

1089

ALTUS BANK

CREDITMASTER ADJUSTABLE RATE LINE OF CREDIT MORTGAGE

NOTICE: THIS ADJUSTABLE RATE MORTGAGE SECURES AN OPEN-END CREDIT PLAN WHICH CONTAINS PROVISIONS ALLOWING FOR CHANGES IN THE ANNUAL PERCENTAGE RATE. INCREASES IN THE ANNUAL PERCENTAGE RATE MAY RESULT IN HIGHER MINIMUM MONTHLY PAYMENTS AND INCREASED FINANCE CHARGES. DECREASES IN THE ANNUAL PERCENTAGE RATE MAY RESULT IN LOWER MINIMUM MONTHLY PAYMENTS.

This is a future advance mortgage and the proceeds of the open-end credit plan secured by this Mortgage will be advanced by the Mortgagee under the terms of the credit agreement between the Mortgagee and the Borrower named herein.

STATE OF ALABAMA

COUNTY OF Shelby

This indenture is made and entered into this 8th day of June, 1989, by and between David J. Damato and wife, Elizabeth F. Damato

(hereinafter called the "Mortgagor," whether one or more) and ALTUS BANK, A Federal Savings Bank (hereinafter called the "Mortgagee").

RECITALS

A. **The Secured Line of Credit.** David J. Damato and wife, Elizabeth F. Damato (hereinafter called the "Borrower," whether one or more), is now or may become in the future justly indebted to the Mortgagee in the maximum principal amount of Fifteen Thousand and No/100 ----- Dollars (\$ 15,000.00) (the "Credit Limit") pursuant to a certain open-end line of credit established by the Mortgagee for the Borrower, under an agreement entitled "ALTUS BANK Creditmaster Agreement," executed by the Borrower in favor of the Mortgagee and dated June 8, 1989 (the "Creditmaster Agreement"). The Creditmaster Agreement provides for an open-end line of credit pursuant to which the Borrower may borrow and repay, and reborrow and repay, amounts from the Mortgagee up to a maximum principal amount at any one time outstanding not exceeding the credit limit. The real estate described in this Mortgage as securing such open-end line of credit is residential property.

B. **Rate and Payment Changes.** The Creditmaster Agreement provides for finance charges to be computed on the unpaid balance outstanding from time to time under the Creditmaster Agreement at an adjustable annual percentage rate. The annual percentage rate may be increased or decreased each billing cycle, according to the provisions stated in the Creditmaster Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of these premises, and to secure the payment of (a) all advances heretofore or from time to time hereafter made by the Mortgagee to the Borrower under the Creditmaster Agreement, or any extension or renewal thereof, up to a maximum principal amount at any one time outstanding not exceeding the Credit Limit; (b) all finance charges payable from time to time on said advances, or any part thereof; (c) all other charges, costs and expenses now or hereafter owing by the Borrower to the Mortgagee pursuant to the Creditmaster Agreement, or any extension or renewal thereof; (d) all other indebtedness, obligations and liabilities now or hereafter owing by the Borrower to the Mortgagee under the Creditmaster Agreement, or any extension or renewal thereof; and (e) all advances by the Mortgagee under the terms of this Mortgage (the aggregate amount of all such items described in (a) through (e) above hereinafter collectively referred to as "Debts") and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate, situated in Shelby County, Alabama (said real estate being hereinafter called the "Real Estate"):

Lot 12, Block 9, according to the Survey of Kerry Downs, as recorded in Map Book 5, Pages 135 and 136 in the Probate Office of Shelby County, Alabama.

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Subject to: Mortgage from David J. Damato and wife, Elizabeth F. Damato, to Altus Bank, A Federal Savings Bank, dated July 15, 1987, in the amount of \$92,000.00, filed for record on July 28, 1987, recorded in Real Book 142, Page 682 and transferred and assigned to South Trust Mortgage Corporation, in Real Book 203, Page 875, in the Office of the Judge of Probate of Shelby County, Alabama.

which has the address of (Street) 3317 Shetland Trace (City) Birmingham Alabama, 35242 (Zip Code) (hereinafter called the "Property Address").

TO HAVE AND TO HOLD such property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents, all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property." Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the property, and that the property is unencumbered, except for encumbrances as may specifically be set forth hereinabove following the description of the property. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to the encumbrances set forth hereinabove.

Larry Newman

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1. **Payment of Obligations.** Borrower shall pay promptly every month the obligations incurred under the Creditmaster Agreement.

2. **Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under the Creditmaster Agreement and paragraph 1 hereof shall be applied by Lender according to the terms contained in the Creditmaster Agreement.

4. **Charges; Liens.** Borrower shall pay all taxes, assessments, and other charges, fines and impositions attributable to the Property which may attain a priority over this Security Instrument and leasehold payments or ground rents, if any, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to lender all notices of amounts due under this paragraph. In the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument; however, Borrower shall not be required to discharge any such lien so long as Borrower (a) shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, (b) shall in good faith contest such lien by, or defend against enforcement of such lien in, legal proceedings which in the opinion of the Lender operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof; or (c) shall secure from the holder of such lien an agreement in a form satisfactory to Lender subordinating such lien to this Security Instrument.

5. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, loss by hazards included within the term "extended coverage," and loss by such other hazards as Lender may identify and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage and any lien prior thereto.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid by Borrower making payments, when due, directly to the insurance carrier or by making payments to a prior lienholder to be held in escrow to make payment to insurance carrier on behalf of Borrower when due.

All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible, or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to account balance shall not change the amount of such minimum payments. If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

6. **Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property, and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

7. **Protection of Lender's Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of extending the credit secured by this Mortgage, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Creditmaster Agreement unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. **Inspection.** Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraph 1 hereof or change the amount of such installments.

10. **Borrower Not Released.** Extension of the time for payment of the sums secured by this Mortgage granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

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

13. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. Anyone who co-signs this mortgage, but does not execute the Creditmaster Agreement, (a) is co-signing this mortgage only to mortgage, grant and convey that co-signer's interest in the Property to Lender under the terms of this mortgage, (b) is not personally liable on the Creditmaster Agreement or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear or make any other accommodations with regard to the terms of this Mortgage or the Creditmaster Agreement without the co-signer's consent and without releasing the co-signer or modifying this mortgage as to that co-signer's interest in the property. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

14. **Notice.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. **Uniform Security Instrument; Governing Law; Severability.** This form of Security Instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Creditmaster Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Creditmaster Agreement which can be given effect without the conflicting provisions, and to this end the provisions of this Security Instrument and the Creditmaster Agreement are declared to be severable.

16. **Borrower's Copy.** Borrower shall be furnished a conformed copy of the Creditmaster Agreement and of this Mortgage at the time of execution or after recordation hereof.

17. **Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or an interest therein is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at Lender's option, declare all the sums secured by this Security Instrument to be immediately due and payable. However, this option shall not be exercised by Lender if exercise is not authorized by Federal Law.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

Notwithstanding a sale or transfer, Borrower will continue to be obligated under the Creditmaster Agreement and Security Instrument unless Lender has released Borrower in writing.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. **Acceleration; Remedies.** Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenant to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall mail a copy of a notice of sale to Borrower in the manner provided in paragraph 14 hereof. Lender shall publish the notice of sale once a week for three consecutive weeks in some newspaper published in the County where the Real Estate is located, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of said County. Lender shall deliver to the purchaser Lender's deed conveying the Property so sold. Lender or Lender's designee may purchase the Property at any sale. Borrower covenants and agrees that the proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

19. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage, Borrower shall have the right to have any proceedings, which were begun by Lender to enforce this Mortgage, discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Mortgage, or (ii) entry of a judgment enforcing this Mortgage, if: (a) Borrower pays Lender all sums which then would be due under this Mortgage, the Creditmaster Agreement and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; (c) Borrower pays all reasonable expenses incurred by Lender in enforcing the covenants and agreements of Borrower contained in Mortgage and in enforcing Lender's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the ten of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured thereby shall remain in full force and effect as if no acceleration had occurred.

20. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property, and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account for only those rents actually received.

21. **Future Advances.** Borrower may obtain future extensions of credit. These future extensions and all debts, costs, or fees associated with them shall be secured by this Mortgage, without the need for either Borrower or Lender to execute any new agreement or mortgage.

22. **Release.** This Mortgage, and Lender's rights and Borrower's obligations, shall remain perpetual until such time as Lender or Borrower provides written notice of termination to the other party and all sums secured hereby have been paid in full. At such time, Lender shall cause a release and satisfaction to be entered on the records of the appropriate recording authority. This Mortgage is not released if written notice is given and any amount secured hereby is unpaid. Nor shall this Mortgage be released if the line of credit it secures is paid to zero unless the Lender or Borrower has sent to the other written notice of termination.

23. **Loan Charges.** If the credit secured by the Security Instrument is subject to a law which sets maximum credit charges, and that law finally is interpreted so that the interest or other credit charges collected or to be collected in connection with the credit exceed permitted limits, then: (1) any such credit charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (2) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the balance owed under the Creditmaster Agreement or by making a direct payment to Borrower. If a refund reduces the balance, the reduction will be treated as a partial prepayment under the Creditmaster Agreement.

IN WITNESS WHEREOF, Borrower has executed this Mortgage.

[Signature]
 Borrower David J. Damato
[Signature]
 Borrower Elizabeth F. Damato

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned for the purpose of securing note of even date executed by Borrower, hereby mortgages, grants and conveys to lender, its successors and assigns, his/her/its interest in subject property.

 Co-Mortgagor

 Co-Mortgagor

 Co-Mortgagor

This instrument was prepared by: Larry R. Newman, Attorney At Law
3021 Lorna Road, Suite 310
Birmingham, Alabama 35216

STATE OF ALA. SHIEL BY
 I CERTIFY THIS
 INSTRUMENT WAS FILED
 89 JUN 16 AM 9:29
[Signature]
 JUDGE OF PROBATE

1. Deed Tax \$ _____
 2. Mtg. Tax 22.50
 3. Recording Fee 7.50
 4. Indexing Fee 2.00
 TOTAL 32.00

ACKNOWLEDGEMENT FOR INDIVIDUAL

STATE OF ALABAMA, Jefferson County ss:
 On this 8th day of June, 19 89
 I, the undersigned authority, a Notary Public in and for said county and
 in said state, hereby certify that David J. Damato and wife, Elizabeth F. Damato, whose name(s) are
 signed to the foregoing conveyance, and who are known to me, acknowledged before me that, being informed of the contents of the conveyance,
they executed the same voluntarily and as their act on the day the same bears date.

Given under my hand and seal of office this the 8th day of June, 19 89
 My Commission expires: 1-2-92

[Signature]
 Notary Public

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