

24-34408A



20040623000341150 Pg 1/8 10,082.00
Shelby Cnty Judge of Probate, AL
06/23/2004 09:32:00 FILED/CERTIFIED

THIS INSTRUMENT PREPARED BY:

Robert H. Sprain, Jr.
SADLER, SULLIVAN, P.C.
SouthTrust Tower, Suite 2500
420 20th Street North
Birmingham, Alabama 35203

REAL ESTATE MORTGAGE

KNOW ALL MEN BY THESE PRESENTS:

That **David E. Foley, Bishop of Birmingham in Alabama, a corporation sole, by and through its Attorney in Fact Reverend Richard E. Donohoe, by that certain First Amended Durable General Power of Attorney recorded at Instrument Number 200111/6401 of the Office of the Judge of Probate of Jefferson County, Alabama, Post Office Box 12047, Birmingham, Alabama 35202-2047** (hereinafter referred to as "Mortgagor," whether one or more), on this 21st day of June, 2004, in consideration of the sum of Six Million Seven Hundred Thousand Dollars (\$6,700,000.00) and other valuable considerations, and for the purpose of securing the payment of the indebtedness hereinafter described, does by these presents, grant, bargain, sell, convey and mortgage unto **KNIGHTS OF COLUMBUS, a specially chartered Connecticut corporation, 1 Columbus Plaza, New Haven, Connecticut, 06510-3326** (hereinafter referred to as "Mortgagee"), its successors and assigns forever, the following described real estate situated in the County of Shelby, State of Alabama to-wit:

Lot 3-A, according to a Resurvey of Lot 3, Brook Highland Commercial No. 3, as recorded in Map Book 26, Page 41, in the Office of the Judge of Probate of Shelby County, Alabama, being a Resurvey of Lot 3, Brook Highland No. 3, as recorded in Map Book 23, Page 91 (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD the same, together with all and singular the tenements, the hereditaments and appurtenances thereunto belonging or in anywise appertaining, forever, including all fixtures and articles of personal property now or at any time hereafter attached to or used in any way in connection with the operation and occupancy of the above-described real estate, and any and all buildings now or hereafter erected thereon, together with all rents, issues and profits therefrom unto the Mortgagee, its successors and assigns forever.

This Mortgage shall secure the performance of the covenants herein and the payment to Mortgagee of the principal sum of Six Million Seven Hundred Thousand Dollars (\$6,700,000.00), according to the terms and conditions of that certain Promissory Note of even date herewith executed by Mortgagor in favor of Mortgagee in the principal amount of Six Million Seven Hundred Thousand Dollars (\$6,700,000.00) payable in installments on a twenty (20) year amortization schedule over a period of five (5) years with interest thereon at the rate of 5.41%,

together with all extensions, renewals, substitutions and changes in form thereon, which may be made without notice to the Mortgagor, and all interest, charges and fees thereon. Mortgagor further covenants and agrees that this Mortgage shall secure all indebtedness owed by Mortgagor to Mortgagee, directly or indirectly, and for any future advances that may be made by Mortgagee to Mortgagor.

The Mortgagor hereby covenants and agrees as follows:

1. Mortgagor is the owner in fee simple of the mortgaged premises, and they are free and clear of encumbrances, subject only to mortgages of record as of this date, and Mortgagor has a good right to sell, convey and mortgage the same as aforesaid; that the premises are free and clear of all general and special taxes, liens, charges and encumbrances except said existing mortgages; and that Mortgagor will warrant and forever defend the title thereto against the lawful claims of all persons whomsoever.
2. Mortgagor will pay the above-recited debt and any amounts becoming due under the Mortgage and interest thereon when and as the same shall become due whether in course or under any covenants or stipulation herein contained.
3. Mortgagor will keep all buildings, fences and other improvements, if any, on the mortgaged premises in good repair, and they shall not be destroyed or removed without the consent of the Mortgagee, and Mortgagor will not commit or allow any waste upon said premises, nor do any other act whereby the property hereby mortgaged shall become less valuable; that the premises shall not be used for illegal or disreputable business or used for purposes which will injure or render said premises unfit or less desirable for their present uses and purposes; that no unnecessary accumulation of combustible material shall be permitted on the premises; that all fixtures now installed, or which may hereafter be installed, on or about the improvements of said premises shall be kept in a good state of repair so that the same may be suitable and useful for the purpose for which they have been or may be installed and so that damage will not result in the improvements or any portion thereof from a failure to maintain such fixtures in proper repair, and, in case any damages should result from any cause, proper and suitable repairs will be immediately made and installed so that the improvements on said premises will be maintained in at least as good condition as the same are at the present time, or as they shall be after development, ordinary wear and tear excepted.
4. The Mortgagor shall maintain a policy or policies of insurance providing coverage for fire, extended coverage, vandalism and malicious mischief, and such perils as the Mortgagee may require. The policy must be issued by an insurance company approved by the Mortgagee and must provide coverage in an amount to the full insurable value of the premises and in satisfaction of any co-insurance requirements, which amount must not be less than the principal amount of the Note secured



hereby. The policy must contain a standard mortgage clause naming the Mortgagee as first mortgagee and containing a 30-day non-cancellation clause and a loss payable clause in favor of the Mortgagee. The original policy and all renewals thereof (or certified copies of the same) shall be held by the Mortgagee. If the Mortgagor fails to procure, pay for and deliver to the Mortgagee any policy or policies of insurance and/or renewals thereof, the Mortgagee may at its option, but shall be under no obligation to do so, effect such insurance and pay the premiums therefor, and the Mortgagor will repay the Mortgagee on demand any premium so paid with interest at the per annum rate of fifteen percent (15%) from the date of payment, and the same shall be secured by this Mortgage.

5. Mortgagor will pay all taxes, charges, or assessments of every kind and nature that may be levied or charged upon said premises herein described, as soon as the same may be due, and will, before the first day of each month following the period when said payment is due, deliver to the Mortgagee the receipt of the proper officer showing the payment of same. If the Mortgagor fails to discharge any taxes, charges, or assessments by their due date, the Mortgagee may, at its option, but shall be under no obligation to do so, pay such taxes, charges or assessments and the Mortgagor will repay the Mortgagee, on demand, any amounts so paid with interest at the rate of fifteen percent (15%) per annum from the date of payment, and the same shall be secured by this Mortgage.
6. Mortgagor shall keep said premises free from all judgments, mechanic's liens, and all other statutory liens of whatsoever nature, and if any action or proceeding be commenced to which action or proceeding the holder of this Mortgage is made a party or in which it becomes proper or necessary to defend or uphold the lien of this Mortgage, Mortgagor agrees to pay to the Mortgagee, all sums, including costs, expenses and reasonable agent=s and attorneys' fees which it may extend, or for which it may become obligated in any proceedings, legal or otherwise, to establish and sustain the lien of this Mortgage, or its priority, or in defending against liens, claims, rights, estate, easements or restrictions of any person or persons asserting priority thereto, or for any abstract or extension of abstract of title to said premises, together with interest on all such sums at the same rate as provided in the above-described note from the date same were paid and any such sum or sums and interest thereon shall be a lien upon said premises and shall be secured by this Mortgage. Time is of the essence of this agreement, and each of the covenants and agreements herein contained shall run with the land hereby mortgaged.
7. In the event Mortgagor fails to comply with the terms hereof in any material respect, Mortgagee may take such action as it deems necessary to preserve the premises and to protect the lien of this Mortgage. All amounts expended by the Mortgagee in such effort shall be charged as principal money bearing interest at the same rate as provided in the above-described note and secured by this Mortgage, but such

payments shall not constitute a waiver of any rights of Mortgagee with regard to Mortgagor's breach of this indenture.

8. It is further expressly agreed that, if any part of said principal sum hereby secured, or any interest thereon, is not paid when the same becomes due and payable, or if any taxes or assessments lawfully levied and assessed against said premises and property are not paid before the same become delinquent, or in the event of the breach of any of the covenants and agreements contained herein or in any agreement between Mortgagor and Mortgagee, or upon a transfer of title of said premises or any part thereof by the Mortgagor without the prior written consent of Mortgagee, the Mortgagee, its successors and assigns, may, without notice to the Mortgagor, elect to declare the whole sum or sums and interest thereon due and payable at once, and may proceed to foreclose this Mortgage for the collection of the debts secured hereby, and the Mortgagee, its successors and assigns, shall become and be entitled to the possession of said mortgaged premises and to the rents and profits therefrom, and shall, as a matter of right, on the institution of any such foreclosure proceeding, be entitled to the appointment of a receiver for the purposes of collecting said rents and profits, said rents being hereby assigned to Mortgagee, its successors and assigns, as further security for said indebtedness. Pursuant to the power of sale, Mortgagee, its successors and assigns, agents or attorneys, are hereby authorized and empowered to sell the Property and all Improvements under the power of sale at auction for cash in compliance with the requirements of applicable law, including Ala. Code Sections 35-10-11 through 35-10-16, at the Shelby County Courthouse door in the City of Columbiana, Alabama, after first giving notice thereof once a week for three (3) successive weeks by publication in any newspaper then published in said county, describing the time, place and terms of such sale, together with a description of the Property to be sold, and upon the sale execute proper conveyance to the purchaser. The auctioneer or person making the sale is hereby empowered and directed to make and execute a deed to the purchaser in the name of the Mortgagor. Upon any foreclosure sale, Mortgagee may bid for and purchase the Property the same as if it were a stranger to the Mortgage and Note and shall be entitled to apply all or any part of the Debt as a credit to the purchase price. Mortgagee, at its option, is authorized to foreclose subject to the rights of any tenants of the Property, and the failure to make any such tenants parties to such foreclosure proceedings and to foreclose their rights will not be, nor will be asserted to be by Mortgagor, a defense to any proceedings instituted by Mortgagee to collect the debt secured by the Mortgage. Upon the event of default, Mortgagee may also recover judgment on the Note either before, during or after any proceedings for the enforcement of the Mortgage; and take any other action to enforce Mortgagee's rights under the Note and Mortgage for the satisfaction and payment of the Loan, whether partial satisfaction or in full and to protect Mortgagee's security interest. In the event of a sale, by foreclosure, power of sale, or otherwise, of less than all of



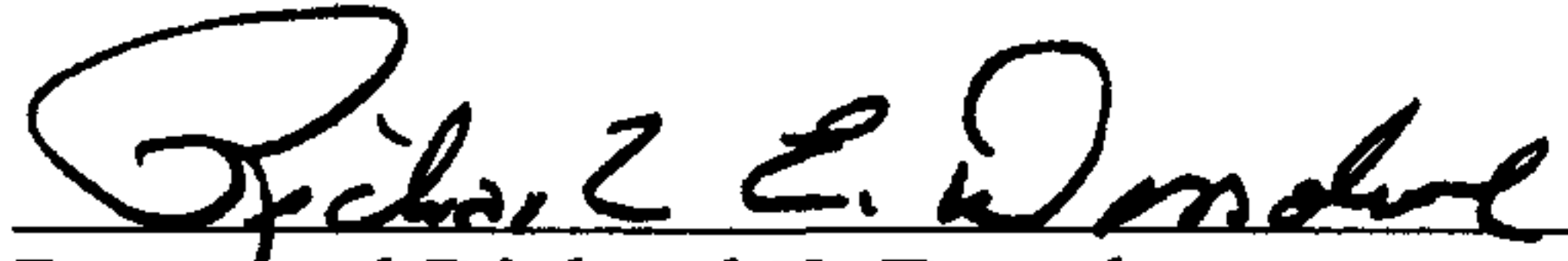
the Property, the Mortgage shall continue as a lien and security interest on the remaining portion of the Property unimpaired and without loss of priority, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all of the Debt shall have been paid in full and to protect Mortgagee's security interest.

9. It is further agreed that if and as often as this Mortgage or the Note secured hereby is placed in the hand of an attorney for collection, Mortgagor agrees to pay to the holder hereof a reasonable attorneys' fee which shall upon a foreclosure hereby be taxed as costs. Mortgagor agrees that appraisement shall be waived or not waived upon foreclosure at the option of the Mortgagee and the Mortgagor expressly waives all benefits of the homestead and stay laws. The Mortgagor further waives notice of election to declare the whole debt due as above provided.
10. Any remedy herein granted to the Mortgagee shall be cumulative and the Mortgagee shall be subrogated to the indebtedness and the lien of any and all mortgages and liens paid out of the proceeds of the loan secured by this Mortgage although such other encumbrances may have been released of record, and the Mortgagee is given express authority to pay any sums secured by such lien in closing the loan secured hereby.
11. The premises shall be subject to inspection from time to time by a representative of the Mortgagee while there remains any outstanding obligation on the loan secured hereby. All reasonable recommendations made by the Mortgagee to preserve the value of the premises shall be carried out by the Mortgagor.
12. In the event the Mortgagor shall fail to pay when due all taxes and assessments of every type levied or assessed against the premises or shall fail to pay or obtain prompt and effective discharge of any claim, lien or encumbrance against the premises whether prior or subsequent to this Mortgage to be held by the Mortgagee, the loan secured hereunder shall immediately become due and payable at the option of the Mortgagee.
13. In the event the Mortgagor shall sell, lease, encumber or otherwise transfer any of its interest or ownership in the premises without the express written consent of the Mortgagee, the loan secured hereunder shall immediately become due and payable at the option of the Mortgagee.
14. It is further agreed that granting any extension or extensions of time of payment of the Note secured hereby or the taking of other or additional security for payment thereof, or waiver or failure to exercise any right to accelerate the whole debt under any covenant or stipulation herein contained, shall not in anywise affect this

Mortgage nor the rights of the Mortgagee hereunder, nor operate as a release from any personal liability upon said Note or Notes or under any covenant or stipulation herein contained.

15. The Note is subject to the express condition that at no time shall Mortgagor be obligated or required to pay interest on the principal balance due hereunder at a rate which could subject Mortgagee to either civil or criminal liability as a result of being in excess of the maximum interest rate which Mortgagor is permitted by applicable law to contract or agree to pay. If by the terms of the Note, Mortgagor is at any time required or obligated to pay interest on the principal balance due under the Note at a rate in excess of such maximum rate, the applicable interest rate or the default rate, as the case may be, shall be deemed to be immediately reduced to such maximum rate and all previous payments in excess of the maximum rate shall be deemed to have been payments in reduction of principal and not on account of the interest due hereunder. All sums paid or agreed to be paid to Lender for the use, forbearance, or detention of the Debt, shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Debt does not exceed the maximum lawful rate of interest from time to time in effect and applicable to the debt for so long as the debt is outstanding.

IN WITNESS WHEREOF, Mortgagor has executed these presents on the day and year first above written.



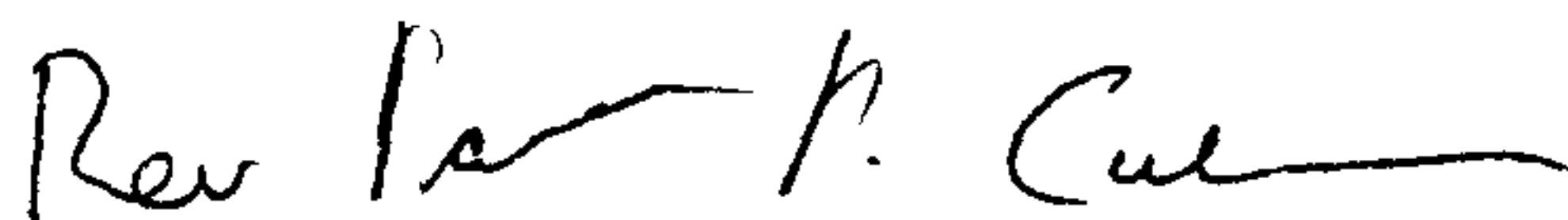
Reverend Richard E. Donohoe
as Attorney in Fact for David E. Foley,
Bishop of Birmingham in Alabama,
a corporation sole, by and through that
certain First Amended Durable General
Power of Attorney recorded at
Instrument Number 200111/6401
of the Office of the Judge of Probate of
Jefferson County, Alabama.

WITNESS:



Arthur P. Beattie
Chairperson of Parish Finance Council
St. Mark the Evangelist Catholic Church

WITNESS:

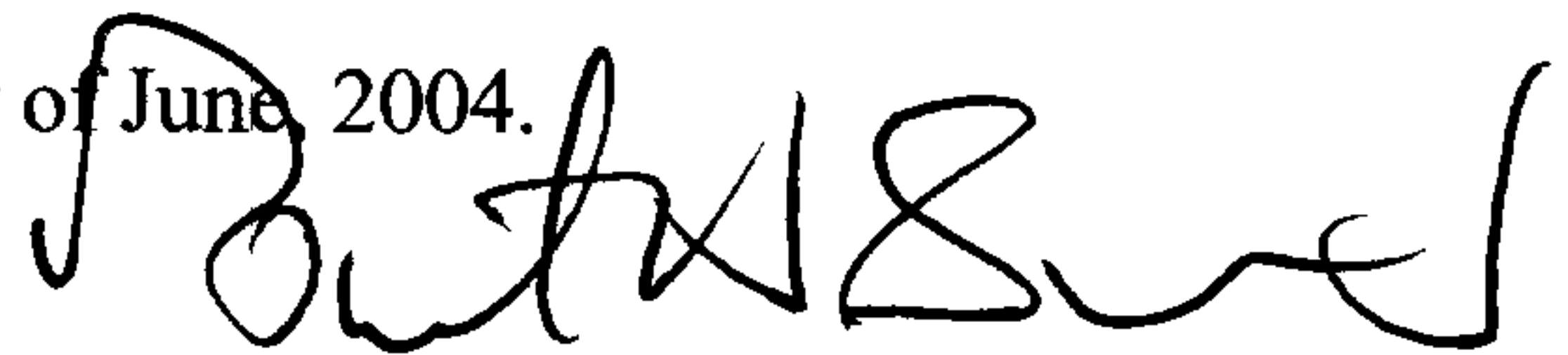


The Reverend Patrick P. Cullen
St. Mark the Evangelist Catholic Church

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Reverend Richard E. Donohoe as Attorney in Fact for David E. Foley, Bishop of Birmingham in Alabama, a corporation sole, whose name 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 Attorney in Fact for David E. Foley, Bishop of Birmingham in Alabama, a corporation sole, and with full authority, executed the same voluntarily as such Attorney in Fact.

Given under my hand and seal this the 21st day of June, 2004.



NOTARY PUBLIC

My Commission Expires: 6/29/05

(SEAL)