amended in Real 290 page 386; Real 325 page 929; as Instrument #1992-15856 and Instrument #1993-25691 in Probate Office.
4. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed 101 page 520 and Deed 145 page 378 in Probate Office.
5. Easement(s) to Alabama Power Company as shown by instrument recorded in Real 292 page 618 in Probate Office.
6. Restrictions, covenants and conditions as set out in instrument(s) recorded in Map Book 13 page 140.
7. Lease between Mortgagor, as landlord, and Mortgagee, as tenant, dated as of January 1, 1998.

**Inst # 1998-00992**

**01/12/1998-00992  
10:49 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
026 NEL 3071.00**