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Douglas Corretti
of CORRETT, NEWELL, ROGERS & MAY, Attys.
5th Bank Nelson Building
BIRMINGHAM, ALABAMA 35203

THE STATE OF ALABAMA)
SHELBY COUNTY)

INDENTURE OF TRUST

See Mtg 341-417

THIS INDENTURE OF TRUST, made and entered into this 26th day of June, 1974 by and among Charles W. Stewart and Lester C. Wyatt (hereinafter sometimes referred to as "Beneficiaries") and Lester C. Wyatt, as Trustee (hereinafter sometimes referred to as the "Trustee")

W I T N E S S E T H:

THAT FOR AND IN CONSIDERATION of the sum of One Hundred Dollars (\$100.00) and other good and valuable consideration and in further consideration of the said Charles W. Stewart and wife, Rita M. Stewart, and Lester C. Wyatt and wife, Mary B. Wyatt, transferring and conveying, and by these presents do hereby grant, bargain, sell, convey and deliver unto the said Trustee the real property described in Exhibit "A" which is attached hereto and expressly made a part hereof.

TO HAVE AND TO HOLD the said real property unto the said Trustee and to his successors and assigns as provided hereafter, but, nevertheless, in trust for the use and benefit, upon the terms and conditions and with the powers and duties hereinafter set forth, this trust shall be known as the "Stewart-Wyatt Trust".

O N E

In the event of the death, resignation or incapacity of the Trustee named herein, a successor Trustee or Trustees shall be the person or persons designated by the Beneficiaries hereof.

The Beneficiaries may, at any time and for good cause, require the resignation of the Trustee, and upon such resignation, the Beneficiaries shall nominate, constitute and appoint a successor Trustee or Trustees.

T W O

The Trust hereby created (hereinafter called the "Trust") shall be held by the Trustee with the powers, duties, rights and



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See Amend. to Indenture of Trust misc BK 11 page 141 5-14-75
See Termination & Agreement Misc BK. 23 pg. 216 (1/4/78) - See Assignment of Interest & Agreement Misc BK. 23 pg. 219 (1/4/78)
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authority and for the purposes and uses hereinafter set out.

(a) The Trustee shall hold and manage the real property constituting the Trust and such other property as he may subsequently acquire pursuant to the power and authority herein given to him with the following powers and authorities:

(1) To hold the real property conveyed herein as a part of said Trust, irrespective of whether such property is a so-called "legal" investment of trust funds, without liability for depreciation or loss and to acquire other property which may or may not be a so-called "legal" investment of trust funds.

(2) To manage generally the improvement, repair or leasing of the Trust property either by management himself or by entering into an agency agreement for the management of the real property or properties constituting the trust estate and to improve, repair, or lease property belonging to the trust estate for a term beyond the possible termination of this Trust or for any less term.

(3) To determine whether any money or property coming into his hands shall be treated as a part of the principal of said trust estate or as part of the income therefrom, to apportion between such principal and income any loss or expenditure in connection with said trust estate as to him may seem just and equitable, and to set up reserves out of the income to meet such items of depreciation, obsolescence, future repairs or construction or amortization of indebtedness deemed by the Trustee to be a proper charge against income.

(4) To keep any property constituting a part of said trust estate properly insured against fire, windstorm and other casualties, to pay all ad valorem taxes or assessments, mortgages or other liens now or hereafter affecting the said real property or any part thereof, and generally, to pay all of the expenses of the trust incurred in the exercise of the power and authority

herein vested in him which, in his judgment, may be proper or necessary.

(5) To make divisions and distributions hereunder provided for either in cash or in kind or partly in cash and partly in kind and for that purpose to determine the value thereof and to determine the identity of persons entitled to take hereunder. The distributions by the Trustee to the Beneficiaries shall be made quarter-annually after the improvements have become income producing.

(6) To institute and defend any and all actions at law, suits in equity, or other legal proceedings relating to or in any way affecting the said trust estate, in any Court, and to employ counsel and to compromise or submit to arbitration all matters of dispute in which this trust estate may be involved, as in his judgment may be necessary and proper.

(7) To pay from and out of the income of the trust estate property any and all expenses reasonably necessary for the administration of the trust estate, including interest, ad valorem taxes, any other taxes and assessments, insurance, including public liability and rents insurance as well as any other expenses incurred for the benefit of the trust estate, and in the event the income from the trust estate property is insufficient for the purpose of paying such expenses, to pay same from the corpus of the trust estate.

(8) To execute and deliver any and all contracts, conveyances, transfers, or other instruments as he may deem necessary or advisable, specifically including contracts for the management of any of the buildings and improvements owned by the Trust, and to do any acts necessary or desirable in the execution of the powers herein vested in him.

(9) To proceed with the construction, erection and completion of such buildings and improvements on the real property described in Exhibit "A" as the Trustee may deem to the best interest of the Beneficiaries and to obtain and accept

such construction and permanent mortgage loan commitments as may be satisfactory and acceptable to the Trustee, and the Trustee is hereby authorized and empowered to execute such mortgage notes, mortgages, assignments of leases, rents and profits, security agreements, financing statements, closing statements and any other legal documents and instruments as may be necessary to close and complete the mortgage loan transactions in connection with the buildings and improvements on the real property described in Exhibit "A". It is contemplated that the real property described in Exhibit "A" shall be developed for commercial purposes and such other purposes as may be from time to time agreed on by the Beneficiaries and the Trustee.

(10) To execute and deliver a construction mortgage note in a sufficient manner in accordance with the plans and specifications to be secured by a mortgage on the real property described in Exhibit "A" with such terms and conditions as may be acceptable to the Trustee.

(11) To execute and deliver any and all other such legal documents and instruments as may be required by any construction and/or permanent lender, including mortgage notes, mortgages, assignments of leases, closing statements, draw notes, in connection with the financing of the said buildings and improvements, including construction and permanent type financing.

(12) To employ a certified public accountant for the purpose of preparing certified statements to be furnished the Beneficiaries quarter-annually.

(13) To do anything or execute any papers, documents or instruments which the Beneficiaries of the Trust may from time to time direct.

(b) The Trustee shall hold the trust estate in trust for the use and benefit of the aforesaid Beneficiaries. The Trustee shall make a distribution of the net income, having regard for accrual of taxes, insurance or other expenses, in

accordance with good, business management practices, to the Beneficiaries quarter-annually. Said distribution to the Beneficiaries shall be divided into two shares, one share of fifty percent (50%) to be distributed to Charles W. Stewart and one share of fifty percent (50%) to be distributed to Lester C. Wyatt. The Trustee shall render to each Beneficiary hereof, a true and correct statement of the trust estate at least quarter-annually, and shall have fiduciary income tax returns prepared and filed and copies of same furnished the Beneficiaries.

(c) Unless sooner terminated as provided in this Indenture of Trust, this Trust shall terminate at the expiration of thirty-one (31) years from the date hereof.

This Trust shall be terminated sooner than 31 years from the date hereof upon the happening of any of the following occurrences:

1. Notice of termination by any one of the Beneficiaries hereof, which notice must be in writing and delivered to the Trustee and all Beneficiaries hereof, provided, however, that in the event the Beneficiary giving notice of termination makes a sworn affidavit that he or she does not know the address of any one or more of the Beneficiaries, then such notice to such Beneficiary shall be waived. In the event that any Beneficiary's interest herein has been assigned or devised by operation of law, will or under the laws of descent and distribution of the State of Alabama to more than one person, then such notice of termination must be given to or by a majority of such persons who have succeeded to the interest of such Beneficiary. In no event, however, may this Trust be terminated for any reason whatsoever until after the buildings and improvements on the real property described in Exhibit "A" have been completed and the permanent loan closed.

2. Upon termination of this Trust by notice as set out herein, or by the death of any Beneficiary hereof, the Trustee

shall continue to hold the trust estate in trust hereunder until the end of the first fiscal year of the Trust following the closing of the permanent mortgage loan as shown by the books of the Trust which falls on a date more than six months after the death of any Beneficiary or after such notice is given, after which the principal of the Trust, together with the accrued income therefrom, shall be divided into two shares. One share of fifty percent (50%) shall be distributed to Charles W. Stewart, his heirs, assigns or personal representatives, and one share of fifty percent (50%) shall be distributed to Lester C. Wyatt, his heirs, assigns or personal representatives. Any real estate comprising any part of the trust estate shall be deeded to the Beneficiaries as tenants in common as follows: An undivided one-half interest to Charles W. Stewart and an undivided one-half interest to Lester C. Wyatt.

(d) No Beneficiary shall sell or encumber his interest in this trust except to another Beneficiary without giving the other Beneficiaries hereof the right and option of first refusal to purchase said interest at a price equal to the Beneficiary's share of the fair market value of the trust estate. If the parties cannot agree to the fair market value of the net equity of the trust estate, then, in such event, the Trustee and Beneficiary giving notice of an offer to sell his interest in the trust estate by mutual agreement shall appoint a confident real estate appraiser to determine the fair market value of the trust estate. If the parties cannot agree on an appraiser, then each shall appoint an appraiser of his own choice and said appraisers so appointed shall promptly name a third appraiser. The evaluation of the said three appraisers or a majority of them shall be conclusive and binding on the Beneficiary giving notice of an offer to sell his interest and the remaining Beneficiaries of the said trust estate. In

the event of the failure of such other Beneficiary or Beneficiaries to purchase said Beneficiary's share, said Beneficiary may thereafter assign and convey his interest to any other person, subject to and restricted by the provisions of this Indenture of Trust. It is understood however, that the prohibition against conveyance or assignment as provided in this paragraph, shall not apply to a Beneficiary's assignment or conveyance given to any member of his family with or without consideration therefor.

T H R E E

After the completion of the construction of the said buildings and improvements, the Trustee may not contract with or approve any contract directly or indirectly with the Trustee hereof, for services to be performed for the Trust estate, whether in the form of a corporation, partnership, proprietorship or another trusteeship without the approval of the Beneficiaries hereof. In the event of the death of any Beneficiary hereof, such deceased Beneficiary's personal representative, devisees or heirs at law or a majority of them, if there are more than one, whichever may be proper, for the purpose of this paragraph shall be counted as one beneficiary.

F O U R

The Trustee shall not be required to pay any interest on any money in his custody while awaiting distribution and/or investment under the terms hereof.

F I V E

In any distribution of the Trust Estate, made in accordance with the terms hereof, the Trustee in his discretion may pay over the share or shares to be distributed either in property or in money or partly in money and partly in property and at such valuation as shall to him seem proper and the determination of the Trustee of the value of any property for the purpose of distributing any share hereunder shall be final and conclusive and binding on all parties interested in such distribution.

S I X

The Trustee hereof shall be free from the control of any court in the exercise of any or all of the provisions of this Trust, and shall not be liable for any loss resulting from the exercise of any or all of the provisions of this Trust so long as such decisions are made in good faith.

S E V E N

If the happening of any future event may cause the ultimate vesting of any trust estate herein created or any share therein to be extended under the provisions hereof to a time beyond that which the same is required by law to become vested, then and in such event, the Trust as to such Trust Estate or as to such share therein shall continue only for as long a period of time as is allowed by law, and at the end of which period the said Trust as to said Trust Estate or as to such share therein shall terminate. In such case, said Trust or share shall thereupon be vested in and distributed to those persons at the expiration of such period enjoying the use and benefit of said Trust estate or of such share therein in the proportions in which they are so enjoying the same, irrespective of their attained ages.

E I G H T

During the period of construction of the buildings and improvements to be constructed and completed on the said real property, the Trustee shall be authorized and empowered to proceed with the construction in his own name and contract with such persons, firms or corporations, including any Beneficiary hereof, for work, labor, materials and subcontractors necessary for the construction and completion of said buildings and improvements. The Trustee shall keep a close accounting of any and all sums expended incurred by him in the completion of said buildings and improvements and the Trustee shall on request by any Beneficiary hereof, furnish a complete and full statement of account showing all costs incurred in the construction including construction loan costs, subcontracts and such other costs

as may be reasonably incurred in and about the construction and completion of said buildings and improvements. Also the Trustee is hereby authorized and empowered to complete and close the permanent mortgage loan financing of said buildings and improvements and he is authorized, empowered and directed to do any and all things and acts necessary and required to complete the construction and permanent financing of said buildings and improvements including the execution of a mortgage note, mortgage, closing statements, estoppel certificates, assignment of rents, leases and profits, and such other legal documents and in such form as may be required by the construction and permanent lender or lenders. The Trustee is hereby authorized, empowered and directed to receive and accept the proceeds of any construction and/or permanent mortgage loans and to execute and deliver receipts for any and all advances made by any construction and/or permanent lenders to said Trustee in connection with the erection, construction, completion and financing of said buildings and improvements and to disburse or concur in the disbursement of any and all construction and/or permanent loan funds.

N I N E

This Trust Agreement may be amended from time to time provided such amendment is executed by all of the parties hereto.

T E N

The Trustee shall have complete, full and absolute power and authority to act generally on behalf of the Beneficiaries of this Trust to the same extent and as though the said real property was owned solely, entirely and absolutely by said Trustee individually.

E L E V E N

This Indenture of Trust is hereby executed by the Trustee, Lester C. Wyatt, and all the Beneficiaries and their respective wives for the purpose of concurring in and consenting to all the provisions, powers, authorities, duties and responsibilities of the said Trustee under this Indenture of Trust. The under-

signed do jointly and severally covenant and agree to never at any time institute any suit in equity and/or action at law or to do any act or thing which would interfere with, hinder, or delay the construction, erection, completion, financing and leasing of said buildings and improvements.

T W E L V E

This Indenture of Trust shall be governed by the laws of the State of Alabama, and shall be binding on the undersigned, their heirs, executors, administrators, personal representatives, successors and assigns; and this Indenture of Trust may be executed in counter parts, and each such counter part shall be a duplicate original.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on this the 26th day of June, 1974.

Charles W. Stewart (SEAL)
Charles W. Stewart

Lester C. Wyatt (SEAL)
Lester C. Wyatt

"BENEFICIARIES"

Lester C. Wyatt (SEAL)
Lester C. Wyatt

"TRUSTEE"

APPROVED:

Rita M. Stewart (SEAL)
Rita M. Stewart

Mary B. Wyatt (SEAL)
Mary B. Wyatt

Wives of Beneficiaries, Charles W. Stewart and Lester C. Wyatt

WITNESS:

Margaret D. Dettig (as to Rita M. Stewart) *Notary Public*
William E. Dettig (as to Mary B. Wyatt) *Harold County*

THE STATE OF ALABAMA
JEFFERSON COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Lester C. Wyatt and wife, Mary B. Wyatt, whose names are signed to the foregoing

Indenture of Trust and who are known to me, acknowledged before me on this day that, being informed of the contents of the Indenture of Trust, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 25 day of June, 1974.

William E. Deane
Notary Public

THE STATE OF TEXAS
HOUSTON COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charles W. Stewart and wife, Rita M. Stewart, whose names are signed to the foregoing Indenture of Trust and who are known to me, acknowledged before me on this day that, being informed of the contents of the Indenture of Trust, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 25th day of June, 1974.

Margaret De Titano
Notary Public



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Shelby Cnty Judge of Probate, AL
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EXHIBIT "A"

STATE OF ALABAMA
SHELBY COUNTY

A parcel of land located in the North Half of the SW $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, more particularly described as follows: Commence at the NE corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of said Section 31; thence in an easterly direction, a distance of 452.73 feet; thence 86 degrees 31 minutes 40 seconds right, in a southerly direction, a distance of 1321.78 feet; thence 47 degrees 06 minutes right, in a southwesterly direction, a distance of 250.20 feet to the Point of Beginning, said point being in the approximate center line of an existing road; thence 79 degrees 55 minutes 15 seconds right, in a northwesterly direction along said approximate center line, a distance of 149.66 feet to the beginning of a curve to the left, having a radius of 113.67 feet, and a central angle of 66 degrees 50 minutes; thence southwesterly along said curve and approximate center line, a distance of 132.59 feet to end of said curve; thence in a southwesterly direction along a line tangent to said curve, a distance of 85.50 feet to a point on the easterly R/W line of now existing Highway 31 South, said point being on a curve having a radius of 2010.08 feet and subtended by a chord length of 868.19 feet, and from last described course, turn an angle of 67 degrees 46 minutes 46 seconds left to said chord; thence in a southerly direction along said curve and R/W line, a distance of 875.07 feet to the point of Spiral to Curve of said R/W; thence from last described chord, turn 15 degrees 07 minutes 04 seconds right to chord of said Spiral, said chord having a length of 307.65 feet; thence in a southerly direction along said Spiral and R/W line, a distance of 307.95 feet to the point of Tangent to Spiral of said R/W line, said point being at Highway Station 66 plus 61.9; thence from last described chord, turn 1 degree 31 minutes 12 seconds right, in a southerly direction along said R/W line, a distance of 143.58 feet; thence 90 degrees left, in a southeasterly direction, a distance of 46.43 feet; thence 41 degrees 55 minutes left, in a northeasterly direction, a distance of 378.44 feet; thence 8 degrees 03 minutes 30 seconds right, in a northeasterly direction, a distance of 137.37 feet; thence 8 degrees 02 minutes right, in a northeasterly direction, a distance of 529.00 feet to a point in the approximate center line of said existing road; thence 97 degrees 15 minutes 06 seconds left, in a northwesterly direction along said approximate center line, a distance of 152.06 feet; thence 5 degrees 32 minutes 03 seconds left, in a northwesterly direction, a distance of 210.29 feet to the beginning of a curve to the left, having a radius of 965.17 feet, and a central angle of 23 degrees 24 minutes 51 seconds; thence northwesterly along said curve and approximate center line, a distance of 394.42 feet to end of said curve; thence in a northwesterly direction along a line tangent to said curve, a distance of 380.41 feet to the Point of Beginning, containing 17.1 Acres, more or less.

LESS AND EXCEPT: That part of the hereinabove-described real property which was on May 17, 1974 conveyed by Warranty Deed to Peter Tortorigi and Charles Joseph Gagliano, recorded in Book 827, page 560, in the Probate Office of Shelby County, Alabama.

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Shelby Cnty Judge of Probate, AL
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