





TOGETHER with all and singular the building, improvements, ways, streets, alleys, passages, waters, water courses, rights, liberties, privileges, easements, tenements, hereditaments and appurtenances thereunto appertaining, and the reversions and remainders, rents, issues and profits thereof, all of the said property, whether real or personal (hereinafter collectively referred to as "Mortgaged Premises").

TO HAVE AND TO HOLD the same with all the rights, privileges, and appurtenances thereunto belonging or in anywise appertaining unto the said Mortgagee, its successors and assigns forever.

And the Mortgagors hereby covenant that Mortgagors are seized of said real property in fee simple, and have a good right to sell and convey the same; that the property is free from all encumbrances except as hereinabove set forth, and that the Mortgagors and Mortgagors' successors and assigns will forever defend same unto the Mortgagee and its assigns against the claims of all persons whomsoever.

THIS MORTGAGE is made, however, subject to the following covenants, conditions and agreements, that is to say :

1. Payment of Principal Indebtedness and Interest.

Mortgagors shall pay the indebtedness evidenced by said Note and interest thereon or under any condition, covenant, or agreement herein contained, together with any other indebtedness which Mortgagors may owe to Mortgagee.

2. Prepayment. Mortgagors may not prepay the principal indebtedness in whole or in part except as provided in the Note.

3. Costs of Protecting Mortgagee's Lien. Mortgagors shall immediately pay to Mortgagee all sums, including costs, expenses, reasonable agent's or attorney's fees which it may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, or to which it is made a party because of its interest in said property, or

BOOK 443 PAGE 793

to establish or sustain the lien of this Mortgage or its priority, or to defend against liens, claims, rights, estates, easements, or restrictions asserting priority to this Mortgage; or in payment, settlement, discharge, or release of any asserted lien, claim, right, easement, or restriction made upon advice of competent counsel that the same is superior to the lien of this Mortgage even if it subsequently develops that such advice was erroneous, either in law or in fact; or to enforce any obligation of or to foreclose this Mortgage or to recover any sums under this paragraph including interest at the rate of 2% above the note rate per annum until paid, this Mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

4. Impositions. Mortgagors shall pay as the same shall become due all real estate taxes, sewer rents, water charges, and all other municipal and governmental assessments, rates, charges, impositions and liens (hereinafter referred to as "Impositions") that may be levied or accrue upon said property or any part thereof, or upon Mortgagee's interest therein, or upon this Mortgage, or the indebtedness or the evidence of indebtedness secured hereby, and all other charges that may become liens upon said premises; and not to permit any lien which might take precedence over the lien of this Mortgage to accrue and remain on said premises, or any part thereof, or on the improvements thereon.

5. Municipal Charges. Mortgagors will promptly pay and discharge any and all license fees or similar charges, with penalties and interest thereon, which may be imposed by the municipality in which the Mortgaged Premises are situated, for the use of vaults, chutes, areas and other space beyond the lot line and under or abutting the public sidewalks in front of or adjoining the Mortgaged Premises, and Mortgagors will promptly cure any violation of law and comply with any order of the municipality in which the Mortgaged Premises

BOOK 443 PAGE 794

are situated, respecting the repair, replacement or condition of the sidewalks or curbs in front of or adjoining the Mortgaged Premises, and in default thereof, Mortgagee may at its option upon five (5) days notice to Mortgagors, pay any and all such license fees or similar charges, with penalties and interest thereon, and the charges of the municipality for such repair or replacement, and in the event of such payment by Mortgagee, Mortgagors will repay the same to Mortgagee upon demand, and the amount of such payment shall be added to the principal indebtedness and secured by the lien hereof.

6. Insurance. Mortgagors will continuously maintain hazard insurance of such type or types and amounts as Mortgagee may from time to time require, on the buildings and all other improvements, and all mortgaged personal property now or hereafter on said premises, and they will pay promptly when due any premiums therefor. All insurance shall be carried by such insurance company or companies which have a Best's rating of A+:XV and which shall be approved by Mortgagee and the policies and renewals thereof shall be delivered to and held by the Mortgagee with loss payable clauses in favor of and in form acceptable to the Mortgagee. In the event of foreclosure of the Mortgage, or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagors in and to any insurance policies then in force shall pass to the purchaser or grantee.

In addition, Mortgagors shall at all times keep the rents and income accruing from the Mortgaged Premises and the business conducted on the Mortgaged Premises insured against loss, damage or interruption by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicle, smoke, vandalist, malicious mischief, other risks insured against by so-called

BOOK 443 PAGE 795

"extended coverage" and "all risk" forms of policy, and such other risks and hazards (including risks of war and nuclear explosion, if available) as may be designated from time to time by Mortgagee, in such amounts and with such insurance company or companies which have a Best's rating of A+:XV and which shall be approved by Mortgagee.

Mortgagors will assign and deliver to Mortgagee the original of each policy of insurance required to be maintained pursuant to this Paragraph 6, and all renewals and replacements thereof. Each such policy shall provide that all proceeds shall be payable to Mortgagee (notwithstanding that any such proceeds may exceed the principal indebtedness then secured by the lien of this Mortgage), that the same may not be cancelled except upon thirty (30) days prior written notice to Mortgagee, and that no act or thing done by Mortgagors shall invalidate the policy as against Mortgagee, and shall otherwise be in form and substance acceptable to Mortgagee, so that at all times until the payment in full of the principal indebtedness and interest and other amounts due under this Mortgage, Mortgagee shall have and hold the said policy and/or policies as further collateral for the payment of all amounts due under this Mortgage.

Mortgagors also shall at all times keep in full force and effect comprehensive public liability insurance protecting Mortgagors from claims arising from personal injury, death and property damage. Such insurance policies shall name Mortgagee as a party insured, and shall provide that it cannot be modified or cancelled unless Mortgagee shall have received thirty (30) days prior written notice, and a copy thereof (with premiums prepaid) shall be deposited with Mortgagee. The insurance policy shall be issued by a company or companies which have a Best's rating of A+:XV and which shall be acceptable to Mortgagee and shall be in an amount, substance and form satisfactory to Mortgagee.

BOOK 443 PAGE 796

In the event of any default by Mortgagors, Mortgagors hereby assign to Mortgagee all rights of Mortgagors in and to any unearned premiums on any insurance policy required to be furnished by Mortgagors.

BOOK 443 PAGE 797

If Mortgagee, by reason of such insurance, receives any sum or sums of money for damage by fire or other hazard or casualty, other than rent insurance or business interruption proceeds which are dealt with in Paragraph 9 hereof (Rent and Business Interruption Proceeds), then, provided that Mortgagors are not in default beyond the expiration of any applicable period under this Mortgage, the Note, or any other agreement or security instrument collateral thereto, (i) if such sum or sums of money are not greater than FIFTY THOUSAND AND NO/100 (\$ 50,000.00) Dollars, Mortgagee shall deposit such proceeds in an escrow account for application to restoration of the damaged improvements, to be disbursed in accordance with Paragraph 7 hereof (Fire and Other Casualty), and Mortgagee shall be entitled to retain any interest earned on the sums deposited in such escrow account or (ii) if such sum or sums of money are greater than FIFTY THOUSAND AND NO/100 (\$ 50,000.00) Dollars, Mortgagee, at its option, may apply such proceeds (a) in whole or in part toward payment of the principal indebtedness (whether or not then due and payable), interest or any other amount secured by this Mortgage, or (b) in whole or in part to restoration of the damaged improvements for which such insurance proceeds shall have been paid.

7. Fire and Other Casualty. In the event of damage to the buildings or other improvements on the Mortgaged Premises by reason of fire or other hazard or casualty, Mortgagors shall give prompt written notice thereof to Mortgagee and shall proceed with reasonable diligence to perform repair, replacement and/or rebuilding work (hereinafter referred to as the "Work") to restore such improve-

ments to their condition prior to such damage in full compliance with all legal requirements. Before commencing the Work, Mortgagors shall comply with the following requirements:

1. Mortgagors shall furnish to Mortgagee complete plans and specifications for the Work, for Mortgagee's approval. Said plans and specifications shall bear the signed approval thereof by an architect satisfactory to Mortgagee (hereinafter referred to as the "Architect") and shall be accompanied by the Architect's signed estimate, bearing the Architect's seal, of the entire cost of completing the Work.

2. Mortgagors shall furnish to Mortgagee certified or photostatic copies of all permits and approvals required by law in connection with the commencement and conduct of the Work.

3. Mortgagors shall furnish to Mortgagee, prior to the commencement of the Work, a surety bond for or guaranty of completion of and payment for the Work, which bond or guaranty shall be in form satisfactory to Mortgagee and shall be signed by a surety or sureties, or guarantor or guarantors, as the case may be, who are acceptable to Mortgagee, and in an amount not less than the Architect's estimate of the entire cost of completing the Work, less the amount of insurance proceeds, if any, then held by Mortgagee and which Mortgagee shall have elected to apply toward restoration of the damaged improvements.

Mortgagors shall not commence any of the Work until Mortgagors shall have complied with the above requirements, and thereafter Mortgagors shall perform the Work diligently and in good faith in accordance with the plans and specifications referred to in subparagraph 1 above.

If Mortgagee is obligated, or elects, to apply any insurance proceeds toward restoration of damaged improvements, then so long as the Work is being diligently performed by Mortgagors in accordance with the provisions of this Mortgage, Mortgagee shall disburse such insurance proceeds to Mortgagors from time to time during the course of the Work in accordance with the following provisions. Mortgagee shall not be required to make disbursements more

BOOK 443 PAGE 798



often than at thirty (30) day intervals. Mortgagors shall make written request for such disbursement at least seven (7) days in advance and shall comply with the following requirements in connection with each disbursement:

A. Mortgagors shall deliver to Mortgagee, at the time of request for a disbursement, a certificate of the Architect, dated not more than ten (10) days prior to the application for withdrawal of funds, setting forth the following:

(i) That the sum then requested to be withdrawn either has been paid by Mortgagors and/or is justly due to contractors, subcontractors, materialmen, engineers, architects or other persons (who stated) who have rendered or furnished certain services or materials for the Work and giving a brief description of such services and materials and the principal subdivisions or categories thereof and the respective amounts so paid or due to each of said persons in respect thereof and stating the progress of the Work up to the date of said certificate;

(ii) That the sum then requested to be withdrawn, plus all sums previously withdrawn, does not exceed the cost of the Work insofar as actually accomplished up to the date of such certificate;

(iii) That the remainder of the monies held by Mortgagee will be sufficient to pay in full for the completion of the Work;

(iv) That no part of the cost of the services and materials described in the foregoing paragraph (i) of this Paragraph A has been or is being made the basis of the withdrawal of any funds in any previous or then pending application; and

(v) That, except for the amounts, if any, specified in the foregoing paragraph (i) of this Clause A to be due for services or indebtedness known, after due inquiry, which is then due and payable for work, labor, services or materials in connection with the Work which, if unpaid, might become the basis of a vendor's, mechanics,

laborer's or materialman's statutory or other similar lien upon the Mortgaged Premises or any part thereof.

BOOK 443 PAGE 799

B. Mortgagors shall deliver to Mortgagee satisfactory evidence that the Mortgaged Premises and every part thereof, and all materials and all property described in the certificate furnished pursuant to paragraph (i) of the foregoing Clause A, are free and clear of all mortgages, liens, charges or encumbrances, except (a) encumbrances, if

any, securing indebtedness due to persons (whose names and addresses and the several amounts due them shall be stated) specified in said certificate furnished pursuant to paragraph (i) of the foregoing Paragraph A, which encumbrances will be discharged upon disbursement of the funds then being requested, and (b) this Mortgage. Mortgagee shall accept as satisfactory evidence under this Clause B a certificate of a title insurance company acceptable to Mortgagee, dated as of the date of the making of the disbursement, confirming the foregoing.

C. Mortgagors shall deliver to Mortgagee a survey of the Mortgaged Premises dated as of a date within ten (10) days prior to the making of the advance (or revised to a date within ten days prior to the advance) showing no encroachments other than those, if any, acceptable to Mortgagee.

D. There shall be no default by Mortgagors under the terms of this Mortgage.

Mortgagee at its option may waive any of the foregoing requirements.

Upon compliance by Mortgagors with the foregoing Paragraphs A, B, C and D, (except for such requirements, if any, as Mortgagee at its option may have waived) Mortgagee shall, to the extent of the insurance proceeds, if any, which Mortgagee shall have elected to apply to restoration of the damaged improvements, pay or cause to be paid to the persons named in the certificate furnished pursuant to the foregoing paragraph (i) of Clause A, the respective amounts stated in said certificate to be due them, and shall pay to Mortgagors the amounts stated in said certificate to have been paid by Mortgagors.

If upon completion of the Work there shall be insurance proceeds held by Mortgagee over and above the

amounts withdrawn pursuant to the foregoing provisions, then Mortgagee, at Mortgagee's option, may either retain such proceeds and apply the same in reduction of the principal indebtedness, interest or any other sum secured hereby, or Mortgagee may pay over such proceeds to Mortgagors.

Notwithstanding any prior election by Mortgagee, if at any time Mortgagors shall be in default under this Mortgage beyond any applicable grace period, then Mortgagee may apply all or any part of such insurance proceeds in reduction of the principal indebtedness, interest or any other amount secured hereby.

8. Fire and Other Casualty; Self Help. If within one hundred twenty (120) days after the occurrence of any damage to the Mortgaged Premises, Mortgagors shall not have submitted to Mortgagee, and received Mortgagee's approval, of plans and specifications for the repair, replacement and/or rebuilding of the damaged improvements or shall not have obtained approval of such plans and specifications by all governmental authorities whose approval is required, or if, after such plans and specifications are approved by Mortgagee and all such governmental authorities, Mortgagors shall fail to commence promptly such repair, replacement and/or rebuilding, or if thereafter Mortgagors fail to perform diligently such repair, replacement and/or rebuilding or is delinquent in the payment to mechanics, materialmen or others of the costs incurred in connection with such work, then, in addition to all other rights herein set forth, and after giving Mortgagors twenty (20) days written notice of the nonfulfillment of one or more of the foregoing conditions, Mortgagee, or any lawfully appointed receiver of the Mortgaged Premises, may at their respective options, perform or cause to be performed such repair, replacement and/or rebuilding and may take such other steps as they deem advisable to perform such repair, replacement and/or rebuild-

BOOK 443 PAGE 801

ing, and may enter upon the Mortgaged Premises for any of the foregoing purposes, and Mortgagors hereby waive, for Mortgagors and all others holding under Mortgagors, any claim against Mortgagee and such receiver arising out of anything done by Mortgagee or such receiver pursuant to this Paragraph 8, and Mortgagee may apply insurance proceeds (without the need to fulfill the requirements of Paragraph 7 hereof) to reimburse Mortgagee and/or such receiver for all amounts expended or incurred by them, respectively, in connection with the performance of such work, and any excess costs shall be paid by Mortgagors to Mortgagee upon demand and such payment shall be secured by the lien of this Mortgage.

9. Rent Insurance Proceeds. If Mortgagors shall promptly and diligently commence to repair, replace and restore any damage occurring to the Mortgaged Premises, and shall not then be in default under this Mortgage, then Mortgagee shall each month pay to Mortgagors out of the rent and business interruption insurance proceeds held by Mortgagee a sum equal to that amount, if any, of the rent and business interruption insurance proceeds paid by the insurer which is allocable to the rental loss and business interruption for the preceding month. Mortgagee at its option may waive any of the foregoing conditions to the payment of rent and business interruption insurance proceeds. If Mortgagors do not fulfill the foregoing conditions entitling Mortgagors to receive monthly disbursements of rent and business interruption insurance proceeds, then such rent and business interruption insurance proceeds may be applied by Mortgagee, at Mortgagee's option, to the payment of any monthly payment of principal indebtedness or of interest or of principal indebtedness and interest which shall be payable under this Mortgage, or to the payment of any Imposition required to be paid by Mortgagors and which is in default under this Mortgage, or to the payment of any

BOOK 443 PAGE 802

monthly tax deposit, or to the payment of any other amount required to be paid by Mortgagors under the provisions of this Mortgage and which is in default hereunder.

10. Repair; Alterations. Mortgagors shall keep all of the buildings, and other improvements on the Mortgaged Premises, and the sidewalks and curbs adjoining the Mortgaged Premises, and all fixtures and articles of personal property attached to or used in connection with any of said buildings and improvements, in good and substantial repair, and shall neither permit nor commit any waste upon the Mortgaged Premises, and shall comply with all laws, ordinances, rules and regulations made or promulgated by any government, municipality or agency, which are now or may hereafter become applicable to the Mortgaged Premises. Mortgagors shall not construct any additional building or buildings or make any other improvements on the Mortgaged Premises, nor alter, remove or demolish any building or other improvements on the Mortgaged Premises, without the prior written consent thereto in each instance of Mortgagee.

If Mortgagors fail to observe any of the provisions of this Paragraph 10, or suffer any default to exist under this Paragraph 10, Mortgagee or a lawfully appointed receiver of the Mortgaged Premises at their respective options, from time to time, may perform, or cause to be performed, any and all repairs and such other work as they deem necessary to bring the Mortgaged Premises into compliance with the provisions of this Paragraph 10 and may enter upon the Mortgaged Premises for any of the foregoing purposes, and Mortgagors hereby waive any claim against Mortgagee and/or such receiver, arising out of such entry or out of any other act carried out pursuant to this Paragraph 10. Mortgagors shall upon demand repay to Mortgagee and such receiver, all amounts expended or incurred by them, respectively, in connection with any action taken pursuant to this

BOOK 443 PAGE 803

Paragraph 10 and such amounts shall be added to the principal indebtedness and secured by the lien of this Mortgage.

11. Independence of Mortgaged Premises. Mortgagors shall not by act or omission permit any building or other improvement on premises not subject to the lien of this Mortgage to rely on the Mortgaged Premises or any part thereof or any interest therein to fulfill any municipal or governmental requirement, and Mortgagors hereby assign to Mortgagee any and all rights to give consent for all or any portion of the Mortgaged Premises or any interest therein to be so used. Similarly, no building or other improvement on the Mortgaged Premises shall rely on any premises not subject to the lien of this Mortgage or any interest therein to fulfill any governmental or municipal requirement. Mortgagors shall not by act or omission impair the integrity of the Mortgaged Premises as a single zoning lot separate and apart from all other premises. Any act or omission by Mortgagors which would result in a violation of any of the provisions of this Paragraph 11 shall be void.

12. No Other Mortgages or Liens. Mortgagors shall not create or permit to exist any subordinate mortgage or any other lien against all or any part of the Mortgaged Premises and shall promptly discharge any such mortgage or other lien now or hereafter arising, other than this Mortgage or a lien securing an Imposition payable at a later date in compliance with Paragraph 4 hereof (Impositions). If Mortgagors shall fail to discharge any such mortgage or lien within ten (10) days after request by Mortgagee, then Mortgagee may pay the same, and in the event of such payment by Mortgagee, Mortgagors shall repay Mortgagee upon demand, and the amount of such payment shall be added to the principal indebtedness and secured by the lien hereof.

None of the provisions of this Mortgage, including, without limitation, Paragraph 15 (Leases; Foreclosure) and 26

(No Obligation to Marshal Assets) shall be construed as modifying the provisions of this Paragraph 12.

13. Mortgagee May Insure. If Mortgagors fail to insure said property as hereinabove provided, or to pay all or any part of the said taxes or assessments so levied, accrued or assessed, or fail to pay immediately and discharge any and all liens, debts and charges which might become liens superior to the lien of this Mortgage, or to keep the premises in good condition and repair, all as provided herein, Mortgagee may, at its option, insure said property and pay said taxes, assessments, debts, liens and charges or enter upon the premises and make such repairs as it may deem necessary, and any money which Mortgagee shall have to paid or become obligated to pay shall constitute a debt to the Mortgagors additional to the debt hereby specially secured and shall be secured by this Mortgage, and shall bear interest at the rate of 2% above the note rate ~~xxxxxxxxxxxxxx~~ xxxxxxxxxx per annum from date paid or incurred and, at the option of Mortgagee, shall be immediately due and payable. Mortgagee shall have no obligation to procure such insurance, to pay such taxes or assessments, or make such repairs.

14. Future Leases. Any standard lease forms used by Mortgagors for the leasing of space in the Mortgaged Premises shall be submitted to Mortgagee for Mortgagee's prior written approval. Mortgagors shall not hereafter enter into any lease of space in the Mortgaged Premises, unless Mortgagee shall first have consented in writing to the terms of said leasing and the form of the lease.

Mortgagors will furnish to Mortgagee a true and complete copy of each lease hereafter made by Mortgagors with respect to space in the Mortgaged Premises.

Mortgagors will from time to time upon demand of Mortgagee, confirm in writing the assignment to Mortgagee of any or all leases heretofore or hereafter made covering

BOOK 443 PAGE 805

the Mortgaged Premises or any part or parts thereof, and such written confirmation shall be in such form as Mortgagee shall require and as shall be necessary to make the same recordable.

15. Leases; Foreclosure. All leases of space in the Mortgaged Premises shall be subordinate to the lien of this Mortgage unless Mortgagee otherwise specifies. Any proceedings or other steps taken by Mortgagee to foreclose this Mortgage, or otherwise to protect the interest of Mortgagee hereunder, shall not operate to terminate the rights of any future tenant of space at the Mortgaged Premises, notwithstanding that said rights may be subject and subordinate to the lien of this Mortgage, unless Mortgagee specifically elects otherwise in the case of any particular tenant. The failure to make any such tenant a defendant in any such foreclosure proceeding and to foreclose such tenant's rights will not be asserted by Mortgagors or any other defendant in such foreclosure proceeding as a defense to any proceeding instituted by Mortgagee to foreclose this Mortgage or otherwise to protect the interests of Mortgagee hereunder.

No holder of a lien on the Mortgaged Premises which is subordinate to the lien of this Mortgage shall have any right to terminate any lease affecting the Mortgaged Premises, or any part thereof, whether or not such lease be subordinate to the lien of this Mortgage and/or to such subordinate lien.

16. Mortgagors' Obligations as Lessor. Mortgagors shall, at Mortgagors' cost and expense, promptly and fully perform each and every covenant, condition, promise and obligation on the part of the lessor to be performed pursuant to the terms of each and every lease or letting, written or oral, hereafter made with respect to the Mortgaged Premises or any part or parts thereof, and shall not suffer or permit

BOOK 443 PAGE 806



there to exist any default in such performance on the part of such lessor or permit any event to occur which would give the tenant under any such lease the right to terminate the same; and shall not modify, alter, waive or cancel any such lease or any part thereof, nor anticipate for more than one (1) month any rents that may be collectible under such lease, or that may have been assigned to Mortgagee, and shall not assign any such lease or any such rents.

BOOK 443 PAGE 807  
Whenever and as often as Mortgagors shall fail to perform, promptly and fully, at its own expense, any covenant, condition, promise or obligation on the part of lessor to be performed under and pursuant to the terms of any lease of space in the Mortgaged Premises, or shall suffer or permit there to exist any default in such performance on the part of such lessor, Mortgagee, or a lawfully appointed receiver of the Mortgaged Premises, may, at their respective options and upon five (5) days' notice or no notice if necessary to meet an emergency situation, enter upon the Mortgaged Premises and perform, or cause to be performed, such work, labor, services, acts or things, and take such other steps and do such other acts as they or either of them may deem advisable, to cure such defaulted covenant, condition, promise or obligation, and all costs and expenses incurred by Mortgagee and any such receiver in taking any action pursuant to this Paragraph 16 shall be repaid by Mortgagors to Mortgagee, or such receiver, as the case may be, upon demand and the amount thereof shall be added to the principal indebtedness and secured by the lien hereof.

17. Self-Help. In the event of any default by Mortgagors in the performance of or compliance with any of the terms, covenants, conditions or obligations to be performed or complied with by Mortgagors hereunder, Mortgagee or a lawfully appointed receiver, at their respective options, upon ten (10) days prior written notice to Mortgagors

(or upon shorter notice, or with no notice at all, if necessary to meet an emergency situation or a governmental or municipal time limitation), may perform the same, and may enter upon the Mortgaged Premises for any of the foregoing purposes, and the cost thereof shall be paid by Mortgagors to Mortgagee upon demand and shall be added to the principal indebtedness and secured by the lien hereof.

18. Saturdays, Sundays and Holidays. If the time for payment of any amount secured hereby shall be extended by any law relating to obligations payable on Saturdays, Sundays or holidays, such extended time shall be included in the computation of interest hereunder.

19. Foreclosure Sale. In any proceeding to foreclose this Mortgage, the Mortgaged Premises may, at the option of Mortgagee, be sold in one parcel or in more than one parcel.

20. Brundage Clause. In the event of the passage of any law of the State of Alabama, deducting from the value of real property for the purposes of taxation any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for State or local purposes, or the manner of the collection of any such taxes, so as to affect this Mortgage, Mortgagee shall have the right to give thirty (30) days written notice to the owner of the Mortgaged Premises requiring the payment of the principal indebtedness. If such notice be given the principal indebtedness and interest shall become due, payable and collectible at the expiration of said thirty (30) days, unless prior to the expiration of said thirty (30) day period, Mortgagors agree in an irrevocable written notice to Mortgagee to pay all of said taxes which may be imposed on this Mortgage and the holder hereof. Thereafter, Mortgagors shall pay all of said taxes when the same become due. If any law or regulation prohibits the lawful payment of said taxes by Mortgagors, any notice

in which Mortgagors purport to agree to pay said taxes shall be null and void, and the principal indebtedness and interest shall become due, payable and collectible at the expiration of said thirty (30) days, at the option of Mortgagee.

21. Receiver. Whenever payment of the principal indebtedness and interest may be accelerated by Mortgagee pursuant to Paragraph 33 hereof (Default; Acceleration of Maturity), then at the option of Mortgagee and irrespective of whether or not Mortgagee shall actually elect to declare the principal indebtedness due and payable, Mortgagee shall be entitled to the appointment of a receiver of the rents and profits of the Mortgaged Premises, and such receiver may be appointed with or without notice and without regard to the adequacy of any security held for the payment of the principal indebtedness and other sums secured hereby.

22. Mortgagee in Possession. Whenever payment of the principal indebtedness and interest may be accelerated by Mortgagee pursuant to Paragraph 33 hereof (Default; Acceleration of Maturity), then at the option of Mortgagee and irrespective of whether or not Mortgagee shall actually elect to declare the principal indebtedness due and payable, Mortgagee shall have the right at any time thereafter to enter and take possession of the Mortgaged Premises and to lease the same and receive all the rents, issues and profits thereof which are overdue, due or thereafter become due, and to apply the same, after payment of all necessary charges and expenses, in reduction of the principal indebtedness, interest or any other amount secured by this Mortgage, and said rents, issues and profits are hereby assigned to Mortgagee as further security for the payment of the principal indebtedness, interest and all other sums secured hereby. This Paragraph becomes effective either without or with any action of foreclosure, and without or with any application for a receiver of said rents, issues and profits.

BOOK 443 PAGE 809

BOOK 443 PAGE 810

23. Occupancy by Mortgagors. Whenever payment of the principal indebtedness may be accelerated by Mortgagee pursuant to Article 33 hereof (Default; Acceleration of Maturity), then at the option of Mortgagee and irrespective of whether or not Mortgagee shall actually elect to declare the principal indebtedness due and payable, if Mortgagors or any subsequent owner of the Mortgaged Premises or any part thereof shall be occupying all or any part of the Mortgaged Premises, then a reasonable rental for the part so occupied shall be paid by the occupant monthly in advance to Mortgagee or to a lawfully appointed receiver. Such occupancy shall be a tenancy by sufferance, and Mortgagee or such receiver may terminate such tenancy upon three (3) days written notice to such occupancy, in addition to all other rights and remedies afforded to Mortgagee or such receiver by law. Upon the expiration of such three (3) days notice, or upon any failure of such occupant to pay rental as aforesaid, such occupant may be removed from the Mortgaged Premises by summary proceedings in addition to all other rights and remedies afforded to Mortgagee or such receiver by law.

24. Expenses of Mortgagee. Mortgagors shall reimburse Mortgagee upon demand for the amount of all costs and expenses, including without limitation attorneys' fees, paid or incurred by Mortgagee in connection with the collection of any sum in default hereunder or under the Note, or enforcement of any obligation with respect to which Mortgagors shall be in default hereunder or under the Note, or any foreclosure or partial foreclosure of this Mortgage, or the protection of Mortgagee's rights under the Note or Mortgagee's rights or lien hereunder, or any litigation or dispute in which Mortgagee becomes a party or otherwise becomes involved, relating to the Mortgaged Premises or Mortgagee's rights under the Note or Mortgagee's rights or lien hereunder, and such amounts shall be added to the principal

indebtedness and secured by the lien of this Mortgage.

25. Disputes Among Mortgagors. If the Mortgaged Premises are hereafter owned by more than one person, corporation or other entity, Mortgagors shall not involve Mortgagee in any dispute which may arise among the persons, corporations or other entities constituting Mortgagors hereunder and in addition to Mortgagors' obligations under Paragraph 24 hereof (Expenses of Mortgagee) Mortgagors shall indemnify and hold Mortgagee harmless from and against any and all loss, costs, damages, fees, liability and expenses suffered or incurred by Mortgagee as a result of or in connection with any such dispute, and the obligation of Mortgagors to pay such amounts shall be secured by the lien of this Mortgage. If Mortgagee shall refund any sum deposited by Mortgagors under Article 31 hereof (Tax Deposits) or pay over any other sum due Mortgagors hereunder, Mortgagee shall be fully protected in making any such refund or other payment to any one of the persons, corporations or other entities constituting the Mortgagors hereunder and to whom Mortgagee in good faith believed that such sum was payable notwithstanding that such sum shall eventually be determined to have been payable to another person, corporation or entity.

26. No Obligation to Marshall Assets. Notice is hereby given that no holder of any mortgage, lien or other encumbrance affecting all or a part of the Mortgaged Premises which is inferior to the lien of this Mortgage shall have any right to require Mortgagee to marshall assets.

27. Right of Entry. Mortgagee and Mortgagee's representatives may, upon notice to Mortgagors, enter upon the Mortgaged Premises during regular business hours and inspect the same, and show the same to others, but Mortgagee shall not be obligated to make any such entry or inspection.

28. Estoppel Certificates. Mortgagors, within ten (10) days after written request by Mortgagee, will fur-

nish a signed statement in writing, duly acknowledged, of the amount then due or outstanding hereunder, stating whether or not this Mortgage has been modified in any respect, and if so, specifying any such modification and stating whether or not any offsets or defenses exist against the mortgage debt, and if so, specifying such offsets and defenses.

29. Extension of Time. Mortgagee, at its sole discretion, may, by agreement with Mortgagors, extend the time for the repayment to it for any sum or sums advanced by Mortgagee for the alteration, modernization, improvement, maintenance or repair of the Mortgaged Premises, for taxes or assessments against the same, and for any other purpose authorized hereunder; and upon the request of Mortgagee, Mortgagors shall execute and deliver a supplemental note or notes for the sum or sums advanced by Mortgagee for such purposes or any other purpose. Said note or notes shall be secured hereby on a parity with and as fully as if the advanced evidenced thereby were included in the original principal indebtedness. Said supplemental note or notes shall bear interest at the rate provided for in the principal indebtedness and shall be payable in approximately equal monthly payments for such period as may be agreed upon by Mortgagee and Mortgagors. Failing to agree on the maturity, the sum or sums so advanced shall be due and payable thirty (30) days after demand by Mortgagee. In no event shall the maturity extend beyond the ultimate maturity of the original principal indebtedness, provided, however, that Mortgagee shall be under no obligation whatsoever to waive any of the provisions of this mortgage with respect to the reimbursement of Mortgagee for any of the outlays made by it, and unless such extension is made by notes executed by Mortgagors and accepted by Mortgagee as herein provided, Mortgagors shall repay Mortgagee the amount, together with interest on each and every payment or advance made by Mortgagee on or before the next installment of said mortgage debt as

BOOK 443 PAGE 812

provided in said principal note hereby secured.

30. No Waiver. No failure of Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured shall be taken or construed as a waiver of its rights to exercise such option or to declare such maturity by reason of any past or present default on the part of Mortgagors; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, debts, liens, or charges; and the lien of this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness, or any part thereof, secured hereby.

31. Tax Deposits. Mortgagors agree that with the monthly payments of principal and interest, Mortgagors will pay to the noteholder a prorata portion of the taxes, assessments and insurance premiums next to become due, as estimated by Mortgagee. Any deficit shall immediately be paid to the Mortgagee by Mortgagors of the premises. Money so held shall not bear interest and upon default, will be applied by Mortgagee on account of the indebtedness secured by this Mortgage.

32. Discharge of Indebtedness. If Mortgagors shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable, and shall do and perform all acts and agreements to be done and performed by Mortgagors under the terms and provisions of this Mortgage, then this conveyance shall be and become null and void.

33. Default; Acceleration of Maturity. If Mortgagors shall fail to pay or cause to be paid, as it matures, the indebtedness hereby secured or any part thereof according to the terms thereof, or if Mortgagors shall fail to do or perform any

BOOK 443 PAGE 814

other act or thing herein required, or agreed to be done, or performed, or if Mortgagors shall fail to do or perform as required any of the agreements contained in any other documents securing this loan, or if the interest of Mortgagee in said property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon, or if Mortgagors should become insolvent, or if Mortgagors should file or cause to be filed an insolvency or bankruptcy proceeding in a State or Federal court under any Chapter of the Bankruptcy Act, or if at any time Mortgagors admit their inability to pay the indebtedness secured hereby as it becomes due, or if an involuntary petition in bankruptcy is filed against Mortgagors and same not dismissed within thirty (30) days after such filing, or if Mortgagors make an assignment for the benefit of their creditors then, in any one or more of such events, the whole indebtedness hereby secured shall, at the Option of Mortgagee, and without notice, become immediately due and payable and this Mortgage subject to foreclosure; and in any such event, Mortgagee shall have the right and is hereby authorized, to enter upon and take possession of said property, and after or without taking possession, to sell the same before the courthouse door at the county seat of the said county in which said property is located in the State of Alabama, at public outcry for cash, first giving notice of the time, place and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper of general circulation published in said county and state in which said property is located; and upon the payment of the purchase money, Mortgagee, or any person conducting said sale for it, is authorized to execute to the purchaser at said sale, a deed to the property so purchased, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. Mortgagee may bid at the same and purchase said property, if the highest bidder therefor. At said foreclosure sale, the premises may



be offered for sale and sold as a whole without first offering it in any other manner, or may be offered for sale and sold in any other manner as Mortgagee may elect. The presence of any of the above described security at the place of sale is expressly waived.

34. Application of Foreclosure Proceeds. The proceeds of a foreclosure sale, judicial or otherwise shall be applied: First, to the expenses of advertising and selling, including reasonable attorney's fees; second, to the repayment of any money with interest thereon, which Mortgagee may have paid or become liable to pay or which it may then be necessary to pay for taxes, assessments, insurance or other charges, liens or debts as hereinabove provided; third, to the payment and satisfaction of the indebtedness hereby specifically secured with interest, but interest to date of sale only shall be charged; and four, the balance, if any, shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner. If this Mortgage be foreclosed in Chancery, such reasonable attorney's fees shall be paid out of the proceeds of the sale.

35. Status of Mortgagors After Foreclosure. After foreclosure of this Mortgage, Mortgagors, and all holding under them, shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

36. Waiver of Exemptions. Any promise made by Mortgagors herein to pay money may be enforced by a suit at law, and the security of this mortgage shall not be waived thereby, and as to such debts, the Mortgagors waive all rights of exemption under the law of the State of Alabama, and any other state or entity of the United States of America and agree to pay a reasonable attorney's fee for the collection thereof.

37. Condemnation. In the event all or any part of

BOOK 443 PAGE 815

the Mortgaged Premises are taken in condemnation proceedings, all of the expenses, including counsel fees, incurred therein by Mortgagee shall be added to the principal indebtedness and secured by the lien of this Mortgage. Notwithstanding any taking by eminent domain, alteration of the grade of any street or other injury to or decrease in value of the Mortgaged Premises by any public or quasi-public authority or corporation, Mortgagors shall continue to make all payments of principal and interest provided for herein. Any award therefor actually received and retained by Mortgagee shall be applied by Mortgagee against the final installments of principal due hereunder and any such award shall not reduce the monthly payments required to be made by Mortgagors pursuant to Paragraph 1 hereof (Payment of Principal Indebtedness and Interest). Mortgagors shall continue to pay interest at the rate specified herein on the entire principal indebtedness until any such award shall have been actually received by Mortgagee, and any reduction in the principal indebtedness resulting from the application by Mortgagee of such award shall be deemed to take effect only on the actual date of such receipt by Mortgagee.

38. Annual Statements. Mortgagors shall keep proper books of record and account in accordance with standard business accounting practice which books of record and account shall be made available to Mortgagee at Mortgagors' address, or at such other place as Mortgagee may reasonably request, at all times during regular business hours for examination and audit. Mortgagors shall, within one hundred twenty (120) days after the end of each fiscal year of Mortgagors, deliver to Mortgagee (a) Mortgagors' annual audited financial statements together with a statement from Mortgagors' accountant that such statements have been prepared in accordance with generally accepted account-

ing principles, and (b) Mortgagors' internal annual statements showing in detail (1) balance sheets and (2) a statement of earnings from the Mortgaged Premises for such fiscal year showing, among other things, "Gross Annual Revenues" (hereinafter defined), the percentage of occupancy for such fiscal year, the average rental income, net income, and detailed expenses paid or incurred in connection with the operation of the Mortgaged Premises. Each such annual statement shall be accompanied by the certification of an officer of Mortgagor that to the best of his knowledge such statements are materially true and correct.

Mortgagors shall use its best efforts to keep the improvements located on the Mortgaged Premises fully occupied at a rental which Mortgagors believe will maximize the gross receipts at the respective Mortgaged Premises.

For the purpose of this Paragraph 38, Gross Annual Revenues shall mean and include the total gross revenues for a fiscal year, determined in accordance with standard accounting procedures, of every kind and nature, whether for cash or on a charge, credit or time basis, derived by Mortgagors or any operator or lessee from the operation of the business of carpet sales located on the Mortgaged Premises, including but not limited to, the rental or any other charge for the improvements located on the Mortgaged Premises, and including and proceeds of rent and business interruption insurance, but shall not be deemed to include the amount of any bad debts arising out of the rental of any improvement located on the Mortgaged Premises, nor the amount of any federal, state or local sales, excise, use or similar taxes collected directly from patrons or guests of such facilities and properly payable to the governmental authority imposing such tax, provided that such taxes shall be separately stated on any invoice for sales or rental.

BOOK 443 PAGE 817

39. Uniform Commercial Code. This instrument shall constitute both a mortgage and a security agreement under Article 9 of the Uniform Commercial Code. Mortgagors irrevocably authorize Mortgagee to execute in Mortgagors' name and to file any financing statement or continuation statement which Mortgagee deems necessary or advisable to preserve and maintain the priority of the lien hereof or to extend the effectiveness thereof, and Mortgagors shall pay to Mortgagee upon demand any costs from time to time expended by Mortgagee for filing any such statement under said Code or under any other laws from time to time applicable and such payments shall be secured by the lien of this Mortgage.

40. Rights Cumulative. Each right and remedy of Mortgagee under this Mortgage, the Note and all agreements and security instruments collateral thereto and hereto shall be in addition to every other right and remedy of Mortgagee, and such rights and remedies may be enforced separately or in any combination.

41. Continuing Liability. The obligation of Mortgagors to pay the principal indebtedness, interest and all other sums due hereunder shall continue in full force and effect and in no wise be impaired, until the actual payment thereof to the holder of this Mortgage, and in case of a sale or transfer of all or any of the Mortgaged Premises, or in case of any further agreement given to secure the payment of this Mortgage, or in case Mortgagee shall take any additional notes, or in case of any agreement or stipulation extending the time or modifying the terms of payment of the Note, Mortgagors shall nevertheless continue liable on this Mortgage, as extended or modified by any such agreement or stipulation, unless released and discharged in writing by the holder hereof, irrespective of the then value of the Mortgaged Premises.

BOOK 443 PAGE 818

42. Notices. Any notice or demand which Mortgagee shall desire or be required to serve upon Mortgagors hereunder shall be delivered by registered or certified mail, and such service shall be deemed complete on the third business day after the same is deposited in a United States Post Office in a securely sealed envelope with postage prepaid addressed to Mortgagors at Mortgagors' address, or such other address as Mortgagors may hereafter designate in writing in the manner provided in this Paragraph 43. If at any time the Mortgaged Premises are owned by more than one person, corporation or other entity, then all of such owners shall designate in writing one person upon whom shall be served all notices and demands given to Mortgagors hereunder, and Mortgagors shall forward to Mortgagee an original counterpart of such designation, setting forth the name and address of such designee, and thereafter any notice or demand served upon such designated person shall be deemed to have been served upon each and every one of the owners of the Mortgaged Premises at the same time that such notice or demand is served upon such designated person. If said owners shall fail to select one such person upon whom such notices and demands are to be served, then any such notice or demand may be served upon any one of the owners of the Mortgaged Premises, and such notice or demand served upon any one of such owners shall be deemed to have been served upon each and every owner of the Mortgaged Premises at the same time that such notice or demand is served upon any one of them.

Any notice or demand which Mortgagors may desire or be required to serve upon Mortgagee hereunder shall be delivered by registered or certified mail, and such service shall be deemed complete on the third business day after the same is deposited in a United States Post Office in a securely sealed envelope with postage prepaid addressed to Mortgagee as follows, or to such other address as the holder of this

Mortgage may hereafter designate in writing in the manner provided in this Paragraph 42:

43. Applicable Law. The provisions of this Mortgage shall be construed in accordance with the law of the State of Alabama.

44. Further Assurances. Mortgagors will, at the cost of Mortgagors, and without expense to Mortgagee, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignments, transfers and assurances as Mortgagee shall, from time to time, require, for the better assuring, conveying, assigning, transferring and confirming unto Mortgagee the property and rights hereby mortgaged or intended now or hereafter so to be, or which Mortgagors may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage or for filing, registering or recording this Mortgage and, on demand, will execute and deliver and hereby authorizes Mortgagee to execute in the name of Mortgagors to the extent Mortgagee may lawfully do so, one or more security agreements, chattel mortgages or comparable security instruments, to evidence more effectively the lien hereof upon the Mortgaged Premises.

45. Usury. Anything to the contrary notwithstanding contained herein, or in the Mortgage Note which is secured hereby, the total liability for payment in the nature of interest shall not exceed the limits now imposed by the usury laws of the State of Alabama.

46. No Transfer or Assignment. Mortgagors shall not transfer, assign, or convey all or any part of their interest in and to the real property described herein or any part thereof without the prior written consent of Mortgagee.

BOOK 443 PAGE 820

47. This Mortgage Governs. There are no other agreements or understandings between the parties with respect to this Mortgage except to the extent expressly set forth herein or in a written instrument executed contemporaneously herewith.

48. Captions. The captions in this instrument are inserted only as a matter of convenience and for reference, and are not and shall not be deemed to be a part hereof.

49. No Oral Changes. This Mortgage may not be changed or terminated orally, but only by an agreement in writing signed by the party against whom enforcement of any change is sought.

50. Bind and Inure. The provisions of this Mortgage shall bind and inure to the benefit of the parties hereto and their heirs, successors and assigns; the covenants of Mortgagors herein shall run with the land; the word "Mortgagors" as used herein shall mean not only the original Mortgagors named in the first paragraph of this instrument but also all future owners of the Mortgaged Premises; and the word "Mortgagee" as used herein, shall mean not only the original Mortgagee named in the first paragraph of this instrument but also all future holders of this Mortgage.

IN WITNESS WHEREOF, the undersigned, Mortgagors, have hereunto set their hands and seals on this the 22nd day of February, 1984

  
LESTER C. WYATT

BOOK 443 PAGE 821

STATE OF ALABAMA

JEFFERSON COUNTY

On this 22nd day of February, 1984, I, the undersigned authority, a Notary Public in and for said county and in said State, hereby certify that Lester C. Wyatt, whose name is signed to the foregoing conveyance and who is known to me, acknowledged before me that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 22nd day of February, 1984.

  
NOTARY PUBLIC  
My Commission Expires: 2-2-85

BOOK 443 PAGE 822



EXHIBIT "A"

A parcel of land located in the North Half of the SW quarter of Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the NE corner of the SW quarter of the NW quarter of said Section 31; thence in an easterly direction, a distance of 452.73 feet; thence  $86^{\circ} 31' 40''$  right, in a southerly direction, a distance of 1321.78 feet; thence  $47^{\circ} 06'$  right, in a southwesterly direction, a distance of 250.20 feet to a point; said point being in the approximate center line of an existing road; thence  $79^{\circ} 55' 15''$  right, in a northwesterly direction along said approximate center line, a distance of 34.06 feet to the point of beginning; thence continue along last described course, a distance of 115.60 feet to the beginning of a curve to the left, having a radius of 113.67 feet and a central angle of  $66^{\circ} 50'$ ; 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; thence  $76^{\circ} 26' 39''$  left to chord of said curve, in a southeasterly direction along said curve to the right, and along said R/W line, a chord distance of 198.92 feet; thence  $88^{\circ} 41' 51''$  left, in a northeasterly direction, a distance of 152.97 feet; thence  $38^{\circ} 00'$  left, in northeasterly direction, a distance of 146.00 feet to the point of beginning.

SUBJECT TO: (1) Taxes for the current year 1984 and subsequent years. (2) Right of way granted to Alabama Power Company, by instrument recorded in Deed Book 101, Page 506; Deed Book 112, Page 513; Deed Book 175, Page 57; Deed Book 138, Page 50; and Deed Book 170, Page 258. (3) Right of way in favor of Shelby County, as recorded in Deed Book 154, Page 162, and Deed Book 159, Page 482. (4) Right of way for highway as acquired by condemnation proceedings as recorded in Final Record 13, Page 203, and Final Record 16, Page 190 and 191. (5) Restrictions appearing of record in Deed Book 281, Page 6. (6) Terms, conditions, restrictions and limitations contained in Assignment of Lease recorded in Miscellaneous Book 23, Page 202. (7) Right of way granted to Alabama Power Company by instrument recorded in Deed Volume 329, Page 306.

BOOK 443 PAGE 823

# ADJUSTABLE RATE LOAN RIDER

NOTICE: THE SECURITY INSTRUMENT SECURES A NOTE WHICH CONTAINS A PROVISION ALLOWING FOR CHANGES IN THE INTEREST RATE. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

This Rider is made this 22nd . . . day of . . . February . . . . ., 19.84. . . , and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note to . . . . . JEFFERSON FEDERAL SAVINGS AND LOAN ASSOCIATION OF BIRMINGHAM . . . . . (the "Lender") of the same date (the "Note") and covering the property described in the Security Instrument and located at . . . . . 2201-05. Highway .31. South, Pelham, Alabama .35124. . . . .  
Property Address

**Modifications.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

## A. INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note has an "Initial Interest Rate" of 13.0%. The Note interest rate may be increased or decreased on the 1st . . day of the month beginning on . . March 1. . . . ., 19.85. . and on that day of the month every . 12. . months thereafter.

Changes in the interest rate are governed by changes in an interest rate index called the "Index". The Index is the:  
[Check one box to indicate Index.]

(1) ☒ "Contract Interest Rate, Purchase of Previously Occupied Homes, National Average for all Major Types of Lenders" published by the Federal Home Loan Bank Board.

(2) ☐ \* . . . . .

[Check one box to indicate whether there is any maximum limit on changes in the interest rate on each Change Date; if no box is checked there will be no maximum limit on changes.]

(1) ☒ There is no maximum limit on changes in the interest rate at any Change Date. The minimum is 10.0%.

(2) ☐ The interest rate cannot be changed by more than . . . . . percentage points at any Change Date.

If the interest rate changes, the amount of Borrower's monthly payments will change as provided in the Note. Increases in the interest rate will result in higher payments. Decreases in the interest rate will result in lower payments.

## B. LOAN CHARGES

It could be that the loan secured by the Security Instrument is subject to a law which sets maximum loan charges and that law is interpreted so that the interest or other loan charges collected or to be collected in connection with the loan would exceed permitted limits. If this is the case, then: (A) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (B) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower.

## C. PRIOR LIENS

If Lender determines that all or any part of the sums secured by this Security Instrument are subject to a lien which has priority over this Security Instrument, Lender may send Borrower a notice identifying that lien. Borrower shall promptly act with regard to that lien as provided in paragraph 4 of the Security Instrument or shall promptly secure an agreement in a form satisfactory to Lender subordinating that lien to this Security Instrument.

## D. TRANSFER OF THE PROPERTY

If there is a transfer of the Property subject to paragraph 46 of the Security Instrument, Lender may require (1) an increase in the current Note interest rate, or (2) an increase in (or removal of) the limit on the amount of any one interest rate change (if there is a limit), or (3) a change in the Base Index figure, or all of these, as a condition of Lender's waiving the option to accelerate provided in paragraph 46.

By signing this, Borrower agrees to all of the above.

 . . . . . (Seal)  
LESTER C. WYATT  
—Borrower

. . . . . (Seal)  
—Borrower

\* If more than one box is checked or if no box is checked, and Lender and Borrower do not otherwise agree in writing, the first Index named will apply.

# ADJUSTABLE RATE NOTE

NOTICE TO BORROWER: THIS NOTE CONTAINS A PROVISION ALLOWING FOR CHANGES IN THE INTEREST RATE. INCREASES IN THE INTEREST RATE WILL RESULT IN HIGHER PAYMENTS. DECREASES IN THE INTEREST RATE WILL RESULT IN LOWER PAYMENTS.

February 22, 1984 Birmingham Alabama  
City State

2201-05 Highway 31 South, Pelham, Alabama 35124  
Property Address City State Zip Code

## 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 325,000.00 (this amount will be called "principal"), plus interest, to the order of the Lender. The Lender is JEFFERSON FEDERAL SAVINGS AND LOAN ASSOCIATION OF BIRMINGHAM

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the "Note Holder".

## 2. INTEREST

Interest will be charged on that part of outstanding principal which has not been paid. Interest will be charged beginning on the date I receive principal and continuing until the full amount of principal I receive has been paid.

Beginning on the date of this Note, I will pay interest at a yearly rate of 13.0% (the "Initial Interest Rate"). The interest rate that I will pay will change in accordance with Section 4 of this Note until my loan is paid. Interest rate changes may occur on the 1st day of the month beginning on March 1, 1985, and on that day of the month every twelve (12) months thereafter. Each date on which the rate of interest may change will be called a "Change Date".

## 3. PAYMENTS

### (A) Time and Place of Payments

I will pay principal and interest by making payments every month. I will make my monthly payments on the 1st day of each month beginning on April 1, 1984. I will make these payments until I have paid all of the principal and interest and any other charges, described below, that I may owe under this Note. I will pay all sums that I owe under this Note no later than March 1, 1999 (the "final payment date").

I will make my monthly payments at 215 North 21st Street - Birmingham, Alabama 35203 or at a different place if required by the Note Holder.

### (B) Borrower's Payments Before They Are Due

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment". When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates of my monthly payments unless the Note Holder agrees in writing to those delays. My partial prepayment will reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

### (C) Amount of Monthly Payments

My initial monthly payments will be in the amount of U.S. \$ 4,112.04. If the interest rate that I pay changes, the amount of my monthly payments will change. Increases in the interest rate will result in higher payments (unless my prepayments since the last Change Date offset the increases in my monthly payments). Decreases in the interest rate will result in lower payments. The amount of my monthly payments will always be sufficient to repay my loan in full in substantially equal payments by the final payment date. In setting the monthly payment amount on each Change Date, the Note Holder will assume that the Note interest rate will not change again prior to the final payment date.

4. INTEREST RATE CHANGES

(A) The Index

Any changes in the interest rate will be based on changes in an interest rate index which will be called the "Index". The Index is the: [Check one box to indicate Index.]

(1) ☒ \* "Contract Interest Rate, Purchase of Previously Occupied Homes, National Average for all Major Types of Lenders" published by the Federal Home Loan Bank Board.

(2) ☐ \* .....

If the Index ceases to be made available by the publisher, or by any successor to the publisher, the Note Holder will set the Note interest rate by using a comparable index.

(B) Setting the New Interest Rate

To set the new interest rate, the Note Holder will determine the change between the Base Index figure and the Current Index figure. The Base Index figure is 11.70..... The Current Index figure is the most recent Index figure available 45..... days prior to each Change Date. If the amount of the change is less than one-eighth of one percentage point, the change will be rounded to zero. If the amount of the change is one-eighth of one percentage point or more, the Note Holder will round the amount of the change to the nearest one-eighth of one percentage point.

If the Current Index figure is larger than the Base Index figure, the Note Holder will add the rounded amount of the change to the Initial Interest Rate. If the Current Index figure is smaller than the Base Index figure, the Note Holder will subtract the rounded amount of the change from the Initial Interest Rate. The result of this addition or subtraction will be the preliminary rate. If there is no change between the Base Index figure and the Current Index figure after rounding, the Initial Interest Rate will be the preliminary rate.

[Check one box to indicate whether there is any maximum limit on interest rate changes; if no box is checked, there will be no maximum limit on changes.]

(1) ☒ If this box is checked, there will be no maximum limit on changes in the interest rate up ~~and down~~. The preliminary rate will be the new interest rate. The minimum interest rate will be 10.0%.

(2) ☐ If this box is checked, the interest rate will not be changed by more than ..... percentage points on any Change Date. The Note Holder will adjust the preliminary rate so that the change in the interest rate will not be more than that limit. The new interest rate will equal the figure that results from this adjustment of the preliminary rate.

(C) Effective Date of Changes

Each new interest rate will become effective on the next Change Date. If my monthly payment changes as a result of a change in the interest rate, my monthly payment will change as of the first monthly payment date after the Change Date.

(D) Notice to Borrower

The Note Holder will mail me a notice by first class mail at least thirty and no more than forty-five days before each Change Date if the interest rate is to change. The notice will advise me of:

- (i) the new interest rate on my loan;
- (ii) the amount of my new monthly payment; and
- (iii) any additional matters which the Note Holder is required to disclose.

5. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments by the end of 15..... calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 4.0..... % of my overdue payment of principal and interest. I will pay this late charge only once on any late payment.

(B) Notice from Note Holder

If I do not pay the full amount of each monthly payment on time, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date I will be in default. That date must be at least 30 days after the date on which the notice is mailed to me.

(C) Default

If I do not pay the overdue amount by the date stated in the notice described in (B) above, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount.

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

\* If more than one box is checked or if no box is checked, and Lender and Borrower do not otherwise agree in writing, the first Index named will apply.

**(D) Payment of Note Holder's Costs and Expenses**

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all its reasonable costs and expenses to the extent not prohibited by applicable law. Those expenses may include, for example, reasonable attorneys' fees.

**6. WAIVERS**

Anyone who signs this Note to transfer it to someone else (known as an "endorser") waives certain rights. Those rights are (A) the right to require the Note Holder to demand payment of amounts due (known as "presentment") and (B) the right to require the Note Holder to give notice that amounts due have not been paid (known as "notice of dishonor").

**7. GIVING OF NOTICES**

Except for the notice provided in Section 4(D), any notice that must be given to me under this Note will be given by mailing it by certified mail. All notices will be addressed to me at the Property Address above. Notices will be mailed to me at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by certified mail to the Note Holder at the address stated in Section 3(A) above. Notices will be mailed to the Note Holder at a different address if I am given a notice of that different address.

**8. RESPONSIBILITY OF PERSONS UNDER THIS NOTE**

If more than one person signs this Note, each of us is fully and personally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any guarantor, surety, or endorser of this Note is also obligated to do these things. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

Any person who takes over my rights or obligations under this Note will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of a guarantor, surety, or endorser of this Note is also obligated to keep all of the promises made in this Note.

**9. LOAN CHARGES**

It could be that this loan is subject to a law which sets maximum loan charges and that law is interpreted so that the interest or other loan charges collected or to be collected in connection with this loan would exceed permitted limits. If this is the case, then: (A) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (B) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

**10. THIS NOTE SECURED BY A MORTGAGE**

In addition to the protections given to the Note Holder under this Note, a Mortgage, dated February 22, 1984, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Mortgage describes how and under what conditions I may be required to make immediate payment in full of all amounts that I owe under this Note. One of those conditions relates to any transfer of the property covered by the Mortgage. In that regard, the Mortgage provides in paragraph 46:

46. ~~KK~~ Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Mortgage shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph ~~12~~<sup>46</sup> and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Mortgage and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph ~~14~~<sup>3</sup> hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph ~~33~~<sup>18</sup> hereof.

An Adjustable Rate Loan Rider supplements the Mortgage and provides:

If there is a transfer of the Property subject to paragraph 17 of the Security Instrument, Lender may require (1) an increase in the current Note interest rate, or (2) an increase in (or removal of) the limit on the amount of any one interest rate change (if there is a limit), or (3) a change in the Base Index figure, or all of these, as a condition of Lender's waiving the option to accelerate provided in paragraph 17.

*Lester C. Wyatt* ..... (Seal)  
Borrower  
LESTER C. WYATT

..... (Seal)  
Borrower

..... (Seal)  
Borrower  
(Sign Original Only)

BOOK 443 PAGE 828

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1984 FEB 23 PM 2:45

*Thomas A. Slaughter, Jr.*  
JUDGE OF PROBATE

Mtg TAX \$87.50  
Rec \$5.50  
Ind 1.00  
\$144.00