

ALABAMA

COMMERCIAL MORTGAGE

THE FIRST SAVINGS BANK, FSB
FORMERLY FIRST FEDERAL SAVINGS
AND LOAN ASSOCIATION OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF SHELBY

1196

THIS MORTGAGE is executed this 29th day of August, 1991 by Loiron Thomas Holley and Jan H. Holley, husband and wife

(the Mortgagor), whose address is 1741 King James Drive, Alabaster, Alabama 35007, in favor of First Federal Savings and Loan Association of South Carolina (the Mortgagee), a Corporation organized and existing under the laws of the United States of America, whose address is 301 College Street, Greenville, South Carolina 29601, and is given in consideration of the sums loaned or to be loaned by Mortgagee pursuant to that certain promissory note (the Note) of even date identified more fully hereinafter from Mortgagors to Mortgagee, and shall secure the Obligations (defined hereinafter) upon the terms and conditions set forth in this Mortgage:

GRANT OF MORTGAGE:

1. **Indebtedness Secured.** This Mortgage is executed in order to secure the following obligations now or hereafter owed to the Mortgagee (the Obligations):

a. The repayment of the Note, which is in the original principal sum of Sixteen Thousand Nine Hundred and No/100 (\$ 16,900.00) Dollars, and which has a final maturity date (if not sooner paid) of Nov 27, 19 91, together with interest thereon, any renewals or extensions thereof, and all debts, liabilities and obligations now or hereafter owed to Mortgagee;

b. The repayment of all future advances or re-advances made by Mortgagee pursuant to the Note or this Mortgage;

c. The repayment of attorneys fees, court cost and any other indebtedness owed to Mortgagee, pursuant to the terms of the Note, this Mortgage, and any other instruments or documents executed or delivered to Mortgagee to secure the Obligations (the Security Instruments); and

d. The performance and observance by Mortgagor of all covenants, conditions and representations contained in the Note, this Mortgage and the Security Instruments.

2. **Mortgaged Property.** Mortgagor grants, mortgages and conveys to Mortgagee, its successors, legal representatives and assigns forever, to have and to hold, the following property (the Property):

a. Land. (described as follows):

Lot 14, according to the map and survey of King's Meadow Subdivision, Second Sector, as recorded in Map Book 9, Page 168, in the Probate Office of Shelby County, Alabama.

This being the same property conveyed to the mortgagors herein by Deed of C & C Homebuilders, Inc. dated December 9, 1988 and recorded on December 19, 1988 in Deed Book 218 at Page 609, Office of the Probate Office for Shelby County, Alabama.

- b. All buildings, structures and improvements now or subsequently erected on the Property;
 - c. All fixtures, materials, machinery, equipment and personalty of Mortgagor now or subsequently located on, attached to or used in connection with the Property;
 - d. All easements, rights of way, covenants, rights and appurtenances now or subsequently pertaining to or in favor of the Property, and all rights of enforcements thereof;
 - e. All rights of Mortgagor in all adjoining streets, alleys, passages, ways and water courses;
 - f. All mineral, timber, water, oil and gas rights, royalties and profits pertaining to or in favor of the Property;
 - g. All income, rents, issues, royalties, and profits now or subsequently derived from or through the Property;
 - h. All rights, title and interest of Mortgagor in and to any leases now or subsequently on or affecting the Property;
- and
- i. All replacements of and/or additions to any of the foregoing.

3. **Warranties of Title.** Mortgagor covenants and warrants that Mortgagor is lawfully seized of the Property in fee simple absolute; that Mortgagor has the full right to mortgage, grant and convey the Property; that the Property is free and clear of all liens and encumbrances except as may be set forth herein or in a list of "exceptions" approved by Mortgagee and contained in any title insurance policy insuring Mortgagee's interest in the Property. Mortgagor further covenants to warrant and forever defend the Property unto Mortgagee, its successors and assigns forever, from and against Mortgagor and the claims of all other persons. This Mortgage shall remain in full force and effect unless and until Mortgagor pays and discharges the Obligations secured hereby in full.

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COVENANTS OF MORTGAGOR

1. Maintenance of Property.

- a. Mortgagor shall maintain the Property in good condition and repair, shall not commit or permit any waste, nuisance, or any action or omission which will increase the risk of fire or other hazard to the Property.
- b. Mortgagor shall not remove, demolish or alter any improvement or fixture which is or becomes a part of the Property without the prior written consent of Mortgagee.
- c. Mortgagor shall give immediate written notice to Mortgagee of any loss, damage or destruction of or to the Property due to any cause whatsoever, and shall promptly repair, restore or replace the same to the equivalent of its original condition whether or not any insurance proceeds therefore are sufficient.
- d. Mortgagee and its representatives are authorized to enter upon and inspect the Property at any time during normal business hours.
- e. Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property, and with all restrictive covenants and any declarations, by-laws, regulations or other documents establishing any condominium project or planned unit development of which the Property is a part.

2. Taxes, Assessments and Liens.

- a. Mortgagor shall promptly pay when due all regular and special taxes, assessments, utility charges, and other charges now or subsequently levied or assessed upon the Property or any operations thereon and shall deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the validity of such tax, assessment or charge so long as collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.
- b. Mortgagor shall obtain the discharge by payment, bonding, or other appropriate security, of any mechanics', materialmen's, laborers', statutory or other lien upon the Property within ten (10) days following attachment thereof.
- c. Mortgagee may at any time, at its option, require Mortgagor to deposit with Mortgagee, with each regular payment under the Note, an amount equal to the portion of the annual taxes, insurance and assessments estimated by Mortgagee to be sufficient to enable Mortgagee to pay all taxes, insurance, assessments and similar charges against the Property at least thirty (30) days before they become due. Such deposits shall not constitute trust funds and may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, insurance, assessments and similar charges.

3. Insurance.

- A. Mortgagor shall keep all improvements on the Property, whether now existing or subsequently erected, continuously insured against loss or damage by fire and against such other hazards as Mortgagee, at its sole discretion, shall from time to time require, for the benefit of Mortgagee. All insurance required by Mortgagee shall be maintained in such form and amounts, through such companies and agents, and with such terms, as shall be acceptable to Mortgagee at its sole discretion. Such policies shall designate Mortgagee as loss payee pursuant to this Mortgage. Mortgagor shall deliver to Mortgagee all policies and renewals immediately upon issuance, together with proof of payment of all premiums and renewals not less than ten (10) days prior to the expiration date of such policies or renewals. All such policies, together with any rights to unearned premiums appurtenant thereto, shall become the property of the purchaser of the Property by foreclosure or otherwise, and Mortgagor hereby appoints Mortgagee as attorney in fact for Mortgagor to assign all right, title and interest of Mortgagor in and to such policies to such purchaser. This appointment is coupled with an interest and is irrevocable.
- b. Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies and to collect and receive any proceeds therefrom. Each insurance company is directed and authorized to make payments for all such losses directly to Mortgagee alone, and not to Mortgagor and Mortgagee jointly. Mortgagee shall have the sole discretion to apply any insurance proceeds to payment of the Obligations, to the repair or restoration of the Property, or to any combination thereof.

4. Expenditures by Mortgagee.

- a. Mortgagee may at its sole discretion, take any action and make any disbursements necessary to protect its interest herein. Mortgagor will pay or reimburse Mortgagee immediately without demand for all costs, fees and attorneys fees incurred in protecting Mortgagee's interest in any matter, including but not limited to bankruptcy, insolvency, litigation, code enforcement, eminent domain, or any other matter or proceeding involving the Note, this Mortgage, the Security Instruments or the Property or in which Mortgagee is designated as a party plaintiff or defendant.
- b. If Mortgagor shall not pay when due any tax, assessment, insurance premium or utility or other charge or timely perform or observe any other covenant, condition or term of the Note, this Mortgage, or any of the Security Instruments, then Mortgagee, at its sole discretion, may perform or observe the same, and all payments so made or costs or expenses so incurred shall be added to the Obligations secured hereby and shall be repaid by Mortgagor immediately without demand.
- c. All sums paid or incurred by Mortgagee pursuant to this provision shall bear interest at the rate set forth in the Note from the date of payment. Mortgagee shall be the sole judge of the legality, validity and priority of any tax, assessment, premium, charge, claim or payment, and of the necessity or advisability of such expenditure.

5. Assignment of Leases, Rents and Profits. Mortgagor assigns to Mortgagee all leases of and rents and profits from the Property, provided that so long as Mortgagor is not in default hereunder, Mortgagor may collect and retain all rents and profits. Mortgagor shall comply with and observe its obligations as landlord under all leases of the Property and shall not, without prior written consent of Mortgagee, further assign any rents or modify, extend, terminate or accept surrender of any lease or permit any assignment or sublease. In no event shall the foregoing assignment impose any duties of landlord upon Mortgagee under any leases.

6. Condemnation. Mortgagor assigns to Mortgagee all compensation, awards, damages, right of action and proceeds whatsoever arising out of any damage or taking of the Property through condemnation or similar taking thereof by any governmental authority, including all rights, at Mortgagee's option, to commence, appear in and prosecute, any such action or proceeding and to settle or compromise any such claim or award. Mortgagee, at its option, may apply any payments or awards to reduce the Obligations, to replace, restore or repair the Property, or for any combination thereof. Application of any award, however, will not delay or affect any payments due hereunder.

7. Further Assurances. Upon request by Mortgagee, Mortgagor shall execute, procure and deliver to Mortgagee any instruments, certificates or documents as Mortgagee may deem necessary or desirable to effectuate, complete, enlarge, perfect, continue or preserve the Obligations or the lien of this Mortgage. Upon any failure by Mortgagor to do so, Mortgagee may procure, execute and record any such instruments, certificates or documents for and in the name of Mortgagor and Mortgagor appoints Mortgagee as agent and attorney in fact of Mortgagor for such purpose.

8. **Books and Records.** Mortgagor shall keep and maintain at all times complete, true and accurate books and records on the Property, any operations thereon, and the Mortgagor, all as may be required from time to time by Mortgagee. Mortgagor shall at all times permit Mortgagee to inspect said books and records.

9. **Notice.** All notices required hereunder shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the First Class United States mail, with postage duly prepaid, addressed to the recipient thereof at the address set forth above or at such other address as the recipient shall have provided in writing to the other party.

10. **Future Advances.** This Mortgage shall secure any future advances, with interest thereon, from Mortgagee to Mortgagor, jointly, severally or otherwise, whether obligatory or not, made by Mortgagee at its sole discretion, to the same extent as though such future advances were made at the time of execution of the Note and this Mortgage; provided that at no time shall the indebtedness secured by this Mortgage exceed the original principal sum of the Note plus \$ _____, plus interest thereon, and such other sums as may become secured pursuant to the provisions of this Mortgage.

11. **Transfer of Title.** Mortgagor shall not, without the written consent of Mortgagee:

- a. Sell, transfer, convey, lease, encumber or in any other manner change the ownership of or title to all or any portion of the Property, whether voluntarily, involuntarily or by operation of Law;
- b. Cause, permit or allow any issuance or transfer of stock or other beneficial interest in Mortgagor, whether by sale, exchange, conveyance, merger, consolidation or otherwise (except transfer by devise or intestate succession);
- c. Consent to, create, permit or allow any encumbrance, subordinate mortgage or lien, or any other debt, charge or lien against the Property.

DEFAULT

1. **Events of Default.** The term default or event of default, wherever used in this Mortgage, shall mean any one or more of the following events:

- a. Failure by Mortgagor to pay when due any installment of principal and/or interest under the Note;
- b. Failure by Mortgagor to pay any other sums secured by this Mortgage upon demand;
- c. Failure by Mortgagor to perform or observe any other covenant, condition, warranty, representation, obligation or agreement set forth in the Note, this Mortgage or the Security Instruments;
- d. Falsity or material untruth of any representations or warranties of Mortgagor contained in the Note, this Mortgage or the Security Instruments;
- e. Any of the following actions by, against or involving Mortgagor or any guarantor or endorser of all or any part of the Obligations: (i) filing of a voluntary petition in bankruptcy; (ii) adjudication as a bankrupt or insolvent; (iii) the filing of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution 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; (iv) any petition for, consent to or acquiescence in the appointment of any trustee, receiver or liquidator of Mortgagor or any such guarantor or endorser or of all or any part of the Property or of the rents, issues, royalties, income or profits thereof; (v) the making of any general assignment for the benefit of creditors; or (vi) the admission in writing of its inability to pay its debts when due.

2. **Acceleration of Maturity.** If any event of default shall have occurred, Mortgagee may declare the outstanding Obligations to be immediately due and payable in full without further notice or demand.

3. **Enforcement and Foreclosure.** If any event of default shall have occurred, Mortgagee shall have the right, without further notice or demand to Mortgagor, to enforce this Mortgage by instituting foreclosure of the Mortgage or by instituting any other proceedings at law or in equity (including specific performance) for payment or enforcement of the Obligations or of any other terms or conditions set forth in the Note, this Mortgage or the Security Instruments.

4. **Entry Upon the Property.** If any event of default shall have occurred, Mortgagor, upon demand from Mortgagee, shall immediately surrender possession of the Property to Mortgagee, and to the extent permitted by law, Mortgagee may enter upon, take and maintain exclusive possession of the Property, unless and until all defaults shall be cured and such cure shall be accepted by Mortgagee at its sole discretion.

5. **Operation of Property.** Mortgagee, upon entry and taking possession of the Property, may hold, store, use, operate, manage, control and maintain the Property, conduct the business thereof make repairs, replacements, alterations and improvements to the Property and any fixtures or personalty thereon, all as Mortgagee may deem necessary or desirable.

6. **Appointment of Receiver.** If any event of default shall have occurred, Mortgagee, upon application to a court of competent jurisdiction, shall have the absolute right to appointment of a receiver of the Property. Such receiver shall have all powers granted to Mortgagee herein to enter upon and operate the Property, together with any other powers available to receivers by law or as may be conferred by the Court which appoints such receiver.

7. **Other Remedies.** Mortgagee shall have the right to exercise any other rights, remedies and recourses granted under the Note, the Security Instruments, or now or hereafter existing in equity, at law, by statute or otherwise.

8. **Waiver of Redemption and Appraisement.** To the fullest extent permitted by law, Mortgagor waives and releases all benefits of any applicable law exempting the Property from attachment, levy or sale on execution or providing for appraisement, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment. To the fullest extent permitted by law, Mortgagor waives and releases all benefits of any applicable law permitting or requiring the assets comprising the Property to be marshalled or appraised for the purpose of reducing any deficiency judgment against Mortgagor and agrees that Mortgagee's right to foreclose this Mortgage shall include the right to sell the Property in one or more parcels or in its entirety.

9. **Application of Proceeds.** Any proceeds of any nature and kind derived from the exercise of any remedy conferred herein in the event of default by Mortgagor shall be applied in the following order of priority:

- a. First, to the payment of all expenses of taking, holding, using, leasing, repairing, improving, operating and selling the Property, including, without limitation, compensation and fees of all attorneys, receivers, agents and all other persons employed for such purposes;
- b. Second, to the payment of all sums due Mortgagee under the Note, this Mortgage and the Security Instruments, with interest thereon, other than the outstanding principal balance of the Note and any accrued unpaid interest thereon.
- c. Third, to the payment of all accrued unpaid interest due on the Note;
- d. Fourth, to the payment of the unpaid principal balance of the Note;
- e. Fifth, to Mortgagor or such other disposition as shall be directed by any court of competent jurisdiction.

10. **Discontinuance of Proceedings.** Mortgagee, at its sole option for any reason whatsoever, shall have the right to discontinue at any time any proceedings for enforcement of this Mortgage, in which case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

11. **No Waiver.** No delay or failure by Mortgagee to exercise any right of remedy conferred hereunder upon any event of default shall be deemed a waiver by Mortgagee of any future right to exercise such right or remedy or of any other right or remedy provided herein; nor shall any waiver of any event of default be deemed to be a waiver of any other event of default or of the future occurrence of the same event of default.

12. Nature of Remedies. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or the Security Instruments is exclusive of any other right, power or remedy. Each right, power and remedy is cumulative and concurrent; shall be in addition to any other right, power and remedy under the Note, this Mortgage and the Security Instruments, or now or hereafter existing at law, in equity or by statute; and may be pursued separately, successively or concurrently against Mortgagor and/or the Property, at the sole discretion of Mortgagee.

MISCELLANEOUS

1. Usury. It is the intent of Mortgagor and Mortgagee to at all times comply with all applicable usury and similar laws, if any. Should any such laws at any time render usurious any provisions of the Note or this Mortgage, then it is the intent of Mortgagor and Mortgagee that all excess amounts theretofore collected be refunded to Mortgagor, the Note be thereupon reformed, and the amounts collectible thereafter be reduced so as to permit the recovery by Mortgagee of the fullest amount allowable by the law and otherwise called for in the Note.

2. Successors and Assigns. All terms and covenants contained in this Mortgage are and shall be binding upon and inure to the benefit of Mortgagor and Mortgagee, their respective heirs, successors, assigns, and legal representatives, and all other persons claiming by, under or through them.

3. Severability. Should any provision of the Note, this Mortgage or the Security Instruments be invalid, illegal or unenforceable, the validity of the remaining provisions thereof shall not be affected by such invalidity, illegality or unenforceability.

4. Entire Agreement. This Mortgage, together with the Note and Security Instruments, contains the entire agreement of the parties with respect to its subject matter; supercedes all prior agreements not incorporated herein or therein; and may not be changed, waived, discharged or terminated in any manner except by written instrument executed by Mortgagor and Mortgagee.

5. Applicable Law. This Mortgage, together with the Note and Security Instruments, is executed in the State of South Carolina and shall be governed and construed in accordance with and enforced under the laws of the State of South Carolina.

EXECUTED as of the date first written above.

Signed, sealed and delivered in the presence of:

Mortgagor

Thomas H. Boyeman
Judy L. Jackson

Loiron Thomas Holley
Jan H. Holley

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STATE OF SOUTH CAROLINA
COUNTY OF Greenville

Personally appeared before me the undersigned witness who made oath that (s)he saw the within named Mortgagor sign, seal, and as the Mortgagor's act and deed, deliver the within written Mortgage; and that (s)he with the other witness subscribed above witnessed the execution thereof.

Sworn before me this 29th day of August, 1991

Thomas H. Boyeman (SEAL)
Notary Public for South Carolina
My Commission Expires: 10-28-95

Judy L. Jackson
Witness

STATE OF ALA. SHERIFF
I CERTIFY THIS INSTRUMENT WAS FILED
91 SEP 17 PM 12:51
JUDGE OF PROBATE

1. Deed Tax	\$ 33.33
2. Mtg. Tax	\$ 10.00
3. Recording Fee	\$ 3.00
4. Indexing Fee	\$ 1.00
5. No Tax Fee	\$ 1.00
6. Certified Fee	\$ 1.00
Total	\$ 60.33

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Loiron Thomas Holley and Jan H. Holley, husband and wife, 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, they, as husband and wife, and with full authority, executed the same voluntarily for and as their act and deed.

GIVEN under my hand and official seal, this the 29th day of August, 1991.

Thomas H. Boyeman (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-28-95

RETURN TO: SNABLE AND TUCKER, ATTORNEYS

JMS 91-1258
ZEMAN, GRAYSON, SMITH & PRICE
FIRST FEDERAL BLDG. SUITE 400
301 COLLEGE STREET
GREENVILLE, S.C. 29601

RETURN TO: SNABLE AND TUCKER, ATTORNEYS