

1315

COLLATERAL ASSIGNMENT OF CONTRACT DOCUMENTS

THIS COLLATERAL ASSIGNMENT OF CONTRACT DOCUMENTS made this 12th day of May, 1988, from TWINBRIDGE-ROCKY BROOK PARTNERS, an Alabama general partnership (the "Borrower"), to AMSOUTH BANK N.A. (the "Lender"),

RECITALS

Simultaneously with the execution hereof, the Lender is making an advance to the Borrower in the amount of \$200,000 (the "Loan") pursuant to a Master Note (the "Note") and a Development Loan Agreement, both dated October 15, 1987. In consideration of the Loan and as security therefor, the Borrower is executing this Assignment in favor of the Lender (this Assignment, the Note and the Development Loan Agreement are herein referred to collectively as the "Loan Documents").

WITNESSETH:

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NOW, THEREFORE, in consideration of the Loan and the promises and covenants contained herein, the Borrower hereby grants, transfers and assigns to the Lender and its successors and assigns all the right, title and interest of the Borrower in and to those contracts, agreements and other documents described in Exhibit "A" attached hereto and made a part hereof (herein, together with any changes, extensions, revisions, modifications or guarantees of performance thereof, called the "Contract Documents"). This Agreement is entered into for the purpose of providing additional security (a) for all obligations which are secured by any of the Loan Documents and (b) for the performance and discharge of the obligations, covenants and agreements of the Borrower contained in the Loan Documents.

PROVIDED, HOWEVER, that upon the payment and performance in full of all obligations evidenced or secured by any of the Loan Documents, the assignment made herein shall be void.

1. **Representations and Warranties of the Borrower.** The Borrower represents and warrants as follows:

(a) The Borrower has made no assignment of any of its rights under any of the Contract Documents other than the assignment made herein.

(b) The Borrower is not in default under any of the Contract Documents and knows of no default on the part of any other party to any of the Contract Documents.

Amended Title

(c) The Borrower has not done or omitted to do any act so as to be estopped from exercising any of its rights under any of the Contract Documents.

(d) The Borrower is not prohibited by any other agreement or under any judgment or decree from the execution and delivery of this Agreement or the performance of the covenants of the Borrower hereunder or in the Contract Documents.

(e) There is no action pending or threatened which would in any way prohibit or impair the execution and delivery of this Agreement or the performance of the covenants of the Borrower herein or in the Contract Documents.

2. **Covenants of the Borrower.** The Borrower agrees and covenants with the Lender as follows:

(a) The Borrower will (i) fulfill, perform and observe all obligations, conditions and covenants of the Borrower contained in any of the Contract Documents, (ii) give prompt notice to the Lender of any claim of default under any of the Contract Documents given to the Borrower or given by the Borrower, (iii) at the sole cost and expense of the Borrower, enforce the performance and observance of the obligations, conditions and covenants of the Contract Documents to be performed or observed by any other party to any of the Contract Documents and (iv) appear in and defend any action arising out of or in any manner connected with any of the Contract Documents.

(b) The rights assigned hereunder include all the Borrower's right (i) to modify the Contract Documents, (ii) to terminate the Contract Documents and (iii) to waive or release the performance or observance of any obligation or condition of the Contract Documents; provided, however, these rights shall not be exercised by the Lender unless an Event of Default hereunder has occurred.

3. **Events of Default.** The occurrence and continuation of any of the following shall be an "Event of Default" hereunder:

(a) the failure of the Borrower to perform or observe any obligation or covenant contained herein and the continuation of such failure after thirty (30) days' written notice to the Borrower, or

(b) an Event of Default under any of the other Loan Documents,
or

(c) the failure of the Borrower to perform any condition precedent to the material obligation of any party to any of the Contract Documents and the continuation of such failure after thirty (30) days' written notice thereof to the Borrower by the Lender.

4. **Remedies of the Lender.** Upon the occurrence and continuation of an Event of Default hereunder, the Lender may:

(a) Declare all or any part of the indebtedness secured by this Agreement and by the Loan Documents immediately due and payable;

(b) Perform any and all covenants or obligations of the Borrower contained in any of the Contract Documents and exercise any and all rights of the Borrower therein contained as fully as the Borrower itself could and without regard to the adequacy or security for the indebtedness hereby secured and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court;

(c) Take possession of all plans, drawings, specifications, surveys and other documents reasonably required by the Lender in the exercise of its rights and remedies hereunder; or

(d) Take all other actions which the Lender may deem necessary or desirable to protect its security.

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The Borrower hereby appoints the Lender as its attorney-in-fact to take such actions, execute such documents and perform such work, with or without entry into possession of the Land, as the Lender may deem appropriate in the exercise of the rights and remedies of the Lender granted herein. The powers herein granted shall include, without limitation, the power to sue on the Contract Documents and to seek all governmental approvals required for the completion of the improvements contemplated by the Contract Documents in the name of the Borrower or the Lender or both. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the termination of the assignment made herein. The Borrower agrees to indemnify and hold harmless the Lender and any other party acting hereunder from all claims, demands, liabilities, losses, costs, damages, fees and expenses whatsoever associated with the exercise of the power of attorney granted in this paragraph and hereby releases the Lender and any other party acting hereunder from all liability whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto.

5. **Performance by the Lender. Indemnity.** (a) If the Borrower fails to perform or observe any covenant or comply with any condition contained in any of the Contract Documents, upon thirty (30) days' written notice to the Borrower and without releasing the Borrower from its obligations to do so, the Lender may perform such covenant or condition, or it may appear in any action or proceeding. The Lender shall not be obligated to perform or discharge any obligation of the Borrower under any of the Contract Documents either before or after the occurrence of an Event of Default. To the extent that the Lender shall reasonably incur any costs or expenses or pay any moneys in connection therewith, including any costs or expenses of litigation, such costs, expenses or payments will be additional indebtedness of the Borrower to the Lender secured by the Mortgage, will bear interest at the after-maturity rate specified in the Note and will be payable upon demand.

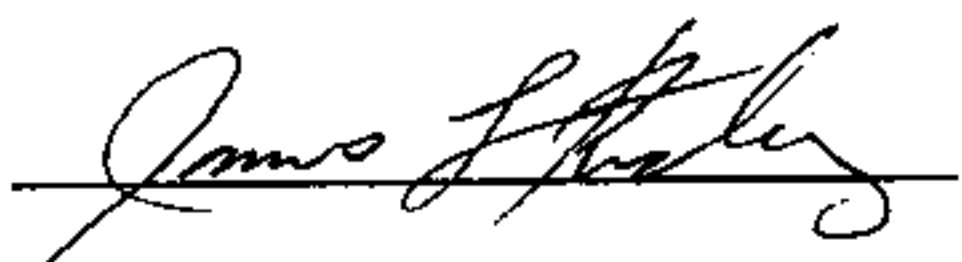
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(b) The Borrower agrees to indemnify and hold harmless the Lender from all claims, demands, liabilities, losses, costs, damages, fees and expenses (including attorney's fees) which the Lender may incur under any of the Contract Documents or under or by reason of this Agreement by reason of any act of the Lender under this Agreement or under any of the Contract Documents.

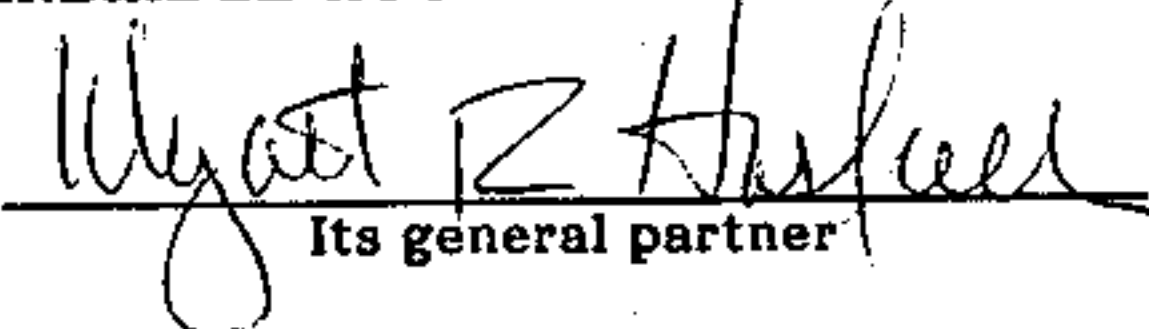
6. **Miscellaneous.** The remedies herein provided shall be in addition to and not in substitution for the rights and remedies which would otherwise be vested in the Lender in any of the other Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by the Lender. The remedies herein provided or otherwise available to the Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall the use of any of the remedies hereby provided prevent the subsequent or concurrent resort to any other remedy or remedies. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns, heirs and legal representatives of the parties hereto. The provisions of this Agreement are severable, and the invalidity or unenforceability of any one or more of the provisions hereof will in no way affect any other provision. This Agreement constitutes the entire agreement between the Borrower and the Lender with respect to the subject matter hereof, and this Agreement may be amended only by an instrument in writing executed by the parties. This Agreement shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, the Borrower has caused this Agreement to be executed in its corporate name by its duly authorized officers and has caused its corporate seal to be affixed hereto on the day and year first above written.

Witness:

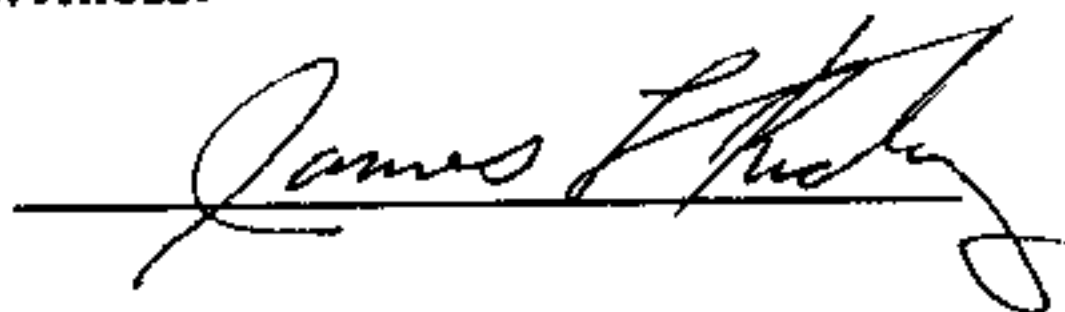


TWINBRIDGE-ROCKY BROOK PARTNERS

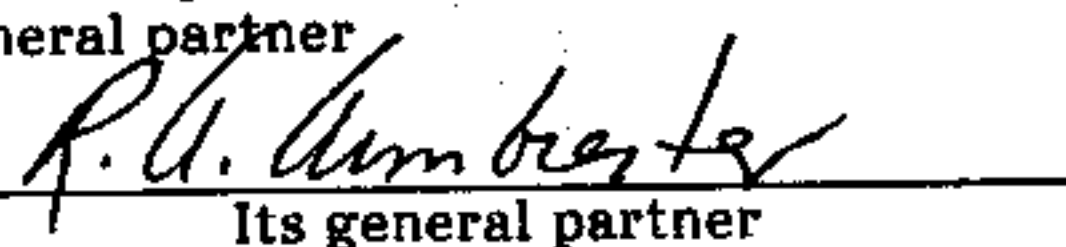
By 
Its general partner

and

Witness:



By Twinbridge-Rocky Brook Partners, Ltd.
Its general partner

By 
Its general partner

This instrument prepared by:

James L. Richey
Haskell Slaughter & Young
Professional Association
800 First National-Southern Natural Building
Birmingham, Alabama 35203

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that R.A. Ambrester, whose name as general partner of Twinbridge-Rocky Brook Partners, Ltd., an Alabama limited partnership, as general partner of Twinbridge-Rocky Brook Partners, an Alabama general partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such general partner and with full authority, executed the same voluntarily for and as the act of said limited partnership, acting in its capacity as general partner of said general partnership as aforesaid.

Given under my hand and official seal this 12th day of May, 1988.

[NOTARIAL SEAL]

Susan M. Jones
Notary Public

My Commission Expires: 5-29-91

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that WYATT R. HASKELL, whose name as General Partner of TWINBRIDGE-ROCKY BROOK PARTNERS, an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, 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 12th day of May, 1988.

[NOTARIAL SEAL]

Susan M. Jones
Notary Public

My Commission Expires: 5-29-91

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EXHIBIT A TO ASSIGNMENT OF CONTRACT DOCUMENTS

1. Promissory Note dated May 12, 1988 from Ryan Contract Services, Inc. ("Ryan") to the Borrower;
2. Construction Loan Agreement dated May 12, 1988 between Ryan and the Borrower;
3. Mortgage and Security Agreement dated May 12, 1988 from Ryan to the Borrower;
4. Guaranty Agreement dated May 12, 1988 from Donald L. Ryan to the Borrower; and
5. Collateral Assignment of Contract Documents dated May 12, 1988 from Ryan to the Borrower and the documents and agreements assigned to the Borrower thereunder.

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STATE OF ALA. SHERIFF
I CERTIFY THIS
INSTRUMENT WAS FILED

88 MAY 18 AM 9:22

Thomas W. Johnson, Jr.
JUDGE OF PROBATE

RECORDING FEES
Recording Fee \$ 15.00
Index Fee 1.00
TOTAL \$ 16.00