

202

The State of Alabama }  
Shelby County.

THIS INDENTURE, made and entered into this 16th day of October, 1987

by and between

Southbrook Village Shopping Center, Ltd., a limited partnership

parties of the first part, hereinafter referred to as mortgagor, and

AmSouth Bank N.A.

party of the second part, hereinafter referred to as mortgagee,

**Witnesseth:**

WHEREAS, the said Southbrook Village Shopping Center, Ltd. justly indebted to the party of the second part in the principal sum of Six hundred fifty thousand & no/100 dollars (\$650,000.00)

as evidenced by note bearing even date herewith, payable as follows: On demand but not later than \_\_\_\_\_ days from the date hereof or January 29, 19 87, at the earlier of which time said Note will be renewed and extended, provided there is no default in said Note or under this mortgage, by the execution of a Renewal Note, payable as follows:

In accordance with its terms bearing interest as provided in said Note. (This is a FUTURE ADVANCE MORTGAGE, and the said \$ 650,000.00 indebtedness shall be advanced by mortgagee in agreement with a master note of even date herewith the terms of which note are made a part of this mortgage.) In addition to the said \$ 650,000.00 principal amount with interest, this mortgage shall also secure any and all other indebtedness now or hereafter owing by mortgagor to mortgagee.

NOW, THEREFORE, the parties of the first part, in consideration of the premises, and to secure the payment of said indebtedness evidenced by said Note and any and all extensions and renewals thereof, or any part thereof, and all interest payable on all said indebtedness and on any and all such extensions and renewals and the compliance with all the stipulations herein contained, have bargained and sold, and do hereby grant, bargain, sell, alien, and convey unto the party of the second part, its successors and assigns, the following described real estate, lying and being situated on the County of Shelby, State of Alabama, to wit:

See attached Exhibit A

The proceeds of this loan have been applied to the purchase price of the described real estate attached on Exhibit A.

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, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building material and equipment of every kind and character used or useful in connection with said improvements.

*(Cahaba) Title*

BOOK 158 PAGE 216

Exhibit A

A parcel of land situated in the Northeast 1/4 of Section 2, Township 21 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the Southwest corner of the North 1/2 of the Southwest 1/4 of the Northeast 1/4 of said Section 2; thence in an Easterly direction along the South line thereof and the North right of way line of 6th Avenue Southwest, a distance of 790.66 feet; thence an angle left of 141 deg. 22 min. 49 sec. and run in a Northwesterly direction a distance of 282.92 feet; thence an angle right of 90 deg. and run in a Northeasterly direction a distance of 665.0 feet to the point of beginning at a point on John Allen Branch, the Northeast property line of Southbrook Village Shopping Center; thence an angle right of 180 deg. and reverse course for a distance of 211 feet; thence an angle left of 90 deg. and run in a Southeasterly direction a distance of 330 feet; thence an angle right of 90 deg. and run in a Southwesterly direction a distance of 28 feet; thence an angle left of 90 deg. and run in a Southeasterly direction a distance of 198 feet to a point on the Northwesterly right of way line of Alabama Highway No. 119; thence left, in a Northeasterly direction along said Northwest right of way line a distance of 102 feet to the most Southerly corner of Tract A of Southbrook Village Shopping Center; thence left in a Northwesterly direction along the South line of said Tract A, a distance of 172.18 feet; thence right and run Northeasterly along the Northwest line of said Tract A a distance of 140 feet to the most Northerly corner of Tract A on John Allen Branch; thence left in a Northwesterly direction along the Northeast property line of Southbrook Village Shopping Center and John Allen Branch, a distance of 343.68 feet to the point of beginning; being situated in Shelby County, Alabama.

BOOK 158 PAGE 217

Together with all the rights, privileges, tenements, and appurtenances thereunto belonging or in any wise appertaining, including screen windows and doors, gas, steam, electric and other heating, lighting and cooking apparatus, elevators, ice boxes, plumbing and other fixtures appertaining to the said premises, all of which shall be deemed realty and conveyed by this mortgage.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto the mortgagee, its successors and assigns forever. And the undersigned covenant with the mortgagee that the undersigned are lawfully seized in fee simple of said premises and have a good right to sell and convey the same as aforesaid; that the said premises are free of all incumbrances and the undersigned will warrant and forever defend the title to the same unto the mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

And for the purpose of further securing the payment of said indebtedness, the undersigned hereby agree to pay all taxes, assessments, or other liens taking priority over this mortgage, when imposed legally upon said premises, and should default be made in the payment of same, or any part thereof, said mortgagee, at its option, may pay the same; and to further secure said indebtedness first above named, and every portion thereof, the undersigned agree to keep said property continuously insured in such manner and in such companies as may be satisfactory to the mortgagee, for at least \$ 650,000.00 against loss by fire and \$ 650,000.00 against loss by tornado, with loss, if any, payable to said mortgagee, as its interest may appear, and if the undersigned fail 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 tornado, for its own benefit, the proceeds from such insurance, if collected to be credited on the indebtedness secured by this mortgage, less cost of collecting same, or, at the election of the mortgagee, may be used in repairing or reconstructing the premises; all amounts so expended by said mortgagee for insurance, or for the payment of taxes, assessments, or any other prior liens, shall become a debt due and at once payable, without demand upon or notice to any person, to said mortgagee, additional to the indebtedness hereby specially secured, and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by said mortgagee, and at the election of the mortgagee, and without notice to any person, the mortgagee may declare the entire indebtedness secured by this mortgage due and payable, and this mortgage subject to foreclosure, and same may be foreclosed, as hereinafter provided.

The undersigned agree to take good care of the premises above described, and not to commit or permit any waste thereon, and to keep the same repaired, and at all times to maintain the same in as good condition as they now are, reasonable wear and tear alone excepted.

The undersigned agree that no delay or failure of the 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 its right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this mortgage can be waived, altered or changed except as evidenced in writing, signed by the undersigned, and by the mortgagee, by an officer thereof.

After any default on the part of the mortgagor the mortgagee shall, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to any party, of a receiver of the rents, issues and profits of said premises, which power to lease and control the said premises, and with such other powers as may be deemed necessary.

UPON CONDITION, HOWEVER, That if the mortgagor pays said note and any renewals or extensions thereof, and all other indebtedness secured by this mortgage, and reimburses said mortgagee for any amount it may have expended in payment of taxes and insurance or other liens, and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance to be null and void; but should default be made in the payment of any sum expended by the said mortgagee under the authority of any of the provisions of this mortgage, or should said indebtedness hereby secured, and any renewals or extensions thereof, or any part thereof, or any interest thereon, remain unpaid at maturity, or should the interest of said mortgagee in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, or should any law, either Federal or State, be passed imposing or authorizing the imposition of any specific tax upon this mortgage or the debt 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 premises shall be chargeable against the owner of said mortgage, or should at any time any of the stipulations contained in this mortgage be declared invalid or inoperative by any court of competent jurisdiction, then, in any one of said events, the whole of the indebtedness hereby secured, or any portion or part of same as may not at said date have been paid, with interest thereon, shall at once become due and payable at the option of said mortgagee, and this mortgage be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages; and the mortgagee shall be authorized to take possession of the premises hereby conveyed, and after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the County wherein said property is located, to sell the same in front of the Courthouse door of the County wherein said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; 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 incumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and, fourth, the balance, if any, to be turned over to the mortgagor.

And the undersigned further agree that said mortgagee, its successors, or assigns, may bid at any sale had under the terms of this mortgage, and purchase said property, if the highest bidder therefor; and the undersigned further agree to pay a reasonable attorney's fee to said mortgagee, its successors or assigns, for the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction, said fee to be a part of the debt hereby secured, and the purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

In the event of a sale hereunder, the mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the undersigned a good and sufficient deed to the property sold.

The undersigned agree that the debt hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided, at the option of the holder hereof, when and if any statement of lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen, without regard to form and contents of such statement, and without regard to the existence or non-existence of the debt, or any part thereof, or of the lien, on which such statement is based.

Plural or singular words used herein to designate the undersigned, the parties of the first part, 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 made by the undersigned 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.

Notwithstanding any other provision of this Mortgage or the note or notes evidencing the indebtedness secured hereby, said indebtedness shall become immediately due and payable, at the option of the Mortgagee, upon the conveyance of the above described real estate, or any part thereof or any interest therein.

The said indebtedness of \$ 650,000.00 which is secured hereby is being advanced by mortgagee to mortgagor in accordance with a ~~Master Note~~ <sup>note</sup> of even date herewith, the terms of which ~~are~~ <sup>note</sup> are incorporated as a part hereof. In the event of default in the terms of said ~~note~~ <sup>note</sup>, or any other contract or agreement between mortgagor and mortgagee, such default shall be an event of default entitling the mortgagee herein to foreclose this mortgage in accordance with the terms hereof.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals, on this day and year first above written.

Southbrook Village Shopping Center, Ltd.

By: [Signature]  
Joe J. Joseph  
Its general partner

By: [Signature]  
Ernest A. Joseph  
Its general partner

ACKNOWLEDGEMENT FOR PARTNERSHIP

State of Alabama )  
Shelby County )

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Joe J. Joseph and Ernest A. Joseph whose names as general partners of Southbrook Village Shopping Center, Ltd. a limited partnership, and whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they as such general partners, and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 16<sup>th</sup> day of October, 1987.

[Signature]  
Notary Public

My commission expires:

April 29, 1990

NOTARY MUST AFFIX SEAL

This instrument prepared by:  
John S. Meriwether, Jr.  
AmSouth Bank N.A.  
P.O. Box 11007  
Birmingham, AL 35298

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands and seals, on this the day and year first above written.

Witnesses:

..... (Seal)  
..... (Seal)  
..... (Seal)  
..... (Seal)

BOOK 158 PAGE 220

STATE OF ALABAMA,

COUNTY. I, the undersigned authority, in and for said County, in said State, hereby certify that

whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this

Notary Public.

STATE OF ALABAMA,

COUNTY. I, the undersigned authority, in and for said County, in said State, hereby certify that

on this day came before me the within named

known to me to be the wife of the within named who, being examined separate and apart from the husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, without fear, constraints or threats on the part of the husband.

In Witness Whereof, I have hereunto set my hand and official seal, this

Notary Public.

STATE OF ALABAMA,

COUNTY. I, the undersigned authority, in and for said County, in said State, hereby certify that

on this day came before me the within named

known to me to be the wife of the within named who, being examined separate and apart from the husband touching her signature to the within conveyance, acknowledged that she signed the same of her own free will and accord, without fear, constraints or threats on the part of the husband.

In Witness Whereof, I have hereunto set my hand and official seal, this

Notary Public.

STATE OF ALABAMA,

COUNTY. I, the undersigned authority, in and for said County, in said State, hereby certify that

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 the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this

Notary Public.

STATE OF ALABAMA,

COUNTY. I, the undersigned authority, in and for said County, in said State, hereby certify that

whose name as President of the

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

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

Notary Public.

Prepared by: Penny Bresnahan  
Commercial Real Estate  
AmSouth Bank N.A.  
P. O. Box 11007  
Birmingham, AL 35288

1987 NOV -4 AM 8:54 Prepared for: John Meriwether

*Thomas A. ...*  
JUDGE OF PROBATE

1. Deed Tax	
2. Mtg. Tax	975.00
3. Recording Fee	12.50
4. Indexing Fee	1.00
TOTAL	988.50

and examined.  
of Mortgages, at page  
M, and was duly recorded  
day of 19  
Filed in this office for record on the  
I hereby certify that the within mortgage was  
Office of the Judge of Probate  
County

Judge of Probate.

STATE OF ALABAMA  
MORTGAGE DEED  
TO  
AmSouth Bank N.A.

STATE OF ALA. SHELBY CO.  
1987 NOV -4 AM 8:54  
SOUTHBRIDGE VARIETY SHIPPING CENTER  
JUDGE OF PROBATE