

COLONIAL BANK ADJUSTABLE RATE MORTGAGE

I. Made this 24th day of October, 1988, by and between Herbert Thomas Smith and wife, Joan L. Smith (referred to as "mortgagor" or "you," whether singular or plural) whose address is Rt. 2, Box 360, Shelby, Al. 35143, and the Colonial Bank- No. Region, an Alabama banking corporation (referred to as "mortgagee," "we," or "us"), whose address is 1602 Forestdale Plaza Birmingham, Ala. 35214.

Note. You are executing this Adjustable Rate Mortgage in order to secure your indebtedness to us, in the sum of Twenty six thousand eight hundred eighty three 26,883.00 Dollars (\$26,883.00), with interest thereon, evidenced by an Adjustable Rate Mortgage Note "Note," of even date herewith, any future advances thereunder, and any renewals and extensions thereof with interest thereon. In addition, this Adjustable Rate Mortgage secures any and all monies we extend to protect our interest and rights in the Property, as defined in Section II below, including, but not limited to monies expended for insurance, property taxes, assessments, water rents and other governmental assessments.

II. In consideration of the mutual promises and premises herein contained, and to secure the indebtedness described above, you hereby grant, bargain, sell, and convey to us the property ("Property") described below.

(A) The real property which is located at Rt. 2, Shelby, Al. 35143 in Shelby County, Al. described as follows:

Lot 3, according to the Survey of Shelby Shores, Bentley addition, as recorded in Map Book 10, page 65 in the Probate Office of Shelby County, Alabama.

BOOK 211 PAGE 230

- (B) All buildings, structures and other improvements that are located on the real property described in paragraph (A) of this section;
- (C) All property rights and interests that you have as owner of the real property described in paragraph (A) of this section. These property rights and interests are known as "easements, rights and appurtenances attached to the property;"
- (D) All rents and royalties from the real property described in paragraph (A) of this section;
- (E) All mineral, oil and gas rights and profits, water rights and water stock that are part of the real property that is described in paragraph (A) of this section;
- (F) All rights that you have in the land which lies in the streets or roads in front of, or next to, the real property described in paragraph (A) of this section;
- (G) All fixtures presently attached to the real property described in paragraph (A) and (B) of this section and which may be attached in the future;
- (H) All of the property described in paragraphs (B) through (F) of this section that you acquire in the future, and all rights described in paragraph (B) through (F) that you acquire in the future;
- (I) All replacements of or additions to the property described in paragraphs (B) through (F) and paragraph (H) of this section; and
- (J) All replacements of or additions to the fixtures that are on the property described in paragraphs (A) and (B) of this section.

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

III. We may exercise all rights contained herein if you do not:

(A) Well and truly pay and discharge every indebtedness hereby secured as it shall become due and payable, any renewals or extensions thereof with interest thereon;

(B) Eventually pay, with interest, any amounts that we spend under this Adjustable Rate Mortgage to protect the value of the Property and our rights in the Property, including, but not limited to, monies expended for insurance, property taxes, assessments, rents, water rents, and other governmental assessments; and

(C) Keep all of your promises and agreements under this Adjustable Rate Mortgage.

You warrant and represent that except for the "exceptions" listed in any title insurance policy which insures our rights in the Property:

(A) You lawfully own the Property;

(B) You have the right to mortgage and convey the Property to us; and

(C) There are no outstanding claims or charges against the Property, unless we have expressly agreed to take this adjustable rate mortgage subject to such claims.

You give us a general warranty of title. This means that you will be fully responsible for any losses which we suffer because someone other than us has some of the rights in the Property which you promise that you have. You promise that you will defend our ownership of the Property against any claims of such rights.

Colonial Bank
P.O. Box - 1887

IV. For the purpose of further securing the payment of said indebtedness, any extensions or renewals thereof with interest thereon, and any future advances we may make to you, you hereby warrant, covenant, and agree with us, our successors and assigns, as follows:

1. **Insurance.** You agree that you will keep the buildings erected or to be erected on the Property insured against loss or damage by fire, and such other hazards as may be specified by us, including, but not limited to flood insurance, for the benefit of us, and by insurers and in amounts approved by us. You also agree to deliver such insurance policy or policies to us, and have attached thereto loss payable clauses in favor of and in a form acceptable to us. The fire insurance policy shall contain the usual extended coverage endorsement. Further, such policies shall provide that we shall receive twenty days notice before the expiration of any such policy. At least ten days before the expiration of any such policy, you shall supply us with evidence of the renewal of such policy or with a suitable substitute for such policy with evidence of the payment of the premiums thereof.

If you fail to obtain and maintain such insurance, we may, at our option, obtain such insurance or obtain a renewal policy, and the premiums therefor shall be a lien on the Property and added to the amount of your obligations secured by this Adjustable Rate Mortgage. In the case of a loss, any insurance proceeds payable to you and/or us are, to the extent of your interest, hereby assigned to us. We may use such proceeds to preserve and protect our rights under this Adjustable Rate Mortgage and Note, or to secure repayment of the Note or to rebuild or restore the damaged buildings or improvements, as we deem best. Further, we shall have the absolute right to settle and compromise all claims under said policies of insurance.

2. **Payment of Taxes; Discharge of Liens; Inferior Liens.** You shall pay all taxes, assessments, water rents and any other governmental charges levied upon the Property in a timely fashion. If you default in the payment of your taxes and other charges, we may, at our option, pay said taxes, and other charges, and such payments shall be a lien on the Property and added to the amount of your debt to us secured by this Adjustable Rate Mortgage.

You agree to pay or satisfy all liens against the Property that may be superior to this Adjustable Rate Mortgage. However, you do not have to satisfy a superior lien if:

(A) You agree, in writing, to pay the obligation which gave rise to the superior lien and we approve the way in which you agree to pay that obligation;

(B) You, in good faith, argue or defend against the superior lien in a lawsuit so that, during that lawsuit, the superior lien may not be enforced and no part of the Property may be given up;

(C) You obtain from the holder of such lien an agreement which subordinates, i.e. gives us priority over, the competing lien; or

(D) We expressly agree, in writing, to take this Adjustable Rate Mortgage subject to such lien.

You agree not to allow any creditor to place a lien on or receive any security interest in the Property securing your indebtedness described above, without first notifying us. Failure to so notify will be an act of default, and we may require you to pay immediately all sums outstanding.

3. **Your Agreement to Maintain the Property; Lease Obligations; Agreements About Condominiums and Planned Unit Developments.** You agree to keep the Property in good repair. You will not destroy, damage or substantially change the Property, and you will not allow the Property to deteriorate. If you do not own but are a tenant on the Property, you will fulfill all obligations under your lease.

If the Property is a unit in a condominium project or a planned unit development, you will fulfill all of your obligations under the Declaration, By-Laws, Regulations and other documents that create or govern the condominium project or planned unit development. Also, you will not divide the Property into smaller parts that may be owned separately, and you will not consent to any of the following unless you have first given us notice and obtained our consent in writing:

(A) the abandonment or termination of the condominium project or planned unit development, unless, in the case of the condominium, the abandonment or termination is required by law;

(B) any significant change to the Declaration, By-Laws or Regulations of the Owner Association, Trust Agreement, Articles of Incorporation, or other documents that create or govern the condominium project or planned unit development, including, for example, a change in the percentage of ownership rights held by unit owners in the condominium project or in the common area or facilities of the planned unit development;

(C) a decision by the Owners Association to terminate professional management and to begin self-management of the condominium project or planned unit development; and

(D) the transfer, release, creation of liens, partition or subdivision of all or part of the common areas and facilities of the planned unit development.

We have the right, but not the obligation, to pay any condominium dues, assessments or liens in order to protect our interest in the Property, and if we exercise this right, all such expended sums, with interest thereon at the rate stated in the Note, are hereby secured.

If a condominium or planned unit development rider is executed by you and recorded together with this Adjustable Rate Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Adjustable Rate Mortgage, as if the rider were a part hereof.

4. **Our Right to Protect the Property, If:**

(A) you do not keep your promises and agreements made in this Adjustable Rate Mortgage, or (B) someone, including you, begins a legal proceeding that may significantly affect our rights in the Property including, but not limited to, any proceeding which would impair our right to pursue a judgment for your indebtedness to us or a deficiency balance, (such as, for example, a legal proceeding in bankruptcy, in probate, for condemnation, or to enforce laws or regulations), then we may do and pay for whatever is necessary to protect the value of the Property and our rights in the Property. Our actions under this paragraph may include, for example, appearing in court, paying reasonable attorney's fees, and entering the Property to make repairs. We will give you notice before we take any of these actions.

You must pay to us any amounts, with interest thereon, which we spend under this paragraph. This Adjustable Rate Mortgage will protect us in case you do not keep the promise to pay those amounts with interest. You must pay all amounts due to us when we send you a notice requesting that you do so. You will also pay interest on those amounts at the same rate stated in the Note. However, if payment of interest at that rate would violate the law, you will pay interest on the amounts spent by us under this paragraph at the highest rate that the law allows. Interest on each amount will begin on the date that the amount is spent by us. However, you and mortgagee may agree in writing to terms of payment that are different from those in this paragraph.

Any amounts we disburse pursuant to this paragraph, with interest thereon, shall become additional indebtedness of you secured by this Adjustable Rate Mortgage.

Although we may take action under this paragraph, we do not have to do so.

5. **Our Right of Inspection.** We, and others authorized by us, may enter and inspect the Property. We must do so in a reasonable manner and at reasonable times. However, before one of the inspections is made, we must give you notice stating a reasonable purpose for the inspection. That purpose must be related to our rights in the Property.

6. **Condemnation.** A taking of the Property by any governmental authority by eminent domain is known as "condemnation." Upon such condemnation, you give us your right:

(A) to proceeds of all awards or claims for damages resulting from condemnation or other governmental taking of the Property (or, if the Property includes a unit in a planned unit development, of the common areas and facilities of the planned unit developments); and

(B) to proceeds from a sale of the Property (or, if the Property includes a unit in a planned unit development, of the common areas and facilities of the planned unit development) that is made to avoid condemnation. All of those proceeds are to be paid to us.

If all of the Property is taken, the proceeds will be used to reduce the amount that you owe to us under your Note and this Adjustable Rate Mortgage. If any of the proceeds remain after the amount that you owe to us has been paid in full, the remaining proceeds will be paid to you. Unless you and mortgagee agree otherwise in writing, if only a part of the Property taken (or, if the Property is a unit in a planned unit development, if all or part of the common areas or facilities of the planned unit development are taken), the amount that you owe us will only be reduced by the amount of proceeds, multiplied by the following amount:

(i) the total amount that you owe to us under the Note, any other indebtedness secured hereby, and this Adjustable Rate Mortgage immediately before the taking, and divided by

(ii) the fair market value of the Property immediately before the taking. The remainder of the proceeds will be paid to you. The use of proceeds to reduce the amount that you owe us will not be a prepayment that is subject to the prepayment charge provisions, if any, under your Note.

If you abandon the Property, or if you do not answer within thirty days, a notice from us stating that a governmental authority has offered to make a payment or to settle a claim for damages, then we have the authority to collect the proceeds. We may then use the proceeds to repair or restore the Property or to reduce the amount that you owe to us under the Note and this Adjustable Rate Mortgage. The thirty day period will begin on the date the notice is mailed, or if it is not mailed, on the date the notice is delivered. If any proceeds are used to reduce the amount of principal which you owe us under the Note, that use will not delay the due date or change the amount of any of your monthly payments under the Note. However, you and mortgagee may agree in writing to those delays or changes.

7. Continuation of Our Rights. Even if we do not exercise or enforce any right under this Adjustable Rate Mortgage or under the law, we will still have all of those rights and may exercise them and enforce them in the future. Even if we obtain insurance, pay taxes, or pay other claims, charges or liens against the Property, to protect our rights in the Property, we will still have the right to demand that you make immediate payment in full of the amount that you owe us under the Note and under this Adjustable Rate Mortgage, as set forth more fully in Paragraph 14.

8. Our Rights of Enforcement. Each of our rights under this Adjustable Rate Mortgage is separate. We may exercise and enforce one or more of these rights, as well as any of our other rights under the law, one at a time or all at once.

9. Obligations of You and Persons Taking Over Your Rights or Obligations; Agreement Concerning Captions. Subject to the terms of this Mortgage, any person who takes over your rights or obligations under this Mortgage shall have all of your rights and will be obligated to keep all of your promises and agreements made in this Adjustable Rate Mortgage. Similarly, any person who takes over our rights or obligations under this Adjustable Rate Mortgage will have all of our rights and will be obligated to keep all of our agreements made in this Adjustable Rate Mortgage.

If more than one person signs this Adjustable Rate Mortgage and the Note as borrower, all are fully obligated to keep all of borrower's promises and obligations contained in this Adjustable Rate Mortgage. We may enforce our rights under this Adjustable Rate Mortgage against each of you individually or against all of you together. This means that any one of you may be required to pay all of the amount owed under the Note and under this Adjustable Rate Mortgage. However, if one of you does not sign the Note then:

(A) that person is signing this Adjustable Rate Mortgage only to give his or her rights in the Property to us under the terms of this Adjustable Rate Mortgage;

(B) he or she is not personally obligated to make payments or to act under the Note or under this Adjustable Rate Mortgage; and

(C) he or she agrees that we and any borrower under the Note may agree to extend, modify, forbear or make any other accommodations with regard to the terms of this Adjustable Rate Mortgage or the Note, or any extensions or renewals thereof, without his or her consent and he or she shall not be released from this Adjustable Rate Mortgage and this Adjustable Rate Mortgage shall not be modified as to his or her interest in the Property.

The captions and titles of this Adjustable Rate Mortgage are for convenience only. They may not be used to interpret or to define the terms of this Adjustable Rate Mortgage.

10. Agreement Concerning Notices. Unless the law requires otherwise, any notice that must be given to you under this Adjustable Rate Mortgage will be given by delivering it or by mailing it addressed to you at the address stated in Section I above. A notice will be delivered or mailed to you at a different address if you give us a notice of your different address. Any notice that must be given to us under this Mortgage will be given by mailing to our address stated in Section I above. A notice should be mailed to us at a different address if we give you a notice of the different address. A notice required by this Adjustable Rate Mortgage is given when it is mailed or when it is delivered according to the requirements of this paragraph.

11. Agreement is Enforceable. If any terms of this Adjustable Rate Mortgage or of the Note conflict with any provision of law, all other terms of this Adjustable Rate Mortgage and of the Note will still remain in effect if they can be given effect without the conflicting term. This means that any terms of the Adjustable Rate Mortgage and of the Note which conflict with the law can be separated from the remaining terms, and the remaining terms will still be enforced.

12. Borrower's Copy of the Note and of this Adjustable Rate Mortgage. You will be given a copy of the Note and of this Adjustable Rate Mortgage. Those copies must show that the original Note and Adjustable Rate Mortgage have been signed. You will be given the copies either when you sign the Note and this Adjustable Rate Mortgage or after this Adjustable Rate Mortgage has been recorded in the proper official records.

13. Transfer of the Property. If you sell all or any part of the Property, or if an interest herein is sold or transferred then we may, at our option, declare all the sums secured by this Adjustable Rate Mortgage to be immediately due and payable. However, this option may not be exercised by us if in so doing we would violate any applicable law.

If we exercise such an option to accelerate, we shall mail to you notice of the acceleration in accordance with Paragraph 14 of this Adjustable Rate Mortgage. Such notice shall provide a period of not less than ten days from the date the notice is mailed within which you may pay the sums declared due. If you fail to pay such sums prior to the expiration of such period, we may, without further notice or demand on you, invoke any remedies permitted by this Adjustable Rate Mortgage.

14. Our Rights Upon Your Default. If you breach any of your agreements contained in this Adjustable Rate Mortgage, or the Notes for which the debt is secured hereby, or any other instruments or documents secured by this Adjustable Rate Mortgage, you will be deemed in default under this Adjustable Rate Mortgage and we may "accelerate" your obligations. This means that all debts you owe us will become immediately due and payable and this Adjustable Rate Mortgage shall be subject to foreclosure at our option, and you are hereby expressly agreeing to waive any notice of the exercise of such option.

If we accelerate your debt, we shall have the right to sell the Property before the Courthouse door of the County where said property is located, at public outcry for cash, or exercise any other legal right we have. After default, we will be entitled to all costs we incur in pursuing any rights we have, including, but not limited to, reasonable attorneys' fees, not to exceed 15% of the unpaid balance after default if the original amount financed exceeded \$300.00 and if we refer the matter to an attorney who is not a salaried employee of ours.

If we decide to sell the Property, we will give you a copy of the notice of sale. The notice of sale will contain the time, place and terms of sale and will be published for three consecutive weeks in a newspaper of general circulation in the county where the Property is located, or if the Property is located in more than one county, in each county where the Property is located. We may hire an auctioneer to sell the Property or we may act as auctioneer at said sale. The Property shall be sold to the highest bidder (which may be us) at a public auction on the steps of the county courthouse in the same county where the Property is located. Upon payment of the proceeds of the sale, we or the auctioneer are hereby authorized by you to execute to the purchaser for and in your name a deed conveying the Property to the purchaser which may be us. The proceeds from the sale will be applied first to the costs of the sale (which include, among other expenses, reasonable attorneys' fees and title searches), then to all indebtedness secured by this Adjustable Rate Mortgage, including, but not limited to, the Note, any amounts we may have expended for taxes, insurance, assessments, and encumbrances, with interest thereon at the rate stated in the Note, and any other notes for which the debt is secured hereby, and finally to the person who is legally entitled to any remaining sums.

15. Your Right to Reinstate. Even if we decide to accelerate and sell the Property, you may have our foreclosure proceedings stopped under certain circumstances. You must:

(A) pay all amounts which would be due under your Note and this Adjustable Rate Mortgage as if no acceleration had occurred;

(B) cure all breaches of this Adjustable Rate Mortgage;

(C) pay all expenses we incurred in attempting to enforce our rights under this Adjustable Rate Mortgage; and

(D) pay all other amounts secured hereby; and

(E) take whatever steps we may reasonably think are necessary to assure that this Adjustable Rate Mortgage, our interest in the Property and your obligations will continue unimpaired. If you pay all sums due and correct all problems, then this Adjustable Rate Mortgage will continue in full force and effect as if no acceleration had occurred.

16. Our Right to Rental Payments and Possession. As additional protection for us, you give us all of your rights to any rental payments from the Property. However, until we require immediate payment in full, or until you abandon the Property, you have the right

to collect and keep those rental payments as they become due. You agree that you have not given any of your rights to rental payments from the Property to anyone else, and you will not do so without our consent in writing. If we require immediate payment in full, or if you abandon the Property, then we, persons authorized by us, or a receiver appointed by a court at our request may:

- (A) collect the rental payments, including overdue rental payments directly from the tenants;
- (B) enter on and take possession of the Property;
- (C) manage the Property; and

(D) sign, cancel and change leases. You agree that if we notify the tenants that we have the right to collect rental payments directly from them under this paragraph, then the tenants may make those rental payments to us without having to ask whether you have failed to keep your promises and agreements under this Adjustable Rate Mortgage.

After foreclosure, you will pay us reasonable rent from the date of foreclosure for as long as you occupy the Property. Unless otherwise agreed, such rent shall be equal to the monthly payments due under the Note. However, this does not give you the right to be tenant on the Property.

All rental payments collected by us or by a receiver, other than the rent paid by us under this paragraph, will be used first to pay the costs of collecting rental payments and of managing the Property. If any part of the rental payments remain after those costs have been paid in full, the remaining part will be used to reduce the amount you owe to us under the Note and under this Adjustable Rate Mortgage. The cost of managing the property may include the receiver's fees, reasonable attorney's fees, and the cost of any necessary bonds. We and the receiver will be obligated to account only for those rental payments that we actually receive.

17. **Agreements About Future Advances.** You may ask us to make one or more future advances, extend or renew the Note. Any future advances, extensions or renewals and all debts, costs and fees associated with them, will be secured by this Adjustable Rate Mortgage. Neither you nor we will have to execute any additional agreements or mortgages to secure these additional advances. You have no entitlement to future advances and they may be made strictly at the option of the Mortgagee.

18. **Discharge and Release.** When you have paid all amounts due to us under your Note, any future advances thereunder, and any renewals or extensions thereof with interest thereon, and any other agreement secured by this Adjustable Rate Mortgage, we will discharge this Adjustable Rate Mortgage by delivering a certificate that this Adjustable Rate Mortgage has been satisfied. You will not be required to pay us for the discharge, but you will pay all costs of recording the discharge in the proper official records.

19. **Maximum Credit Charges.** You have agreed, according to the terms set forth in your Note, to pay charges on the credit extended to you. If this credit is subject to a law which sets a maximum charge, and this law is interpreted so that the interest or other credit charges which we impose exceed permitted limits, then:

(A) any such charge in violation of the law as interpreted will be reduced by whatever amount is necessary to bring the charge within permissible limits; and

(B) any sums which you have paid us in excess of the legal limit will be refunded to you. Such refund may be made by reducing the balance owed under your Note or by making a direct payment to you.

X If checked, notwithstanding any other provision hereof, this Mortgage is not a future advance mortgage and secures only the specific debt evidenced by the Note, all extensions and renewals thereof, the interest thereon, and advances hereafter made by Mortgagee for taxes, assessment, and insurance and to discharge encumbrances and the interest on such advances; and any other debts owed by either of you whether now or hereafter existing or incurred.

By signing this Adjustable Rate Mortgage, you agree to all of the above.

STATE OF ALA. SHELBY
I CERTIFY THIS
INSTRUMENT WAS FILED
88 OCT 28 AM 10:17

1. Dead Tax \$
2. Mig. Tax 40.35
3. Recording Fee 10.00
4. Indexing Fee 1.00

TOTAL

51.35

Borrower

Borrower

State of Alabama)

County of Shelby)

On this 24th day of October, 19 88, I

Martha W. Benefield, a Notary Public in and for said county in said state to hereby certify that Herbert Thomas Smith and wife Joan L. Smith

whose name(s) is/are signed to the foregoing conveyance, and who is/are known to me, acknowledged before me that, being informed of the contents of the conveyance, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this, the 24th day of October, 19 88.

Martha W. Benefield
Notary Public

My Commission Expires: 1-19-91

This instrument prepared by: Jo Robertson
Colonial Bank Northern Region
1602 Forestdale Plaza
Birmingham, Alabama 35214