

STATE OF ALABAMA)
COUNTY OF SHELBY)

Inst # 1999-47306

11/19/1999-47306
08:34 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
017 NOV 542.00

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

This Mortgage, Security Agreement and Assignment of Rents and Leases ("Mortgage") is made and entered into as of the 17th day of November, 1999, by and between **FOUNTAIN CITY BODY WORKS, INC.**, an Alabama corporation, whose address is 5541 Wares Ferry Road, Montgomery, Alabama 36117 ("Mortgagor") and **HERITAGE BANK**, whose address is 2100 SouthBridge Parkway, Post Office Box 59549, Birmingham, Alabama 35259 ("Mortgagee").

Recitals

A. Mortgagor is, or hereafter shall be, justly indebted to Mortgagee in the principal sum of **THREE HUNDRED TWENTY-NINE THOUSAND AND NO/100 DOLLARS (\$329,000.00)**, as evidenced by a promissory note of even date herewith (the "Note").

B. To secure the Note, and to induce Mortgagee to extend credit to Mortgagor, and to convey the property described herein to Mortgagee as hereinafter set forth, Mortgagor has agreed to execute and deliver Mortgage to Mortgagee.

Agreement

NOW, THEREFORE, in consideration of the premises, and to secure compliance with all of the stipulations, covenants, agreements, representations, warranties and conditions contained in Mortgage and to secure the payment of the debt evidenced by the Note, and interest thereon, and any and every extension, renewal and modification thereof, or of any part thereof, and all interest on all such extensions, renewals and modifications; the following (hereinafter collectively referred to as the "Debt"), Mortgagor does hereby grant, bargain, sell and convey unto Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A through D, both inclusive, and Mortgagor also does grant to Mortgagee a security interest in the same property and interests in property:

- A. The land described on Exhibit A attached hereto and made a part hereof (the "Real Estate"), together with all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements").
- B. All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements.
- C. (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate or the Improvements with respect to which

Mortgagor is the lessor, including but not limited to any existing leases (the "Existing Leases"), any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate or the Improvements (all such leases, subleases, agreements and tenancies heretofore mentioned, including but not limited to, the Existing Leases being hereinafter collectively referred to as the "Leases");

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

(iii) any award, dividend or other payment made hereafter to Mortgagor in any court procedure involving the Real Estate or any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. Mortgagor hereby appoints Mortgagee as Mortgagor's irrevocable attorney in fact to appear in any action and/or to collect any such award, dividend or other payment.

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

and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting, fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.

(All of the property and interests in property described in the foregoing Granting Clauses A through D, both inclusive, are herein sometimes collectively called the "Property." The personal property described in Granting Clause D and all other personal property covered by this Mortgage are herein sometimes collectively called the "Personal Property.") The proceeds of this Mortgage have been applied toward the purchase price of the Property conveyed to Mortgagor simultaneously herewith.

SUBJECT, HOWEVER, to the easements, rights-of-way and other exceptions described on Exhibit B hereto ("Permitted Exceptions").

To have and to hold the Property unto Mortgagee, its successors and assigns forever.

1. Mortgage. This Mortgage secures the repayment of the Debt in the amount of **THREE HUNDRED TWENTY-NINE THOUSAND AND NO/100 DOLLARS (\$329,000.00)** evidenced by the Note entered into between Mortgagor and Mortgagee.

2. Warranties of Title. Mortgagor covenants with Mortgagee that Mortgagor is lawfully seized of fee simple title to the Real Estate and Improvements and has a good right to sell and convey the Property as aforesaid; that the Property is free of all encumbrances, unless otherwise provided hereinbefore; and that Mortgagor will warrant and forever defend the title to the Property unto Mortgagee against the lawful claims of all persons.

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

4. Covenants To Pay Liens and Maintain Insurance. For the purpose of further securing the payment of the Debt, Mortgagor agrees to: (a) pay all taxes, assessments, and other liens taking priority over this Mortgage(hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, Mortgagee, at its option, may pay the same; (b)

keep the Property continuously insured, in such manner and with such companies as may be satisfactory to Mortgagee, against loss by flood (if the Property is located in a flood-prone area), fire, windstorm, vandalism and malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to Mortgagee) to Mortgagee, as its interests may appear. Such insurance shall be in an amount at least equal to the full insurable value of the Personal Property and Improvements unless Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefor, shall be delivered to, and held by, Mortgagee until the Debt is paid in full. The original insurance policy and all replacements there for must provide that they may not be canceled without the insurer's giving at least fifteen days' prior written notice of such cancellation to Mortgagee.

5. Assignment of Insurance Policies, etc. Mortgagor hereby assigns and pledges to Mortgagee, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof), together with all right, title and interest of Mortgagor in and to each and every such policy, including, but not limited to, all Mortgagor's right, title and interest in and to any premiums paid on each such policy, including all rights to return premiums. If Mortgagor fails to keep the Property insured as specified above then, at the election of Mortgagee and without notice to any person, Mortgagee may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as Mortgagee may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Debt, or, at the election of Mortgagee, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements. All amounts spent by Mortgagee for insurance or for the payment of Liens or for remediation of any environmental condition as required by any lawful authority shall become a debt due by Mortgagor to Mortgagee and at once payable, without demand upon, or notice to, Mortgagor, and shall be secured by this Mortgage, and shall bear interest at the rate of interest set forth in the Note, or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by Mortgagee until paid by Mortgagor.

6. Assignment of Condemnation Proceeds, etc. As further security for the Debt and the full and complete performance of each and every obligation, covenant, agreement and duty of Mortgagor contained herein, and to the extent of the full amount of the Debt secured hereby and of the costs and expenses (including reasonable attorney's fees) incurred by Mortgagee in the collection of any award or payment, Mortgagor hereby assigns to Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property. All such damages, condemnation proceeds and consideration shall be paid directly to Mortgagee, and after first applying said sums to the payment of all costs

and expenses (including reasonable attorneys' fees) incurred by Mortgagee in obtaining such sums, Mortgagee may, at its option, apply the balance on the Debt in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Debt, or apply such balance to the restoration of the Property, or release the balance to Mortgagor. No such application, holding in reserve or release shall cure or waive any default of Mortgagor.

7. Covenant Against Waste. Mortgagor agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, and at all times to maintain such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted.

8. Hazardous Substances.

(a) Right of Mortgagee to Remove Prohibited Substances. Except for the hazardous materials and substances and the use thereof required to construct and to operate and maintain the Improvements, Mortgagor shall not make, store, use, treat, release or dispose of any hazardous substances, pollutants or other contaminants ("Prohibited Substances") on or under the Real Estate. If any such Prohibited Substances are nonetheless made, stored, used, treated, released, disposed of or found to exist on or under the Real Estate, Mortgagor shall give immediate written notice to Mortgagee of such occurrence or existence. If Mortgagor fails to keep the Real Estate or Improvements free of such Prohibited Substances, Mortgagee may, but shall not be obligated to, do or cause to be done such acts as are necessary or desirable in Mortgagee's opinion to remove and dispose of such Prohibited Substances. All amounts spent by Mortgagee for the removal and disposal of such Prohibited Substances and the return of the Real Estate and Improvements to a condition free of Prohibited Substances shall become a debt due by the Mortgagor to Mortgagee and at once payable, without demand or notice, and shall become a part of the Debt secured by this Mortgage, to bear interest as provided in the Note from the date of payment by Mortgagee until paid by Mortgagor.

(b) Indemnification of Mortgagee. Mortgagor hereby warrants that to the best of Mortgagor's knowledge, (i) there are no civil, criminal or administrative environmental proceedings involving the Real Estate that are pending or to Mortgagor's knowledge threatened; (ii) Mortgagor knows of no facts or circumstances that might give rise to such a proceeding in the future; (iii) the Real Estate is in compliance with all applicable federal, state and local statutory and regulatory environmental requirements; and (iv) to the best of Mortgagor's knowledge, except as disclosed by Mortgagor to Mortgagee, the Real Estate is free from any and all "hazardous substances," "pollutants" and other "contaminants," as those terms are defined in the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and rules and regulations thereunder. Mortgagor shall give immediate written notice to Mortgagee of any actual or threatened "release" (as defined in CERCLA and rules and regulations thereunder) of such substances on or from the Real Estate or any portion thereof at any time during or preceding Mortgagor's ownership of the Real Estate. Mortgagor shall indemnify and hold Mortgagee harmless from and against all loss, damages, fines, penalties, liability and expenses

(including but not limited to reasonable attorneys fees actually incurred at the hourly rate customarily charged to Mortgagee and costs of investigation and litigation) caused by or in any manner resulting from such substances on or under the Real Estate or any portion thereof at any time during or preceding Mortgagor's ownership of the Real Estate. The indemnity provisions of this Paragraph 8 shall survive the satisfaction of this Mortgage and shall continue in full force and effect notwithstanding the payment of the Debt in full.

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

10. Defeasance. This Mortgage is made upon the condition that if Mortgagor pays the Debt, as defined in this Mortgage (which Debt includes without limitation the debt evidenced by the Note, and interest thereon, and all other indebtedness, obligations and liabilities of Mortgagor to Mortgagee of every kind and description whatsoever, due or to become due, and now existing or hereafter incurred, contracted or arising), and reimburses Mortgagee for any amounts Mortgagee has paid in respect of Liens or insurance premiums, and interest thereon, and fulfills all of its other obligations under this Mortgage, this conveyance shall be null and void.

11. Events of Default. Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) Mortgagor shall fail to pay to Mortgagee when due the principal or interest on the Debt evidenced by the Note or any other sum due under the Loan Agreement or any of the other Security Documents (as defined in the Loan Agreement), or (b) if Mortgagor fails to comply with any of the provisions of this Mortgage or of the Note, the Loan Agreement or the other Security Documents and such default remains uncured for a period of thirty (30) days after Mortgagee gives Mortgagor written notice thereof; or (c) if any statement, representation or warranty contained in this Mortgage, the Loan Agreement or any of the other Security Documents or any report, certificate or other instrument delivered to Mortgagee in connection with any of the same shall be untrue when made in any material respect; or (d) if Mortgagor conveys or further encumbers all or part of the Property; or (e) if any lien, statement of lien or suit to enforce a lien is filed against any of the Property and Mortgagor fails to have such lien satisfied or suit dismissed or to secure the payment of the amount claimed by such lien, statement of lien or suit by a bond, letter of credit or other security satisfactory to Mortgagee within thirty (30) days of the day such lien or statement of lien is filed in the office of the Judge of Probate of the County in which the Real Estate is located or such suit

is filed in court; or (f) if any other event of default occurs under the Note, the Loan Agreement or any of the other Security Documents and remains uncured after any required notice and right to cure, if any; or (g) the interest of Mortgagee in any of the Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; or (h) any law is passed imposing, or authorizing the imposition of, any specific tax upon this Mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal of, or interest on, the Debt, or by virtue of which any tax, lien or assessment upon the Property shall be chargeable against the owner of Mortgage; or (i) any of the stipulations contained in this Mortgage is declared invalid or inoperative by any court of competent jurisdiction.

12. Rights and Remedies of Mortgagee upon Default.

(a) Acceleration of Debt. Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, Mortgagee may at its option and without demand or notice to Mortgagor, declare all or any part of the Debt immediately due and payable, whereupon all such Debt shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Mortgagor, and Mortgagee may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, any of the other Security Documents and applicable law. Mortgagor also waives any and all rights Mortgagor may have to a hearing before any judicial authority prior to the exercise by Mortgagee of any of its rights under this Mortgage, the Note, any of the other Security Documents and applicable law.

(b) Access to Property; Operation of Property by Mortgagee. Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person, firm or corporation designated by Mortgagee) may, but will not be obligated to, enter upon, and without taking possession thereof, inspect or cause to be inspected, the Property, including testing for hazardous substances, and/or to take possession of any or all of the Property, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; and Mortgagee may collect, receive and receipt for all proceeds accruing from such operation and management, make repairs and purchase needed additional property, and exercise every power, right and privilege of Mortgagor with respect to the Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, Mortgagee, in lieu of, or in addition to, exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue Mortgagor for damages on account of or arising out of said default or breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. 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 appointment by any competent court

or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) Foreclosure Sale. Upon the occurrence of an Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, after giving notice by publication once a week for three consecutive weeks of the time, place and terms of each such sale by publication in some newspaper published in Shelby County, Alabama, to sell the Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) at the appropriate courthouse door considered the front or main door of such courthouse, at public outcry, to the highest bidder for cash. Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case 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 Debt secured hereby shall have been paid in full.

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

by law relative to, the sale or disposition of the Collateral or to the exercise of any other right or remedy of Mortgagee existing after default. To the extent that such notice is required and cannot be waived, Mortgagor agrees that if such notice is given to Mortgagor in accordance with the provisions of Paragraph 24 below, at least five days before the time of the sale or other disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving said notice.

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

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

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

(A) to terminate automatically, without the necessity of taking any action, the license granted to Mortgagor in Granting Clause C (ii) hereof to collect the Rents, and, without taking possession, in Mortgagee's own name to demand, collect, receive, sue for, attach and levy the Rents, to give proper receipts, releases and acquittances therefor, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney's fees, to apply the net proceeds thereof to the Debt in such order and amounts as Mortgagee may choose (or hold the same in a reserve as security for the Debt);

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by court, to enter upon, take possession of, manage and operate the Property or any part thereof for the account of Mortgagor, make, modify, enforce, cancel or accept surrender of any Lease, remove and evict any lessee or sublessee, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expenses Mortgagee shall deem proper to protect the security hereof, as fully and to the same extent as Mortgagor could do if in possession, and in such event to apply any funds so collected to the operation and management of the Property

(including payment of reasonable management, brokerage and attorney's fees) and payment of the Debt in such order and amounts as Mortgagee may choose (or hold the same in reserve as security for the Debt); and

(C) (i) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or covenant or agreement of Mortgagor under Mortgage.

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

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

(h) Multiple Sales. Upon the occurrence of an Event of Default or at any time thereafter during the continuance thereof, Mortgagee shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this Mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unmatured part of the Debt secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Debt secured by this Mortgage, but as to such unmatured part of the Debt, this Mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Debt 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 Debt without exhausting any power of foreclosure and the

power to sell the Property for any other part of the Debt, whether matured at the time or subsequently maturing.

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

(j) Prerequisites of Sales. In case of any sale of the Property as authorized by this Paragraph 12, 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 Debt or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

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

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

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, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

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

17. Waiver and Election. The exercise by Mortgagee of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this Mortgage, either on any matured portion of the Debt or for the whole of the Debt, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of 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 other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the Security Documents, nor consent to any departure by Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of Mortgagee, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to, or demand on, Mortgagor in any case shall entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

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

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

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

21. Advances by Mortgagee. If Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair, the performance of Mortgagor's obligations under any Lease, the payment of any prior mortgages, or the performance of any other term or covenant herein contained, 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 any such term or covenant. Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Debt and shall be secured hereby. The making of any such advances shall not be construed as a waiver by Mortgagee of any Event of Default resulting from Mortgagor's failure to pay the amounts paid.

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

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

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

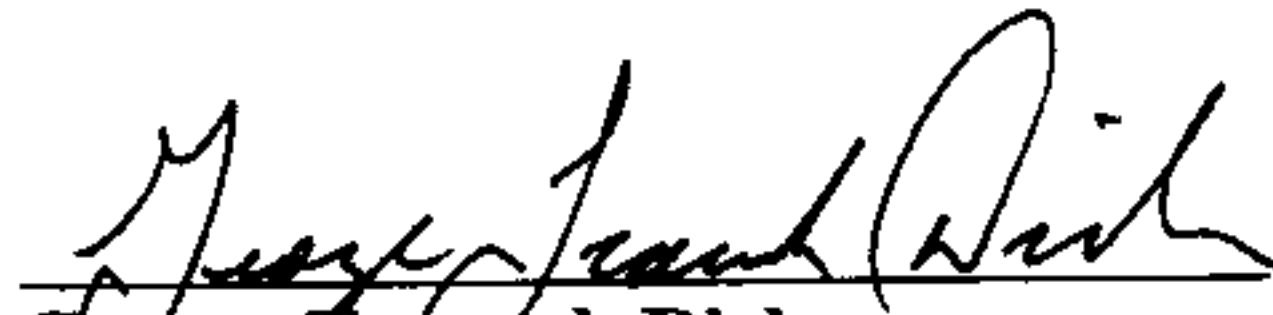
25. Titles. All section, paragraph, subparagraph or other titles contained in this Mortgage are for reference purposes only, and this Mortgage shall be construed without reference to said titles.

[SIGNATURES BEGIN ON NEXT PAGE]


IN WITNESS WHEREOF, the undersigned Fountain City Body Works, Inc., an Alabama corporation, has caused this Mortgage to be executed as of the date first written above.

FOUNTAIN CITY BODY WORKS, INC.

By:


George Traweck Dickson
As its President

By:


Freddie Joe Hudson
As its Secretary

STATE OF ALABAMA)
COUNTY OF SHELBY)

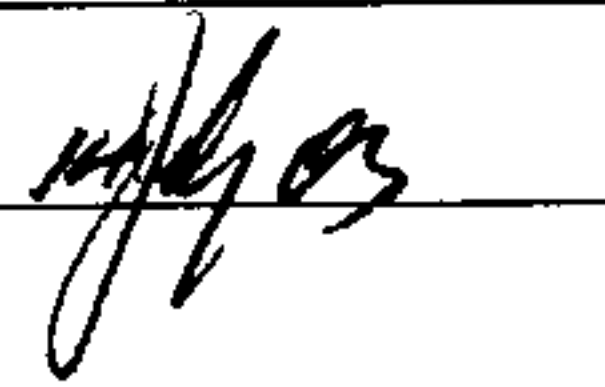
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that George Traweck Dickson, whose name as President of Fountain City Body Works, Inc., an Alabama corporation, is signed to the foregoing mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of said mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 17th day of November, 1999.

AFFIX SEAL


Notary Public

My commission expires:



STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Freddie Joe Hudson, whose name as Secretary of Fountain City Body Works, Inc., an Alabama corporation, is signed to the foregoing mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of said mortgage, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 17th day of November, 1999.

AFFIX SEAL



Notary Public

My commission expires: 17 July 01

This instrument prepared by
James J. Odom, Jr.
Post Office Box 11244
Birmingham, AL 35202
(205) 664-8691

EXHIBIT "A"

LEGAL DESCRIPTION

Lot 1, according to the Survey of The Ace Subdivision, as recorded in Map Book 20, at Page 137, in the Probate Office of Shelby County, Alabama, being situated in Shelby County, Alabama.

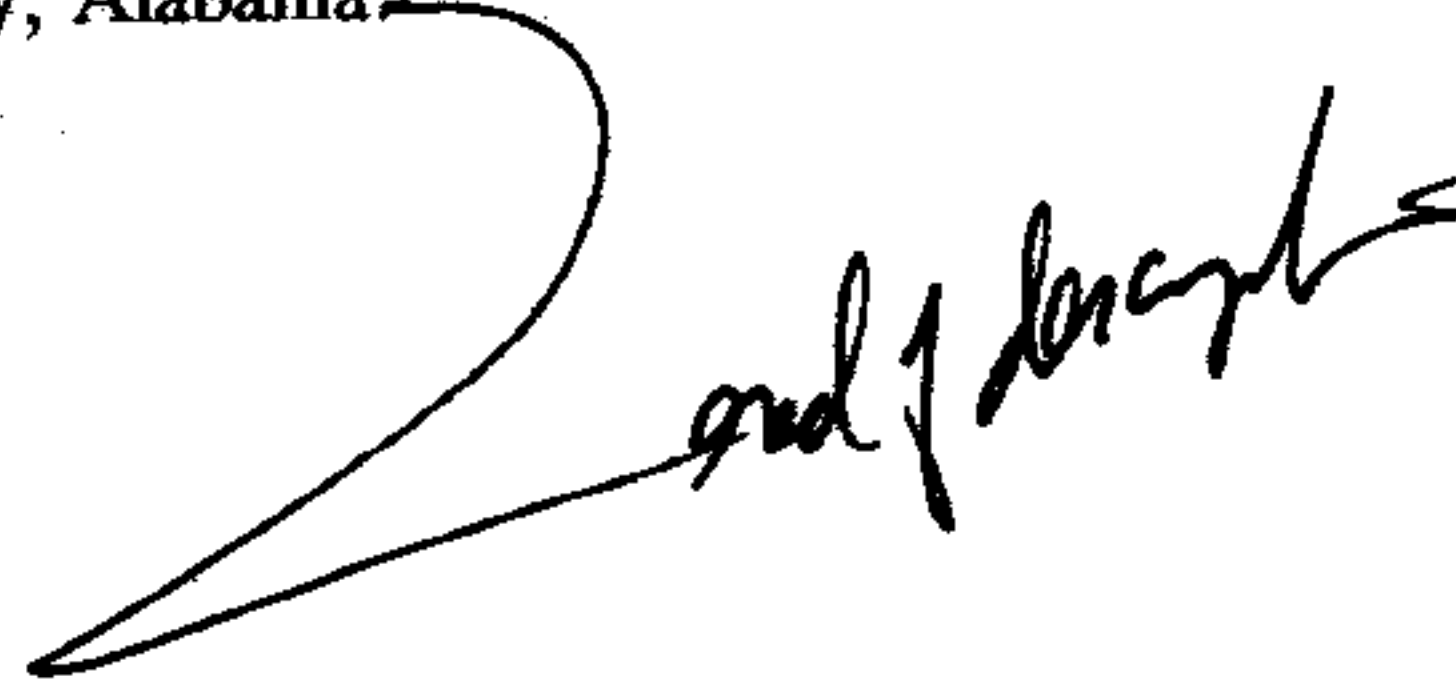
A handwritten signature in black ink, appearing to read "and J. [unclear]", written over a long horizontal line that extends from the left margin.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Transmission Line Permits to Alabama Power Company as shown by instrument recorded in Deed 129, at Page 560, and Real 48, at Page 36, in the Office of the Judge of Probate of Shelby County, Alabama.
2. Transmission Line Permits to Shelby County as shown by instruments recorded in Deed 177, at Page 91, and Deed 216, at Page 16, in the Office of the Judge of Probate of Shelby County, Alabama.
3. Covenant releasing predecessor in title from any liability arising from sinkholes, limestone formations, soil conditions or any other known or unknown surface or subsurface conditions that may now or hereafter exist or occur or cause damage to subject property, as shown by Map Book 20, at Page 137, and Instrument Number 1996-8657 in the Office of the Judge of Probate of Shelby County, Alabama.
4. Building setback line of 20 feet reserved from the Easterly side of lot as shown by plat. Said setback has been violated in that the house overlaps the land, as shown by Map Book 20, at Page 137.
5. Restrictions, limitations and conditions as set out in Map Book 20, Page 137.

Inst # 1999-47306

**11/19/1999-47306
08:34 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
017 NWS 542.00**