



1626

This Instrument Prepared By:  
Kathryn S. Carver  
Lange, Simpson, Robinson &  
Somerville  
1700 First Alabama Bank Building  
Birmingham, Alabama 35203

M O R T G A G E

STATE OF ALABAMA)  
SHELBY COUNTY )

THIS MORTGAGE REPRESENTS A PORTION OF THE PURCHASE  
PRICE OF THE PROPERTY DESCRIBED HEREIN, CONVEYED TO  
THE MORTGAGOR SIMULTANEOUSLY HERewith.

THIS INDENTURE, made and entered into on this the 21<sup>ST</sup>  
day of June, 1989, by and between APPLGATE REALTY, INC., an  
Alabama corporation (hereinafter referred to as the "Mortgagor"),  
and SAMFORD UNIVERSITY, an Alabama non-profit corporation (herein-  
after referred to as the "Mortgagee").

W I T N E S S E T H:

WHEREAS, Mortgagor is indebted to Mortgagee, as evidenced by  
a Real Estate Mortgage Note of even date herewith, in the  
principal amount of EIGHTY THOUSAND AND NO/100 (\$80,000.00)  
DOLLARS (hereinafter referred to as the "Note"), the terms of  
which are incorporated herein by reference, with principal and  
interest payable as stipulated and provided therein; and

WHEREAS, Mortgagor desires to secure the prompt payment of  
the indebtedness evidenced by the Note and any amendments  
thereto, and the payment of principal and interest therein  
provided for; and

WHEREAS, Mortgagor may hereafter become indebted to said  
Mortgagee for additional sums loaned and/or on account of  
indebtedness which may accrue to Mortgagee on account of any  
future payments, advances or expenditures made by Mortgagee under  
the provisions of this Mortgage; and Mortgagor wishes to execute  
this conveyance for the security and enforcement of the payment  
both of said present and any such future indebtedness;

NOW, THEREFORE, Mortgagor, in consideration of the premises,  
and in order to secure the prompt payment of the Note, and any  
and all extensions and renewals thereof, or of any part thereof,

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*Samford University*

and all interest payable on all of said indebtedness, and on any and all such extensions and renewals, and the payment of any further sum or sums for which Mortgagor may hereafter become indebted to Mortgagee under the provisions hereof or otherwise, and further to secure the performance of the covenants, conditions and agreements hereinafter and in the Note set forth, Mortgagor does hereby grant, bargain, sell and convey to Mortgagee, its successors and assigns, the real estate lying and being in Shelby County, Alabama, being more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any way appertaining, including, without limitation, any after-acquired title and easements and all rights, title and interest now or hereafter owned by the Mortgagor in and to all streets, alleys, roads or highways abutting said premises, buildings and improvements, now or hereafter constructed on said real estate, storm and screen windows and doors, gas, steam, electric and other heating, lighting, ventilating, air conditioning, refrigerating, fire extinguishing, and cooking apparatus, elevators, plumbing, sprinkling, and other equipment and fixtures attached or appertaining to said real estate, all of which (hereinafter designated as the "Mortgaged Property") shall be deemed real estate and shall be conveyed by this Mortgage;

TOGETHER WITH any awards hereafter made for any taking of or injury to said real estate and other property described herein through eminent domain or otherwise, including awards or damages for change of grade; and also any return premiums or other payments upon any insurance at any time provided for the benefit of Mortgagee, all of which awards, damages, premiums and payments are hereby assigned to Mortgagee and may be at any time collected by Mortgage; and all of Mortgagor's rights further to encumber said real estate and other property described herein for debt without the prior written approval of the Mortgagee, all of which (hereinafter designated as the Mortgaged Property) shall be deemed real estate and shall be conveyed by this Mortgage;

TO HAVE AND TO HOLD the said Mortgaged Property, rights and privileges, and every part thereof, unto Mortgagee, its successors and assigns forever. And Mortgagor covenants with Mortgagee that Mortgagor is lawfully seized in fee and possessed of the Mortgaged Property and has a good right to sell and convey the same as aforesaid; and Mortgagor covenants with Mortgagee that the said Property is free and clear of all encumbrances, easements, and restrictions, except as herein set out, and Mortgagor will warrant and forever defend the title to said Mortgaged Property unto Mortgagee, Mortgagee's successors and assigns, against the lawful claims of all persons whomsoever.

The said indebtedness which is secured hereby is evidenced by the Note of even date herewith between Mortgagor and Mortgagee, the terms of which are incorporated as a part hereof. In the event of default in the terms of said Note, such default shall be an event of default hereunder entitling the Mortgagee herein to exercise the remedies provided herein, including the right to foreclose this Mortgage in accordance with the terms hereof.

This conveyance is intended to operate and is to be construed as a mortgage and is given to secure (a) the debt evidenced by the aforementioned Note and the interest thereon and any renewals, extensions or modifications thereof, and (b) any additional sums as may be loaned, advanced or re-advanced to or for Mortgagor's account for taxes, insurance premiums, public assessments and repairs, or otherwise; said additional sums to bear interest from the date advanced at the per annum rate set forth in the Note. (The Note and the other obligations secured hereby are sometimes collectively referred to as the "Secured Indebtedness.")

PROVIDED THAT, if all of the Secured Indebtedness is paid as and when due, and if Mortgagor keeps and performs all of the covenants, provisions, and agreements of this Mortgage and the Note, then this Mortgage will be void and release or satisfaction thereof will be made at the expense of the Mortgagor, otherwise this Mortgage will remain in full force and effect.

FOR THE PURPOSE of further securing the payment of the Secured Indebtedness, Mortgagor warrants, covenants and agrees with Mortgagee as follows:

(1) Payment of Indebtedness. Mortgagor will promptly pay all indebtedness secured hereby whether presently existing or hereafter incurred.

(2) Taxes. Mortgagor will pay all real estate taxes or other special assessments or charges due on the Mortgaged Property covered hereby as and when due.

(3) Insurance. For the benefit of Mortgagee, Mortgagor will constantly keep in force public liability, if applicable, fire and extended coverage insurance policies. Such insurance to be provided in such manner and in such companies and for such amounts as may be required by Mortgagee, with loss, if any, payable to said Mortgagee as Mortgagee's interest may appear. Each such policy shall provide that the coverage thereunder may not be terminated without giving to Mortgagee at least thirty (30) days prior written notice of Mortgagor's or insurance company's intent to cancel. Upon request by Mortgagee, but no less frequently than annually, Mortgagor shall provide Mortgagee with a certificate of insurance from the insurance company

stating the coverages, the amounts of coverage, and that each such policy provides that the coverage thereunder may not be terminated without giving to Mortgagee at least thirty (30) days prior written notice of Mortgagor's or insurance company's intent to cancel. Mortgagor hereby transfers, assigns, sets over and delivers to Mortgagee the general liability, fire, and other insurance policies covering said property and any and all renewals thereof, the premiums on which have been or shall be paid by Mortgagor, and it is further agreed that all such insurance and insurance policies shall be held by Mortgagee as a part of the security for said indebtedness, and shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of specifically describing said insurance or insurance policies in the foreclosure notice, sale, deed, or other proceedings in consummation of such foreclosure; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this Mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be applied in payment for any repair or replacement of such building, or buildings, without affecting the lien of this Mortgage for the full amount hereby secured. Mortgagor agrees to give Mortgagee notice in writing of any damage to the Mortgaged Property caused by fire or other casualty within ten (10) days after the occurrence of any such damage.

If the Mortgaged Property is at any time included within an area identified by the Secretary of Housing and Urban Development as having special flood or mud slide hazards for which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, Mortgagor shall promptly purchase a flood insurance policy acceptable to Mortgagee. Such policy shall insure Mortgagee to the extent of his interest and shall be promptly delivered to Mortgagee.

(4) Care of Property. The Mortgaged Property and any improvements thereon shall be kept in good condition and no waste committed or permitted thereon, reasonable wear and tear excepted. Taxes and assessments or other charges which may be levied upon or accrue against said Mortgaged Property, as well as all other sums which may be or become liens or charges against same, shall be paid and discharged by Mortgagor promptly as and when so levied or assessed, and shall not be permitted to become delinquent or to take priority over the lien of this Mortgage and evidence of the payment of such taxes, assessments and other charges shall be furnished to Mortgagee prior to the date the same becomes delinquent. No building or other improvement on the Mortgaged Property shall be structurally altered, removed or demolished without the Mortgagee's prior written consent, nor shall any fixture or chattel covered by this Mortgage and adapted

to the proper use and enjoyment of the Mortgaged Property be removed at any time without like consent unless actually replaced by an article of equal suitability owned by Mortgagor. In the event of any breach of this covenant the Mortgagee may, in addition to any other rights or remedies, at any time thereafter, declare the whole of said principal sum immediately due and payable.

(5) Liens. Any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Mortgagor and shall not be permitted to take priority over the lien of this Mortgage, provided that Mortgagor, upon first furnishing to Mortgagee reasonable security for the payment of all liability, costs and expenses of the litigation, may in good faith contest, at Mortgagor's expense, the validity of any such lien or liens. In those instances where Mortgagee's title policy protects it against such lien or liens, such title policy shall be deemed to be sufficient security. Determination of whether said title policy protects Mortgagee shall be made solely by Mortgagee and shall be binding upon Mortgagor.

(6) Compliance. That any and all legal requirements of any department of the city or county wherein the Mortgaged Property is located shall be fully complied with by Mortgagor.

(7) Payment of Insurance and Taxes by Mortgagee. If Mortgagor fails to insure the Mortgaged Property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued or assessed upon or against said property or the indebtedness secured hereby, or any interest of Mortgagee in either, or fails to pay immediately and discharge any and all liens, debts, and/or charges which might become liens superior to the lien of this Mortgage, Mortgagee may, at its option, insure said Mortgaged Property and/or pay said taxes, assessments, debts, liens and/or charges, and any money which Mortgagee shall have so paid or become obligated to pay shall constitute a debt to Mortgagee additional to the debt hereby specifically secured, shall be secured by this Mortgage, shall bear interest at a rate equal to the rate in said note from date paid or incurred, and, at the option of the Mortgagee, shall be immediately due and payable upon notice to Mortgagor.

(8) No Waiver. No delay or failure of Mortgagee to exercise any option herein given to declare the maturity of any debt hereby secured shall be taken or construed as a waiver of his right to exercise such option or to declare such maturity by reason of any past, present or future default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the

failure of Mortgagor to procure such insurance or to pay such taxes, debts, liens or charges. It is agreed that no terms or conditions set forth in this Mortgage can be waived, altered, or changed except as evidenced in writing signed by Mortgagor and by Mortgagee.

(9) Covenant to Pay Attorneys' Fees.

(a) All expenses incurred by Mortgagee, including a reasonable attorney's fee, in compromising, adjusting, or defending against lien claims or encumbrances sought to be fixed upon the Mortgaged Property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured and Mortgagor shall pay the same to Mortgagee upon demand by Mortgagee.

(b) In the event Mortgagee employs an attorney to collect any indebtedness hereby secured or to enforce any of Mortgagee's covenants herein, Mortgagor agrees to pay (in addition to costs and disbursements otherwise allowed), to the extent permitted by law, a reasonable attorney's fee.

(10) Condemnation. Notwithstanding that the assignment of awards hereinabove referred to shall be deemed to be self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due thereon, and the issuing of a warrant by the condemnor for the payment thereof, shall execute, at Mortgagee's request, and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage and any advances made by Mortgagee as herein provided then remaining unpaid, with interest thereon at the rate specified herein, or in the Note which this Mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this Mortgage.

(11) Assignment of Rents, etc. If Mortgagor shall make default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may proceed to collect the rent, income and profits from the Mortgaged Property, either with or without the appointment of a receiver; any rents, income and profits collected by Mortgagee prior to foreclosure of this Mortgage, less the cost of collecting same, including any real estate commission or attorney's fee incurred, shall be credited first to advances with interest thereon, then to interest due on the principal indebtedness, and the remainder, if any, to the principal debt hereby secured.

(12) Default; Remedies. It is further agreed that: (a) if Mortgagor shall fail to pay, or cause to be paid, when due, the whole or any portion of the principal sum or any installment of interest thereon under the Note, or any other sum the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained; or (b) should default be made in the payment of any mechanic's lien, materialman's lien, insurance premiums, taxes or assessment on, or which may hereafter be, levied against, or which may become a lien on, said Mortgaged Property; or (c) should default be made in any of the other covenants, conditions and agreements set forth herein or in the Note; then and in that event the whole of said principal sum, with interest thereon, and all other sums secured hereby, shall, at the option of the then holder of said indebtedness, be and become immediately due and payable and the holder of the debt hereby secured shall have the right to enter upon and take possession of the same, sell the Mortgaged Property at public outcry, in front of the courthouse door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale to Mortgagor and by publication once a week for three (3) successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized and empowered to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased in the name and on behalf of Mortgagor, and the certificate of the holder of the mortgage indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of its authority in the Mortgaged Property, or the equity of redemption from this mortgage may be foreclosed by suit in any court of competent jurisdiction as now provided by law in the case of past due mortgages; the Mortgagee, or the then holder of the indebtedness hereby secured, may bid at any such sale and become the purchaser of said Mortgaged Property if the highest bidder therefor. The proceeds of any such sale shall be applied (a) to the expenses incurred in making the sale and in all prior efforts to effect collection of the indebtedness secured hereby, including a reasonable attorney's fee, or reasonable attorneys' fees, for such services as may be, or have been, necessary in any one or more of the foreclosures of this Mortgage, of the collection of said indebtedness, and of the pursuit of any efforts theretofore directed to that end, including, but without limitation to, the defense of any proceedings instituted by the Mortgagor, or anyone liable for said indebtedness, or interest in the Mortgaged Property, to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this Mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this Mortgage, together with interest thereon; (c) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale; and (d) the balance, if any, shall be paid

over to Mortgagor, or Mortgagor's heirs, successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money. Upon the failure of Mortgagor to keep and perform all of the covenants, conditions, and agreements of the Note, Mortgagee may declare the entire principal sum of the Note, and all other indebtedness secured hereby, immediately due and payable. Any event of default under the Note shall be an event of default hereunder.

(13) Subsequent Legislation. In the event of the enactment of any law by any federal, state or local authority, after the date of this Mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force or the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation or is prohibited by law from making such payment, the whole of the principal sum secured by this Mortgage, together with the interest due thereon, shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

(14) Bankruptcy. Should Mortgagor become insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed; or should Mortgagor intentionally damage or attempt to remove any improvements upon the Mortgaged Property; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on the Mortgaged Property prior to the lien hereof; or in case of an error or defect in the above described Note or this instrument or in the execution or the acknowledgment thereof; or if a homestead claim be set up to said Mortgaged Property or any part thereof adverse to this Mortgage and if the said Mortgagor shall fail for fifteen (15) days after demand by the Mortgagee, or other holder or holders of said indebtedness, to correct such defects in the title or to remove any such lien or encumbrance or homestead claim, or to correct any error in said Note or this instrument or its execution; then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness, or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this Mortgage by the power of sale herein contained or by suit, as such Mortgagee, or other holder or holders of said indebtedness, may elect.

(15) Extension; Rearrangement; Renewal. It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the

(15) Extension; Rearrangement; Renewal. It is expressly agreed that any indebtedness at any time secured hereby may be extended, rearranged or renewed, and that any part of the security herein described may be waived or released without in anywise altering, varying or diminishing the force, effect or lien of this instrument; and this instrument shall continue as a first lien on all of the Mortgaged Property and other property and rights covered hereby and not expressly released until all sums with interest and charges hereby secured are fully paid; and no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness shall in any manner impair or affect the security given by this instrument; and all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

(16) Mortgagee in Possession. Mortgagor agrees for Mortgagor and any and all persons or concerns claiming by, through or under Mortgagor that if they or any one of them shall hold possession of the above described Mortgaged Property or any part thereof subsequent to foreclosure hereunder (except for tenants whose leases were approved by Mortgagee, and who attorn to such purchaser), Mortgagor or the parties so holding possession shall become and be considered as tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchaser or purchasers for reasonable rental of said Mortgaged Property, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such tenant as a result thereof are hereby expressly waived.

(17) Releases. Mortgagee agrees to partially release this Mortgage as to portions of the Mortgaged Property upon payment by Mortgagor to Mortgagee of the sum of Seven Thousand Five Hundred Dollars (\$7,500) per acre to be released, provided Mortgagor is not in default under any terms of the Note or this Mortgage. This Paragraph 19 shall not apply to any of the Mortgaged Property which abuts Highway 264. Mortgagee shall join in ~~the~~ easements over unreleased portions of the mortgaged property for utilities which are normal and customary in the development of property for residential purposes, provided Mortgagee incurs no expense in connection with such easements.

(18) Notice. Wherever and whenever in this Mortgage it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be deemed to have been given or served when deposited in the United States

Mail, by registered or certified mail, return receipt requested,  
addressed as follows:

To Mortgagor: Applegate Realty, Inc.  
150 Old Town Road  
Birmingham, Alabama 35216  
Attention: Mr. Randall H. Goggans

To Mortgagee: Samford University  
800 Lakeshore Drive  
Birmingham, Alabama 35229  
Attention: Dr. Thomas E. Corts

With a copy to: Kathryn S. Carver, Esquire  
Lange, Simpson, Robinson  
& Somerville  
1700 First Alabama Bank Bldg.  
Birmingham, Alabama 35203

or to such other address as either party may have given to the  
other by notice as hereinabove provided.

(19) Terms: Singular or plural words used herein to  
designate the Mortgagor shall be construed to refer to the maker  
or makers of this Mortgage, whether one or more persons or a  
partnership.

(20) Successors and Assigns. All covenants and agreements  
herein contained shall bind the successors and assigns of the  
Mortgagor, and every option, right and privilege herein reserved  
or secured to Mortgagee shall inure to the benefit of Mortgagee's  
successors and assigns.

(21) Enforceability. The unenforceability or invalidity of  
any provision or provisions of this Mortgage shall not render any  
other provision or provisions herein contained unenforceable or  
invalid.

(22) Remedies Cumulative. All rights or remedies of  
Mortgagee hereunder are cumulative and not alternative, and are  
in addition to those provided by law.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed under seal on the day and year first above written.

APPLEGATE REALTY, INC., an  
Alabama corporation

By: Randall H. Gar

Its President

STATE OF ALABAMA)  
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that RANDALL H. GAR, whose name as PRESIDENT of APPLEGATE REALTY, INC., an Alabama corporation, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, 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 21 day of June, 1989.

97-14  
Notary Public

My Commission Expires: 3-1-90

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EXHIBIT "A"

The N 1/2 of the NW 1/4 of the SE 1/4 of Section 3, Township 21 South, Range 3 West, excepting therefrom (1) a 40-foot strip across the North end of said property heretofore reserved for a roadway, and (2) an easement for an existing public road on the West side of said property. Situated in Shelby County, Alabama.

SUBJECT TO THE FOLLOWING:

1. Ad valorem taxes for the year 1989 and taxes for all subsequent years.
2. Easements to Southern Natural Gas Corporation as recorded in Deed Book 90, Page 333; Deed Book 90, Page 445; and Deed Book 212, Page 313, in the Probate Office of Shelby County, Alabama.
3. Easement to Plantation Pipe Line as recorded in Deed Book 112, Page 364, in said Probate Office.
4. Easement to Alabaster Water and Gas Board as recorded in Deed Book 278, Page 391, in said Probate Office.
5. Right of way to Shelby County as recorded in Deed Book 280, Page 340, in said Probate Office.

STATE OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 JUN 26 AM 9:11

*William C. [Signature]*  
JUDGE OF PROBATE

1. Deed Tax	\$	_____
2. Mtg. Tax		<u>120.00</u>
3. Recording Fee		<u>30.00</u>
4. Indexing Fee		<u>2.00</u>
TOTAL		<u>152.00</u>

