

THE INSTRUMENT PREPARED BY:
Stanley M. Brock
Balch, Bingham, Baker, Hawthorne,
Williams & Ward
600 North 18th Street
Birmingham, Alabama 35203

400

STATE OF ALABAMA)

COUNTY OF SHELBY)

UNCONDITIONAL ASSIGNMENT OF NOTE AND MORTGAGE

KNOW ALL MEN BY THESE PRESENTS, that:

WHEREAS, Drury W. Ellard, Jr. and wife, Jean Baxter Ellard (hereinafter called "Mortgagor") executed a Mortgage (hereinafter called the "Mortgage") dated the date hereof to Ellard Contracting Company, Inc., (hereinafter called "Assignor") encumbering the real estate described therein and incorporated herein by reference, and being hereinafter referred to as the "Premises", and given to secure a note (hereinafter called the "Note") of the Mortgagor in the original principal sum of Four Hundred Nineteen Thousand Three Hundred Forty-One and 76/100 Dollars (\$419,341.76), and Assignor is the legal owner and holder of the Note and the Mortgage; and

WHEREAS, Assignor has become or is becoming justly indebted to Assignee as evidenced by promissory notes or otherwise, and may become so indebted hereafter, whether, directly or indirectly, conditionally, unconditionally or contingently, whether as maker, surety, endorser or guarantor, now or in the future, any and all of such indebtedness being hereinafter referred to as the "Indebtedness";

NOW, THEREFORE, the Assignor, for and in consideration of these presents and the mutual agreements herein contained, and to secure any and all Indebtedness of Assignor to Assignee, now existing or hereafter arising, and in consideration of the sum of One Dollar (\$1.00) to the Assignor in hand paid, the receipt whereof is hereby acknowledged, does hereby sell, assign and transfer unto Central Bank of the South, a certain indenture of Mortgage made by Drury W. Ellard, Jr. and wife, Jean Baxter Ellard, dated the date hereof, and recorded at Real Volume 427, page 205 in the Probate Office of Shelby County, Alabama, upon the property described in said Mortgage together with the Note described in said Mortgage, and the money due and to become due thereon with interest, it being the intention of the parties to hereby establish an absolute transfer and assignment of said Mortgage and the Note secured by said Mortgage. Said Mortgage and Note shall hereinafter be referred to as "Collateral". The Assignor does hereby appoint irrevocably Central Bank of the South its true and lawful attorney in its name and stead and upon such terms in its discretion as it may determine, and to collect all of said sums arising from or accruing at any time hereafter, and all now due, or that may hereafter become due under said Collateral. It is the intention of the parties that this Assignment of Collateral shall be a present assignment with full recourse.

The Assignor represents and agrees that the payment of none of the sums due will be waived, released, reduced, or discounted, or otherwise discharged or compounded by the Assignor. Assignor agrees that it will not further assign any of the sums due and owing.

In the exercise of the powers herein granted Central Bank of the South, no liability shall be asserted or enforced against Central Bank of the South, all such liability being expressly waived and released by the Assignor.

Central Bank of the South shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under said Collateral, and the Assignor shall and does hereby agree to indemnify and hold Central Bank of the South harmless of and from any and all liability, loss or damage which it may or might incur under said Collateral, or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to

Central Bank of the South

BOOK 45 PAGE 662

DOCX 48 PAGE 663

perform or discharge any of the terms, covenants or agreements contained in said Collateral. Should Central Bank of the South incur any such liability loss or damage, under said Collateral or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Central Bank of the South in connection with said Collateral, the Assignor agrees to reimburse Central Bank of the South for the amount thereof, including costs, expenses and a reasonable attorney's fee immediately upon demand, and until the same are fully reimbursed by the Assignor, all such costs, expenses and attorney's fees shall be secured by this Assignment.

It is understood and agreed that the provisions set forth in this Assignment shall be deemed as a special remedy given to Central Bank of the South, and shall not be deemed exclusive of any of the remedies granted in the Mortgage, but shall be deemed an additional remedy and shall be cumulative with the remedies therein granted.

Whenever the word "Assignor" is mentioned herein, it is hereby understood that the same includes both the singular and plural in number and the masculine, feminine or neuter gender, as the context hereof shall require, and shall include and be binding upon the successors and assigns of the Assignor, and any party or parties holding title to the above-described Premises by, through or under the Assignor. All of the rights, powers, privileges and immunities herein granted and assigned to Central Bank of the South shall also inure to its successors and assigns, including all holders, from time to time, of the Note.

It is expressly understood that no judgment or decree which may be entered on any debt secured or intended to be secured by the Mortgage shall operate to abrogate or lessen the effect of this instrument, but that the same shall continue in full force and effect until the payment and discharge of any and all indebtedness secured by the Mortgage, in whatever form the said indebtedness may be and until the indebtedness secured by the Mortgage shall have been paid in full and all bills incurred by virtue of the authority herein contained have been fully paid out of proceeds of the Collateral, or by the Assignor, or until such time as this instrument may be voluntarily released. This instrument shall also remain in full force and effect during the pendency of any foreclosure proceedings, both before and after sale, until the issuance of a deed pursuant to such foreclosure, unless the indebtedness secured by the Mortgage is fully satisfied before the expiration of any period of redemption.

The Assignor covenants that as of the date hereof, there is due and owing upon said Mortgage without offset or defense of any kind, the principal sum of \$419,341.76.

IN WITNESS WHEREOF, the Assignor has hereunto set his hand and seal in Birmingham, Alabama, as of this 12th day of January, 1983.

Signed, sealed and delivered in
our presence:

ATTEST:

ELLARD CONTRACTING COMPANY, INC.

By: C. M. Dangle
Its: VICE PRESIDENT

By: D. W. Ellard, Jr.
Its: PRESIDENT

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, THE UNDERSIGNED, a Notary Public in and for said County in said State, hereby certify that D. W. Ellard, Jr., whose name as President of Ellard Contracting Company, Inc., a 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

the above and foregoing instrument, he
thirty, excepted and acknowledged
ratified the foregoing same hereunto.

Given under my hand and official seal of office this 12th day of
January _____, 1983.

Notary Public

My Commission expires: May 2, 1983

BOOK 48 PAGE 664

RECEIVED A. J. KELLY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1983 FEB -9 AM 10:28

Thomas A. Shoultz, Jr.
JUDGE OF PROBATE

Recd 4.50
Jud 1.00
5.50