

MORTGAGE DEED - CONSTRUCTION

THE STATE OF ALABAMA

SHELBY

County

1785

This instrument was prepared by

of First Alabama Bank/shelby County

KNOW ALL MEN BY THESE PRESENTS: That whereas on this 22nd day of June, 1990, CLAYTON-BAILEY PROPERTIES, an Alabama general partnership, has

become justly indebted to FIRST ALABAMA BANK/OR SHELBY COUNTY

hereinafter called the Mortgagee, in the principal sum of One Million Fifty-Four Thousand and No/100

( \$ 1,054,000.00 ) Dollars.

as evidenced by negotiable note (the "Note") of even date herewith,

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and any renewals or extensions of same and any other indebtedness now or hereafter owed by Mortgagors to Mortgagee and compliance with all the stipulations hereinafter contained, the said CLAYTON-BAILEY PROPERTIES

(hereinafter called Mortgagors )

do hereby grant, bargain, sell and convey unto the said Mortgagee the following described real estate situated in County, State of Alabama viz:

See Exhibit "A" attached hereto and incorporated herein.

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THIS INSTRUMENT PREPARED BY:

David L. Silverstein  
Berkowitz, Lefkovits, Isom & Kushner  
1100 Financial Center  
Birmingham, Alabama 35203

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by the Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric and other heating, lighting, ventilating, air conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, and other equipment and fixtures attached or appertaining to said premises, all of which (hereinafter designated as the mortgaged property) shall be deemed realty and conveyed by this mortgage.

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

And for the purpose of further securing the payment of said indebtedness the Mortgagors covenant and agree as follows:

1. That they are lawfully seized in fee and possessed of said mortgaged property and have a good right to convey the same as aforesaid, that they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that said property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

#### SEE EXHIBIT "A"

2. That they will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed legally upon said mortgaged property and should default be made in the payment of same, or any part thereof, said Mortgagee may pay the same.

3. That they will keep the buildings on said premises continuously insured in such amounts, in such manner and in such companies as may be satisfactory to the Mortgagee against loss by fire and such other hazards as Mortgagee may specify, with loss, if any, payable to said Mortgagee, and will deposit with Mortgagee policies for such insurance and will pay premiums therefor as the same become due. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damages to said premises caused by any casualty. If Mortgagors fail to keep said property insured as above specified, the Mortgagee may insure said property for its insurable value against loss by fire and other hazards for the benefit of the Mortgagee. The proceeds of such insurance shall be paid by insurer to Mortgagee which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the indebtedness secured by this mortgage, less cost of collecting same, or to be used in repairing or reconstructing the premises as the Mortgagee may elect; 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 said Mortgagee additional to the indebtedness herein described and at once payable without demand upon or notice to any person, and shall be secured by the lien of this mortgage and shall bear interest at the highest legal rate 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.

4. To take good care of the mortgaged property 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 it now is, reasonable wear and tear alone excepted.

5. 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 the right to exercise such option or to declare such forfeiture either as to past or present default on the part of said Mortgagors, and that the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagors to procure such insurance or to pay such taxes, it being agreed that no terms or conditions contained in this mortgage can be waived, altered, or changed except as evidenced in writing signed by the Mortgagors and by the Mortgagee.

6. That they will well and truly pay and discharge any indebtedness hereby secured as it shall become due and payable including the note or notes above described, any renewals or extensions thereof, and any other notes or obligations of Mortgagors to Mortgagee whether now or hereafter incurred.

7. That after any default on the part of the Mortgagors, the Mortgagee shall, upon bill filed or other proper legal proceeding 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, with power to lease and control the said premises and with such other powers as may be deemed necessary, and that a reasonable attorney's fee shall, among other expenses and costs, be fixed, allowed and paid out of such rents, issues and profits or out of the proceeds of the sale of said mortgaged property.

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

9. 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 liens of mechanics and materialmen, without regard to the 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, and the same is not dismissed within thirty

(30) days from its filing.

after any applicable cure period

~~XX~~

~~is being advanced to the Borrower by the Lender in accordance with a Loan Agreement between Bank and Borrower dated~~

~~the date hereof. Notwithstanding anything to the contrary contained in this mortgage or in the note secured hereby, or in~~

~~any other instrument securing the loan evidenced by said note, the Bank may at its option declare the entire indebtedness~~

~~secured hereby, and all interest thereon and all advances made by Bank hereunder, immediately due and payable in the~~

~~event of a breach by the Borrower of any covenant contained in this mortgage, the note secured hereby, or in said Loan~~

~~Agreement; that when the Borrower and the Lender, dated the day hereof, a certain Loan Agreement, by which said~~

~~terms are incorporated by the terms hereof and effect has through said Loan Agreement, shall be forthwith and full,~~

11. In addition to the said \$1,054,000.00 principal amount with interest secured hereby, this mortgage shall also secure any and all other and additional indebtedness now or hereafter owing by Borrower to Bank. During the period of construction of the improvements contemplated to be constructed upon the Mortgaged Property, this mortgage covers and the undersigned, in consideration of the said indebtedness, and to secure the prompt payment of the same, with the interest thereon, and further to secure the performance of the covenants, conditions and agreements set forth in this mortgage, and in said Loan Agreement, have bargained and sold and do hereby grant, bargain, sell, alien and convey unto the Bank, its successors and assigns, the following described additional property, situated or to be situated on the real estate hereinabove described and mortgaged:

All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the mortgagors for the purpose of being 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. Personal property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing materials, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building materials and equipment of every kind and character used or useful in connection with said improvements.

12. Plural or singular words used herein to designate the undersigned Mortgagors shall be construed to refer to the maker or makers of this mortgage, whether one or more persons or a corporation.

UPON CONDITION, HOWEVER, that if the Mortgagors shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall in all things do and perform all acts and agreements by them herein agreed to be done according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void; but should default be made in the payment of the indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by said Mortgagee under the authority of any of the provisions of this mortgage 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 a petition to condemn any part of the mortgaged property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a 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 charged against the owner of this 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 or should the Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part of same may not as said date have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of the Mortgagee, notice of the exercise of such option being hereby expressly waived; and the Mortgagee shall have the right to enter upon and take possession of the property hereby conveyed and after or without taking such possession to sell the same before the County Court House door in Columbiana, Shelby County,

**Alabama**

Alabama

County of Alabama at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said City, and upon the payment of the purchase money the Mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors a good and sufficient deed to the property sold; the Mortgagee shall 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 encumbrances, 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 date of sale; and fourth, the balance, if any, to be paid over to the said Mortgagors or to whomsoever then appears of record to be the owner of said property. The Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale thereunder.

CLAYTON-BAILEY PROPERTIES, an Alabama  
general partnership

By its general partners:

IN WITNESS WHEREOF,

Larry Clayton

~~Net Baile~~

Warren Bailey

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THE STATE OF ALABAMA,  
\_\_\_\_\_ COUNTY.

I, \_\_\_\_\_, a Notary Public in and for said County, in said State,  
hereby certify that \_\_\_\_\_  
whose name \_\_\_\_\_ signed to the foregoing conveyance and who \_\_\_\_\_ known to me, acknowledged before me on this day  
that, being informed of the contents of the conveyance, \_\_\_\_\_ executed the same voluntarily on the day the same bears date.  
Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_  
Notary Public.

THE STATE OF ALABAMA,  
\_\_\_\_\_ COUNTY.

I, \_\_\_\_\_, a Notary Public in and for said County, in said State,  
hereby certify that \_\_\_\_\_  
whose name \_\_\_\_\_ signed to the foregoing conveyance and who \_\_\_\_\_ known to me, acknowledged before me on this day  
that, being informed of the contents of the conveyance, \_\_\_\_\_ executed the same voluntarily on the day the same bears date.  
Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_  
Notary Public.

THE STATE OF ALABAMA,  
\_\_\_\_\_ COUNTY.

I, \_\_\_\_\_, Notary Public in and for said County, in said State,  
hereby certify that \_\_\_\_\_ whose name as President  
of the \_\_\_\_\_, a corporation, is signed to the fore-  
going conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the con-  
veyance, 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 \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
\_\_\_\_\_  
Notary Public.

STATE OF ALABAMA )  
JEFFERSON COUNTY )

i, the undersigned authority, a Notary Public in and for said County, in said state, hereby  
certify that Larry Clayton, Neil Bailey and Warren Bailey, whose names as General Partners  
of Clayton-Bailey Properties, an Alabama general partnership, is signed to the foregoing  
Mortgage Deed and who is known to me, acknowledged before me on this day that, being informed  
of the contents of the conveyance, they, in their capacities as such General Partners and  
with full authority, executed the same voluntarily for and as the act of said general  
partnership on the day the same bears date.  
Given under my hand this the 22 day of June, 1990.

My Commission Expires: \_\_\_\_\_

Alvin B. Feltner  
Notary Public

CLAYTON BAILEY PROPERTIES

TO  
FIRST ALABAMA BANK/  
OF SHELBY COUNTY

**MORTGAGE DEED**

THE STATE OF ALABAMA,

\_\_\_\_\_ COUNTY.

Office of the Judge of Probate.

I hereby certify that the within mortgage was filed

in this office for record on the \_\_\_\_\_

day of \_\_\_\_\_, 19\_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M., and duly record in

Volume \_\_\_\_\_ of Mortgagees, at page

\_\_\_\_\_ and examined

Judge of Probate.

**First Alabama Bank**



ADDENDUM NO. 1 TO MORTGAGE DEED

ADDENDUM NO. 1 TO MORTGAGE DEED attached to and made a part of that certain Mortgage Deed (the "Mortgage") dated June 22, 1990, between CLAYTON-BAILEY PROPERTIES, an Alabama general partnership ("Mortgagor") and FIRST ALABAMA BANK/SHELBY COUNTY ("Mortgagee").

The following additional terms and provisions are made a part of the Mortgage. In the event of any conflict between the terms and provisions of the Mortgage and those of this Addendum, the terms and provisions of this Addendum shall prevail and control.

1. PARTIAL RELEASES. Provided Mortgagor is not then in default of the Mortgage, the Note or any other instrument relating to the indebtedness owed by Mortgagor to Mortgagee, immediately upon receipt by Mortgagor of the Net Proceeds (as defined below) with respect to a particular real estate parcel, Mortgagor shall deliver to Mortgagee a partial release thereof from the lien of the Mortgage. All costs and expenses with respect to such partial release shall be borne by Mortgagor. For purposes of this Paragraph, the term "Net Sales Proceeds" shall mean the product of:

- (i) the difference between (a) the number 1 and (b) the highest combined marginal federal and state income tax rate applicable to individuals for the year in which such sale occurs; and
- (ii) the gross sales proceeds with respect to a particular real estate parcel reduced by all costs and expenses incurred by Mortgagor with respect to such sale.

2. DEFAULT. The following shall be an event of default under the Mortgage or Note:

- (a) Nonpayment of principal or interest when due and payable and the same shall remain unpaid for more than ten (10) banking days after written notice from Mortgagee to Mortgagor;
- (b) Default in the performance or observance of any other covenant or provision of the Note or Mortgage and such default shall have continued for more than twenty (20) banking days after written notice thereof has been given to Mortgagor from Mortgagee.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on this the 22nd day of June, 1990.

CLAYTON-BAILEY PROPERTIES, an Alabama  
general partnership

By: [Signature]  
Larry Clayton  
Its: General Partner

By: [Signature]  
Neil Bailey  
Its: General Partner

By: [Signature]  
Warren Bailey  
Its: General Partner

FIRST ALABAMA BANK/SHELBY COUNTY

By: [Signature]  
Its: [Signature]

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EXHIBIT "A"  
MORTGAGE DEED  
CLAYTON-BAILEY PROPERTIES  
TO  
FIRST ALABAMA BANK/SHELBY COUNTY

A parcel of land situated in the North 1/2 of the South 1/2 of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, said parcel being more particularly described as follows: Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence proceed South 0 deg. 19 min. 52 sec. West along the West line of said Northwest 1/4 of the Southwest 1/4, 654.74 feet to the point of beginning; thence continue South 0 deg. 19 min. 52 sec. West along said West line of the Northwest 1/4 of the Southwest 1/4, 333.00 feet to a point; thence proceed South 87 deg. 55 min. 08 sec. East 1265.73 feet to a point on the Westerly right of way margin of U. S. Highway No. 31, said Westerly right of way margin being in a curve to the West, said curve having a central angle of 10 deg. 30 min. 26 sec., a radius of 1,809.86 feet, an arc of 331.90 feet, and a chord which bears North 01 deg. 48 min. 53 sec. West for 331.44 feet; thence proceed along the arc of said curve and along said Westerly right of way margin 331.90 feet to a point; thence leaving said Westerly right of way margin, proceed North 87 deg. 49 min. 10 sec. West, 1253.38 feet to the point of beginning; being situated in Shelby County, Alabama.

LESS AND EXCEPT the following;

A parcel of land situated in the South half of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, said parcel being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama; thence proceed South 0 deg. 19 min. 52 sec. West along the West line of said Northwest 1/4 of the Southwest 1/4, 654.74 feet to a point; thence proceed South 87 deg. 49 min. 10 sec. East 883.14 feet to an iron pin set, said point being the point of beginning; thence continue along previous course, bearing South 87 deg. 49 min. 10 sec. East, 115.00 feet to an iron pin set; thence proceed South 2 deg. 08 min. 18 sec. West 164.89 feet to an iron pin set; same being the point of curvature of a non-tangent curve to the left having a radius of 92.72 feet; thence along said curve an arc distance of 24.95 feet North 78 deg. 26 min. 07 sec. West, a chord distance of 24.88 feet to the point of tangent; thence proceed North 87 deg. 57 min. 28 sec. West 90.46 feet to an iron pin set; thence proceed North 02 deg. 08 min. 18 sec. East, 161.05 feet to the point of beginning.

LESS AND EXCEPT the Following:

A parcel of land situated in the South half of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, said Parcel being more particularly described as follows:

Commence at the Northwest corner of the Northwest 1/4 of the Southwest 1/4 of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama thence proceed South 0 deg. 19 min. 52 sec. West along the West line of said Northwest 1/4 of the Southwest 1/4, 654.74 feet to a point; thence proceed South 87 deg. 49 min. 10 sec. East 658.14 feet to an iron pin set, said point being the point of beginning; thence continue along previous course, bearing South 87 deg. 49 min. 10 sec. East, 100.00 feet to an iron pin set; thence proceed South 2 deg. 08 min. 18 sec. West, 161.35 feet to an iron pin set; thence proceed North 87 deg. 51 min. 42 sec. West, 100.00 feet to an iron pin set; thence proceed North 2 deg. 08 min. 18 sec. East, 161.42 feet to the point of beginning.

LESS AND EXCEPT any dedicated roadways.

Subject to the following restrictions:

1. 1990 Ad Valorem Tax ID: 58-10-9-31-3-001-011.
2. Restrictions, covenants and conditions as set out in instrument recorded in Real 168, Page 263 and amended in Real 220, Page 94 in the Probate Office of Shelby County, Alabama.
3. Transmission Line Permit to Alabama Power Company as shown by instrument recorded in Deed Book 138, page 51 in said Probate Office.
4. Right-of-Way for telephone lines shown by instrument recorded in Deed Book 56, Page 296 in said Probate Office.
5. Easement to Alabama Power Company and South Central Bell as shown by instrument recorded in Real 99, Page 474 in said Probate Office.
6. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, including rights set out in Deed Book 61, Page 9 and Deed Book 80, page 325 in said Probate Office.

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STATE OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

90 JUN 25 1110:21

CLERK OF THE PROBATE

1. Deed Tax	1587.00
2. Int. Tax	17.50
3. L. & C. Tax	3.00
4. L. & C. Tax	3.00
5. L. & C. Tax	1.00
6. C. & L. Tax	1.00
Total	1602.50