

674

SECOND LIEN REAL ESTATE ACCOMMODATION MORTGAGE

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

KNOW ALL MEN BY THESE PRESENTS THAT:

WHEREAS, Interstate Properties, an Alabama general partnership, contemporaneously with the execution hereof, is becoming indebted to Central Bank of the South, (said Bank and any subsequent holder of this Accommodation Mortgage being referred to herein as "Mortgagee"), on a loan in the sum of One Hundred Sixty-Six Thousand Six Hundred Seventy-Three and 83/100 Dollars (\$166,673.83) principal, as evidenced by a promissory note dated the date hereof, payable to Bank with interest thereon, on demand, or otherwise as provided therein (said Interstate Properties is hereafter referred to as "Borrower" and said promissory note executed by Borrower in favor of Bank is hereinafter collectively referred to as the "Notes"); and

WHEREAS, in order to provide further financial accommodations to Borrower, the Bank has purchased or agreed to purchase that certain bond or bonds designated "Industrial Development Revenue Bonds Series 1979 - CCP" from National City Bank, Cleveland, Ohio, issued pursuant to that certain Mortgage and Indenture of Trust between the Industrial Development Board of the City of Birmingham and National City Bank, Cleveland, Ohio, et al, dated as of December 1, 1979 ("Indenture") for an amount not to exceed \$450,000 (such bond or bonds hereinafter collectively referred to as the "Bond"); and

WHEREAS, Borrowers contemporaneously with the execution hereof are for valuable consideration taking by assignment an interest as lessee under that certain Lease Agreement by and between the Industrial Development Board of the City of Birmingham and C & C Products, Inc. ("Lease"); and Borrowers are in turn assigning or mortgaging their interests under the Lease to Mortgagee as collateral security for Borrowers' indebtedness to Mortgagee; and

WHEREAS, said Borrowers may hereafter become indebted to Bank or a subsequent holder of this Accommodation Mortgage on loans or otherwise (said Bank and any subsequent holder of this Accommodation Mortgage being referred to herein as "Mortgagee"); and

WHEREAS, in order to induce Mortgagee to make the above loan or loans to Borrowers, and to purchase the Bond, the undersigned William G. Sanders and Teresa B. Sanders (hereinafter "Mortgagors"), agree to make this Accommodation Mortgage to secure the principal amount of the Notes with interest, and all renewals, extensions or modifications thereof, and to secure any and all payments to Mortgagee under said assignment of the Lease to Mortgagee, which now or hereafter may become due, and any and all other additional indebtedness of said Borrowers to said Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect,

Y.B.S.
W.B.S.

liquidated or unliquidated, and whether incurred or given as maker, endorser, guarantor or otherwise, all of which are hereinafter referred to as "Other Indebtedness."

NOW THEREFORE, the undersigned Mortgagors and all others executing this Accommodation Mortgage, in consideration of Mortgagee making the loan or loans above mentioned, and to secure the prompt payment of same, with the interest thereon, and to secure the prompt payment of any and all Lease payments now or hereafter due to Mortgagee by reason of the assignment or mortgaging of the Lease to Mortgagee, and any extensions, renewals or modifications of same, and any and all Other Indebtedness of Borrowers to Mortgagee as set forth above and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and as may be set forth in instruments evidencing or securing Other Indebtedness of Borrowers to Mortgagee, and further to secure any and all charges incurred by Mortgagee on account of Mortgagors, including but not limited to attorney's fees, and to induce Mortgagee to purchase the Bond, have bargained and sold and do hereby grant, bargain, sell and convey unto said Mortgagee, its successors and assigns, that certain real property situated in the County of Shelby, State of Alabama (hereinafter "Property"), described on Exhibit A attached hereto.

Together with all and singular the rights, privileges, tenements, hereditaments, improvements, fixtures and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the above granted Property unto the said Mortgagee, its successors and assigns, forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers or Mortgagors shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers or Mortgagors, and shall pay all charges incurred by Mortgagee on account of Borrowers or Mortgagors, including, but not limited to attorney's fees, and shall pay all Lease payments which are now due or hereafter may become due to Mortgagee under the assignment of the Lease by Borrowers to Mortgagee, and shall pay any and all Other Indebtedness of Borrowers to Mortgagee, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the Note, Lease, and in this Accommodation Mortgage, and in any other instruments evidencing or securing Other Indebtedness of Borrowers to Mortgagee, expressed to be kept, performed, and observed by or on the part of the Borrowers or Mortgagors, all without fraud or delay, then this Accommodation Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of said Note, or of any installment thereof, principal or interest, when due, or upon any event of default specified in Section 7.1 of the Indenture, or upon the happening of a default in the payment of any Other Indebtedness,

BOOK 052 PAGE 425

obligation or liability hereby secured, or any renewals, extensions or modifications thereof when due, or upon default in the performance of any of the covenants, conditions and agreements in the Note, the Bond Indenture, Lease, or in this Accommodation Mortgage, or in any other instruments evidencing or securing the Note or Other Indebtedness of Borrowers to Mortgagee, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Borrowers or Mortgagors, or any endorser, surety or guarantor of the Note or Other Indebtedness of Borrowers to Mortgagee, file or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law for relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby, including the indebtedness represented by the Bond, to be immediately due and payable, and the Mortgagors hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of said county. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in said county and state. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Accommodation Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagors, and all recitals made in any deed executed under this Accommodation Mortgage shall be evidence of the facts therein recited.

The Mortgagors, their heirs, successors, assigns, executors and administrators, hereby covenant with the Mortgagee, its successors and assigns, that they are seized of an indefeasible estate in fee simple in and to said Property, that said Property is free from all liens and encumbrances except as set forth herein, and that they will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, its successors or assigns, and unto the

purchaser at any such sale, against the lawful claims of all persons whomsoever.

The Mortgagors further expressly agree and covenant as follows:

1. Mortgagors shall keep any buildings now or hereafter erected on said Property in good repair, and insured against fire and windstorm, and such other risks as Mortgagee may designate, by policies made payable to the Mortgagee, as its interest may appear, and deposited with the Mortgagee. Such policies shall be in an amount, as may be required by the Mortgagee, but Mortgagee shall not require insurance exceeding the value of said buildings and other improvements.

2. Mortgagors shall keep the improvements situated on the Property in a reasonable state of repair and shall not commit or permit waste of the Property, or remove any fixtures.

3. Mortgagors shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.

4. If it shall become necessary to employ an attorney to collect the debt or any of the debts hereby secured, or any portion thereof, or to foreclose this Accommodation Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceeding, then the said Mortgagors shall pay and allow a reasonable attorney's fee.

5. Mortgagors shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.

6. If the said Mortgagors fail to perform any of the duties herein specified, the Mortgagee may perform the same.

7. The Mortgagee may advance to said Mortgagors such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property, or to pay for any work done upon said Property, or for materials furnished to said Property.

8. The Mortgagee shall have an additional lien upon said Property, secured by this Accommodation Mortgage, for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 4 through 7 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate set forth in the Note or at 15% per annum, whichever is greater, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.

9. Mortgagors shall not sell or otherwise transfer or dispose of the Property without the prior written consent of the Mortgagee. Upon any such sale, transfer or disposition of the Property, without the

prior written consent of Mortgagee, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be immediately due and payable.

10. Mortgagee is authorized, without notice or demand and without affecting this Accommodation Mortgage, from time to time to (a) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrowers, or any part thereof, including increase or decrease of the rate of interest thereof; (b) take and hold security for the payment of the Note or any Other Indebtedness of Borrowers, and exchange, enforce, waive and release any such security; and (c) apply such security and direct the order or manner of sale thereof as Mortgagee in its discretion may determine. Mortgagee may without notice assign this Accommodation Mortgage in whole or in part.

11. Mortgagors waive any right to require Mortgagee to (a) proceed against Borrowers, or the Industrial Development Board of the City of Birmingham; (b) proceed against or exhaust any security held from Borrowers, or the Industrial Development Board of the City of Birmingham; or (c) pursue any other remedy in Mortgagee's power whatsoever. Mortgagors waive any defense arising by reason of any disability or other defense of Borrowers or by reason of the cessation from any cause whatsoever of the liability of Borrowers. Until the Note and all Other Indebtedness of Borrowers to Mortgagee shall have been paid in full, Mortgagors shall have no right of subrogation, and waive any right to enforce any remedy which Mortgagee now has or may hereafter have against Borrowers, and waive any benefit of, and any right to participate in any security now or hereafter held by Mortgagee. Mortgagors waive all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation, or incurring of new or additional indebtedness.

12. It is the intent hereof that this Accommodation Mortgage shall be and remain unaffected, (a) by the existence or non-existence, validity or invalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrowers; or (b) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Borrowers, or any part thereof; or (c) by resort on the part of the Mortgagee to any other security or remedy for the collection of any indebtedness of Borrowers; or (d) by the death or bankruptcy of any other security or remedy for the collection of any indebtedness of Borrowers; or (d) by the death or bankruptcy of any one or more of the Borrowers if more than one, and in case of any such death or bankruptcy, by failure of the Mortgagee to file claim against the deceased Borrower's estate or against such bankrupt's estate, as the case may be, for the amount of such decedent's or such bankrupt's liability to Mortgagee.

13. This Accommodation Mortgage is independent of the obligations of Borrowers, and Mortgagee may exercise its rights under this Accommodation Mortgage whether or not action is brought against

BOOK 052 PAGE 428

Borrowers; and Mortgagors waive the benefit of any statute of limitations or other defenses affecting this Accommodation Mortgage or the enforcement thereof.

14. The provisions of this Accommodation Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.

15. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Accommodation Mortgage, the Note, or other instrument securing the Note or Other Indebtedness of Borrowers, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

16. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Accommodation Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

17. This Accommodation Mortgage is given under the seal of all parties hereto, and it is intended that this Accommodation Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

18. Special Limitation. Notwithstanding the total principal amount now or hereafter outstanding under the Note, Bond, and Other Indebtedness, or Lease payments owed to Mortgagee under the Lease, the total sum chargeable against the Property and secured by this Accommodation Mortgage, shall be limited to \$32,000; provided, however this limitation shall apply only to the amount secured and shall not in any way be construed to limit any rights, remedies, or privileges of the Bank hereunder, under the Bond, Lease or Indenture, or under any other Loan Document.

IN WITNESS WHEREOF, said Mortgagors have hereunto set their hands and seals on this the 29 day of OCTOBER, 1985.

BOOK 052 PAGE 429

WITNESSES

Mirita M. Vauter
Handley/Cook

MORTGAGORS:

William G. Sanders (SEAL)
William G. Sanders
Teresa B. Sanders (SEAL)
Teresa B. Sanders

STATE OF ALABAMA)

COUNTY OF Shelby)

I, Deborah K. Selman, a Notary Public in and for said County, in said State, hereby certify that William G. Sanders, whose name 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 this conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29 day of October, 1985.

Deborah K. Selman
Notary Public

My Commission expires: 2/1/88

STATE OF ALABAMA)

COUNTY OF Shelby)

I, Deborah K. Selman, a Notary Public in and for said County, in said State, hereby certify that Teresa B. Sanders, whose name 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 this conveyance, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29 day of October, 1985.

Deborah K. Selman
Notary Public

My Commission expires: 2/1/88

EXHIBIT A

The land referred to in this Commitment is described as follows:

Lot 8, Block 5, according to the Survey of Oak Mountain Estates, Third Sector, as recorded in Map Book 5, page 83, in the Probate Office of Shelby County, Alabama.

Subject to:

Mortgage from William G. Sanders and Teresa B. Sanders to Home Federal Savings & Loan Association, filed for record 3/10/77 and recorded in Vol. 362, page 935, in the Probate Office of Shelby County, Alabama.

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

1985 DEC 10 PM 2:56

Thomas A. Shumaker, Jr.
JUDGE OF PROBATE

RECORDING FEES

Mortgage Tax	\$ <u>48⁰⁰</u>
Deed Tax	_____
Mineral Tax	_____
Recording Fee	<u>20⁰⁰</u>
Index Fee	<u>10⁰⁰</u>
TOTAL	\$ <u>69⁰⁰</u>

BOOK 052 PAGE 430