

MORTGAGE CORPORATION OF THE SOUTH  
A subsidiary of Bank of Boston  
P.O. Box 10726  
Birmingham, Alabama 35202

STATE OF ALABAMA

COUNTY OF Jefferson

CONSTRUCTION LOAN MORTGAGE DEED  
AND SECURITY AGREEMENT

THIS INDENTURE made and entered into this 21st day of August, 1985, by and between Don Kirby Construction, Inc. (hereinafter referred to as Mortgagor, whether one or more), and MORTGAGE CORPORATION OF THE SOUTH, an Alabama corporation, hereinafter referred to as Mortgagee,

WITNESSETH:

WHEREAS, the Mortgagor is justly indebted to the mortgagee in the principal sum of One Hundred Twenty Thousand Three Hundred and NO/100 DOLLARS (\$120,300.00), or so much as may from time to time be disbursed hereunder, as evidenced by a note bearing even date herewith, payable to said Mortgagee; with interest thereon, on demand or as otherwise provided herein; and

NOW, THEREFORE, the Mortgagor, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same with interest thereon, and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereafter incurred, and all extensions and renewals hereof or of any indebtedness of the Mortgagor to the Mortgagee, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, have bargained and sold, and do hereby bargain, sell, alien, grant and convey unto the Mortgagee, its successors and assigns the following described real estate, lying and being in Shelby County, Alabama, to wit:

Lot 24, according to the Survey of Willow Creek, Phase One, as recorded in Map Book 7, page 132 in the Probate Office of Shelby County, Alabama.

Lot 61, according to the Survey of Willow Creek, Phase One, as recorded in Map Book 7, page 132 in the Probate Office of Shelby County, Alabama.

TOGETHER WITH all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of or used or useful in connection with the improvements located or to be located on the hereinabove described real estate, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located. The personal property herein conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building material of every kind and character used or useful in connection with said improvements.

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TOGETHER WITH all the improvements now or hereafter erected on the said real estate, and all rents, issues and profits hereof and the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, including all gas, electric, steam, hot air and other heating, lighting and cooking apparatus, engines, boilers, motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing fixtures which are, or shall be, attached to any said improvements now or hereafter erected, all of which shall be deemed realty as between the parties hereto and all persons claiming by, through or under them, and conveyed by this mortgage as a part of the security for said indebtedness.

All of the foregoing is sometimes hereinafter for convenience called the "Premises".

TO HAVE AND TO HOLD the Premises, and every part hereof, unto the Mortgagee, its successors and assigns, forever. And the Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Premises and has a good right to sell and convey the same as aforesaid; that the Premises are free and clear of all liens and encumbrances and the Mortgagor will warrant and forever defend that title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

1. THIS IS A FUTURE ADVANCE MORTGAGE, and the indebtedness shall be advanced by Mortgagee to Mortgagor in accordance with a construction loan agreement of even date herewith, the terms of which agreement are made a part of this mortgage. This mortgage shall also secure any and all other indebtedness now or hereafter owing from the Mortgagor to the Mortgagee.

2. The Mortgagor will duly and punctually pay the note secured hereby and all other sums required to be paid by the Mortgagor hereunder.

3. For the benefit of the Mortgagee, the buildings on said Premises shall be constantly insured against loss by fire and other hazards, casualties and contingencies, extended coverage, and other such coverage, in such manner and in such companies and for such amounts as may be required by the Mortgagee, with loss, if any, payable to Mortgagee, as its interest may appear, and the Mortgagor does hereby transfer, assign, set over and deliver to the Mortgagee for fire and other insurance policies covering said property, and it is further agreed that all of the security for said indebtedness shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified then the Mortgagee may, at its option, insure said property for its insurable value, against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien on this mortgage and bear interest from the date of payment by the Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be paid over to a trustee, to be named by the Mortgagee, its successors or assigns, to be applied in payment for any repair or replacement of such building, or buildings, or for any other purpose or object satisfactory to said Mortgagee, without affecting the lien of this mortgage for the full amount hereby secured.

4. The Premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and all taxes and assessments or other charges, which may be levied upon or accrue against the Premises, as well as all other sums which may be or become liens or charges against the same, shall be paid and discharged by the undersigned promptly as and when so levied or assessed and shall not be permitted to become delinquent or to take priority over the lien of this mortgage.

5. Any claim of lien which may be filed under the provisions of the Statutes of Alabama, relating to the liens of mechanics or materialmen, shall be promptly paid and discharged by the undersigned and shall not be permitted to take priority over the lien of this mortgage.

6. Any and all legal requirements, of any governmental agency wherein the Premises are located, shall be fully complied with by the Mortgagor.

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7. Should default be made in the payment of any insurance premiums, taxes, assessments or other liens, or any other sum, as herein provided, the Mortgagee or assigns shall be authorized to pay same and the sum, or sums so paid shall be and become a part of the indebtedness secured by the mortgage, or the Mortgagee or assigns may take possession of the Premises, collect the rents due or to become due thereon and apply same in payment of such delinquent taxes, assessments or other liens or, upon application made to any court of competent jurisdiction, be entitled as a matter of right to the appointment of a receiver of the rents, issued and profits to be derived therefrom and with power to lease and control the Premises for the benefit of the Mortgagee or, at its option, the Mortgagee may declare the whole of said indebtedness due and payable at once and the mortgage may be foreclosed as hereinafter provided, but no delay or failure of the Mortgagee to exercise this right or any other option herein shall be deemed a waiver of such right.

8. The Mortgagor agrees to pay reasonable attorneys' fees and expenses incurred by the Mortgagee in applying for a receiver, in protecting its interest in any litigation involving this real estate, in presenting claim under any administration or other proceeding where proof of claims is required by law to be filed, or in foreclosing this mortgage by suit in any court of competent jurisdiction, such fees and expenses to be part of the debt hereby secured.

9. It is further agreed that if the Mortgagor shall fail to pay or cause to be paid in whole, or any portion of the principal sum, or any installment of interest hereon, and any extensions or renewals thereof, or any other sum, the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on said property, or should default be made in any of the covenants, conditions and agreements herein contained or in the construction loan agreement of even date herewith, then and in that event the whole of said principal sum, with interest thereon, and all other sums secured hereby shall, at the option of the then holder of said indebtedness, be and become immediately due and payable, and the holder of the debt secured shall have the right to enter upon and take possession of said property and sell after or without taking such possession of the same at public outcry, in whole or in parcels, in front of the Court House door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, shall execute to the purchaser at said sale a deed to the property so purchased, the proceeds of such sale shall be applied (1) to the expenses incurred in making the sale, including a reasonable attorney's fee for such services as may be necessary, in the collection of said indebtedness or the foreclosure of the mortgage; (2) to the payment of whatever sum, or sums, the Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (3) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale and the balance, if any, shall be paid over to the Mortgagor, or assigns. Or said Mortgage may be foreclosed as now provided by law in case of past due mortgages, in which event a reasonable attorney's fee shall, among other expenses and costs, be allowed and paid out of the proceeds of the sale of said property. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money and the Mortgagee or the then holder of the indebtedness hereby secured may become the purchaser at said sale. The auctioneer making the sale is hereby authorized and empowered to execute a deed in the name and on behalf of the Mortgagor to such purchaser, and the certificate of the holder of such indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the Premises. Mortgagee shall also have all rights and remedies of a secured party under the Alabama Uniform Commercial Code. Whether the Premises are comprised by one separate parcel or by separate parcels or are non-contiguous or are subdivided into lots or are to be subdivided or are divided by natural boundaries or are comprised by both real and personal property, then in either event(s), Mortgagee shall have the right on foreclosure of this mortgage to sell the Premises in separate lots or parcels or in any combination(s) of such separate lots, parcels, or divisions,

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or en masse, as Mortgagee may in its sole discretion deem best, and shall not be obligated to first offer the Premises in any such sub-parcel(s), lots, or divisions at such sale.

10. In the event of the enactment of any law, Federal or State, after the date of this mortgage, deducting from the value of the land for the purposes of taxation any lien thereon, or imposing any liability upon the Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, the indebtedness secured hereby together with the interest due thereon, shall, at the option of the Mortgagee, without notice to any party, become immediately due and payable.

11. If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by the governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently the entire indebtedness secured hereby shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, rights of action, claims and proceeds as the Mortgagee may require.

12. This mortgage creates a security interest in the personal property of the Mortgagor herein described, and shall constitute a Security Agreement under the Alabama Uniform Commercial Code. Mortgagor covenants and agrees to execute, file and refile such financing statements, continuation statements or other documents that Mortgagee shall require.

13. Provided always that if the Mortgagor pay said note and any renewal or extension thereof and all other indebtedness secured by the mortgage and reimburse said Mortgagee, its successors or assigns, for any amount it may have expended in payment of taxes, assessments, insurance or other liens and interest thereon and shall do and perform all other acts and things herein agreed to be done this conveyance shall be null and void; otherwise it shall remain in full force and effect.

14. If all or any part of the Premises or an interest therein is sold or transferred by Mortgagor without Mortgagee's prior written consent, excluding (a) the creation of a purchase money security interest for household appliances, or; (b) a transfer by devise, descent or by operation of law upon the death of a joint tenant, Mortgagee may, at its option, declare all the sums secured by this Mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the premises are to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this mortgage shall be at such rate as Mortgagee shall request. If Mortgagee has waived the option to accelerate provided in this paragraph 14, and if Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by Mortgagee, Mortgagor shall remain liable nonetheless for all obligations under this mortgage, the Note, and the Construction Loan Agreement.

15. Extension of the time for payment or modification of amortization of the sums secured by this mortgage granted by Mortgagee to any successor in interest of Mortgagor shall not operate to release, in any manner, the liability of the original Mortgagor and the Mortgagor's successors in interest. Mortgagee shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this mortgage by reason of any demand made by the original Mortgagor and Mortgagor's successors in interest.

16. Any forbearance by Mortgagee in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of

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insurance or the payment of taxes or other liens or charges by Mortgagee shall not be a waiver of Mortgagee's right to accelerate the maturity of the indebtedness secured by this mortgage.

17. The loan evidenced by the Note and secured by this mortgage is to be disbursed in accordance with the terms and provisions of the Loan Agreement. The Note, this mortgage, and the Loan Agreement shall always be taken and read together as consisting part of a single loan transaction. The Mortgagor agrees to fully, duly and promptly discharge each and every of its agreements contained in the Loan Agreement. Any default under the provisions of the Loan Agreement shall be and constitute an event of default under the terms of this mortgage, and Mortgagee may take such action as it deems necessary to protect its security.

18. All remedies provided in this mortgage are distinct and cumulative to any other right or remedy under this mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

Singular or plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the heirs personal representatives, successors and assigns of the undersigned and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, the undersigned have (has) hereunto affixed their (his) hand(s) and seal(s), intending to be legally bound, on the date above written.

Box 039 MC 391

DON KIRBY CONSTRUCTION, INC.

 (SEAL)  
Don Kirby, President

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

STATE OF ALABAMA

COUNTY OF \_\_\_\_\_

(individual acknowledgment)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name \_\_\_\_\_ signed to the foregoing conveyance, and who \_\_\_\_\_ known to me, acknowledged before me on this day that, being informed of the contents of the conveyance \_\_\_\_\_ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF ALABAMA

COUNTY OF

(individual acknowledgment)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name \_\_\_\_\_ signed to the foregoing conveyance, and who \_\_\_\_\_ known to me, acknowledged before me on this day that, being informed of the contents of the conveyance \_\_\_\_\_ executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

STATE OF ALABAMA

COUNTY OF Jefferson

(individual acknowledgment)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Don Kirby whose name as President

of Don Kirby Construction, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 21<sup>st</sup> day of August, 19 85.

Margie L. Bryant  
Notary Public

My Commission Expires 10-7-88

STATE OF ALABAMA  
I CERTIFY THAT  
INSTRUMENT NO. \_\_\_\_\_

1985 AUG 29 AM 8:23

R. J. [Signature]  
JULY 1985

RECORDING FEES

Mortgage Tax	\$ <u>180.45</u>
Deed Tax	_____
Mineral Tax	_____
Recording Fee	<u>15.00</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>196.45</u>

This instrument was prepared by: Mortgage Corp of the South (Margie Bryant)  
P. O. Box 10726  
Birmingham, AL 35202