

24 pgs 2.50 = 60.00
 index = 1.00
 tax 1400 x .15 = 210.00
 271.00

This instrument prepared by: William W. Brooke
 1600 Bank for Savings Building
 Birmingham, AL 35203

STATE OF ALABAMA)
 COUNTY OF SHELBY)

MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT, made this 1st day of October, 1984, by and between NICHOLS AND HILL CONSTRUCTION COMPANY, an Alabama general partnership whose sole general partners are William R. Hill, Jr. and William D. Nichols, and whose address is Route 1, Box 83-C, Chelsea, Alabama 35147 (the "Mortgagor") and SOUTHTRUST MORTGAGE CORPORATION, a Delaware corporation, having its principal office at 250 Office Park Drive, Birmingham, Alabama 35253 (the "Mortgagee");

W I T N E S S E T H :

WHEREAS, the Mortgagor is justly indebted to the Mortgagee in the sum of One Hundred and Forty Thousand and no/100 Dollars (\$140,000.00) with interest thereon, according to the terms of a certain Promissory Note of even date herewith (the "Note"), which Note matures not later than November 1, 1996, which Note shall bear interest from date thereof at the Initial rate of thirteen and three-eighths percent (13-3/8%) per annum, which rate may change, from time to time, pursuant to the terms of the Note, and upon which initial monthly payments of principal and interest in the amount of One Thousand Six Hundred Eighteen and 63/100 Dollars (\$1,618.63) shall be made, which payments shall be subject to adjustment, from time to time, in order to reflect changes in the interest rate payable on such indebtedness, all pursuant to the terms of the Note, with all outstanding principal and interest to be due in any event no later than November 1, 1996.

NOW, THEREFORE, to secure to the Mortgagee the payment of the aforesaid indebtedness, with interest thereon, the payment of all other monies secured hereby or advanced hereunder and the performance of the covenants and agreements herein contained, the Mortgagor does hereby grant, bargain, sell, convey and mortgage unto the Mortgagee and to its successors and assigns, the following real property located in Shelby County, State of Alabama, to wit:

A parcel of land located in the NE 1/4 of the SW 1/4 of Section 21, Township 22 South, Range 3 West, in the City of Montevallo, Shelby County, Alabama, described as follows:

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Begin at the point of intersection of the Southeast-erly right-of-way of Valley Street and the Southwest-erly right-of-way of Wadsworth Street; thence run Southwesterly along the right-of-way of said Valley Street a distance of 73.89 feet: Thence turn left 89 degrees 04 minutes 42 seconds a distance of 201.93 feet to the Northwesterly right-of-way of Main Street, (also known as Broad Street); Said point being the P. C. of a curve to the left having a central angle of 08 degrees 41 minutes 25 seconds and a radius of 538.00 feet; Thence turn left 95 degrees 57 minutes 39 seconds to the chord of said curve and run along the arc of said curve, which is also the right-of-way of said Main Street a distance of 81.60 feet to the Southwesterly right-of-way of said Wadsworth Street; Thence turn left 86 degrees 09 minutes 28 seconds from said chord and run Northwesterly along the right-of-way of said Wadsworth Street a distance of 194.79 feet to the point of beginning. According to the survey of Johnye Horton, RLS #12496, dated 20th January, 1984. Situated in Shelby County, Alabama.

together with all and singular tenements, hereditaments, and appurtenances thereof; all buildings and improvements now or hereafter constructed thereon; and Mortgagor's interest in all chattels, fixtures, goods to become fixtures, and articles of tangible and intangible personal property now owned or hereafter acquired by the Mortgagor and now or hereafter located in or used for the operation and maintenance of the aforesaid buildings and improvements including, but not limited to, furnaces, steam boilers, hot-water boilers, oil burners, pipes, radiators, air-conditioning and sprinkler systems, gas and electric fixtures, carpets, rugs, shades, awnings, screens, elevators, motors, dynamos, cabinets, incinerators, lawn plants and shrubbery and all other furnishings, tools, equipment and machinery, appliances, building supplies, furniture and furnishings, materials, rents, contract rights, accounts receivable, business records, fittings and fixtures of every kind, all of which real estate, fixtures and personal property are hereinafter collectively called the "Mortgaged Premises" and are hereby declared to be subject to the lien of this Mortgage and Security Agreement (herein called "Mortgage") as security for payment of the aforesaid indebtedness.

TO HAVE AND TO HOLD the Mortgaged Premises with all the rights, improvements and appurtenances thereunto belonging, or in anywise appertaining thereto, unto the Mortgagee, its successors and assigns, forever. The Mortgagor covenants that the Mortgagor is seized of an indefeasible estate in fee simple in the Premises, that the Mortgagor has a good

right to grant, sell, convey and mortgage the same, that except for the matters set forth herein, if any, the Mortgaged Premises are free and clear of all general and special taxes, liens, charges and encumbrances of every kind and character, and that the Mortgagor hereby warrants and will forever defend the title thereto against the claims of all persons whomsoever.

This Mortgage is made subject to the following covenants, conditions and agreements:

1. INDEBTEDNESS SECURED:

(a) If Mortgagor shall pay the indebtedness evidenced by the Note in accordance with its terms and shall punctually perform and comply with all the obligations, covenants and conditions contained herein, and upon payment in full of all amounts owing hereunder and under the Note, then in that event only, this Mortgage shall be and become null and void, and be discharged of record at the cost of the Mortgagor, which cost Mortgagor agrees to pay.

(b) This Mortgage shall secure the payment of the above described Note, including any and all additional indebtedness of the Mortgagor to the Mortgagee, whether or not incurred or becoming payable under the provisions hereof and whether as future advancements or otherwise, together with any renewals or extensions of said Note or other indebtedness.

2. PRESERVATION AND MAINTENANCE OF PROPERTY. With respect to the Mortgaged Premises, the Mortgagor covenants and agrees to keep the same in good condition and repair, ordinary wear and tear excepted; to pay all general and special taxes and assessments and other charges that may be levied or assessed upon or against the same as they become due and payable and to furnish to the Mortgagee receipts showing payment of any such taxes and assessments; to pay all utility charges or assessments and debts for repair or improvements of whatever nature, now existing or hereafter arising, that may become liens upon or charges against the same; to comply with or cause to be complied with all requirements of any governmental authority relating to the Mortgaged Premises; and to promptly repair, restore, replace or rebuild any part of the Mortgaged Premises which may be damaged or destroyed by any casualty whatsoever or which may be affected by any condemnation proceeding or exercise of eminent domain. The Mortgagor further covenants and agrees that the Mortgagor

will not commit nor suffer to be committed any waste of the Mortgaged Premises; nor initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance, or other public or private restrictions limiting or defining the uses which may be made of the Mortgaged Premises or any part thereof; nor permit any lien or encumbrance, of any kind or character, to accrue or remain on the Mortgaged Premises or any part thereof which might take precedence over the lien of this Mortgage. The Mortgagor shall have the right to contest, in good faith, mechanics and materialmen's liens filed against the Mortgaged Premises and the proposed assessment of ad valorem taxes or special assessments by governmental authorities having jurisdiction; provided, however, the Mortgagor shall give written notice thereof to Mortgagee and Mortgagee may, at its option, require Mortgagor to post bond or other collateral satisfactory to Mortgagee.

3. INSURANCE. The Mortgagor will keep the Mortgaged Premises insured for the benefit of the Mortgagee against loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, vandalism and malicious mischief and (as, when and to the extent insurance against war risks is obtainable from the United States of America or any agency thereof) against war risks, and other coverages embraced within extended coverage all in amounts approved by the Mortgagee and covering the Mortgaged Premises for the principal amount of the loan or a minimum of eighty percent (80%) of the full replacement cost of the Mortgaged Premises with a replacement cost endorsement sufficient to prevent the application of any co-insurance provisions, whichever is greater, and shall provide the Mortgagee with policies of public liability insurance in amounts approved by Mortgagee, rent loss insurance in an amount equal to the full rental value of the Mortgaged Premises for at least twelve (12) months, and flood insurance in an amount equal to the lesser of the outstanding principal balance of the indebtedness secured hereby or the maximum amount of coverage made available with respect to the Mortgaged Premises under the National Flood Insurance Program (or the surveyor's certification that the Mortgaged Premises are not located in an area designated by the Secretary of Housing and Urban Development as an area having special flood or mudslide hazards and that flood insurance is not required for this loan under the terms of any law, regulation or rule governing Mortgagee's activities), and when and to the extent required by the Mortgagee, against any other risk insured against by persons operating like properties in the locality of the Mortgaged Premises; all insurance herein provided for shall be in form and issued by companies approved by the Mortgagee; regardless of the types or amounts of insurance required and approved by the Mortgagee, the Mortgagor will assign and deliver to

the Mortgagee all policies of insurance (or, at the election of Mortgagor, certificates of insurance and certified copies of such policies) which insure against any loss or damage to the Mortgaged Premises, as collateral and further security for the payment of the indebtedness hereby secured, with loss payable to the Mortgagee pursuant to the standard mortgage clause; not less than fifteen (15) days prior to the expiration dates of each policy required of the Mortgagor pursuant to this paragraph, the Mortgagor will deliver to the Mortgagee a renewal policy or policies marked "premium paid" or accompanied by other evidence of payment satisfactory to the Mortgagee; all such policies shall contain a provision that they will not be cancelled or materially altered or amended without at least fifteen (15) days prior written notice to Mortgagee; and in the event of a foreclosure of this Mortgage, the purchaser of the Mortgaged Premises shall succeed to all the rights of the Mortgagor, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to the Mortgagee pursuant to the provisions of this paragraph.

Subject to the conditions hereinafter set forth, in the event of loss or damage to the improvements situated on the Mortgaged Premises by fire or other casualty, proceeds payable by reason of such insurance shall be deposited with Mortgagee and disbursed to Mortgagor for the sole purpose of accomplishing necessary repairs or restoration to the Mortgaged Premises as such repairs and restoration progresses strictly in accordance with the following: (i) in advance of the commencement of construction, the Mortgagor shall submit a construction contract and plans and specifications to the Mortgagee for its written approval; (ii) there shall be sufficient funds on deposit with the Mortgagee at all times to complete the repair and restoration, as certified from time to time by an inspecting architect approved by the Mortgagee and, if at any time it shall appear that there are insufficient insurance proceeds to prosecute or complete the repairs or restoration, then, in such event, the Mortgagor shall deliver an unconditional, irrevocable Letter of Credit to the Mortgagee for such excess estimated cost, with disbursements on such repair and restoration to be made from insurance proceeds first and then from the Mortgagor's Letter of Credit, with such Letter of Credit to be returned to Mortgagor upon completion of and full payment for the repair and restoration; (iii) Mortgagor shall execute a Guarantee Agreement for loan payments until the project is again producing enough gross revenues to cover the loan payments plus proforma expenses (break even) and for the reconstruction of the damaged premises; (iv) the Mortgagor shall provide completion and performance bonds and builder's risk insurance acceptable to the Mortgagee showing Mortgagee as a dual obligee and an additional

insured, as the case may be; (v) the Mortgagee shall disburse such funds to Mortgagor in increments of not less than \$20,000 each, except the final disbursement, and in a total amount which shall not exceed the cost to complete the work, with the balance remaining, if any, to be applied, at Mortgagee's sole option, to reduce the indebtedness secured hereby, at par; (vi) prior to any disbursement to Mortgagor, the Mortgagee's inspecting architect will certify completion of the work in place in accordance with approved plans and specifications and that there are sufficient funds on deposit with the Mortgagee to complete the repair and restoration; and (vii) the Mortgagee, may, in its discretion, impose such other conditions to such disbursements as would be customarily required by a construction lender doing business in the area, or as are otherwise reasonable. Notwithstanding the foregoing, the Mortgagee, may, at its option, retain such insurance proceeds and apply the same, at par, for payment of the money secured by this Mortgage in the event that (i) Mortgagor is in default under this Mortgage or any instrument evidencing or securing payment of the indebtedness secured hereby, (ii) the loss or damage by fire or other casualty exceeds Five Hundred Dollars (\$500.00), or (iii) any insurance carrier asserts any defense against the Mortgagor's claim of loss made pursuant to the aforescribed policies of insurance.

4. CONDEMNATION. The Mortgagor covenants and agrees that if at any time all or any portion of the Mortgaged Premises shall be taken or damaged under the power of eminent domain, the award received by condemnation proceedings for any property so taken or any payment received in lieu of such condemnation proceedings shall be paid directly to the Mortgagee and all or any portion of such award or payment, at the option of the Mortgagee, shall be applied to the indebtedness hereby secured or paid over, wholly or in part, to the Mortgagor for the purpose of altering, restoring or rebuilding any part of the Mortgaged Premises which may have been altered, damaged or destroyed as a result of any such taking or damage, or for any other purpose or object satisfactory to Mortgagee; provided, that the Mortgagee shall not be obligated to see to the application of any amount paid over to the Mortgagor. Provided, however, in the event that Mortgagee elects to apply any such award or payment received in lieu of condemnation proceedings to reduce the indebtedness secured hereby, it is agreed that the Prepayment Premium required by the Note shall not be due and payable.

5. INDULGENCES, EXTENSIONS, RELEASES AND WAIVERS.

(a) Mortgagee may at any time, without notice to any person, grant to the Mortgagor any indulgence, forbearance or any extension of time for the payment

of any indebtedness secured hereby or allow any change or substitution of or for any of the property described in this Mortgage or any other collateral which may be held by the Mortgagee, without in any manner affecting the liability of the Mortgagor, any endorsers of the indebtedness hereby secured or any other person liable for the payment of said indebtedness together with interest and any other sums which may be due and payable to the Mortgagee, and also without in any manner affecting or impairing the lien of this Mortgage upon the remainder of the property and other collateral which is not changed or substituted; and it is also understood and agreed that the Mortgagee may at any time, without notice to any person, release any portion of the Mortgaged Premises or any other collateral or any portion of any other collateral which may be held as security for the payment of the indebtedness hereby secured, either with or without any consideration for such release or releases without in any manner affecting the liability of the Mortgagor, all endorsers, and all other persons who are or shall be liable for the payment of said indebtedness, and without affecting, disturbing or impairing in any manner whatsoever the validity and priority of the lien of this Mortgage upon the entire remainder of the Mortgaged Premises which is unreleased, and without in any manner affecting or impairing to any extent whatsoever any and all other collateral security which may be held by the Mortgagee. It is distinctly understood and agreed by the Mortgagor and Mortgagee that any release or releases may be made by the Mortgagee without the consent or approval of any person or persons whomsoever.

(b) Any failure by the Mortgagee to insist upon strict performance by the Mortgagor of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof, and the Mortgagee, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of the terms and provisions of this Mortgage to be performed by the Mortgagor; neither the Mortgagor nor any other person now or hereafter obligated for the payment of the whole or any part of the sums now or hereafter secured by this Mortgage shall be relieved of such obligation by reason of the failure of the Mortgagee to comply with any request of the Mortgagor or of any other person so

obligated to take action to foreclose this Mortgage or otherwise enforce any of the provisions of this Mortgage or of any obligations secured by this Mortgage, or by reason of the release, regardless of consideration, of the whole or any part of the security held for the indebtedness secured by this Mortgage, or by reason of any agreement or stipulation between any subsequent owner or owners of the Mortgaged Premises and the Mortgagee extending, from time to time, the time of payment or modifying the terms of the Note or Mortgage without first having obtained the consent of the Mortgagor or such other person, and, in the latter event, the Mortgagor and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by the Mortgagee; regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien on the Mortgaged Premises, the Mortgagee may release the obligation of anyone at any time liable for any of the indebtedness secured by this Mortgage or any part of the security held for the indebtedness and may, from time to time, extend the time of payment or otherwise modify the terms of the Note and/or Mortgage without, as to the security or the remainder thereof, in anyway impairing or affecting the lien of this Mortgage or the priority of such lien, as security for the payment of the indebtedness as it may be so extended or modified, over any subordinate lien; the holder of any subordinate lien shall have no right to terminate any lease affecting the Mortgaged Premises whether or not such lease be subordinate to this Mortgage; and the Mortgagee may resort for the payment of the indebtedness secured hereby to any other security therefor held by the Mortgagee in such order and manner as the Mortgagee may elect. Provided, however, any modification of the Note or Mortgage by Mortgagee without the consent of Mortgagor shall not (i) increase the obligations of Mortgagor thereunder, or (ii) decrease the rights of Mortgagor thereunder in any material respect.

(c) All sums payable by Mortgagor hereunder shall be paid without notice, demand, counterclaim, setoff, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of Mortgagor hereunder shall in no way be released, discharged

or otherwise affected (except as expressly provided herein) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the premises or any part thereof; (ii) any restriction or prevention of or interference with any use of the premises or any part thereof; (iii) any title defect or encumbrance or any eviction from the Property or the improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Mortgagee, or any action taken with respect to this Mortgage by any trustee or receiver of Mortgagee, or by any court, in any such proceeding; (v) any claim which Mortgagor has or might have against Mortgagee; (vi) any default or failure on the part of Mortgagee to perform or comply with any of the terms hereof or of any other agreement with Mortgagor; or (vii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Mortgagor shall have notice or knowledge of any of the foregoing. Except as expressly provided herein, Mortgagor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by Mortgagor.

6. SECURITY AGREEMENT. This Mortgage shall also be construed to be, and shall be construed as, a security agreement with respect to any of the properties described herein which are characterized by law as fixtures or personal property, of whatever nature (hereinafter referred to as the "Collateral"), and Mortgagor does hereby grant unto Mortgagee a security interest in and to such Collateral on the terms set forth herein.

(a) Assembly of Collateral: Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof, or the Note secured hereby, the Mortgagee may, at its discretion, require the Mortgagor to assemble the Collateral and make it available to the Mortgagee at a place reasonably convenient to both parties to be designated by the Mortgagee.

(b) Manner of Sale: Upon default hereunder and acceleration of the indebtedness pursuant to the provisions hereof, or of the Note secured hereby, all or any part of the Collateral may, at the sole discretion of the Mortgagee, be combined with

the real property conveyed hereby and sold together with such real property as an entirety, or the Collateral (or any part of the Collateral not sold together with the real property) may be sold separately, as one parcel or in such parcels, manner or order as the Mortgagee, in its sole discretion, may elect.

(c) Notice of Sale: The Mortgagee shall give the Mortgagor notice, by registered or certified mail, postage prepaid, of the time and place of any public sale of any Collateral or of the time after which any private sale or other intended disposition thereof is to be made by sending notice to the Mortgagor at least ten (10) days before the time of the sale or other disposition, which provisions for notice the Mortgagor and Mortgagee agree are reasonable.

(d) Additional Documents: The Mortgagor will, from time to time, within fifteen (15) days after request by the Mortgagee, execute, acknowledge and deliver any Financing Statement, Renewal Affidavit, Certificate, Continuation Statement, Inventory or other similar documents as the Mortgagee may request in order to protect, preserve, continue, extend or maintain the security interest under the priority of this Mortgage and will, upon demand, pay any expenses incurred by the Mortgagee in the preparation, execution and filing of any such documents.

7. TAXES.

(a) Mortgagor agrees to pay, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Premises, which are assessed or imposed upon the Mortgaged Premises, or become due and payable, and which create, may create or appear to create a lien upon the Mortgaged Premises, or any part thereof, or upon any collateral, equipment or other facilities used in the operation or maintenance thereof (all of which taxes, assessments and other governmental charges of like nature are hereinafter referred to

as "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the option of the taxpayer be paid, in installments, Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) If at any time after the date hereof there shall be assessed or imposed (i) a tax or assessment on the premises in lieu of or in addition to the Impositions payable by Mortgagor pursuant to subparagraph (a) hereof, or (ii) a license fee, tax or assessment imposed on Mortgagee and measured by or based in whole or in part upon the amount of the outstanding obligations secured hereby, then all such taxes, assessments or fees shall be deemed to be included within the term "Impositions" as defined in subparagraph (a) hereof, and Mortgagor shall pay and discharge the same as herein provided with respect to the payment of Impositions or, at the option of Mortgagee, all obligations secured hereby together with all accrued interest thereon, shall immediately become due and payable. Anything to the contrary herein notwithstanding, Mortgagor shall have no obligation to pay any franchise, estate, inheritance, income, excess profits or similar tax levied on Mortgagee or on the obligations secured hereby.

(c) Subject to the provisions of subparagraph (d) of this Paragraph 7, Mortgagor covenants to furnish Mortgagee within thirty (30) days after the date upon which any such Imposition is due and payable by Mortgagor, official receipts of the approximate taxing authority, or other proof satisfactory to Mortgagee, evidencing the payment thereof.

(d) Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such Imposition by appropriate legal proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending Mortgagor's covenant to pay any such Imposition at the time and in the manner provided in this Paragraph 7, unless Mortgagor has given prior written notice to Mortgagee of Mortgagor's intent to so contest or object to an Imposition.

sition, and unless, at Mortgagee's sole option, (i) Mortgagor shall demonstrate to Mortgagee's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (ii) Mortgagor shall furnish a good and sufficient bond or surety as requested by and satisfactory to Mortgagee; or (iii) Mortgagor shall have provided with a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of such proceedings.

8. MORTGAGEE'S RIGHTS.

(a) Upon the failure of the Mortgagor to pay any of the taxes or assessments, or other charges above mentioned, as they become due and payable, or to pay any other of the debts or liens above mentioned at the time above mentioned, or to insure the Mortgaged Premises or deliver the policies of insurance as herein agreed, or to perform any of the Mortgagor's covenants and agreements herein, the Mortgagee is hereby authorized, at its option, to insure the Mortgaged Premises, or any part thereof, and pay the costs of such insurance, and to pay such taxes, liens, assessments or other charges herein mentioned, or any part thereof, and to remedy the Mortgagor's failure to perform hereunder and pay the costs associated therewith, and the Mortgagor hereby agrees to refund on demand any and all sum or sums so paid, with interest thereon at the lower of the rate of twenty percent (20%) per annum or the highest permissible legal rate; and this Mortgage shall stand as security therefor; and any such sum or sums so paid shall become a part of the indebtedness hereby secured; provided, however, that the retention of a lien hereunder for any sum so paid shall not be a waiver of subrogation or substitution which the Mortgagee might otherwise have had, and, in the event of the failure by the Mortgagor to keep the Mortgaged Premises insured in the manner and time herein provided, or the failure to deliver renewal policies in the manner and time herein provided, or if any installment of interest or payment of principal is not paid at or within the time required by terms of the Note secured hereby, or in the case of the actual or threatened demolition or removal of any of the Mortgaged Premises, or the failure to do any of the things herein agreed to be done, or on

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the breach of any of the terms of this Mortgage or the Note secured hereby, then in any of such events, whether the Mortgagee has paid any of the taxes, liens or other charges, or procured the insurance, or remedied the Mortgagor's failure to perform, all as above mentioned, or not, the Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

(b) Upon the institution of any foreclosure proceeding by the holder of any mortgage or lien upon the Mortgaged Premises, or in case the Mortgagor should become insolvent, or should the Mortgagor make a general assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for any receiver or trustee for the Mortgagor or for any part of the Mortgagor's property, commence any proceeding relating to the Mortgagor under the bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or by any act indicate the Mortgagor's consent to, approval of, or acquiescence in any such proceeding, application or petition, or should a third person commence any such proceeding, file a petition or make such application, and the same not be discharged within sixty (60) days from the date of filing thereof, then in any of said events, the Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

(c) In the event that any part of any of the buildings situated on the Mortgaged Premises shall be condemned by any governmental authority having jurisdiction or if lands constituting a portion of the Mortgaged Premises shall be condemned by any governmental authority having jurisdiction such that the Mortgaged Premises are in violation of applicable parking ordinances or the provisions of the agreement between the Mortgagor and Mortgagee, then in either of said events, the Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

(d) In the event (a) the Mortgagor, without the prior written consent of the Mortgagee, shall mortgage or otherwise encumber, sell, assign, transfer, convey or voluntarily or involuntarily permit or suffer the Mortgaged Premises or any part there-

of to be mortgaged, encumbered, sold, assigned, transferred or conveyed, except for transfers by reason of condemnation, or (b) if Mortgagor is a corporation, in the event of a direct or indirect transfer, without Mortgagee's prior written consent, or more than fifty percent (50%) of its voting stock, or (c) if Mortgagor is a partnership, in the event of the direct or indirect transfer, without Mortgagee's prior written consent, of a general partnership interest to a party which is not presently a general partner, or (d) if Mortgagor is a Trust, the direct or indirect assignment, without Mortgagee's prior written consent, of the beneficial interest therein, or any part thereof, which restriction shall be acknowledged by the trustee, then, in any such event, Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage. Provided, further, there shall be no secondary financing of the Mortgaged Property without the prior written consent of Mortgagee. This provision shall apply to each and every sale, assignment, transfer, conveyance or encumbrance regardless of whether or not the Mortgagee has consented to or waived its rights hereunder whether by action or non-action in connection with any previous sale, assignment, transfer, conveyance or encumbrance, whether one or more. In the event that any of the foregoing events shall occur without the prior written consent of Mortgagee, the Mortgagee shall have the right, in its sole discretion, to require that an assumption fee be paid to Mortgagee and/or that the interest rate payable under the Note be increased and that the remaining principal balance of the Note be amortized over a period to be specified by Mortgagee, and that the amount of the monthly payment due under the Note may be changed to reflect any one or more of the foregoing.

(e) The exclusive manager of the Mortgaged Premises shall be the Mortgagor, or such other designee of Mortgagor which shall first be approved in writing by the holder of the Note, and its management contract shall be subordinate to the lien of this Mortgage and Security Agreement in all respects, and shall be satisfactory to and subject to the approval of Mortgagee throughout the term of the indebtedness secured hereby. Upon default in this requirement, then the Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

(f) Notwithstanding any other provision contained herein, if any installment of interest, payment of principal or any other payment required under the Note or hereunder is not paid when due, or upon default in any of the other terms or conditions of the Note or this Mortgage or any other instrument securing payment of the Note which remains uncured for a period of thirty (30) days following written notice thereof to Mortgagor, then in either such event, the Mortgagee shall be entitled to exercise any or all remedies provided or referenced in this Mortgage.

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(g) Upon the occurrence of any of the events of default described above, the whole of the indebtedness hereby secured, together with the Prepayment Premium required by the Note, shall, at the election of the Mortgagee, become immediately due and payable without notice and the Mortgagee, at its option, may proceed to foreclose this Mortgage, and thereupon or at any time during the existence of any such default, the Mortgagee shall be entitled to enter into possession of the Mortgaged Premises and to collect the rents, issues and profits thereof, accrued and to accrue, and to apply the same on any indebtedness secured hereby or, if the Mortgagee so elects, the Mortgagee shall be entitled to the appointment of a receiver in any court of competent jurisdiction to collect such rents, issues and profits under the direction of the court, notice of the exercise thereon being hereby waived, regardless of the sufficiency or value of the security hereunder or the solvency of the Mortgagor. In addition, the Mortgagee shall be entitled to exercise any and all other remedies available by applicable laws and judicial decisions.

(h) When the indebtedness hereby secured, or any part thereof, shall become due, whether by acceleration or otherwise, Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof, and may sell the premises at public outcry to the highest bidder for cash in front of the Courthouse door in the County where said property is located, either in person or by auctioneer, having first given notice of the time, place and terms of sale by publication once a week for three successive weeks prior to said sale in some newspaper published in said County, and upon payment of the purchase money, Mortgagee, or any person conducting the sale for Mortgagee,

are authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase the premises, or any part thereof, if the highest bidder therefor. At the 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 Mortgagee may elect. In any such foreclosure, or upon the enforcement of any other remedy of Mortgagee under this mortgage or the Note, there shall be allowed and included as additional indebtedness all expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charge, publication costs, and costs involved in title insurance and title examinations. All expenditures and expenses of the nature in this paragraph mentioned, and such expenses and fees as may be incurred in the protection of the premises and the maintenance of the lien of this mortgage, including the fees of any attorney employed by Mortgagee in any litigation or proceeding affecting this mortgage, the Note or the premises, including probate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Mortgagor, with interest thereon at the rate provided by the Note, and shall be secured by this mortgage. The proceeds of any foreclosure sale of the premises shall be distributed and applied in the following order or priority: First, on account of all costs and expenses incident to the foreclosure proceedings, including all such items as are mentioned in this paragraph hereof; second, all other items which under the terms hereof constitute secured indebtedness additional to that evidenced by the Note, with interest thereon as herein provided; third, all principal and interest remaining unpaid on the Note; fourth, any remaining amounts to the Mortgagor, its successors or assigns, as their rights may appear.

(i) In the event that any installment of principal and interest is not paid on the due date thereof, then in addition to, and not in limitation of, any and all other rights and remedies of Mortgagee hereunder, a late payment charge of five percent (5%) of the aggregate monthly installment then due shall accrue to the benefit of the Mort-

gagee, and shall thereafter be a part of the indebtedness represented by the Note and the payment of which shall be secured hereby.

9. LEASES.

(a) The Mortgagor shall keep, perform, comply with and observe all terms, conditions, covenants and obligations on its part to be performed under all leases of or affecting the Mortgaged Premises or any part thereof (the "Occupancy Leases").

(b) Mortgagee has heretofore approved a form of Occupancy Lease (the "Form Lease"); Mortgagor shall not, without the prior written consent of the Mortgagee, modify or alter the Form Lease in any material respect. In addition Mortgagor shall not, without the prior written consent of Mortgagee, except in the ordinary course of Mortgagor's business, surrender or terminate, either orally or in writing, any Occupancy Lease now existing or hereafter made of all or part of the Mortgaged Premises or any part thereof, permit an assignment or sublease of any such Occupancy Lease, or request or consent to the subordination of any Occupancy Lease of all or any part of the Mortgaged Premises to any lien subordinate to this Mortgage.

(c) The Mortgagor shall furnish the Mortgagee with copies of all executed Occupancy Leases of all or any part of the Mortgaged Premises now existing or hereafter made; and shall assign to the Mortgagee, as additional security, all Occupancy Leases now existing or hereafter made of all or any part of the Mortgaged Premises.

10. FEES AND EXPENSES. It is agreed that if, and as often as, this Mortgage or the Note hereby secured is placed in the hands of an attorney for collection, or to protect the priority or validity of this Mortgage, or to defend any suit affecting the title to the Mortgaged Premises, or to enforce or defend any of the Mortgagee's rights hereunder, the Mortgagor shall pay to the Mortgagee its reasonable attorney's fees, together with all court costs, expenses for title examination, title insurance or other disbursements relating to the Mortgaged Premises, which sums shall be secured hereby.

11. ESTOPPEL CERTIFICATE. The Mortgagor upon request, made either personally or by mail, shall certify, by a writing duly acknowledged, to the Mortgagee or to any proposed assign-

nee of this Mortgage, the amount of principal and interest then owing on this Mortgage and whether any offsets or defenses exist against the mortgage debt, within ten (10) days in case the request is made personally, or within twenty (20) days after the mailing of such request in case the request is made by mail.

12. NOTICE. Every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on such party or mailed by depositing it in any post office station or letter box, enclosed in a postpaid envelope addressed to such party, or its successors, at his, their or its address set forth herein or as specified in a writing delivered pursuant to the requirements of this paragraph.

13. BOOKS AND RECORDS. The Mortgagor will maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Premises, and will furnish to the Mortgagee, within ninety (90) days after the close of the Mortgagor's fiscal year, certified annual financial statements for the Mortgagor and the operation of the Mortgaged Premises, all showing in detail all income derived from and expenses incurred in connection with the ownership and operation of the Mortgaged Premises. In the event the Mortgagor fails to provide such statements to the Mortgagee within the time prescribed above, the Mortgagor shall pay the Mortgagee the sum of Fifty and no/100 dollars (\$50.00), as an administrative expense, for each successive month for which such statements are delinquent.

14. CHANGE IN PROPERTY. The Mortgagor covenants and agrees to permit or suffer none of the following without the prior written consent of the Mortgagee:

(a) Any structural alteration of, or addition to, the buildings or improvements now or hereafter situated upon the Mortgaged Premises or the addition of any new buildings or other structure(s) thereto; or,

(b) The removal, transfer, sale or lease of the Mortgaged Premises except the renewal, replacement, or substitution of fixtures, equipment, machinery, apparatus and articles of personal property (replacement or substituted items must be of like or better quality than the removed items) covered hereby may be made in the normal course of business; or,

(c) The use of any of the buildings or improvements now or hereafter situated on the Mortgaged Premises for any purpose other than as a commercial office complex and related facilities.

15. TAX AND INSURANCE ESCROWS. Together with and in addition to each installment of interest or of principal and interest payable under the terms of the Note secured hereby, Mortgagor agrees to pay to Mortgagee a pro rata portion of the ad valorem and personal property taxes, assessments, premiums on insurance required hereunder and similar charges next to become due, as estimated by Mortgagee, to be sufficient to enable the Mortgagee to pay such taxes, assessments, insurance premiums and similar charges at least thirty (30) days before they shall become due. Any deficit shall immediately be paid to Mortgagee by Mortgagor. Moneys so held shall not bear interest, shall not be trust funds and upon default may be applied by Mortgagee on account of the indebtedness secured hereby. It shall be the responsibility of Mortgagor to furnish Mortgagee with bills in sufficient time to pay all such taxes, assessments, insurance premiums and similar charges before penalty attaches.

16. MINERAL INTERESTS. The Mortgagor agrees that the making of any oil, gas or mineral lease or the sale or conveyance of any mineral interest or right to explore for minerals under, through or upon the Mortgaged Premises would impair the value of the Mortgaged Premises as security for payment of the indebtedness secured hereby and that the Mortgagor shall have no right, power or authority to lease the Mortgaged Premises, or any part thereof, for oil, gas or other mineral purposes, or to grant, assign or convey any mineral interest of any nature, or the right to explore for oil, gas and other minerals, without first obtaining from the Mortgagee express written permission, which permission shall not be valid until recorded. The Mortgagor further agrees that if the Mortgagor shall make any such lease or attempt to grant any such mineral rights without such prior written permission, then the Mortgagee shall have the option, without notice, to declare the same to be a default hereunder and to exercise any and all remedies provided or referred in this mortgage. Whether or not the Mortgagee shall consent to such lease or grant of mineral rights, the Mortgagee shall receive the entire consideration to be paid for such lease or grant of mineral rights, with the same to be applied to the indebtedness hereby secured; provided, however, that the acceptance of such consideration shall in no way impair the lien of this Mortgage on the entire Mortgaged Premises and all rights therein, including all mineral rights.

17. FURTHER OBLIGATIONS. Mortgagor shall fully and faithfully satisfy and perform the obligations of Mortgagor contained in the Mortgagor's loan application and Mortgagee's loan commitment, and any such application and commitment between Mortgagor and any assignee of Mortgagee, and each agreement of Mortgagor incorporated by reference therein or herein, and any modification or amendment thereof. All representations, warranties and covenants of Mortgagor contained therein or incorporated by reference shall survive the closing and funding of the loan evidenced by the Note and shall remain continuing obligations, warranties and representations of Mortgagor during any time when any portion of the obligations secured by this Mortgage remain outstanding.

18. SUBROGATION. In the event all or any portion of the proceeds of the loan secured hereby are used for the purpose of retiring debt or debts secured by prior liens on the Mortgaged Premises, the Mortgagee shall be subrogated to the rights and lien priority of the holder of the lien so discharged.

19. MISCELLANEOUS.

(a) The rights of the Mortgagee arising under the clauses and covenants contained in this Mortgage shall be separate, distinct and cumulative and none of them shall be in exclusion of the others; and no act of the Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provisions, anything herein or otherwise to the contrary notwithstanding.

(b) The covenants and agreements contained herein are binding upon the Mortgagor, and the successors and assigns of the Mortgagor, and shall inure to the benefit of the Mortgagee and its successors and assigns.

(c) In case of any sale under this Mortgage, by virtue of foreclosure or otherwise, the Mortgaged Premises may be sold in one parcel and as an entirety or in such parcels, manner or order as the Mortgagee in its sole discretion may elect.

(d) Wherever used in this Mortgage, unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, the word "Mortgagor" shall mean "Mortgagor and/or any subsequent owner or owners of the Mortgaged Premises," the word "Mortgagee" shall mean "Mortgagee or any

subsequent holder or holders of this Mortgage," the word "Note" shall mean "note/s secured by this Mortgage" and the word "person" shall mean "an individual, trustee, trust, corporation, partnership or unincorporated association."

(e) This Mortgage cannot be changed except by an agreement in writing, signed by the party against whom enforcement of the change is sought and in recordable form.

(f) This Mortgage covers property situated in the State of Alabama, County of Shelby, is given as an incident to a lending transaction negotiated and consummated in the County of Jefferson, and is to be governed by the laws of the State of Alabama.

20. PARTIAL INVALIDITY. Should any clause or provision of this Mortgage be invalid or void for any reason, such invalid or void clause shall not affect the whole of this instrument, and the balance of the provisions hereof shall remain in full force and effect.

21. ADJUSTABLE INTEREST RATE AND PAYMENTS; NEGATIVE AMORTIZATION. The Mortgagor and Mortgagee hereby acknowledge, consent and agree that, while the initial interest rate provided for by the Note is thirteen and three-eighths percent (13-3/8%) per annum, such interest rate, as well as the monthly payment and total principal amount due under the Note, are all subject to change and increase in the event of changes in the interest rate, as provided in the Note, as follows:

BOOK 004 PAGE 201 (a) The rate of interest payable hereunder shall be the "Index" rate plus three percent (3%), with the "Index" being the weekly average auction rate for United States Treasury Bills having a maturity of 26 weeks. The rate of interest thus obtained shall be rounded to the nearest one-eighth of one percentage point (0.125%). The most recent Index figure available as of a date forty-five (45) days before the applicable Interest Change Date (hereafter defined) shall be the "Current Index".

(b) The Initial Interest Rate (the "IIR") for the loan evidenced by this Promissory Note shall be Thirteen and Three-Eighths percent (13-3/8%).

(c) The IIR shall be subject to adjustment during the term of this Promissory Note to reflect

variations in the Index on each "Interest Change Date". The first Interest Change Date shall occur five (5) calendar months following the first regular monthly payment under this Promissory Note, and Interest Change Dates shall occur every sixth calendar month thereafter.

(d) Before each Interest Change Date, the Holder of this Promissory Note shall calculate the necessary revision to the interest rate then in effect by adding three percentage points (3%) to the Current Index, the result of which shall be rounded to the nearest one-eighth of one percentage point (0.125%), which sum shall be the Revised Interest Rate (the "RIR"), which shall be the rate of interest which shall accrue upon the outstanding principal balance due under this Promissory Note effective with the Interest Change Date.

(e) Upon any change in the interest rate hereunder, the amount of the monthly payment applied to interest shall necessarily change. If the interest rate increases to the extent that the amount of the monthly payment is not sufficient to pay accrued interest since the last payment, then the Holder shall make an additional loan each month in an amount necessary to pay accrued but unpaid interest in full. The amount of each such additional loan shall be added to and become a part of the outstanding principal due hereunder, and shall bear interest as a part of such principal. Notwithstanding the foregoing, the outstanding principal due hereunder shall not exceed one hundred and fifteen percent (115%) of the original principal amount of this Promissory Note at any time, and in the event that any additional loan to be made under this provision shall result in an outstanding principal balance in excess of one hundred and fifteen percent (115%) of the original principal amount of this Promissory Note, then the monthly payment due hereunder shall be recomputed as provided in paragraph (e) below in order to fully pay all accrued interest and the required amortization.

(f) The initial monthly payment is equal to the "Full Payment Amount", which is the amount necessary to pay all interest which shall accrue at the IIR and amortize the outstanding principal balance over a period of twenty-five (25) years from the date of the loan represented by this Promissory Note. The initial monthly payment shall

be subject to adjustment twelve months following the first regular monthly payment under this Promissory Note, and annually on such day thereafter. The monthly payment shall also change in the event that the extension of an additional loan hereunder shall increase the outstanding principal amount due hereunder to a sum in excess of one hundred and fifteen percent (115%) of the original principal amount of this Promissory Note, as provided in paragraph (d) above. Any such date upon which the monthly payment may be revised under the terms of this Promissory Note shall be a "Payment Change Date". Before any Payment Change Date, the Holder of this Promissory Note shall compute the new Full Payment Amount which shall be equal to the amount of interest due each month based on the RIR to be in effect for that period plus the principal amortization required on a twenty-five (25) year loan. The Holder shall notify the Borrower in writing of such revised Full Payment Amount on or before the Payment Change Date for which it is to be effective.

BOOK 004 PAGE 203

(g) If, at any time, the Index shall be unavailable, the Holder shall designate a new index which shall be based on comparable information. The designation of such new index shall be solely in the discretion of Holder. Holder shall give written notice of such designation to the Borrower at the time of such designation.

(h) It is understood and acknowledged by the Borrower that the above set forth method of computing the rate of interest payable hereunder may create a "negative amortization" of the principal due hereunder, resulting in additional principal amounts becoming due to the Holder. The Borrower acknowledges that the monthly payment due hereunder may change at least annually or more often, which change could result in higher monthly payments becoming due hereunder.

EXECUTED AND DELIVERED the day and month first above written.

NICHOLS AND HILL CONSTRUCTION
COMPANY, an Alabama General
Partnership

Helen S. Wright
Witness

BY:

William R. Hill, Jr.
its general partner

Helen S. Wright
Witness

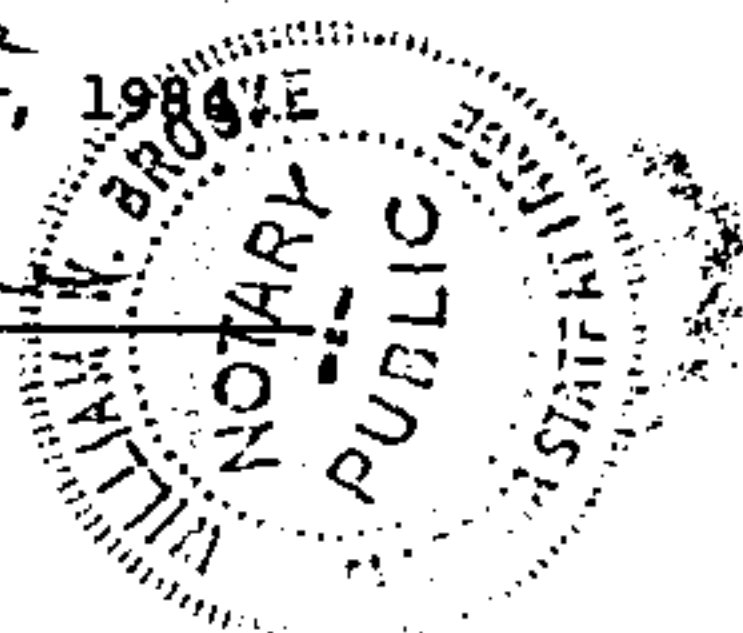
BY: William D. Nichols
William D. Nichols,
its general partner

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, William N. Broome, a Notary Public in and for said county in said state, hereby certify that William R. Hill, Jr., whose name is signed to the foregoing Mortgage and Security Agreement as a general partner of Nichols and Hill Construction Company, an Alabama general partnership, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, and acting in his capacity as such general partner, he executed the same voluntarily as and for the act of such partnership on the day the same bears date.

Given under my hand, this 1st ^{October} day of August, 1984

Wm. N. Broome
Notary Public

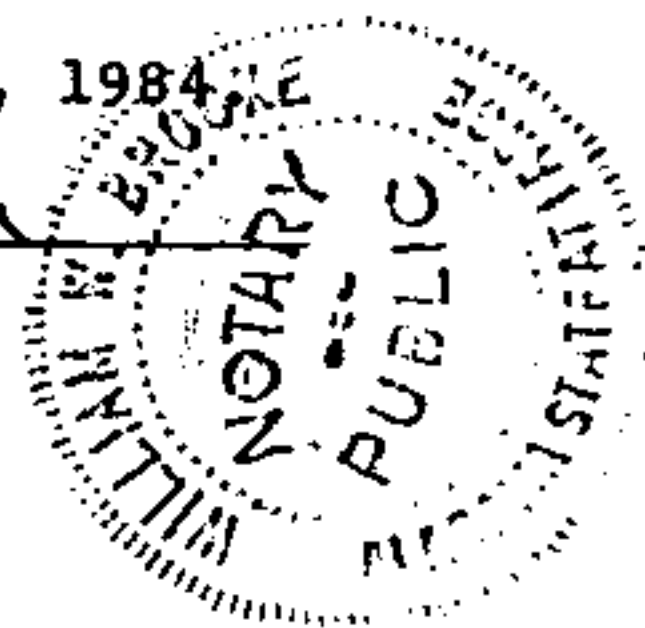


STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, William N. Broome, a Notary Public in and for said county in said state, hereby certify that William D. Nichols, whose name is signed to the foregoing Mortgage and Security Agreement as a general partner of Nichols and Hill Construction Company, an Alabama general partnership, and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, and acting in his capacity as such general partner, he executed the same voluntarily as and for the act of such partnership on the day the same bears date.

Given under my hand, this 1st ^{October} day of August, 1984

Wm. N. Broome
Notary Public



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