

STATE OF ALABAMA)

SHELBY COUNTY)

MORTGAGE

THIS MORTGAGE is made and entered into on the 4th day of November, 2002, by Olde Pirate, Inc., an Alabama corporation (the "Mortgagor") in favor of The Peoples Bank & Trust Company, an Alabama banking corporation (the "Mortgagee").

RECITALS

A. The Mortgagor is justly indebted to the Mortgagee in the amount of 157,536.03, plus expenses, as evidenced by that certain promissory note dated October 29, 2001.

B. In order to secure the payment of all sums due and to become due under the Note, the Mortgagor has agreed to execute and deliver this Mortgage and convey the property described herein to the Mortgagee as hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and in order to induce the Mortgagee to extend payments under the Note, and in order to secure the payment of the following:

(1) Any and all sums, principal, interest and agreed charges, becoming due and payable by the Mortgagor under or with respect to the Note; and

(2) Any and all sums becoming due and payable by the Mortgagor to the Mortgagee under the terms of this Mortgage, including but not limited to advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and

(3) All renewals and extensions of any or all of the obligations of the Mortgagor described in (1) and (2) above, whether or not any renewal or extension agreement is executed in connection therewith;

and also to secure the full and complete performance of each and every obligation, covenant, duty and agreement of the Mortgagor contained in this Mortgage:

I. GRANTING CLAUSES

The Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey to the Mortgagee, its successors and assigns, the property and interests in property described in the following Granting Clauses A, B and C:

A. The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate");

- B. All improvements, structures and fixtures now or hereafter located on the Real Estate; and
- C. All leases, rents, easements, rights-of-way and permits related to the Real Estate or the improvements located thereon.

All of the property described in the foregoing Granting Clauses A, B and C is herein sometimes together referred to as the "Mortgaged Property".

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

II. ASSIGNMENT OF CONDEMNATION AWARDS

As further security for the Indebtedness and the full and complete performance of each and every obligation, covenant, agreement and duty of the Mortgagor contained herein, and to the extent of the full amount of the Indebtedness secured hereby and of the costs and expenses (including reasonable attorneys' fees) incurred by the Mortgagee in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagee any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Mortgaged 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 Mortgaged Property.

III. MORTGAGOR'S REPRESENTATIONS AND WARRANTIES

In order to induce the Mortgagee to extend credit to the Mortgagor, the Mortgagor represents and warrants that:

A. Valid Title, etc. The Mortgagor is lawfully seized of an indefeasible estate in fee simple in and to the Mortgaged Property; it has a good right to sell and mortgage the Mortgaged Property; the Mortgaged Property is subject to no liens, encumbrances or security interests other than the liens, encumbrances and security interests appearing of public record as of the date this Mortgage is executed; and the Mortgagor will forever warrant and defend the title to the Mortgaged Property unto the Mortgagee against the claims of all persons whomsoever, except those claiming of public record on the date this Mortgage is executed.

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

IV. COVENANTS OF MORTGAGOR

The Mortgagor covenants and agrees that, until the Indebtedness is paid in full:

A. Payment of Taxes and Other Assessments. The Mortgagor will pay or cause to be paid all taxes, assessments and other governmental, municipal or other public dues, charges, fines or impositions imposed or levied upon the Mortgaged Property or on the interests created by this Mortgage, and any tax or excise on rents or other tax, however described, assessed or levied by any state, federal or local taxing authority as a substitute, in whole or in part, for taxes assessed or imposed on the Mortgaged Property or on the lien and other interests created by this Mortgage, and upon request, the Mortgagor will deliver receipts therefor to the Mortgagee. The Mortgagor may, at its own expense, in good faith contest any such taxes, assessments and other governmental charges and, in the event of any such contest, may permit the taxes, assessments or other governmental charges so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of such contested items shall be effectively stayed.

B. Insurance. The Mortgagor shall keep or cause to be kept the Mortgaged Property insured against loss or damage by fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties or other contingencies as from time to time may be required by the Mortgagee, in such amounts, in such manner and in such companies as the Small Business Administration, as prior mortgagee, may approve. All such policies shall provide that any losses payable thereunder shall (pursuant to standard mortgagee clauses, without contribution, to be attached to each policy) be payable to the Mortgagees. Upon request, the Mortgagor shall furnish to the Mortgagee evidence of the payment of such premiums.

C. Waste, Demolition, Alteration or Replacement. The Mortgagor will cause the Mortgaged Property and every part thereof to be maintained, preserved and kept in safe and good repair, working order and condition, will not commit or permit waste thereon, will not remove, demolish or alter the structural character of any building now or hereafter erected on thereon without the express prior written consent of the Mortgagee, will comply with all laws and regulations of any governmental authority with reference to the Mortgaged Property and the manner and use of the same, and will from time to time make all necessary and proper repairs, renewals, additions and restorations thereto so that the value and efficient use thereof shall be fully preserved and maintained.

V. DEFEASANCE

If the Mortgagor shall pay in full: (A) all of the Indebtedness (as defined herein), including but not limited to, all sums (principal, interest and charges) payable under the Note and any and all extensions and renewals of the same; and (B) all sums becoming due and payable by the Mortgagor under the terms of this Mortgage, including but not limited to, advancements made by the Mortgagee pursuant to the terms and conditions of this Mortgage; and (C) the Mortgagor shall have kept and performed each and every obligation, covenant, duty, condition and agreement herein imposed on or agreed to by the Mortgagor; then this conveyance and the grants and conveyances contained herein shall become null and void, and the Mortgaged Property shall revert to the Mortgagor, and the entire estate, right, title and interest of the

Mortgagee will thereupon cease; and the Mortgagee in such case shall, upon the request of the Mortgagor and at the Mortgagor's cost and expense, deliver to the Mortgagor proper instruments acknowledging satisfaction of this instrument; otherwise, this Mortgage shall remain in full force and effect.

VI. EVENTS OF DEFAULT

The Mortgagor shall be in default under this Mortgage upon the happening of any of the following events or conditions, or the happening of any other event of default as defined elsewhere in this Mortgage (hereinafter collectively referred to as "Events of Default"):

- (a) any representation or warranty made herein shall prove to be false or misleading in any material respect;
- (b) default shall be made in the prompt payment of the principal of and interest payable on the Note, plus expenses;
- (c) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of the Mortgagor to be observed or performed pursuant to the terms of this Mortgage or;
- (d) if a receiver, trustee, liquidator or other custodian is appointed for the Mortgagor or for any of the property of the Mortgagor, or if a petition in bankruptcy (whether for liquidation, reorganization, arrangement, wage-earner's plan or otherwise) is filed by or against the Mortgagor, or if the Mortgagor applies for the benefits of, or takes advantage of, any law for the relief of debtors;
- (e) the interest of the Mortgagee in the Mortgaged Property shall become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the Indebtedness; or
- (f) all debt due and owing under the Note becomes immediately due and payable.

VII. RIGHTS OF MORTGAGEE UPON DEFAULT

A. Acceleration of Indebtedness. Upon occurrence of an Event of Default or at any time thereafter, the Mortgagee may at its option and without demand or prior notice to the Mortgagor, declare in writing the Indebtedness, all or any part thereof, immediately due and payable. Unless otherwise provided herein and to the extent permitted by law, the Mortgagor hereby waives demand, presentment for payment, protest, notice of protest, dishonor and default, and notice of intent to declare the Indebtedness immediately due and payable.

B. Operation of Property by the Mortgagee. Upon the occurrence of an Event of Default, or at any time thereafter, in addition to all other rights herein conferred on the Mortgagee, the Mortgagee (or any person, firm or corporation designated by the Mortgagee), may, but will not be obligated to, enter upon and take possession of any or all of the Mortgaged Property, exclude the Mortgagor therefrom, and hold, use, administer, manage and operate the

same to the extent that the Mortgagor could do so, without any liability to the Mortgagor resulting therefrom; and the 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 the Mortgagor with respect to the Mortgaged Property. When and if the expenses of such operation and management have been paid and the Indebtedness has been paid, the Mortgaged Property shall be returned to the Mortgagor, provided there has been no foreclosure sale. This provision is a right created by this Mortgage and is cumulative of, and shall in no way affect, the right of the Mortgagee to the appointment of a receiver given the Mortgagee by law.

C. Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, the Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit for a foreclosure of its lien on and security interest in the Mortgaged Property, to sue the 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. Upon the occurrence of an Event of Default, the Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to the Mortgagor or any other party, of a receiver of the rents, issues and profits of the Mortgaged Property, with power to lease and control the Mortgaged Property and with such other powers as may be deemed necessary.

D. Foreclosure Sale. Upon the occurrence of any 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 the Mortgagee shall be authorized, at its option, whether or not possession of the Mortgaged Property is taken, after giving 21 days' 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 the county wherein the Mortgaged Property or part thereof is located, to sell the Mortgaged Property (or such part or parts thereof as the Mortgagee may from time to time elect to sell) in front of such county's courthouse door, at public outcry, to the highest bidder for cash. The Mortgagee, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Mortgaged 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 Mortgaged 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, the Mortgagor hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Mortgagee, in the exercise of the power of sale herein given, elects to sell the Mortgaged 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 Mortgaged Property not previously sold shall have been sold or all the Indebtedness secured hereby shall have been paid in full.

E. Mortgagor's Warranties after Sale. The Mortgagor hereby authorizes and empowers the Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Mortgagor, to execute and deliver to the purchaser or purchasers of any of the

Mortgaged Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto, and the title of such purchaser or purchasers when so made by the Mortgagee or such auctioneer, the Mortgagor binds itself to warrant and forever defend to the extent of the right, title and interest therein of the Mortgagor.

F. Application of Proceeds. The proceeds of any and all foreclosure sales of the Mortgaged Property shall be applied as follows: (i) to the payment of all necessary expenses incident to the execution of said sale or sales, (ii) to the payment of the Indebtedness, to the amount of the accrued interest and principal legally due thereon and all other sums secured hereby and to the payment of attorneys' fees as provided in the Note, and (iii) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law.

G. Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the 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 Indebtedness due, and provided that if any sale is made because of such Event of Default, such sale may be made subject to the unmatured part of the Indebtedness secured by this Mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Indebtedness secured by this Mortgage, but as to such unmatured part of the Indebtedness 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 Indebtedness whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Mortgaged Property for any matured part of the Indebtedness without exhausting any power of foreclosure and the power to sell the Mortgaged Property for any other part of the Indebtedness, whether matured at the time or subsequently maturing.

H. Waiver of Appraisement Laws. The 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 Mortgaged Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Indebtedness or any creation or extension of a period of redemption from any sale made in collecting the Indebtedness (commonly known as stay laws and redemption laws).

I. Prerequisites of Sales. In case of any foreclosure sale of the Mortgaged Property, 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 money secured 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.

VIII. MISCELLANEOUS PROVISIONS

A. Waiver and Election. The exercise by the 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 and security interest

granted by this Mortgage, either on any matured portion of the Indebtedness or for the whole of the Indebtedness, 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 or necessary notices for foreclosure, as provided in this Mortgage, preclude the prosecution of a later suit thereon.

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

C. 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 the Mortgagee to effectuate the provisions hereof.

D. Application of Payments. If the lien or the security interest created by this Mortgage is invalid or unenforceable as to any part of the Indebtedness or is invalid or unenforceable as to any part of the Mortgaged Property, the unsecured or partially secured portion of the Indebtedness shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Indebtedness, and all payments made on the Indebtedness, 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 Indebtedness which is not secured or not fully secured by said lien or security interest created hereby.

E. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and the words "the Mortgagor" and "the Mortgagee" shall include their respective successors and assigns.

F. Advances by the Mortgagee. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of taxes, assessments and other charges, the keeping of the Mortgaged Property in repair, or any other term or covenant herein contained, the Mortgagee may (but shall not be required to) make advances to perform the same, and where necessary enter the Mortgaged Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all sums advanced upon demand, with interest from the date such advances are made, determined on the same basis as the principal in the Note (to the fullest extent permitted by applicable law), and all sums so advanced with interest shall be secured hereby.

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

H. Partial Payments. Acceptance by the Mortgagee of any payment of less than the amount due on the Indebtedness shall be deemed acceptance on account only, and the failure of the 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 Indebtedness has been paid, the 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.

I. Titles Not To Be Considered. 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.

J. Construction of Mortgage. This Mortgage may be construed as a mortgage, 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 security interest created hereby and the purposes and agreements herein set forth.

IN WITNESS WHEREOF, Olde Pirate, Inc., has executed this instrument on the day and year first above written.

Olde Pirate, Inc.
By PS Gannuscio
Its President

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Phillip S. Gannuscio, Sr., whose name as President of Old Pirate, Inc., a 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 instrument, he, as such officer and with full authority, executed the same voluntarily for and as an act of said corporation.

Given under my hand and official seal this 4th day of November, 2002.

Junca D. Cook
Notary Public

AFFIX SEAL

My commission expires 3/25/2003

This instrument prepared by:

Ryan K. Cochran
WALSTON, WELLS, ANDERSON & BAINS
505 N. 20th Street, Suite 500
Birmingham, Alabama 35203
(205) 251-9600

Exhibit A
Legal Description

Commence at the Northwest corner of said $\frac{1}{4}$ - $\frac{1}{4}$ Section, run thence in a Southerly direction along the West line of said $\frac{1}{4}$ - $\frac{1}{4}$ Section for a distance of 401.85 feet to an iron pin found; thence turn an angle to the left of $88^{\circ}43'24''$ and run in an Easterly direction for a distance of 803.43 feet to the point of beginning of the parcel herein described; from the point of beginning thus obtained, continue Eastwardly along the same course as before for a distance of 250.00 feet to the West right of way line of Shelby County Highway No. 95; thence turn an angle to the right of $97^{\circ}24'02''$ and run in a Southerly direction along the West right of way line of said Shelby County Highway No. 95 for a distance of 14.46 feet; thence turn an angle to the right of $11^{\circ}18'36''$ and run in a Southwesterly direction along said West right of way line of said Shelby County Highway No. 95 for a distance of 50.99 feet; thence turn an angle to the left of $11^{\circ}18'36''$ and run in a Southerly direction along the West right of way line of said Shelby County Highway No. 95 for a distance of 100.00 feet; thence turn an angle to the left of $11^{\circ}18'36''$ and run in a Southeasterly direction along the West right of way line of said Shelby County Highway No. 95 for a distance of 50.99 feet; thence turn an angle to the right of $97^{\circ}14'30''$ and run in a Westerly direction for a distance of 250.00 feet; thence turn an angle to the right of $94^{\circ}29'04''$, and run in a Northerly direction for a distance of 200.00 feet to the point of beginning of the parcel herein described.