


Prepared by, recording requested by
and, after recording, return to:

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223,240


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Shelby Cnty Judge of Probate, AL
01/06/2005 11:48:00 FILED/CERTIFIED

MORTGAGE

THIS MORTGAGE (herein "Instrument"), made as of December 28, 2004, among the Mortgagor, A.R. Thornton, Jr. as trustee of the Harry Winston Thornton Trust, a testamentary trust created under the Will of Ruby B. Thornton, whose address is 576 Thornton Lake Road, Gadsden, Alabama 35903 (herein referred to sometimes as the "Trust" and "Borrower"), in favor of the Mortgagee, A.R. Thornton, Jr., an individual, whose address is 576 Thornton Lake Road, Gadsden, Alabama 35903 (herein "Lender").

WITNESSETH:

WHEREAS, the Trust was the recipient of certain gifts under paragraphs C and D of Article IV of the Will of Ruby B. Thornton, *i.e.*, all of the stock of T & H Investments, Inc. ("T & H") and property and/or money with an aggregate value of \$200,000;

WHEREAS, immediately subsequent to the transfer of the T & H stock to the Trust, 1) T & H distributed all of its assets, including a 4.08 acre tract of real property located on Highway # 31 in Alabaster, Shelby County, Alabama, to the Trust and 2) T & H was dissolved;

WHEREAS, paragraph I of Article VI of the Will of Ruby B. Thornton provides that all estate taxes and administration expenses shall be equitably apportioned among those beneficiaries to whom any benefit from the estate accrued, in the proportion that the value of the property or interest received by a beneficiary bears to the total value of the property and interests received by all beneficiaries, using the values as finally determined for federal estate tax purposes.

WHEREAS, the Trust's allocable portion of the estate taxes and administration expenses per the estate tax return as filed is Two Hundred Twenty-Three Thousand Two Hundred and Forty and no/100 Dollars (\$223,240.00).

WHEREAS, the Lender has paid the above referenced liability for the Borrower and, as a result, the Borrower is justly indebted to Lender in the sum of Two Hundred Twenty-Three Thousand Two Hundred and Forty and no/100 Dollars (\$223,240.00), as evidenced by a certain Note (as hereinafter defined),

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has granted, bargained, and sold and does hereby grant, bargain, sell, and convey to Lender with Power of Sale all of Borrower's right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located at U. S. Highway # 31, in Alabaster, Shelby County, State of Alabama, and more particularly described on Exhibit A attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises");

TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in:

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements");

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to (i) a taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided for the benefit of or naming Lender, and refunds or rebates of taxes or assessments on the Premises;

(d) all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises;

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts,

agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

(f) all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements;

(g) all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein; and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein;

The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property."

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof to the use, benefit and behoof of Lender and its successors and assigns in fee simple forever.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith and having a maturity date as set forth in the Note, in the principal sum of Two Hundred Twenty-Three Thousand Two Hundred and Forty and no/100 Dollars (\$223,240.00) with interest thereon as set forth in the note, and all renewals, extensions and modifications thereof (herein "Note"); (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under the other Loan Documents (as defined below); (c) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (d) the repayment of all sums now or hereafter owing to Lender by Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness and obligations described in clauses (a)-(d) above are collectively referred to herein as the "Indebtedness." The Note, this Instrument, and all other documents evidencing, securing or guaranteeing the Indebtedness, as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents."

PROVIDED, ALWAYS, that if Borrower shall pay unto Lender the Indebtedness and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note and this Instrument, then this Instrument and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise to remain in full force and effect.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to mortgage an indefeasible fee simple estate in, the Premises, Improvements, rents, and leases, and the right to convey the other Property, that the Property is unencumbered except as disclosed in writing to and approved by Lender prior to the date hereof, and that Borrower will warrant and forever defend the title to the Property against all claims and demands.

Borrower represents, warrants, covenants and agrees for the benefit of Lender as follows:

1. **PAYMENT OF PRINCIPAL AND INTEREST.** Borrower shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. **CHARGES, LIENS.** Borrower shall pay all taxes, insurance premiums, assessments, water and sewer charges ("Impositions") attributable to the Property, when due, directly to the payee thereof, or in such other manner as Lender may designate in writing. If requested by Lender, Borrower shall promptly furnish to Lender all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without Lender's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without Lender's prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record and deliver evidence of such release to Lender.

3. **INSURANCE.** If Comprehensive general liability insurance is acquired, Lender shall be named as an additional insured.

4. **PRESERVATION, MAINTENANCE AND IMPROVEMENTS OF PROPERTY.** Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, in good repair, and (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property. Neither Borrower nor any tenant or other person, without the written approval of Lender, shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

5. **PROTECTION OF LENDER'S SECURITY.** If Borrower fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of Lender therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, disburse such sums and take such action as Lender deems necessary, in its sole discretion, to protect

Lender's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance.

Any amounts disbursed by Lender pursuant to this Section 5, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and Lender agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the Default Rate (as defined in the Note). Borrower hereby covenants and agrees that Lender shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 5 shall require Lender to incur any expense or take any action hereunder.

6. **CONDEMNATION.** If the Property, or any part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be paid to Lender who shall have the right, in its sole and absolute discretion, to apply the amounts so received against (a) the costs and expenses of Lender, including reasonable attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the Indebtedness.

7. **BORROWER AND LIEN NOT RELEASED.** From time to time, Lender may, at Lender's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on Lender's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Lender pursuant to the terms of this Section 7 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay Lender a service charge, together with such title insurance premiums and attorneys fees as may be incurred at Lender's option, for any such action if taken at Borrower's request.

8. **FORBEARANCE BY LENDER NOT A WAIVER.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by Lender of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums so secured or

to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall Lender's receipt of any awards, proceeds or damages under Sections 3 and 6 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

9. **LEASES OF THE PROPERTY.** Borrower shall enter into no leases on or with respect to the Property.

10. **REMEDIES CUMULATIVE.** Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

11. **TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER: ASSUMPTION.** Lender may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and Lender may invoke any remedies permitted by Section 16 of this Instrument, if title to the Property is changed without the prior written consent of Lender, which consent shall be at Lender's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease, contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Borrower (including any transfer, pledge, assignment, or hypothecation of, or other change in, the ownership interests in Borrower or any legal entities which comprise or control Borrower), shall be considered a change of title.

12. **NOTICE.** Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) days after the date of mailing by registered or certified mail, (iii) one (1) day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

13. **SUCCESSORS AND ASSIGNS BOUND: JOINT AND SEVERAL LIABILITY; AGENTS: CAPTIONS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of Lender and Borrower, subject to the provisions of Section 12 hereof. If Borrower is comprised of more than one person or entity, whether as individuals, partners, partnerships or corporations, each such person or entity shall be jointly and severally liable for Borrower's obligations hereunder. In exercising any rights hereunder

or taking any actions provided for herein, Lender may act through its employees, agents or independent contractors as authorized by Lender. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

14. **WAIVER OF STATUTE OF LIMITATIONS.** Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

15. **WAIVER OF MARSHALING.** Notwithstanding the existence of any other security interests in the Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Lender shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

16. **DEFAULT.** The following shall each constitute an event of default ("Event of Default"):

(a) Failure or refusal by Borrower to make any payment of principal or interest under the Note when due or to pay any portion of any other sum secured by this Instrument when due and which remains outstanding for ten (10) days after written notice; or

(b) Failure by Borrower to observe or perform any obligations of Borrower to Lender on or with respect to any transactions, debts, undertakings or agreements other than the transaction evidenced by the Note following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or

(c) Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances; or

(d) The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of Lender, except as specifically allowed under this Instrument, including without limitation creating or allowing any liens on the Property or leasing any portion of the Property; or

(e) Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other

statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for Borrower, any part of the Property, or any of the income or rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 2 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations; or

(f) Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or

(g) The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law; or

(h) Any warranty, representation or statement furnished to Lender by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents shall prove to have been false or misleading in any material respect; or

(i) Failure of Borrower to observe or perform any other covenant or condition contained in the Instrument and such default shall continue for thirty (30) days after notice is given to Borrower specifying the nature of the failure, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions; provided, however, that no notice of default and no opportunity to cure shall be required with respect to defaults under Section 12 hereof; or

(j) Any of the foregoing events occur with respect to any tenant of the Property, with respect to any partner in Borrower in connection with the Indebtedness (subject to the terms of the Note) or such partner dies or becomes incompetent.

17. **RIGHTS AND REMEDIES ON DEFAULT.**

17.1 **Remedies.** Upon the occurrence of any Event of Default and at any time thereafter, Borrower may exercise any one or more of the following rights and remedies:

(a) Lender may declare all sums secured by this Instrument immediately due and payable.

(b) Lender shall have the right to foreclose this Instrument in accordance with applicable law.

(c) In the event of any foreclosure, to the extent permitted by applicable law, Lender will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Instrument exceeds the net sale proceeds payable to Lender.

(d) With respect to all or any part of the Property that constitutes personalty, Lender shall have all rights and remedies of secured party under the Uniform Commercial Code.

(e) Lender shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect all the rents and revenues from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Instrument, and to exercise any and all of the rights with respect to the Property. The receiver may serve without bond if permitted by law. To the extent permitted by law, Lender's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the sums due under this Instrument by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

(f) In the event Borrower remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become a tenant at will of Lender or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(g) Lender shall have any other right or remedy provided in this Instrument, the Note, or any other Loan Document or instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

17.2 Foreclosure and Power of Sale. If an Event of Default shall have occurred and be continuing, Lender shall be authorized to take possession of the Property and, after giving thirty (30) days' notice, by publication once a week for four (4) consecutive weeks of the time, place, and terms of sale, by publication in some newspaper published in Shelby County, State of Alabama, to sell the same, as a whole or in parcels, in front of the courthouse door of Shelby County, Alabama, at public outcry, to the highest and best bidder for cash, in order to pay the Indebtedness and accrued interest thereon. Lender may bid and purchase at such sale. The aforesaid power of sale is granted in addition to the other remedies provided by law for collection of the Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until Lender has received full payment of the Indebtedness.

If at the time of the sale Lender shall deem it best for any reason to postpone or continue said sale for one or more days, Lender may do so, in which event notice of such postponement or continuance shall be made in such manner as the Lender may deem sufficient under the laws of the State of Alabama. At any such public sale, Lender may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple with full warranty and, to this end, Borrower hereby constitutes and appoints Lender as the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title or equity that Borrower may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales. Said appointment is coupled with an interest and shall be irrevocable. Any recitals contained in the conveyance as to the happening of the default, and such recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with, and said recitals shall be conclusive against Borrower.

Upon any public sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied as provided by law. In the event that such proceeds are insufficient to pay all costs and expenses of sale, Lender may advance such sums as it in its sole and absolute discretion shall determine for the purpose of paying all or any part of such costs and expenses, and all such sums shall be a part of the Indebtedness, payable on demand with interest at the rate provided in the Note as applicable upon default. Borrower shall remain liable for any deficiency resulting if the proceeds of sale are inadequate to repay the Indebtedness.

17.3 **Notice of Sale of Personal Property.** Lender shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, including notices given in the manner and at the times required for notices in a nonjudicial foreclosure.

17.4 **Waiver; Election of Remedies.** A waiver by either party of a breach of a provision of this Instrument shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of Lender under this Instrument are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect Lender's right to declare a default and exercise its remedies under this Instrument.

18. **SATISFACTION OF MORTGAGE.** Upon payment of all sums secured by this Instrument, Lender shall execute a satisfaction (or at Borrower's option, an assignment) of this Instrument and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto.

19. **IMPOSITION OF TAX BY STATE.**

19.1 **State Taxes Covered.** The following constitute state taxes to which this Section applies:

(a) A specific tax upon mortgages or upon all or any part of the indebtedness secured by a mortgage.

(b) A specific tax on a mortgagor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a mortgage.

(c) A tax on a mortgage chargeable against the mortgagee or the holder of the note secured.

(d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a mortgagor.

19.2 **Remedies.** If any state tax to which this Section applies is enacted subsequent to the date of this Instrument, this shall have the same effect as an Event of Default, and Lender may exercise any or all of the remedies available to it unless the following conditions are met:

(a) Borrower may lawfully pay the tax or charge imposed by state tax, and

(b) Borrower pays the tax or charge within thirty (30) days after notice from LENDER that the tax law has been enacted.

20. **ATTORNEYS' FEES.** In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, and title insurance, incurred by Lender that are necessary at any time in Lender's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

21. **GOVERNING LAW: SEVERABILITY.** This Instrument shall be governed by the law of the State of Alabama applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the

Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note are declared to be severable.

22. **TIME OF ESSENCE.** Time is of the essence of this Instrument.

23. **CHANGES IN WRITING.** This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or Lender relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

24. **NO OFFSET.** Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against Lender or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against Lender or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by Lender.

25. **MAXIMUM INTEREST CHARGES.** Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, in no event shall Lender be entitled to receive interest on the loan secured by this Instrument (the "Loan") in amounts which, when added to all of the other interest charged, paid to or received by Lender on the Loan, causes the rate of interest on the Loan to exceed the highest lawful rate. Borrower and Lender intend to comply with the applicable law governing the highest lawful rate and the maximum amount of interest payable on or in connection with the Loan. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the final maturity date of the Loan or if any prepayment by Borrower results in Borrower having paid or demand having been made on Borrower to pay, any interest in excess of the amount permitted by applicable law, then all excess amounts theretofore collected by Lender shall be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, such excess amounts shall be refunded to Borrower), and the provisions of the Note, this Instrument and any demand on Borrower shall immediately be deemed reformed and the amounts thereafter collectible thereunder and hereunder shall be reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder and hereunder. The right to accelerate the final maturity date of the Loan does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Lender does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of the Loan shall, to the

extent permitted by applicable law, be amortized, prorated, allocated and spread through the full term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the applicable usury ceiling. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be nonusurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Lender written notice of its belief and the reasons why Borrower believes the Loan to be usurious, and Borrower agrees that Lender shall have ninety (90) days following its receipt of such written notice in which to make appropriate refund or other adjustment in order to correct such condition if it in fact exists.

IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

BORROWER:

The Harry Winston Thornton Trust, created u/w of
Ruby B. Thornton

By: 
Its: Trustee

STATE OF ALABAMA)

ETOWAH COUNTY)

I, the undersigned, a Notary Public, in and for said County, in said State hereby certify that A.R. Thornton, Jr. whose name as trustee of the Harry Winston Thornton Trust, a testamentary trust created under the Will of Ruby B. Thornton, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day, that, being informed of the contents thereof, he, as such trustee and with full authority, executed the same voluntarily for and as the act of said trust in its capacity as trustee as aforesaid.

Given under my hand and official seal this 28 th day of December, 2004.



Notary Public
My Commission Expires: 10/14/08

EXHIBIT "A"

LEGAL DESCRIPTION

A 5.28 acre parcel of land situated at the southeast corner of the intersection of U.S. Highway 31 and Simmsville Road (Highway 11) Alabaster, Alabama

Lots 1, 2, 3, 4, 5 and 6 of Parcel 5, according to the Map made by H. W. Cannon dated August, 1933, of the lands of Buck Creek Cotton Mills, the said six lots lying East of the Montgomery Highway, South of the Damper's Bottom Road, and being in the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 2, Township 21, South Range 3 West, Shelby County, Alabama.

Commencing at the NW corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 1, TP 21, R. 3 West, and running thence South along the West line of said Section a distance of 290 feet for a point of beginning; continue thence South along said section line a distance of 105 feet; run thence East 70 feet; run thence North 105 feet to the road; run thence West along said road a distance of 70 feet to the point of beginning, and being a part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Sec. 1, TP. 21, R. 3 West and situated in Shelby County, Alabama.

LESS AND EXCEPT:

And as shown on the right of way map of Project No. STPAA-458(2) of record in the State of Alabama Highway Department, a copy of which is also deposited in the Office of the Judge of probate of Shelby County, Alabama, as an aid to persons and entities interested therein and as shown on the property plat attached hereto and made a part hereof:

A part of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$, of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, and being more fully described as follows: Commence at the southeast corner of said SE $\frac{1}{4}$ of NE $\frac{1}{4}$ thence north along the east line of said SE $\frac{1}{4}$ of NE $\frac{1}{4}$, a distance of 1070 feet, more or less, to the present south right of way line of 5th Avenue Southeast; thence west along said right of way line, a distance of 117 feet, more or less, to a point that is southerly of and at right angles to the centerline of survey of 5th Avenue Southeast at Station 19+75 and the point of beginning of the property herein to be conveyed; thence southwesterly, a distance of 480 feet, more or less, to a point that is 110 feet northeasterly of and at right angles to the centerline of survey of U.S. Highway # 31 at Station 186+58; thence southwesterly, a distance of 33 feet, more or less, to a point on the present north right of way line of U.S. Highway # 31 that is 115 feet northeasterly of and at right angles to the centerline of survey of U.S. Highway # 31, said point being the north line of a right of way flare; thence west along said right of way flare, a distance of 20 feet, more or less, to the present northeast right of way line of U.S. Highway # 31; thence northwesterly along said right of way line, a distance of 235 feet, more or less, to the point of curve of a radius connection said present northeast right of way line with the present southeast right of way line of County Road # 11; thence northeasterly along said radius, curving to the right, a distance of 60 feet, more or less, to the southeast right of way line of said County Road # 11; thence northeasterly along said southeast right of way line, a distance of 338 feet, more or less, to the present south right of way line of 5th Avenue Southeast; thence easterly along said present south right of way line, a distance of 62 feet, more or less, to the point of beginning and containing 1.20 acres, more or less.