

Prepared by:  
Damon P. Denney, Esq.  
BURR & FORMAN LLP  
3100 SouthTrust Tower  
420 North 20th Street  
Birmingham, Alabama 35203-3202  
(205) 251-3000

STATE OF ALABAMA

COUNTIES OF JEFFERSON, SHELBY, ST. CLAIR AND WALKER

Inst # 2002-04102

01/24/2002-04102  
08:40 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
021 CH 72.00

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT**, dated the 27th day of November, 2001, is by and between **MCCULLOUGH SNAPPY SERVICE OIL CO., INC.**, a Delaware corporation, Mortgagor, whose address is P.O. Box 579, Fultondale, Alabama 35068 ("Borrower"), in favor of **SOUTHTRUST BANK**, an Alabama banking corporation (hereinafter called "Lender"), Mortgagee, whose address is Post Office Box 2554, Birmingham, Alabama 35290, Attention: Alan Drennen.

**W I T N E S S E T H:**

**WHEREAS**, pursuant to a certain Loan Agreement between Borrower and Lender, dated of even date herewith (as the same may hereafter be modified, being herein called the "Loan Agreement"), Borrower is justly indebted to Lender in the principal sum of up to **FOUR MILLION ~~FOUR HUNDRED~~ and NO/DOLLARS (\$4,000,000.00)**, as evidenced by that certain Promissory Note, dated of even date herewith, from Borrower to Lender (said Promissory Note, as the same may hereafter be renewed, extended or modified, being herein called the "Note"). *Capitalized terms used herein without definition shall have the meanings ascribed to such terms in the Loan Agreement.*

**NOW, THEREFORE**, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same, including future advances, with the interest thereon, and any extensions or renewals of same, and further to secure the performance of the covenants, conditions, and agreements hereinafter set forth and set forth in the Loan Documents, and further to secure all indebtedness, liabilities or obligations of Borrower which may at any time become due under any Financial Contract (as defined in the Note), the undersigned has bargained and sold and does hereby grant, bargain, sell, alien, mortgage and convey unto the Lender, its successors and assigns, the following described land, real estate, buildings, improvements, fixtures, furniture, and other personal property (which together with any additional such property hereafter acquired by Borrower and subject to the lien of this mortgage, or intended

---

**THIS MORTGAGE AND SECURITY AGREEMENT SERVES AS A FINANCING STATEMENT FILED AS A FIXTURE FILING, PURSUANT TO SECTION 7-9-402(6), CODE OF ALABAMA, 1975, AS AMENDED, AND SHOULD BE CROSS-INDEXED IN THE INDEX OF FIXTURE FILINGS.**

to be so, as the same may be from time to time constituted is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

(a) All that tract or parcel of land particularly described in Exhibit A attached hereto and made a part hereof (the "Property").

(b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Property, and all fixtures, machinery, equipment, furniture, furnishings, and personal property of every nature whatsoever now or hereafter owned by the Borrower and located in, on, or used or intended to be used in connection with or with the operation of said property, buildings, structures, or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing.

(c) All building materials, equipment, fixtures, fittings, and personal property of every kind or character now owned or hereafter acquired by Borrower for the purpose of being used or useful in connection with the improvements located or to be located on the real estate described herein, whether such materials, equipment, fixtures, fittings, and personal property are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located, including, but without limitation, all lumber and lumber products, bricks, building stones, and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

**TOGETHER** with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:

(a) All rents, profits, issues, and revenues of the Mortgaged Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Borrower, however, so long as Borrower is not in default hereunder, the right to receive and retain the rents, issues, and profits thereof; and

(b) All judgments, awards of damages, and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on



behalf and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto the Lender, its successors and assigns forever, subject however to the terms and conditions herein:

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if Borrower shall pay or cause to be paid to Lender the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall keep, perform, and observe all and singular the covenants and promises of Borrower in the Loan Documents, all without fraud or delay, then this mortgage, and all the properties, interest, and rights hereby granted, bargained, and sold shall cease, determine, and be void, and shall be discharged of record at the cost of Borrower, which cost Borrower agrees to pay, but shall otherwise remain in full force and effect.

**AND** this Mortgage is made subject to the following covenants and agreements:

## **ARTICLE I**

1.01. **Performance of Note and Mortgage.** This Mortgage shall secure payment of the Note and the payment and performance of all of Borrower's obligations under the Loan Documents. Borrower will perform, observe and comply with all provisions hereof and of the Note secured hereby and duly and punctually will pay to Lender the sum of money expressed in the Note with interest thereon and all other sums required to be paid by Borrower pursuant to the provisions of the Loan Documents, all without any deductions or credit for taxes or other similar charges paid by Borrower.

1.02. **Warranty of Title.** Borrower is lawfully seized of an indefeasible estate in fee simple in the Property, and has good and absolute title to all existing personal property hereby mortgaged, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid. Except as otherwise set forth in Schedule B of the loan policy of title insurance approved by Lender in connection with this Loan, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and Borrower shall and will warrant and forever defend the title thereto unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

1.03. **Monthly Tax Deposits.** If required by Lender, at any time during the term of the Loan after an Event of Default, Borrower will pay to Lender on the first day of each month together with and in addition to the regular installment of principal and/or interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Lender to be sufficient to enable Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such taxes, assessments and similar charges. Upon the occurrence of an Event of Default, Lender may apply to the

reduction of the sums secured hereby, in such manner as Lender shall determine, any amount under this Section 1.03 remaining to Borrower's credit.

**1.04. Other Taxes, Utilities and Liens.**

(a) Borrower will pay, when and as due, and prior to any delinquency, and will exhibit promptly to Lender receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same for which provision has been made in Section 1.03 hereof), as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage for any amounts secured hereby or would have priority or equality with this Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Borrower will pay promptly or cause to be paid promptly all charges by utility companies, whether public or private, for electricity, gas, water, sewer, or other utilities.

(c) Borrower shall pay promptly and will not suffer any mechanic's, laborer's, statutory, or other lien which might or could be prior to or equal to the lien of this Mortgage to be created or to remain outstanding upon any of the Mortgaged Property, unless arrangements satisfactory to Lender are made with respect thereto.

(d) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely Lender, and Borrower fails or is unable to reimburse Lender for such adverse effects, the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon shall without notice become due and payable at the option of Lender.

**1.05. Insurance.** Borrower will procure for, deliver to, and maintain for the benefit of, Lender during the life of this Mortgage, insurance policies, in such amounts as Lender shall reasonably require, with such insurers as Lender may approve, insuring the Mortgaged Property against fire, extended coverage, and such other insurable hazards, casualties and contingencies as Lender may reasonably require, including, if Lender shall require, insurance against flood. Without limiting the foregoing, during any construction of improvements to the Mortgaged Property, the Borrower shall maintain all-risk builder's risk coverage, written on a non-reporting basis in an amount not less than the cost of constructing the Improvements. With regard to existing Improvements, and upon completion or occupancy (whichever first occurs) of any Improvements hereafter constructed, the Borrower shall maintain fire and extended coverage insurance in an amount not less than the full replacement cost of the Mortgaged Property, rental continuation insurance in an amount not less than twelve (12) months expected gross revenues from the Mortgaged Property, and general liability coverage. The form of such policies and the companies issuing them shall be reasonably acceptable to Lender. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses to the building payable to Lender, a lender loss payable endorsement making losses to personalty payable to Lender and Lender shall be named as an additional insured on any liability policies. All policies



must obligate the insurer to give to Lender not less than thirty (30) days' prior written notice of cancellation. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Lender shall be delivered to Lender. Borrower shall deliver to Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

Lender is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and Lender is hereby authorized and empowered, at its option, to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to Lender, instead of to Borrower and Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, Lender may, subject to the provisions of Section 3.06 hereof, apply the net proceeds, at its option, either toward restoring the improvements, or as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future, or at the option of Lender, such sums either wholly or in part may be paid over to Borrower to be used to repair such buildings or to build new buildings in their place or for any other purpose or object satisfactory to Lender without affecting the lien of this Mortgage for the full amount secured hereby before such payment took place. Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If required by Lender at any time during the term of the Loan, Borrower will pay to Lender on the first day of each month, together with and in addition to the regular installment of principal and/or interest and monthly tax deposit (as required by Section 1.03 hereof) until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender, and no interest shall be payable in respect thereof. Upon demand of Lender, Borrower agrees to deliver to Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable Lender to pay such insurance premiums. Upon the occurrence of an Event of Default Lender may apply to the reduction of the sums secured hereby, in such manner as Lender shall determine, any amount paid in accordance herewith remaining to Borrower's credit.

**1.06. Condemnation.** If all or any portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), the entire indebtedness secured hereby shall at the option of Lender become immediately due and payable. Lender shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Borrower's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by Borrower to Lender, who, after deducting therefrom all its expenses, including attorneys' fees, may, subject to the provisions of Section 3.06 hereof, release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as Lender shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to Borrower. Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Lender may require.

**1.07. Care of the Property.**

(a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures, or appurtenances not necessarily of the same character, but of at least equal value to Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower will give immediate written notice of the same to Lender.

(d) Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours prior to the completion of the construction of the Improvements and at any time during normal business hours after reasonable notice is provided by Lender after the completion of the construction of the Improvements.

(e) Borrower will comply promptly with all present and future laws, ordinances, rules and regulations of any governmental authority, and covenants and restrictions affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, upon Lender making any insurance proceeds available to Borrower, Borrower will restore promptly the Mortgaged Property to the equivalent of its original condition, regardless of whether or not such insurance proceeds shall be sufficient for such purpose. If a part of the Mortgaged Property shall be physically damaged through condemnation, upon Lender making any condemnation proceeds available to Borrower, Borrower will restore promptly, repair or alter the remaining property in a manner satisfactory to Lender, regardless of whether or not such condemnation proceeds shall be sufficient for such purpose.

**1.08. Further Assurances; After Acquired Property.** At any time, and from time to time, upon request by Lender, Borrower will make, execute and deliver or cause to be made, executed and delivered, to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, enlarge, or perfect, or to continue and preserve the obligation of Borrower under the Loan Documents, and the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower



and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien hereof will automatically attach, without further act, to all after acquired property attached to and/or used or useful in the operation of the Mortgaged Property or any part thereof.

1.09. **Expenses.** Borrower will pay or reimburse Lender for all reasonable attorneys' fees, costs, and expenses incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding, or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting the Loan Documents, Borrower, or the Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid by Lender shall bear interest at the Default Rate, shall be payable upon demand, and shall be secured by the lien of this Mortgage.

1.10. **Performance by Lender of Defaults by Borrower.** If Borrower shall default in the payment of any tax, lien, assessment, or charge levied or assessed against the premises before the same becomes delinquent; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any covenant, condition, or term of the Loan Documents, then Lender, at its option, may perform or observe the same, and all payments made or costs incurred by Lender in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by Borrower to Lender with interest thereon at the Default Rate. Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender is hereby empowered to enter and to authorize others to enter upon the premises or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower.

1.11. **Estoppel Affidavits.** Borrower will, within ten (10) days after receipt of written request from Lender, furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, whether or not any offsets or defenses exist against such principal and interest and such other matters as Lender may reasonably request.

1.12. **Compliance with Applicable Environmental Law.** Borrower represents and warrants to Lender that the representations and warranties contained in the Loan Agreement with respect to environmental matters are true and correct, and Borrower agrees to observe and perform every covenant contained in the Loan Agreement with respect thereto.

## ARTICLE II

2.01. **Event of Default.** The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

- (a) The occurrence of any "Event of Default" (as therein defined) under any other Loan Documents
- (b) any failure by Borrower to observe any covenant, condition or agreement under the terms of this Mortgage, which default or failure is not cured within thirty (30) days after receipt

of written notice thereof from Lender to Borrower, (provided that if a cure of such default is being diligently pursued by Borrower, within an additional period of thirty (30) days).

**2.02. Acceleration of Maturity.** If an Event of Default shall have occurred, then the entire principal amount of the indebtedness secured hereby with interest accrued thereon shall, at the option of Lender, become due and payable without notice or demand, time being of the essence; and any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right.

**2.03. Right of Lender to Enter and Take Possession.**

(a) If an Event of Default shall exist, the Borrower, upon demand of the Lender, shall forthwith surrender to the Lender the actual possession, and if and to the extent permitted by law, the Lender may enter and take possession, of all the Mortgaged Property, and may exclude the Borrower and its agents and employees wholly therefrom.

(b) If Borrower shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after such demand by Lender, Lender, may obtain a judgment or decree conferring upon Lender the right to immediate possession or requiring Borrower to deliver immediate possession of the Mortgaged Property to Lender, and Borrower hereby specifically consents to the entry of such judgment or decree. Borrower will pay to Lender, upon demand, all expenses of obtaining such judgment or decree, including reasonable compensation to Lender's attorneys and agents, and all such expenses and compensation shall, until paid, be secured by this Mortgage.

(c) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage, and control the Mortgaged Property and conduct the business thereof, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments, and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty, and other property; (ii) insure or keep the Mortgaged Property insured; (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Borrower in Borrower's name or otherwise, with respect to the same; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage; and the Lender may collect and receive all the income, revenues, rents, issues and profits of the same including those past due as well as those accruing thereafter, and, after deducting (A) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes); (B) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases, and acquisitions; (C) the cost of such insurance; (D) such taxes, assessments, and other charges prior to the lien of this mortgage as the Lender may determine to pay; (E) other proper charges upon the Mortgaged Property or any part thereof; and (F) the reasonable compensation, expenses, and disbursements of the attorneys and agents of the Lender; shall apply the remainder of the moneys so received by the Lender to the payment of accrued interest, tax and insurance deposits required in Sections 1.03 and 1.04 hereof, and to the payment of overdue installments of principal, all in such order and priority as the Lender may determine.

(d) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Borrower, its successors or assigns. The



same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

**2.04. Receiver.**

(a) If an Event of Default shall exist, the Lender, upon application to a court of competent jurisdiction, shall be entitled to the extent permitted by law, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, and revenues thereof.

(b) The Borrower will pay to the Lender upon demand all reasonable expenses, including receiver's fees, attorneys' fees and costs, and agent's compensation, incurred pursuant to the provisions contained in this Section 2.04; and all such expenses shall be secured by this Mortgage.

**2.05. Lender's Power of Enforcement and Power of Sale.**

(a) If an Event of Default shall have occurred and be continuing, the Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (i) to enforce payment of the Note or the performance of any term thereof or any other right, power or remedy hereunder, (ii) to foreclose this Mortgage and to sell the Mortgaged Property, as an entirety or in separate lots or parcels, as provided by applicable law, and (iii) to pursue any other remedy available to it, all as the Lender shall deem most effectual for such purposes. The Lender shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Lender may determine.

(b) If an Event of Default shall have occurred, Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the Court House door in the county where said property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase said Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect.

**2.06. Purchase by Lender.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Lender may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the obligations secured by this Mortgage as a credit to the purchase price.

**2.07. Application of Foreclosure Proceeds.** The proceeds of any foreclosure sale pursuant to Section 2.05 shall be applied as follows:

(a) First, to the expenses of making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of said indebtedness or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon at the Default Rate which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;

(c) Third, to the payment and satisfaction of the indebtedness hereby secured with interest to date of sale in such order as Lender may elect; and

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the Mortgaged Property at the time of the sale after deducting any expense of ascertaining who is such owner.

**2.08. Borrower as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.09. Lender's Option on Foreclosure.** If this Mortgage is foreclosed, a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sum secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**2.10. Waiver of Exemption.** To the extent permitted by applicable law, Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and to the extent permitted by applicable law, Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

**2.11. Suits to Protect the Mortgaged Property.** Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, and (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom.

**2.12. Borrower to Pay the Note on Any Default in Payment; Application of Moneys by Lender.** Upon the occurrence of an Event of Default, then, upon demand of Lender, Borrower will pay to Lender the whole amount due and payable under the Note; and in case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses, and disbursements of Lender's agents and attorneys.



2.13. **Delay or Omission; No Waiver.** No delay or omission of Lender or of any holder of the Note to exercise any right, power, or remedy accruing upon any default shall exhaust or impair any such right, power, or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power, and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.

2.14. **No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers, or remedies consequent thereon.

If Lender (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Loan Documents; (e) consents to the filing of any map, plat, or replat thereof; (f) consents to the granting of any easement thereon; or (g) makes or consents to any agreement subordinating the lien or charge hereof, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Loan Documents or otherwise of Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety, or guarantor; nor shall any such act or omission preclude Lender from exercising any right, power, or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, at its option, without notice to any person or corporation hereby is authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

2.15. **Discontinuance of Proceedings - Position of Parties, Restored.** In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder to the extent permitted by applicable law, and all rights, powers, and remedies of Lender shall continue as if no such proceeding has been taken.

2.16. **Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any right, power, or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power, and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

2.17. **No Conditions Precedent to Exercise of Remedies.** Neither Borrower nor any other person now or hereafter obligated for payment of all or any part of the indebtedness hereby secured shall be relieved of such obligation by reason of the failure of Lender to comply with any request of Borrower or of any other person so obligated to take action to foreclose on this Mortgage or otherwise enforce any provisions of this Mortgage or the Note, or by reason of the release, regardless of consideration, of all or any part of the security held for the indebtedness.

2.18. **Release of Collateral, Effect on Subordinate Liens.** Lender may release, regardless of consideration, any part of the security held for the indebtedness or obligations of Borrower under the Note and/or this Mortgage without, as to the remainder of the security, in any way impairing or affecting the lien of this Mortgage or its priority over any subordinate lien. The holder of any subordinate lien by the acceptance of such subordinate lien agrees to be bound by the terms of this Section.

2.19. **Other Collateral.** For payment of the indebtedness secured hereby, Lender may resort to any other security therefor, if any, held by Lender, in such order and manner as Lender may elect without affecting its remedies under this Mortgage, to the maximum extent permitted by the laws of the State of Alabama.

2.20. **Waiver of Notice, Marshalling, Etc.** To the extent permitted by applicable law, Borrower hereby waives and releases, to the maximum extent permitted by the laws of the State of Alabama:

(a) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Mortgaged Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any appraisal, valuation, stay of execution, exemption from civil process or extension of time for payment; and

(b) unless specifically required herein or in the other Loan Documents, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise, of any option or remedy under the Note or this Mortgage; and

(c) any right to have the Mortgaged Property marshalled; provided, that if any of the rights waived by Borrower in this Section affect or extend the time for sale of the said described Mortgaged Property or affect Lender's rights to enforce this Mortgage, Lender shall have the right to elect to accept or reject the waiver of such right by Borrower, and such election may be made by Lender at the time of or at any time prior to the entry of a decree or judgment of foreclosure in the court in which this Mortgage is being foreclosed.

### ARTICLE III

3.01. **Successors and Assigns Included in Parties.** Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, and assigns, whether so expressed or not.

3.02. **Headings, etc.** The headings of the articles, sections, paragraphs, and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise affect any of the terms hereof.

3.03. **Invalid Provisions to Affect No Others.** In case any one or more of the covenants, agreements, terms, or provisions contained in the Loan Documents shall be invalid, illegal, or unenforceable in any respect, the validity of the remaining covenants, agreements, terms, and provisions contained in the Loan Documents shall in no way be affected, prejudiced, or disturbed thereby.



3.04. **Lien on Personal Property.** This Mortgage creates a lien on and grants a security interest in, the personal property of Borrower located and to be located on the Mortgaged Property, and it shall constitute a security agreement under the Alabama Uniform Commercial Code or other law applicable to the creation of liens on personal property. Borrower covenants and agrees to execute, file, and refile such financing statements, continuation statements or other documents as Lender shall require from time to time with respect to such personal property. This Mortgage shall constitute a financing statement under the Alabama Uniform Commercial Code. If an Event of Default occurs, Lender shall have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

3.05 **Notices.** Any and all notices, elections or demands permitted or required to be made herein or by applicable law, shall be given and deemed effective upon being sent in the manner specified in the Loan Agreement.

3.06. **Restoration and Repair of Property Damaged or Taken.** Notwithstanding the provisions of Sections 1.05 and 1.06 hereof, Lender agrees that Lender shall apply the net proceeds of insurance or condemnation (after payment of costs and expenses pursuant to Section 1.05 and 1.06) to repair or restoration of the Mortgaged Property on the following terms and subject to Borrower's satisfaction of the following conditions:

- (1) At the time of such loss or damage and at all times thereafter while Lender is holding any portion of such proceeds, there shall exist no Default or Event of Default;
- (2) The property, buildings, improvements and fixtures for which a loss or damage has resulted shall be capable of being restored to its pre-existing condition and utility with a value equal to or greater than prior to such loss or damage, shall be capable of being completed prior to the Maturity Date and shall not be such as would allow any tenant to reduce its rental payments (except during any period in which the leased premises are uninhabitable) or terminate or reduce the term of its lease, and evidence thereof satisfactory to Lender shall have been provided to Lender;
- (3) Within ten (10) days after the Borrower has been notified by the company insuring the property as to the amount of coverage to be provided for the loss or damage, Borrower shall have given Lender a written notice electing to have the proceeds applied for such purpose;
- (4) Within sixty (60) days following the date of notice under the preceding paragraph and prior to any proceeds being disbursed to Borrower, Borrower shall have provided to Lender all of the following:
  - (i) complete plans and specifications for restoration of the property, buildings, improvements and fixtures damaged or taken to the condition and utility prior to such loss or damage,
  - (ii) if loss or damage exceeds \$150,000, fixed-price or guaranteed maximum cost bonded construction contracts for completion of the repair and restoration work in accordance with such plans and specifications,
  - (iii) builder's risk insurance for the full cost of construction with Lender named under a standard mortgagee loss-payable clause,

(iv) such additional funds as in Lender's opinion are necessary to complete the repair and restoration, and

(v) copies of all permits and licenses necessary to complete the work in accordance with the plans and specifications;

(5) Lender may, at Borrower's expense, retain an independent inspecting engineer to review plans and specifications and completed construction and to certify all requests for disbursement;

(6) No portion of such proceeds shall be made available by Lender for architectural reviews or for any other purposes which are not directly attributable to the cost of reconstructing those portions of the property for which a loss or damage has occurred;

(7) Borrower shall commence such work within one hundred twenty (120) days of such loss or damage and shall diligently pursue such work to completion;

(8) Each disbursement by Lender of such proceeds and deposits shall be funded in accordance with the disbursement procedures set forth in the Loan Agreement;

(9) Borrower shall grant to Lender a first lien and security interest in all building materials and completed repair and restoration work and in all fixtures and equipment acquired with such proceeds, and Borrower shall execute and deliver such mortgages, security agreements, financing statements and other instruments as Lender shall request to create, evidence, or perfect such lien and security interest;

(10) In the event and to the extent such proceeds are not required or used for the repair and restoration of the damaged property, buildings, improvements or fixtures, or in the event Borrower fails to timely make such election or having made such election fail to timely comply with the terms and conditions set forth herein, Lender shall be entitled without notice to or consent from Borrower to apply such proceeds or the balance thereof at Lender's option either (i) to the full or partial payment or prepayment of the indebtedness under the Note (without premium), or (ii) to the repair and/or restoration of the property, buildings, improvements or fixtures damaged or taken.

**3.07. WAIVER OF JURY TRIAL. BORROWER AND LENDER HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS MORTGAGE, OR THE OTHER LOAN DOCUMENTS, OR IN CONNECTION WITH THE TRANSACTIONS RELATED THERETO OR CONTEMPLATED THEREBY OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES THEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AND LENDER AGREE THAT EACH MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF THE OTHER IRREVOCABLY TO WAIVE ITS RIGHT TO**



**TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**3.08 Counterparts.** This Mortgage may be executed and recorded in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be properly executed on the day and year first above written.

BORROWER:

MCCULLOUGH SNAPPY SERVICE OIL CO.,  
INC., a Delaware corporation

By: D. Lloyd Bowers  
Name: D. Lloyd BOWERS  
Title: PRESIDENT

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that D. Lloyd Bowers, the President of McCullough Snappy Service Oil Co., Inc., a Delaware corporation, whose name 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 the Mortgage, he, as such President, executed the same as the voluntary act of said corporation on the day the same bears date.

Given under my hand and seal this the 27<sup>th</sup> day of November, 2001.

[Signature]  
NOTARY PUBLIC  
My Commission expires: 4-20-04



**Legal Description**  
**A-1**  
**Jefferson County**  
**7583 U.S. Highway No. 78**  
**Dora, Alabama 35062**

Commence at the Northeast corner of the Southeast quarter of the Southwest quarter of Section 13, Township 15 South, Range 5 West and South along the East line of said quarter Section for a distance of 165.50' for the POINT OF BEGINNING, thence continue South along the last described course for a distance of 403.69' to the northerly right of way line of US Highway 78; thence run North 45 degrees 33'30" West along said right of way for a distance of 345.0'; said point being on the east right of way line of Turner Road; thence run North 08 degrees 59'30" West, along the east right of way line of Turner Road, for a distance of 132.30' to a point; thence North 83 degrees 16'35" East (Deed) North 83 degrees 16'53" East (Measured) for a distance of 268.86' (Deed) 268.84' (Measured) to the POINT OF BEGINNING and containing 67,487.79 square feet or 1.5493 acres.

**Legal Description**  
**A-2**  
**Jefferson County**  
**290 Cane Creek Road**  
**Warrior, Alabama 35180**

A part of the Northwest quarter of the Northeast quarter of Section 23, Township 14 South, Range 3 West, situated in Jefferson County, Alabama, more particularly described as follows:

Commence at the southwest corner of the northwest quarter of the northeast quarter of Section 23, Township 14 South, Range 3 West and run North along the west line thereof for 643.7' to the southerly right of way line of Cane Creek Road; thence 96 degrees 33 minutes 52 seconds right and run East along said right of way for 20.13' to the POINT OF BEGINNING; thence continue along the last described course and along said right of way for 210.0', thence 83 degrees 26'08" right and run South for 208.71', thence 96 degrees 33'52" right and run West for 210.0'; thence 83 degrees 26'08" right and run North for 208.71' to the POINT OF BEGINNING and containing 1.0 acres more or less.

LESS AND EXCEPT any part within the right of way of New Cane Creek Road.



**Legal Description**  
**A-3**  
**Shelby County**  
**132 Shelby County Highway No. 87**  
**Calera, Alabama 35040**

Being Lot 1, in Airport Plaza, as recorded in Map Book 19, Page 36, in the Probate Office of Shelby County, Alabama, containing 1.35 acres, more or less.

**Legal Description**  
**A-4**  
**St. Clair County**  
**780 Mineral Springs Road**  
**Pell City, Alabama 35125**

From the Southeast corner of the Southwest quarter of the Northwest quarter of Section 34, Township 16 South, Range 3 East go North 0 degrees 16 minutes 17 seconds West, 89.56 feet for the point of beginning; thence South 74 degrees 51 minutes 00 seconds East 201.4 feet; thence North 05 degrees 47 minutes 48 seconds West, 479.41 feet; thence South 34 degrees 12 minutes 24 seconds West 199.75 feet; thence South 81 degrees 56 minutes 48 seconds West, 264.83 feet to the Southeast right of way of Eden Cut off Road; thence left 135.7 feet along an arc of a curve which has a delta angle of 5 degrees 39 minutes 16 seconds and a radius of 1375 feet, and a chord bearing of South 24 degrees 05 minutes 45 seconds West; thence South 68 degrees 59 minutes 52 seconds East, 200.79 feet to a point; thence South 74 degrees 46 minutes 52 seconds East, a distance of 99.96 feet to the point of beginning and containing 2.6 acres and lying in the Southwest quarter of the Northwest quarter, and in the Southeast quarter of the Northwest quarter of Section 34, Township 16 South, Range 3 East, St. Clair County, Alabama.



**Legal Description**  
**A-5**  
**Walker County**  
**5500 Highway No. 78 West**  
**Jasper, Alabama 35501**

A parcel of land located in the East half of the Northwest quarter of the Southwest quarter of Section 1, Township 14 South, Range 8 West, Walker County, Alabama, being more particularly described as follows:

Starting at the Northeast corner of said East half, thence N 89°46'51" W along the north boundary of the East half a distance of 206.59'; thence S 46°14'15" W a distance of 479.88' to the East right of way of Gamble Road; thence S 39°19'05" E along said right of way a distance of 60.00' to the POINT OF BEGINNING; thence, continue S 39°19'05" E along said right of way a distance of 88.62' to a point; thence S 03°16'33" W along said right of way a distance of 177.99' to a found right of way marker; thence S 41°31'03" E Deed, S 36°21'19" E Measured a distance of 38.99' to the North right of way of Highway 78; thence S 86°43'01" E along said North right of way a distance of 206.29' thence N 03°16'59" E a distance of 318.16', thence N 86°43'01" W a distance of 249.35', thence S 46°14'15" W a distance of 61.37' to thence POINT OF BEGINNING and containing 1.7651 acres.

**Inst # 2002-04102**

**01/24/2002-04102**  
**08:40 AM CERTIFIED**  
**SHELBY COUNTY JUDGE OF PROBATE**  
**021 CH 72.00**