

STATE OF ALABAMA

COUNTY OF SHELBY

929

**REAL ESTATE MORTGAGE**

THIS MORTGAGE, made and entered into on this 8th day of July, 1986, by and between  
Kirkwood Construction, Inc.

(hereinafter referred to as "Mortgagor") and THE COLONIAL BANK OF Alabama  
(hereinafter referred to as "Mortgagee").

**Witnesseth:**

WHEREAS, Mortgagor is justly indebted to Mortgagee, and hereby executes this Mortgage to secure the  
payment of Fifty-Five Thousand and no/100\*\*\*\* Dollars (\$ 55,000.00)  
as evidenced by promissory note of even date herewith and payable in accordance with the terms of said note.

WHEREAS, Mortgagor may hereafter become further indebted to Mortgagee as may be evidenced by promissory note(s) or otherwise, and it is the intent of the parties hereto that this mortgage shall secure any and all indebtedness(es) of Mortgagor to Mortgagee, whether now existing or hereafter arising, due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is to secure not only the indebtedness evidenced by the note hereinabove specifically referred to, but any and all other debts, obligations or liabilities of Mortgagor to Mortgagee, now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, whether evidenced by note, open account, endorsement, guaranty, pledge or otherwise.

NOW, THEREFORE, Mortgagor and all others executing this mortgage, in consideration of the premises, and to secure the payment of said indebtedness evidenced by note hereinabove specifically referred to, and any and all other indebtedness(es) due or to become due as hereinabove generally referred to, and the compliance with all of the covenants and stipulations herein contained, has bargained and sold, and does hereby grant, bargain, sell, alien, convey, transfer and mortgage unto Mortgagee, its successors and assigns, the following described real estate, together with buildings and improvements thereon (hereinafter sometimes

called the "real estate" or the "mortgaged real estate"), lying and being situated in the County of SHELBY  
State of Alabama, and more particularly described as follows, to-wit:

Lot 5 of the J. A. Jones Survey. Situated in the SW  $\frac{1}{4}$  of NW  $\frac{1}{4}$  of  
Section 3, Township 19 South, Range 2 West, Shelby County, Alabama,  
recorded in Map Book 7, Page 74. Mineral and mining rights excepted.

together with all awards received through eminent domain, and payments upon any insurance policies covering the real estate, and all rights, privileges, tenements, and appurtenances thereunto belonging or in anywise appertaining to said real estate including easements and rights-of-way appurtenant thereto and all gas, steam, electric and other heating, cooling and lighting apparatus, elevators, iceboxes, plumbing, stoves, doors and other fixtures appertaining to the real estate and improvements located thereon, all of which shall be deemed realty and conveyed by this mortgage.

TO HAVE AND TO HOLD the real estate, and every part thereof, unto Mortgagee, its successors and assigns forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of the real estate in fee simple and has a good right to sell and convey the same as aforesaid; that the real estate is free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to the real estate unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions, agreements, and provisions:

1. That Mortgagor shall pay the said indebtedness(es) secured hereby and interest thereon when and as it (they) shall become due, whether in course or under any condition, covenant or agreement herein contained, together with any other indebtedness(es) which Mortgagor may owe to Mortgagee, it being further agreed that any statement, any note or obligation that is secured by this mortgage shall be conclusive evidence of such fact.

2. (a) That Mortgagor shall provide, maintain and deliver to Mortgagee policies of fire insurance (with extended coverage), and such other insurance as Mortgagee may from time to time require in companies, form, types, and amounts, and shall assign, with endorsements satisfactory to Mortgagee, and deliver to Mortgagee with mortgagee clauses satisfactory to Mortgagee all insurance policies of any kind or in any amount now or hereafter issued with respect to the real estate. Not later than the first day following the expiration date of any and all such insurance policies and at any time upon request of Mortgagee, Mortgagor shall furnish Mortgagee certificates of insurance issued by insurance companies satisfactory to Mortgagee showing that the amount and type of insurance required by Mortgagee hereunder is in effect. All renewal policies, with premiums paid, shall be delivered to Mortgagee

**COLONIAL BANK**  
of Alabama

RECORDED IN DEEDS AT 35201

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at least thirty (30) days before the expiration of the old policies. If any insurance, or any part thereof, shall expire, or be withdrawn, or become void or unsafe by Mortgagee's breach of any condition thereof, or become void or unsafe by reason of the failure or impairment of the capital of any company by which the insurance may then be carried, or if for any reason whatever the insurance shall be unsatisfactory to Mortgagee, Mortgagee shall procure and deliver to Mortgagee new insurance on the premises, satisfactory to Mortgagee. If Mortgagee fails to procure and deliver such new insurance, Mortgagee may, but shall not be obligated to, procure same, and upon demand, Mortgagee shall reimburse Mortgagee all such costs expended with interest on such advance at the rate set forth in the note secured hereby. Mortgagee shall give immediate notice in writing to Mortgagee of any loss, injury or damage affecting the mortgaged real estate caused by any casualty or occurrence. Full power is hereby conferred on Mortgagee to settle and compromise claims under all policies and to demand, receive, and receipt for all monies becoming payable thereunder and to assign absolutely all policies to any holder of the note or to the grantee of the real estate in the event of the foreclosure of this mortgage and security agreement or other transfer of title to the real estate in extinguishment of the indebtedness(es) secured hereby. In the event of loss covered by any of the policies of insurance herein referred to, each individual insurance company concerned is hereby authorized and directed to make payment for such loss directly to the Mortgagee instead of to the Mortgagee and the Mortgagee jointly, and the insurance proceeds, after deducting all costs of collection, including reasonable attorneys' fees, may be applied by the Mortgagee at its option, either as a payment on account of the indebtedness(es), secured hereby, whether or not then due or payable, or toward the restoration, reconstruction, repair, or alteration of the real estate, either to the portion thereof by which said loss was sustained or any other portion thereof.

(b) That together with and in addition to the monthly payment of principal and interest, and on the same date on which the principal and interest are payable under the terms of the note secured hereby, Mortgagee, if required by Mortgagee, shall deposit with the Mortgagee, in a non-interest bearing account, a sum equal to one-twelfth (1/12) of the yearly taxes and assessments which may be levied against the real estate and which may attain priority over this mortgage, and ground rents, if any, plus one-twelfth (1/12) of the yearly premiums for insurance that will become due and payable to renew the insurance on the real estate for coverage against loss by fire or such other hazard as may reasonably be required by the Mortgagee. The amount of such taxes, assessments, ground rents, and premiums when unknown, shall be estimated by the Mortgagee. If the amount of funds held shall exceed at any time the amount deemed necessary by the Mortgagee to provide for the payment of taxes, assessments, ground rents and insurance premiums as they fall due, such excess shall be repaid to Mortgagee or credited to Mortgagee as Mortgagee may determine. If the amount of the funds held shall not be sufficient at any time to pay taxes, assessments, ground rents, and insurance premiums as they fall due, Mortgagee shall pay to Mortgagee any amount necessary to make up the deficiency upon notice from Mortgagee to Mortgagee requesting payment thereof. Upon payment in full of all sums secured by this mortgage, Mortgagee shall promptly refund to Mortgagee any funds held.

(c) That Mortgagee shall pay and discharge as the same become due all taxes and assessments that may accrue, be levied, or assessed upon the real estate or any part thereof, which may be or become a lien prior to this mortgage or have priority in payment to the indebtedness(es) secured hereby, or upon Mortgagee's interest therein or upon this mortgage or the indebtedness(es) or evidence of indebtedness(es) secured hereby, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part(es) thereof upon Mortgagee; upon the passage of any law imposing the payment of the whole or any part thereof upon Mortgagee or upon the rendering by an appellate court of competent jurisdiction that the undertaking by Mortgagee to pay such taxes is legally inoperative, then the indebtedness(es) secured hereby without deduction shall, at the option of Mortgagee, become immediately due and payable, notwithstanding anything contained in this mortgage or any law heretofore enacted; and Mortgagee shall not suffer or permit any such taxes on the said real estate to become or remain delinquent or permit any part thereof or any interest therein to be sold for any taxes or assessments; and further shall furnish annually to Mortgagee, prior to the date when they become delinquent certificates or receipts of the proper offices showing full payment of all such taxes and assessments.

3. That the real estate and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon.

4. That no building or other improvement on the real estate shall be structurally altered, removed or demolished, without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this mortgage and adapted to the proper use and enjoyment of the real estate be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagee. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the indebtedness(es) secured hereby immediately due and payable.

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

6. That Mortgagee shall comply with all statutes, ordinances, regulations and laws promulgated by any governmental entity asserting jurisdiction over the real estate and any and all legal requirements shall be fully complied with by Mortgagee.

7. That if Mortgagee fails to insure the real estate as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against the real estate or the indebtedness(es) secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this mortgage, Mortgagee may, at its option, insure the real estate and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid shall constitute a debt to Mortgagee additional to the indebtedness(es) secured hereby; shall be secured by this mortgage; shall bear the interest set out in the note hereinabove referred to from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable.

8. That Mortgagee agrees that no delay or failure of Mortgagee to exercise any option to declare the maturity of any indebtedness(es) secured by this mortgage, shall be taken or deemed as a waiver of its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this mortgage can be waived, altered or changed except as evidenced in writing, signed by the Mortgagee and by the holder hereof; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness(es) hereby secured by reason of the failure of Mortgagee to procure such insurance or to pay such taxes, debts, liens or charges.

9. That if Mortgagee shall be made a party to any suit involving the title to the real estate and employs an attorney to represent it therein, or if Mortgagee employs an attorney to assist in settling or removing any cloud on the title to the real estate hereby conveyed that purports to be superior to the lien of this mortgage in any respect, Mortgagee will pay to Mortgagee, when the same becomes due, such attorney's fee as may be permitted by law and as may be reasonable for such services, and if such fee is paid or incurred by Mortgagee the same shall be secured by the lien of this mortgage in addition to the indebtedness(es) secured hereby, and shall bear interest from the date it is paid or incurred at the rate set out in the note hereinabove referred to and shall be at once due and payable.

10. That all expenses incurred by Mortgagee, including attorney's fee, in compromising, adjusting or defending against lien claims or encumbrances sought to be fixed upon the real estate hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the indebtedness(es) hereby secured.

11. That Mortgagee agrees to pay a reasonable attorney's fee as may be permitted by law to Mortgagee should the Mortgagee employ an attorney to collect any indebtedness(es) secured by this mortgage.

12. That notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self executing, Mortgagee, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the note which this mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this mortgage.

13. That if Mortgagee shall make default in the payment of any of the indebtedness(es) hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect the rent, income and profits from the real estate, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the cost of collecting the same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt(s) hereby secured.

14. That it is further agreed that if Mortgagee shall fail to pay, or cause to be paid, the whole or any portion of the principal sum, or any installment of interest thereon, or any other indebtedness(es) the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on, the real estate, or should default be made in any of the covenants, conditions and agreements herein contained, then and in that event the whole of said principal sum, with interest thereon, and all other indebtedness(es) secured hereby, shall, at the option of the then holder of said indebtedness(es), be and become immediately due and payable and the holder of the indebtedness(es) hereby secured shall have the right to enter upon and take possession of the real estate and after, or without, taking such possession of the same, sell the mortgaged real estate at public outcry, in front of the courthouse door of the county wherein the real estate is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place, and terms of such sale by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the real estate so purchased in the name and on behalf of Mortgagee, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the real estate, or the equity of redemption from this mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages, the Mortgagee, or the then holder of the indebtedness(es) hereby secured, may bid at such sale and become the purchaser of the real estate if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness(es) secured hereby, including a

15. That in the event of the enactment of any law by the State of Alabama, after the date of this mortgage, deducting from the value of the real estate for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness(es) secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this mortgage, together with the interest due thereon shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

17. That no right, title or interest in or to the mortgaged real estate, or any part thereof, shall be sold, transferred, assigned, conveyed, mortgaged or encumbered by a lien at any time prior to the payment in full of the indebtedness(es) secured hereby without first obtaining the prior written consent and approval of Mortgagee which consent and approval shall be within Mortgagee's sole discretion; that in the event of any violation of this provision, the entire unpaid balance of the indebtedness(es) secured hereby, together with all interest thereon, shall become due and payable immediately at the option of Mortgagee without notice to Mortgagor, and shall be recoverable by Mortgagee forthwith or at any time thereafter without stay of execution or other process and failure of Mortgagor to pay all monies to Mortgagee secured by this mortgage shall be an act of default entitling Mortgagee to foreclose this mortgage in accordance with the terms hereof.

19. That Mortgagor agrees for itself and any and all persons or concerns claiming by, through or under Mortgagor, that if it or any one or more of them shall hold possession of the above described real estate or any part thereof subsequent to foreclosure hereunder, it or the parties so holding possession, shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of the real estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof being hereby expressly waived.

21. That Mortgagor shall furnish to Mortgagee within Upon Request (            ) days after the close of each fiscal year of Mortgagor, such financial records as the holder of this mortgage may require including, but not limited to, an annual statement of the operation of the real estate which shall include annual statements itemizing the income and expenses, an itemized rent roll, together with a complete financial statement of Mortgagor's assets and liabilities and its profit and loss statement. Such statement shall be prepared by certified public accountant acceptable to Mortgagee or at Mortgagee's discretion be supported by the affidavit of Mortgagor. Said information shall be given to Mortgagee at no expense to Mortgagee.

Mortgagee to Mortgagor is being advanced in accordance with an agreement dated \_\_\_\_\_ and is secured by this mortgage.

24. That provided always that if Mortgagor pays the indebtedness(es) secured by this mortgage, and reimburses Mortgagee, its successors and assigns, for any amount it may have expended pursuant to the authorization of this mortgage, including without limitation, sums spent in payment of taxes, assessments, insurance or other liens and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance shall be null and void; otherwise it shall remain in full force and effect.

26. That no delay or failure of Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising same or any other option at any time, and the payment, or contracting to pay, by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this mortgage on account of such failure of Mortgagor.

To Mortgagor: Kirkwood Construction, Inc.  
5931 Cahaba Valley Road  
Birmingham, Alabama 35243

To Mortgagee: The Colonial Bank of Alabama, P.O.Box 1887, B'ham, AL 35201



28. That singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker of this mortgage, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

29. That the unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and not alternative, and are in addition to those provided by law.

IN WITNESS WHEREOF, the undersigned (has) (have) set (its) (his) (her) (their) hand(s) and seal(s), on the day and year first above written.

Kirkwood Construction, Inc.

WITNESSES:

Richard P. Humphrey, III

X Frank Kirkwood (SEAL)  
Its: President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (SEAL)

LHB/wp

STATE OF ALABAMA

\_\_\_\_\_  
COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_

whose name(s) (is) (are) signed to the foregoing conveyance and who (is) (are) known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, (he) (she) (they) executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF ALABAMA

Shelby  
COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_

Frank D. Kirkwood

whose name as President of Kirkwood Construction, Inc. is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 8th day of July, 19 86

James D. Gullett  
Notary Public MY COMMISSION EXPIRES DECEMBER 12, 1989

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1986 JUL 14 AM 9:40

Thomas A. Henderson, Jr.  
JUDGE OF PROBATE

1. Deed Tax \$ \_\_\_\_\_  
2. Mtg. Tax 82.50  
3. Recording Fee 10.00  
4. Indexing Fee 1.00  
TOTAL 93.50



This instrument prepared by: Richard P. Humphrey, III/jdc  
The Colonial Bank of Alabama, P.O. Box 1887, B'ham, AL 35201