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REAL ESTATE MORTGAGE AND SECURITY AGREEMENT

MORTGAGOR:

Boardwalk Capital & Development  
Corporation, an Alabama corporation  
600 North 20th Street  
Birmingham, Alabama 35203

MORTGAGEE:

James W. Wilson, Jr.  
300 Water Street  
Montgomery, Alabama 36104

STATE OF ALABAMA       )  
                              :  
COUNTY OF SHELBY     )

KNOW ALL MEN BY THESE PRESENTS: That whereas Boardwalk Capital & Development Corporation, an Alabama corporation (hereinafter sometimes referred to as ("Mortgagor")), has become justly indebted to James W. Wilson, Jr. with offices at 300 Water Street, Montgomery, Alabama (together with his heirs and assigns, hereinafter called "Mortgagee") in the sum of Three Hundred Seventy-Five Thousand and No/100 (\$375,000.00) Dollars, together with interest thereon, as evidenced by a promissory note of even date herewith.

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any renewals or extensions thereof and the interest thereon, and all other indebtedness (including future advances) now or hereafter owed by Mortgagor to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure compliance with all the covenants and stipulations hereinafter contained, the undersigned, Boardwalk Capital & Development Corporation, an Alabama corporation, (hereinafter called "Mortgagor") does hereby Assign, Grant, Bargain, Sell and Convey unto Mortgagee the following described real property situated in Shelby County, State of Alabama, viz:

Said real property is described on Exhibit "A" attached hereto, incorporated herein, and made a part hereof.

This is a Third Mortgage and is subject and subservient to that certain Mortgage in favor of Hessie Mae Dickey Owens, which Mortgage is in the original principal amount of \$300,000 and is recorded in the Office of the Judge of Probate of Shelby County, Alabama, in Book 009 at page 901, which Mortgagor warrants that said principal balance due on said First Mortgage does not exceed \$240,000.00; and a Second Mortgage in favor of Central Bank of the South, Birmingham, Alabama, in the original amount of \$250,000 said mortgage to be recorded in the Office of the Judge of Probate of Shelby County, Alabama. A default or violation in the terms and provisions of the First Mortgage and/or Second Mortgage shall constitute a default or violation hereunder.

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in anywise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagor, if any, in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, smoke, fire and intrusion detection devices, and other equipment and fixtures now or hereafter attached or appertaining to said premises, all of which shall be deemed to be real property and conveyed by this mortgage, and all of which real property, equipment and fixtures are sometimes hereinafter called "mortgaged property."

TO HAVE AND TO HOLD the same and every part thereof unto Mortgagee, its successors and assigns forever.

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances, if any), Mortgagor hereby assigns and transfers to Mortgagee, and grants to Mortgagee a security interest in, all building materials, fixtures and fittings of every

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kind or character now owned or hereafter acquired by Mortgagor, located, whether permanently or temporarily, on the mortgaged property, and all building materials, fixtures and fittings now owned or hereafter acquired by Mortgagor, located or stored on any other real property, which are or shall be purchased by Mortgagor, for the purpose, or with the intention, of making improvements on the mortgaged property or to the premises located on said property. The personal property herein transferred includes, without limitation, all lumber, bricks, building stones, building blocks, sand, cement, roofing materials, paint, doors, windows, storm doors, storm windows, nails, wires and wiring, hardware, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials, of every kind and character used or useful in connection with improvements to real property, but excludes all furniture, furnishings, office equipment and supplies (desks, chairs, tables, typewriters, computers, and the like).

For the purpose of further securing the payment of said indebtedness Mortgagor warrants, covenants and agrees with Mortgagee, his heirs and assigns, as follows:

1. That Mortgagor is lawfully seized in fee and possessed of the mortgaged property and has a good right to convey the same as aforesaid, and it will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the mortgaged property is free and clear of all encumbrances, easements and restrictions except the abovestated mortgages and those easements and restrictions of record.

2. That it will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed upon the mortgaged property, and should default be made in the payment of the same or any part thereof, Mortgagee may pay the same (but Mortgagee is not obligated to do so).

3. That it will keep the buildings on the mortgaged property continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagee may specify from time to time, with loss, if any, payable to Mortgagee, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay the premiums therefor as the same become due. Mortgagor shall have the right to provide such insurance through a policy or policies independently obtained and paid for by Mortgagor or through an existing policy. Mortgagee may, for reasonable cause, refuse to accept any policy of insurance obtained by Mortgagor. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damage to the mortgaged property from any cause whatever. If Mortgagor fail to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind and other hazards for the benefit of Mortgagor and Mortgagee or for the benefit of Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by the insurer to Mortgagee, which is hereby granted full power to demand, receive and give receipt for all sums becoming due thereunder. Said insurance proceeds, if collected, may be credited on the indebtedness secured by this mortgage, less costs of collection, or may be used in repairing or reconstructing the premises on the mortgaged property, at Mortgagee's election. Any application of the insurance proceeds to repairing or reconstructing premises on the mortgaged property shall not extend or postpone the due date of any installment payments of the indebtedness hereby secured or reduce the amount of such installments.

4. That it will take good care of the mortgaged property and the personal property described above and will not commit or permit any waste thereon or thereof, and that it will keep the same repaired and at all times will maintain the same in as good condition as it now is, reasonable wear and tear alone excepted. If Mortgagor fails to make repairs to the mortgaged property, Mortgagee may make such repairs at Mortgagor's expense (but Mortgagee is not obligated to do so). Mortgagee, its agents and employees, may enter the mortgaged property and any improvements thereon at any reasonable time for the purpose of inspecting or repairing such improvements.

5. That all amounts expended by Mortgagee for insurance or for the payment of taxes or assessments or to discharge liens on the mortgaged

property or other obligations of Mortgagor or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagee, shall be payable at once without demand upon or notice to any person, shall bear interest at the rate of interest payable on the principal sum of the note described above, or if no such rate of interest is specified in the note or if the rate specified would be unlawful, at the rate of 12% per annum from the date of payment by Mortgagee, and such debt and the interest thereon shall be secured by this mortgage. Upon failure of Mortgagor to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with 10 days written notice to Mortgagor, Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and may foreclose this mortgage as hereinafter provided or as provided by law.

6. That no delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of Mortgagor, and that the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagee shall not be taken or deemed as a waiver of the right to accelerate the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, liens, assessments or obligations, it being agreed by Mortgagor that no terms or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagee.

7. That Mortgagor shall well and truly pay and discharge the indebtedness as it shall become due and payable, including the note or notes described above, any renewals or extensions thereof, and any other notes or obligations of such Mortgagor to Mortgagee, whether now or hereafter incurred.

8. That if default shall be made in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions of this mortgage, Mortgagee may proceed to collect the rent income and profits from the mortgaged property, either with or without the appointment of a receiver (to which appointment Mortgagor hereby consents), and Mortgagee may notify the lessees or other payors thereof to make payment directly to Mortgagee. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate or property management commissions and attorney's fees incurred, shall be credited first to advances made by Mortgagee and the interest thereon, then to interest due on the indebtedness hereby secured, and the remainder, if any, shall be applied toward the payment of the principal sum hereby secured. This paragraph shall not be construed to mean or include income or profits for the enterprise operated upon the premises.

9. That all the covenants and agreements of Mortgagor herein contained shall extend to and bind their respective heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to Mortgagee shall inure to the benefit of the successors and assigns of Mortgagee.

10. That the provisions of this mortgage and the note or notes secured hereby are severable, and that the invalidity or unenforceability of any provision of this mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this mortgage or of such note or notes. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. A carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office.

11. That Mortgagor shall not sell, assign, mortgage, encumber or otherwise convey the mortgaged property. If Mortgagor should sell, assign, mortgage, encumber or convey all, or any part of, the mortgaged property, then, and in such event, the entire balance of the indebtedness secured by this mortgage, and all interest accrued thereon, shall without notice become due and payable.

12. That notwithstanding any right of any prior Mortgagee(s) to make future or further advances to Mortgagor pursuant to the terms of any such



prior mortgage(s), Mortgagor agrees that it will not accept any future or further advance(s) from any such prior mortgage(s).

UPON CONDITION, HOWEVER, that if Mortgagor shall well and truly pay and discharge all the indebtedness hereby secured (including extensions and renewals of the original indebtedness and all future advances) as the same shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect thereof, then and in that event only this conveyance and the security interest herein granted shall be and become null and void; but should default be made in the payment of any indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by Mortgagee under the authority of any provision of this mortgage, or should the interest of Mortgagee in the mortgaged property or any of the personal property described above become endangered by reason of the enforcement of any lien or encumbrance thereon, or should a petition to condemn all or any part of the mortgaged property be filed by any authority, person or entity having power or eminent domain, or should any law, either state or federal, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the indebtedness hereby secured or permitting or authorizing the deduction of any such tax from the principal or interest secured by this mortgage or by virtue of which any tax or assessment upon the mortgaged property shall be charged against the owner of this mortgage and Mortgagor not pay the same when due, or should at any time any of the covenants contained in this mortgage or in any note or other evidence of indebtedness secured hereby be declared invalid or unenforceable by any court of competent jurisdiction and Mortgagor not pay the indebtedness hereby secured in accordance with the said note, or should Mortgagor fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part thereof which may at said date not have been paid, with interest thereon, shall at once become due and payable upon 7 days written notice to Mortgagor and this mortgage subject to foreclosure at the option of Mortgagee, and Mortgagee shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same before the Court House door (main entrance) of Shelby County, Alabama, at public out cry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said County; and upon the payment of the purchase price, Mortgagee or the auctioneer at said sales is authorized to execute to the purchaser for and in the name of Mortgagor a good and sufficient deed to the property sold. And upon the occurrence of any such event, Mortgagee shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of any of the property herein transferred which is personal property and to sell the same at one or more public or private sales, at the election of Mortgagee. At Mortgagee's request, Mortgagor agrees to assemble such property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagor agrees that notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of said property, or of any part thereof, will be held shall be sufficient if delivered to Mortgagor or mailed to Mortgagor at the address set forth above, or such other address as Mortgagor shall have furnished to Mortgagee in writing for that purpose, not less than five (5) days before the date of such sale or other intended disposition of said property. Mortgagee shall apply the proceeds of said sale or sales under this mortgage as follows: First, to the expenses of advertising, selling and conveying, including a reasonable attorneys' fee (including attorneys' fees incurred by Mortgagee in connection with successfully defending any proceeding seeking to enjoin the foreclosure of this mortgage or otherwise challenging the right of Mortgagee to foreclose this mortgage); second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment of the indebtedness hereby secured and interest thereon in such order as Mortgagee may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagor or to whomsoever then appears of record to be the owner of Mortgagor's interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder. Mortgagor hereby waives any requirement that the mortgaged

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property be sold in separate tracts and agree that Mortgagee may, at its option, sell property en masse regardless of the number of parcels hereby conveyed.

If all or any part of the mortgaged property shall be damaged or taken through condemnation, 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 and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or in Mortgagor's name, any action or proceeding relating to any 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, which, after deducting therefrom all its expenses, including attorneys' fees, may release any monies 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 indebtedness secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require.

IN WITNESS WHEREOF, the undersigned Mortgagor has caused this instrument to be executed and effective as of this 28<sup>th</sup> day of February, 1986.

ATTEST:

BOARDWALK CAPITAL & DEVELOPMENT  
CORPORATION, an Alabama corporation

By:

Martha M. Boleyn  
Secretary

By:

Robert A. Boleyn  
President

Its:

Its:

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Robert A. Boleyn and Martha M. Boleyn, whose names as President and Secretary, of Boardwalk Capital & Development Corporation, an Alabama corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this date, that being informed of the contents of this instrument, they, as such officers and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 28<sup>th</sup> day of February, 1986.

Rosie Tillman  
Notary Public

My Commission Expires:

3/4/89

(SEAL)

This instrument prepared by:

Herman B. Franco  
Copeland, Franco, Screws & Gill, P.A.  
Post Office Box 347  
Montgomery, Alabama 36101

Parcel I

A part of the NW 1/4 of NW 1/4, Section 25, Township 19 South, Range 3 West, described as follows: Begin at the Southwest corner of said 1/4 1/4 section and run North along the West line of said 1/4 1/4 section 715.25 feet; thence 81 deg. 26 min. right 6.30 feet; thence 57 deg. 22 min. left 358.37 feet; thence 20 deg. 36 min. right 388.72 feet to North line of said 1/4 1/4 section; thence 46 deg 15 min. right Easterly along said North line 232.54 feet to the Northeast corner of the W 1/2 of said 1/4 1/4 section; thence 89 deg. 05 min. right along the East line of said W 1/2 392.64 feet to the centerline of a driveway; thence 65 deg. 01 min. right along said driveway 126.3 feet; thence 13 deg. 49 min. left continuing along said driveway 236.28 feet; thence 21 deg. 53 min. left, continuing along said driveway 143.50 feet to a point that is 290 feet East of the West line of said 1/4 1/4 Section; thence 29 deg. 17 min. left parallel to said West line 240.8 feet; thence 104 deg. 41 min. left Northeasterly 380.78 feet to the East line of the W 1/2 of said 1/4 1/4 section; thence Southerly along said East line 462 feet to the South line of said 1/4 1/4 section thence Westerly along said 1/4 1/4 line 658.65 feet to the point of beginning, EXCEPTING Highway right of way.

Parcel II

A part of the NE 1/4 of Section 26, Township 19 South, Range 3 West, described as follows: Commence at the Northeast corner of Section 26 and run South along East line for 611.25 feet to point of beginning; thence an angle to right of 81 deg. 26 min. for 283.5 feet; thence an angle to left of 25 deg. 50 min. for 954.75 feet; thence an angle to right of 93 deg. 03 min. for 287.7 feet; thence an angle to left of 92 deg. 22 min. for 311.3 feet; thence an angle to left of 6 deg. 05 min. for 329.65 feet; thence an angle to right of 19 deg. 07 min. for 275 feet to center line of Cahaba River; thence in a Southeasterly direction along the centerline of said river to a point on the South line of the NE 1/4 of Section 26, which point is 75 feet West of the Southwest corner of the SE 1/4 of NE 1/4 of Section 26; thence East along the South line of the NE 1/4 of Section 26 to Southwest corner of the E 1/2 of SE 1/4 of NE 1/4 of Section 26; thence North along West line of the E 1/2 of SE 1/4 of NE 1/4 of Section 26, 1327.40 feet to Northwest corner of said 20 acres; thence East along North line of said SE 1/4 of NE 1/4 660.10 feet to Northeast corner; thence North along East line of Section 26, 715.25 feet to point of beginning.

THERE IS EXCEPTED THE FOLLOWING DESCRIBED TRACT OF LAND:

Commence at the Northeast corner of Section 26, Township 19 South, Range 3 West, thence South along the East line of said Section 611.25 feet; thence an angle of 81 deg. 26 min. right for 283.5 feet; thence an angle to the left of 25 deg. 50 min. for 455.25 feet to point of beginning of tract excepted; thence continue along last mentioned course 543.2 feet; thence 73 deg. 15 min. left 407.7 feet; thence 104 deg. 30 min left 244.0 feet; thence 7 deg. 45 min. left 304.8 feet; thence 67 deg. 30 min. left 387.4 feet to point of beginning of tract.

Parcel III

A part of E 1/2 of NW 1/4 of NW 1/4, Section 25, Township 19 South, Range 3 West, described as follows: Commence at the Southeast corner of said 20 acres and run West along South line 656.24 feet; thence turn angle of 89 deg. 09 min. to right and run 462.0 feet to point of beginning; thence continue the last mentioned course 466.35 feet to the intersection of the Southwest boundary of Old U. S. Highway #31; thence turn angle to right 151 deg. 58 min. and run Southeasterly direction along Southwest boundary of said Highway 578.0 feet; thence

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THOMAS A

turn angle of 127 deg. 10 min. to right and run along North line of Joe W. Smith land 275.10 feet to the point of beginning.

Parcel IV

A tract of land located in the W 1/2 of NW 1/4 of NW 1/4 of Section 25, Township 19 South, Range 3 West, described as follows: Commence at the Southeast corner of said 1/2 1/4 1/4 section; thence North along East line of said 1/2 1/4 1/4 section 462 feet to the point of beginning of boundary of tract herein described; thence continue along the last mentioned course 471.06 feet to the centerline of a driveway; thence 114 deg. 59 min. left along said centerline 126.3 feet; thence 13 deg. 49 min. left continuing along said centerline 236.28 feet; thence 21 deg. 53 min. left continuing along said centerline 143.50 feet to a point that is 290 feet East of the West line of said 1/2 1/4 1/4 section; thence 29 deg. 17 min. left parallel with said West line 240.8 feet; thence 104 deg. 41 min. left 380.78 feet to the point of beginning.

PARCEL V:

Also the right to use a black top road situated in or along or beside the following line, to-wit: A part of the NE 1/4 of Section 26, Township 19 South, Range 3 West, described as follows: Commence at the Northeast corner of Section 26 and run South along East line for 611.25 feet to point of beginning; thence an angle to right of 81 deg. 26 min. for 283.5 feet; thence an angle to the left of 25 deg. 50 min. for 954.75 feet. (This being the same rights as that conveyed in Deed Book 259 Page 911 in said Probate Office.) Mineral and mining rights excepted.

PARCEL VI

A part of the E 1/2 of the SE 1/4 of NE 1/4, Section 26, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: From the Northwest corner of said E 1/2 of the SE 1/4 of NE 1/4, run in an Easterly direction along the North line of said E 1/2 of SE 1/4 of NE 1/4 for a distance of 77.11 feet to an existing iron pin, being the point of beginning; thence continue along same mentioned course 127.80 feet; thence turn an angle to the right of 138 deg. 18 min. 38 sec. and run in a Southwesterly direction 270.97 feet more or less, to a point on the West line of E 1/2 of SE 1/4 of NE 1/4; thence turn an angle to the right of 130 deg. 52 min. 24 sec. and run in a Northerly direction along said West line of said E 1/2 of SE 1/4 of NE 1/4 for a distance of 112.41 feet, more or less, to an existing iron pin; thence turn an angle to the right of 49 deg. 07 min. 36 sec. and run in a Northeasterly direction 101.97 feet to the point of beginning; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

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

1986 FEB 28 PM 3:40

*Thomas H. Harrison, Jr.*  
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		<u>562.50</u>
3. Recording Fee		<u>17.50</u>
4. Indexing Fee		<u>1.00</u>
TOTAL		<u>581.00</u>