

MORTGAGE DEED

STATE OF ALABAMA)

) **KNOW ALL PERSONS BY THESE PRESENTS, THAT:**

SHELBY COUNTY)

WHEREAS, Betty Duncan as Trustee of the Esther J. Johnston Irrevocable Trust dated February 26, 1982, and recorded in Real Volume 2166, Page 284, in the Probate Office of Jefferson County, Alabama (hereinafter referred to as "Mortgagor") have become justly indebted to Heritage Bank (hereinafter referred to as the "Mortgagee"), in the principal sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), as evidenced by negotiable note of even date herewith (hereinafter referred to as the "Note");

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of the principal sum, including any and all additional advances and any renewals or extensions of the same or any other indebtedness, now or hereafter owed by Mortgagor to Mortgagee (hereinafter referred to as "indebtedness"), in compliance with all the stipulations hereinafter contained, the Mortgagor does hereby grant, bargain, sell and convey to the Mortgagee the following described real estate, situated in the County of Shelby, State of Alabama:

SEE EXHIBIT "A" ATTACHED HERETO

SUBJECT TO:

1. Restrictions, covenants and conditions as set out in instrument(s) recorded in Deed Book 352, pages 805 and 818 and Real 136, page 619, in Probate Office.
2. Right(s)-of-Way(s) granted to Shelby County by instrument(s) recorded in Deed Book 244, page 129 and Deed Book 239, page 237, in Probate Office.
3. Easement(s) to Alabama Power Company as shown by instrument recorded in Real 149, page 41, in Probate Office.
4. Encroachment of metal building on the South property line off of subject property as shown on the survey by Joseph E. Conn, Jr. dated March 6, 1997.
5. Public easement, including 30 foot easement on the Northerly side of lot as shown on the survey by Joseph E. Conn, Jr. dated March 6, 1997.

The above described property together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by the Mortgagor in and to all buildings and improvements, all lumber, brick, electrical, plumbing, heating and air-conditioning equipment and fixtures, roofing, paint, doors, windows, hardware, stoves, ranges, refrigerators, and all other materials, equipment, and chattels and things of every kind and character now or at any time hereafter located on the above described premises (the "premises"), for use or usable on the premises, attached or appertaining thereto. All of said rights, privileges, easements, interests, improvements, and properties shall be deemed realty and part of the premises and are hereby conveyed to the Mortgagee. The premises and the entire estate property and interest are hereinafter collectively referred to as the "Mortgaged Property."

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

And for the purpose of further securing the payment of said indebtedness the Mortgagor covenants and agrees as follows:

06/15/2001-24627
09:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MEL 776.00

Inst # 2001-24627

1. That it is lawfully seized in fee and possessed of the Mortgaged Property and has a good right to convey the same as aforesaid, that it will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the Mortgaged Property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

2. That it will make all payments of principal and interest under the Note, and that it will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed legally upon the Mortgaged Property and should default be made in the payment of same, or any part thereof, the Mortgagee may pay the same but shall not be required to. The Mortgagee, upon payment of any such obligations of the Mortgagor, may add the amount of those payments to the principal amount of the debt secured by this Mortgage. Any payment by the Mortgagee shall not release the Mortgagor from the Mortgagor's obligations or constitute a waiver of the Mortgagor's default under this Mortgage.

3. That it will keep the buildings on the Mortgaged Property continuously insured in such amounts, in such manner and in such companies as may be satisfactory to the Mortgagee against loss by fire and such other hazards as Mortgagee may specify, with loss, if any, payable to the Mortgagee. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damages to said Mortgaged Property caused by any casualty. If Mortgagor fails to keep said property insured as above specified, the Mortgagee may insure said property for its insurable value against loss by fire and other hazards for benefit of the Mortgagee. The proceeds of such insurance shall be paid by insurer to Mortgagee which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the indebtedness secured by this mortgage, less cost of collecting the same, and any amount used in repairing or reconstructing the premises as the Mortgagee may elect.

4. All amounts expended by Mortgagee for insurance or tax assessments or any other prior liens shall become a debt due the Mortgagee, additional to the indebtedness and at once payable without demand upon or notice to any person, and shall be secured by the lien of this mortgage and shall bear interest at the highest legal rate from day of payment by the Mortgagee, but not to exceed eighteen percent (18%) per annum, and at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the indebtedness secured by this mortgage due and payable and this mortgage subject to foreclosure and same be foreclosed as hereinafter provided.

5. To take good care of the Mortgaged Property and not to commit or permit any waste thereon, and to keep the same repaired and at all times to maintain the same in as good condition as it now is, reasonable wear and tear alone excepted.

6. That no delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of the Mortgagor, and that the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagor to procure such insurance or to pay such taxes, it being agreed that no terms or conditions contained in this mortgage can be waived, altered, or changed except as evidenced in writing signed by the Mortgagor and by the Mortgagee.

7. That it will well and truly pay and discharge any indebtedness hereby secured as it shall become due and payable including any future sums advanced by the Mortgagee, the Note or notes above described, any renewals or extensions thereof, and any other notes or obligations of Mortgagor to Mortgagee whether now or hereafter incurred. All payments received by Mortgagee shall first be applied to reimburse the Mortgagee for any payments made by Mortgagee under paragraph 2 hereinabove, then to interest payable on the Note, then to the principal on the Note.

8. That after any default on the part of the Mortgagor in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, the Mortgagee may at its option take immediate possession of the Mortgaged Property and proceed to collect the rent, income, and profits from the Mortgaged Property, either with or without the appointment of a receiver. The Mortgagor irrevocably appoints Mortgagee as its true and lawful attorney-in-fact at the option of the Mortgagee at any time and from time to time, to demand, receive, and enforce payment, to give receipt, releases and satisfaction, and to sue, in the name of the Mortgagor or Mortgagee for any rents, issues or profits and apply any sums so received, after the payment of cost and expenses thereof, to the indebtedness secured. Any rents, income, and profits collected by the Mortgagee, prior to foreclosure of this indebtedness, less the cost of collecting the same, including any real estate commission or attorney's fee incurred, shall be credited on the indebtedness, including interest thereon, hereby secured in such manner or proportion as Mortgagee may elect.

9. That all the covenants and agreements of the Mortgagor herein contained shall extend to and bind its heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to the Mortgagee shall inure to the benefit of the successors or assigns of the Mortgagee.

10. That the indebtedness hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard to the form and contents of such statement and without regard to the existence or non-existence of the debt or any part thereof, or of the lien on which such statement is based.

11. The Mortgagor irrevocably submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (the "Court") over any suit, action or proceeding arising out of or relating to this mortgage; and, further, waive any objection that the Mortgagor may now or hereafter have based on improper venue, lack of jurisdiction, inconvenience of forum, in any action brought in any of the courts.

12. The Mortgagor, the Mortgagee, and any beneficiary or successor of any of them, do each hereby waive all rights to a trial by jury in any suit, action, or proceeding relating to any transaction, grievance or claim under this mortgage or the negotiating, making or payment of the indebtedness hereby secured. This waiver is knowingly, voluntarily and intentionally being entered into as part of the consideration of and a condition of the making of the Loan hereby secured, and the entering into of this mortgage.

13. Mortgagor hereby agrees that, in consideration of the recitals and mutual covenants contained herein, and for other good and valuable consideration, including the forbearance of Mortgagee from exercising its rights and remedies otherwise available to it under the mortgage, the receipt and sufficiency of which are hereby acknowledged, in the event Mortgagor shall (a) file with any bankruptcy court of competent jurisdiction or be the subject of any petition under Title 11 of the U.S. Bankruptcy Code, as amended ("Bankruptcy Code"), (b) be the subject of any order for relief issued under the Bankruptcy Code, (c) file or be the subject of any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, (d) have sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator, or liquidator, or (e) be the subject of any order, judgment, or decree entered by any court of competent jurisdiction approving a petition filed against such party for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or relief for debtors, then, subject to court approval, Mortgagee shall thereupon be entitled and Mortgagor irrevocably consents to relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies otherwise available to Mortgagee as provided in the mortgage and as otherwise provided by law, and Mortgagees hereby irrevocably waive their right to object to such relief.

14. Upon any monetary default which remains uncured after ten (10) days written notice to the Mortgagor, or any non-monetary default not cured within a reasonable period of time after ten (10) days written notice, the Mortgagee may declare the entire indebtedness hereby payable, without any presentation, demand or protest, and proceed to commence foreclosure of this Mortgage, or effect any other remedy available hereunder.

15. This Mortgage applied to, and inures to the benefit of, and binds the Mortgagor, Mortgagor's heirs, successors, and assigns.

16. Mortgagor may not transfer, assign or convey any interest in the Mortgaged Property without first securing the written consent of Mortgagee.

17. Plural or singular words used herein to designate the undersigned Mortgagor shall be construed to refer to the Maker or Makers of this mortgage, whether one or more persons or a corporation.

UPON CONDITION, HOWEVER, that if the Mortgagor shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect hereof, then, and in that event only, this conveyance shall be and become null and void; but should default be made in the payment of the indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by the Mortgagee under the authority of any of the provisions of this mortgage, or should the interest of the Mortgagee in the Mortgaged Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon so as to endanger the indebtedness hereby secured, or should a petition to condemn any part of the Mortgaged Property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the indebtedness hereby secured, or permitting or authorizing the deduction of any such tax from the principal or interest secured by this mortgage or by virtue of which any tax or assessment upon the Mortgaged Property shall be charged against the owner of this mortgage or should at any time any of the stipulations contained in this mortgage be declared invalid or inoperative by any court of competent jurisdiction or should the Mortgagor fail to do and perform any term, provision, act, or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part of same which may not at said date have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of the Mortgagee. Notice of the exercise of such option is hereby expressly waived; and the Mortgagee shall have the right to enter upon and take possession of the Mortgaged Property hereby conveyed and after or without taking such possession to sell the same in front of the Courthouse door of the County wherein the Mortgaged Property is situated, or a part thereof is situated, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said County, and upon the payment of the purchase money the Mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagor a good and sufficient deed to the property sold. The Mortgagee shall apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; and fourth, the balance, if any, to be paid over to the Mortgagor or to whomsoever then appears of record to be the owner of said property. The Mortgagee may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder. The Mortgagor hereby waives any requirements that the Mortgaged Property be sold in separate tracts or parcels and agrees that the Mortgagee may, at its option, sell the Mortgaged Property en masse, regardless of the number of parcels hereby conveyed.

IN WITNESS WHEREOF, the Mortgagor has caused these presents to be executed on this the 14th day of June, 2001.

WITNESS:

MORTGAGOR:

Betty Duncan, Trustee
BETTY DUNCAN AS TRUSTEE OF THE ESTHER J. JOHNSTON IRREVOCABLE TRUST dated February 26, 1982, and recorded in Real Volume 2166, Page 284, in the Probate Office of Jefferson County, Alabama

STATE OF ALABAMA)
)
SHELBY COUNTY)

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Betty Duncan, whose name is signed to the foregoing Lease, as trustee of the Esther J. Johnston Irrevocable Trust, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, she executed the same voluntarily in said capacity on day the same bears date.

Given under my hand and seal this 14th day of June, 2001.

Gleanor Kate Wright
Notary Public
Commission Expires 11-9-01

THIS INSTRUMENT PREPARED BY:
William S. Pritchard, III
PRITCHARD, McCALL & JONES, L.L.C.
800 Financial Center
505 North 20th Street
Birmingham, Alabama 35203
Telephone: (205) 328-9190

EXHIBIT "A"

A parcel of land in the SE ¼ of the NE ¼ of Section 19, Township 21 South, Range 2 West Shelby County, Alabama, described as follows:

Commence at the SE corner of Section 19, Township 21 South, Range 2 West, Shelby County, Alabama and run thence Northerly along the east line of said Section 19 a distance of 2834.30 feet to a point on the North line of property conveyed to Asplundh Tree Expert Company by deed recorded in Real 207 page 292 in the Probate Office of Shelby County, Alabama; thence turn 89 deg. 48 min. 08 sec. left and run Westerly along the North line of property owned by Asplundh Tree Expert Company 110.01 feet to a steel pin corner on the West margin of Shelby County Highway No. 87 and the point of beginning of the property being described; thence continue along last described course a distance of 212.31 feet to a steel pin corner; thence turn 90 deg. 00 min. 00 sec. right and run Northerly a distance of 212.48 feet to a steel pin corner in the Centerline of an existing gravel road or driveway; thence turn 89 deg. 59 min. 59 sec. right and run Easterly along the centerline of said gravel road or drive a distance of 209.25 feet to a steel pin corner on the same said Westerly margin of same said Highway 87; thence turn 89 deg. 10 min. 29 sec. right and run Southerly along said margin of said Highway a distance of 212.50 feet to the point of beginning; being situated in Shelby County, Alabama.
Mineral and Mining rights excepted.

Inst # 2001-24627

06/15/2001-24627
09:53 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MEL 776.00