

3280

☐ (Check box if applicable) That this mortgage is a construction mortgage which secures an obligation incurred for the acquisition costs of the mortgaged property and/or the construction of an improvement on such property. Mortgagors will comply with the terms of any construction loan agreement made with Mortgagee with regard to such improvements.

Log #411

STC24922-7/86

**REAL ESTATE MORTGAGE AND SECURITY AGREEMENT**

Mortgagors (last name first):

APPLEGATE REALTY, INC.

150 OLD TOWNE ROAD

BIRMINGHAM AL 35216  
City State Zip

THE STATE OF ALABAMA

SHELBY County

Mortgagee:

SOUTHTRUST BANK OF ALABAMA

NATIONAL ASSOCIATION

P. O. BOX 2554

BIRMINGHAM AL 35290  
City State Zip

This instrument was prepared by:

S. B. PICKENS - HMS

P. O. BOX 2233

BIRMINGHAM, ALABAMA 35201

KNOW ALL MEN BY THESE PRESENTS: That whereas

APPLEGATE REALTY, INC.

has become justly indebted to SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION  
with offices in BIRMINGHAM, Alabama, (together with its successors and assigns,  
hereinafter called "Mortgagee") in the sum of ONE HUNDRED TWENTY-ONE THOUSAND THREE HUNDRED FORTY-THREE AND 87/100 Dollars (\$ 121,343.87 )  
together with interest thereon, as evidenced by a promissory note or notes of even date herewith.

THE PROMISSORY NOTE IS AN ADJUSTABLE RATE NOTE. THE RATE OF INTEREST  
UNDER THE NOTE MAY INCREASE OR DECREASE BASED ON MOVEMENTS OF AN INDEX RATE  
DESCRIBED IN THE NOTE. A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A".

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of said indebtedness and  
any renewals or extensions thereof and the interest thereon, and all other indebtedness (including future advances) now or  
hereafter owed by any of the above-named to Mortgagee, whether such indebtedness is primary or secondary, direct or  
indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure  
compliance with all the covenants and stipulations hereinafter contained, the undersigned

APPLEGATE REALTY, INC.

(whether one or more, hereinafter called  
"Mortgagors") do hereby assign, grant, bargain, sell and convey unto Mortgagee the following described real property  
situated in SHELBY County, State of Alabama, viz:

SEE ATTACHED SHEET FOR LEGAL DESCRIPTION OF PROPERTY.

Subject to easements, rights-of-way restrictions and covenants of record.

FILE ALL PAPERS IN THE OFFICE OF JUDGE OF PROBATE, SHELBY COUNTY, ALABAMA.

*Laheba Dille*

BOOK 359 PAGE 113

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in anywise appertaining, including any after-acquired title and easements and all rights, title and interest now or hereafter owned by Mortgagors in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric, solar and other heating, lighting, ventilating, air-conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, smoke, fire, and intrusion detection devices, and other equipment and fixtures now or hereafter attached or appertaining to said premises, all of which shall be deemed to be real property and conveyed by this mortgage, and all of which real property, equipment and fixtures are sometimes hereinafter called the "mortgaged property."

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

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances), Mortgagors hereby assign and transfer to Mortgagee, and grant to Mortgagee a security interest in, all building materials, household appliances, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagors, or any of them, located, whether permanently or temporarily, on the mortgaged property, and all building materials, household appliances, equipment, fixtures and fittings now owned or hereafter acquired by Mortgagors, or any of them, located or stored on any other real property, which are or shall be purchased by Mortgagors, or any of them, for the purpose, or with the intention, of making improvements on the mortgaged property or to the premises located on said property. The personal property herein transferred includes, without limitation, all lumber, bricks, building stones, building blocks, sand, cement, roofing materials, paint, doors, windows, storm doors, storm windows, nails, wires and wiring, hardware, 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, equipment and appliances of every kind and character used or useful in connection with improvements to real property.

For the purpose of further securing the payment of said indebtedness Mortgagors warrant, covenant and agree with Mortgagee, its successors and assigns, as follows:

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

2. That they will pay when due all taxes, assessments, or other liens or mortgages taking priority over this mortgage, and should default be made in the payment of the same, or any part thereof, or should Mortgagors default in the performance of any covenant under this mortgage (whether or not Mortgagors have defaulted in the payment of such taxes, assessments, liens, or mortgages), Mortgagee may pay the same (but Mortgagee is not obligated to do so). If the mortgaged property or any part thereof is a unit in a condominium or a planned unit development, Mortgagors shall perform all of Mortgagors' obligations under the declaration or covenants creating or covering the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents. Should Mortgagors default in any of such obligations, Mortgagee may perform Mortgagors' obligations (but Mortgagee is not obligated to do so).

3. That they will keep the buildings and other improvements, on the mortgaged property continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagee may specify from time to time, with loss, if any, payable to Mortgagee under a standard mortgagee's clause providing at least 10 days notice to Mortgagee of cancellation of such insurance, and will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof, and will pay the premiums therefor as the same become due. Mortgagors shall have the right to provide such insurance through a policy or policies independently obtained and paid for by Mortgagors or through an existing policy. Mortgagee may, for reasonable cause, refuse to accept any policy of insurance obtained by Mortgagors. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damage to the mortgaged property from any cause whatever. If Mortgagors fail to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind and other hazards for the benefit of Mortgagors and Mortgagee or for the benefit of Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by the insurer to Mortgagee, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Mortgagors any check or draft representing the proceeds of any such insurance, and to demand, receive and give receipt for all sums becoming due thereunder. Said insurance proceeds, if collected, may be credited on the indebtedness secured by this mortgage, less costs of collection, or may be used in repairing or reconstructing the improvements on the mortgaged property, at Mortgagee's election. No crediting of insurance proceeds to the secured indebtedness and no application of the insurance proceeds to repairing or reconstructing improvements on the mortgaged property shall, extend or postpone the due date of any installment payments of the indebtedness hereby secured or reduce the amount of such installments.

4. That commencing upon written request by Mortgagee and continuing until the indebtedness secured hereby is paid in full, Mortgagors will pay to Mortgagee concurrently with, and on the due dates of, payments on the indebtedness hereby secured a sum equal to the ground rents, if any, next due on the mortgaged property, plus the premiums that will next become due and payable on policies of fire and other hazard insurance covering the mortgaged property, plus water rents, fire district charges, taxes and assessments next due on the mortgaged property (all as estimated by Mortgagee), less any sums already paid to Mortgagee therefor, divided by the number of months or other payment periods to elapse before one month or payment period prior to the date when such ground rents, premiums, water rents, fire district charges, taxes and assessments will become due, such sums to be held by Mortgagee in trust, to pay said ground rents, premiums, water rents, fire district charges, taxes and assessments. All payments mentioned in the preceding sentence and the payments to be made on the indebtedness secured hereby shall be added together and the aggregate amount thereof shall be paid by Mortgagors each month or other payment period in a single payment to be applied by Mortgagee to the following items in the order set forth: (a) ground rents, taxes, water rents, fire district charges, assessments, fire and other hazard insurance premiums; (b) interest on the indebtedness secured hereby; and (c) the balance, if any, shall be applied toward the payment of the principal sum of the indebtedness hereby secured. Any deficiency in the amount of such aggregate monthly or other periodic payments shall constitute a default under this mortgage. Any excess funds accumulated under this paragraph after payment of the items herein mentioned shall be credited in calculating the monthly or other periodic payments of the same nature required hereunder in the subsequent year; but if the actual amount of any such item shall exceed the estimate therefor, Mortgagors shall without demand forthwith make good the deficiency. Failure by Mortgagors to do so before the due date of such item shall be a default hereunder. If the mortgaged property is sold under foreclosure or is otherwise acquired by Mortgagee after default, any remaining balance of the accumulations under this paragraph shall be credited to the principal of the secured indebtedness as of the date of the foreclosure sale or as of the date the property is otherwise acquired.

5. That they will take good care of the mortgaged property and the personal property described above and will not commit or permit any waste thereon or thereof, and that they will keep the same repaired and at all times will maintain the same in as good condition as it now is, reasonable wear and tear alone excepted. If Mortgagors fail to make repairs to the mortgaged property, Mortgagee may make such repairs at Mortgagor's expense (but Mortgagee is not obligated to do so). Mortgagee, its agents and employees, may enter the mortgaged property and any improvements thereon at any reasonable time for the purpose of inspecting or repairing such improvements.

6. That all amounts expended by Mortgagee for insurance or for the payments of taxes or assessments or to discharge liens or mortgages, on the mortgaged property or other obligations of Mortgagors or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagee, shall be payable at once without demand upon or notice to any person, shall bear interest at the rate of interest payable on the principal sum of the note described above, or if no such rate of interest is specified in the note or if the rate specified would be unlawful, at the rate of 8% per annum from the date of payment by Mortgagee, and such debt and the interest thereon shall be secured by this mortgage. Upon failure of Mortgagors to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness secured by this mortgage due and payable and may foreclose this mortgage as hereinafter provided or as provided by law.

7. That no delay or failure of 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 defaults on the part of Mortgagors, and that the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagee shall not be taken or deemed as a waiver of the right to accelerate the maturity of the indebtedness hereby secured by reason of the failure of Mortgagors to procure such insurance or to pay such taxes, liens, assessments or obligations, it being agreed by Mortgagors that no terms or conditions contained in this mortgage can be waived, altered or changed except by writing signed by Mortgagee.

gagors to procure such insurance or to pay such taxes, liens, assessments or obligations, it being agreed by Mortgagors that no term or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagee.

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

9. That if default shall be made in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions of this mortgage, Mortgagee may proceed to collect the rent, income and profits from the mortgaged property, either with or without the appointment of a receiver (to which appointment Mortgagors hereby consent), and Mortgagee may notify the lessees or other payors thereof to make payment directly to Mortgagee. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate or property management commissions and attorney's fees incurred, shall be credited first to advances made by Mortgagee and the interest thereon, then to interest due on the indebtedness hereby secured, and the remainder, if any, shall be applied toward the payment of the principal sum of the indebtedness hereby secured.

10. That (a) if possession of the mortgaged property is allowed to remain in any other person or entity to the exclusion of Mortgagors for a period of one year or more, or (b) if all or any part of the mortgaged property or any interest therein is sold, assigned, transferred or conveyed by Mortgagors, or any of them, without Mortgagee's prior written consent, excluding only (i) the creation of a lien or encumbrance expressly subordinate to this mortgage, (ii) the creation of a purchase money security interest for household appliances, (iii) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (iv) the grant of any leasehold interest of one year or less (including all mandatory or optional renewal periods) not containing an option to purchase, (c) if any Mortgagor is a corporation, and any owner of 5% or more of the voting stock of such corporation sells or otherwise transfers 5% or more of the voting stock of such corporation to any other person or entity, (d) if any Mortgagor is a general partnership, and any partner thereof dies or withdraws from the partnership, or the partnership is dissolved, or (e) if any Mortgagor is a limited partnership, and any general partner thereof dies, withdraws, or is replaced by the limited partners, then in any such event Mortgagee may, at Mortgagee's option, declare all indebtedness secured by this mortgage to be due and payable immediately with or without notice to Mortgagors. Mortgagee may condition its consent to any such transfer of possession of, or an interest in, the mortgaged property upon the transferee's agreeing to pay a greater rate of interest on all or any part of the indebtedness secured by this mortgage or to adjust the payment schedule of all or any part of the indebtedness secured by this mortgage, upon Mortgagee's approval of the creditworthiness of the transferee, and upon the transferee's payment to Mortgagee of a reasonable transfer or assumption fee. Upon breach by Mortgagors, or any of them, of the covenants herein contained, Mortgagee may, at its election, proceed to foreclose this mortgage as hereinafter provided or as provided by law.


11. That all the covenants and agreements of Mortgagors herein contained shall extend to and bind their respective 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 Mortgagee shall inure to the benefit of the successors and assigns of Mortgagee. The provisions of this mortgage and the note or notes secured hereby are severable, and that the invalidity or unenforceability of any provision of this mortgage or of any such note or notes shall not affect the validity and enforceability of the other provisions of this mortgage or of such note or notes. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. Time is of the essence with respect to every covenant contained in this mortgage. A carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office.

UPON CONDITION, HOWEVER, that if Mortgagors shall well and truly pay and discharge all the indebtedness hereby secured (including extensions and renewals of the original indebtedness and all future advances) as the same 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 thereof, then and in that event only this conveyance and the security interest herein granted shall be and become null and void; but should default be made in the payment of any 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 Mortgagee under the authority of any provision of this mortgage, or should the interest of Mortgagee in the mortgaged property or any of the personal property described above become endangered by reason of the enforcement of any lien or encumbrance thereon, or should a petition to condemn any part of the mortgaged property be filed by any authority, person or entity having power of eminent domain, or should any law, either state or federal, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the indebtedness 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 property shall be charged against the owner of this mortgage, or should at any time any of the covenants contained in this mortgage or in any note or other evidence of indebtedness secured hereby be declared invalid or unenforceable by any court of competent jurisdiction, or should 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 thereof which may at said date not have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived by Mortgagors, and Mortgagee shall have the right to enter upon and take possession of the mortgaged property and after or without taking such possession to sell the same before the Court House door of the County (or the division thereof) where said property, or any substantial part of said property, is located, 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 County; and upon the payment of the purchase price, Mortgagee or the auctioneer at said sale is authorized to execute to the purchaser for and in the name of Mortgagors a good and sufficient deed to the property sold. And upon the occurrence of any such event, Mortgagee shall have the rights and remedies of a secured party after default by its debtor under the Alabama Uniform Commercial Code, including, without limitation, the right to take possession of any of the property herein transferred which is personal property and to sell the same at one or more public or private sales, at the election of Mortgagee. At Mortgagee's request, Mortgagors agree to assemble such property and to make the same available to Mortgagee at such place as Mortgagee shall reasonably designate. Mortgagors agree that notice of the time and place of any public sale or of the time after which any private sale or other intended disposition of said property, or of any part thereof, will be held shall be sufficient if delivered to Mortgagors or mailed to Mortgagors at the address set forth above or such other address as Mortgagors shall have furnished to Mortgagee in writing for that purpose, not less than five days before the date of such sale or other intended disposition of said property. Mortgagee shall apply the proceeds of said sale or sales under this mortgage as follows: First, to the expenses of advertising, selling and conveying, including a reasonable attorneys' fee (including attorneys' fees incurred by Mortgagee in connection with any proceeding seeking to enjoin the foreclosure of this mortgage or otherwise challenging the right of Mortgagee to foreclose this mortgage); second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes, assessments, and other liens and mortgages, and in making repairs, with interest thereon; third, to the payment of the indebtedness hereby secured and interest thereon in such order as Mortgagee may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to Mortgagors or to whomsoever then appears of record to be the owner of Mortgagors' interest in said property. Mortgagee may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder. Mortgagors hereby waive any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagee may, at its option, sell said property en masse regardless of the number of parcels hereby conveyed.

IN WITNESS WHEREOF, each of the undersigned  
APPLEGATE REALTY, INC.

has hereunto set his or her signature and seal or has caused this instrument to be executed by its officer(s) thereto duly authorized, this

26th day of JULY, 1991.

  
RANDALL H. GOGGANS - PRESIDENT (SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

ATTEST: \_\_\_\_\_

Its \_\_\_\_\_  
(Corporate Seal)

By \_\_\_\_\_

Its \_\_\_\_\_

I hereby certify that the amount of indebtedness presently incurred is \$ 121,343.87



THE STATE OF ALABAMA,

INDIVIDUAL ACKNOWLEDGMENT

\_\_\_\_\_ COUNTY

I, the undersigned, 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\_\_\_\_

(Notarial Seal)

\_\_\_\_\_  
Notary Public

THE STATE OF ALABAMA,

INDIVIDUAL ACKNOWLEDGMENT

\_\_\_\_\_ COUNTY

I, the undersigned, 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\_\_\_\_

(Notarial Seal)

\_\_\_\_\_  
Notary Public

THE STATE OF ALABAMA,

CORPORATE ACKNOWLEDGMENT

SHELBY \_\_\_\_\_ COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_

RANDALL H. GOGGANS \_\_\_\_\_ whose name as \_\_\_\_\_ President

of the \_\_\_\_\_ APPLEGATE REALTY, INC., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, \_\_\_\_\_ he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this \_\_\_\_\_ 26TH \_\_\_\_\_ day of \_\_\_\_\_ JULY \_\_\_\_\_, 19 91

(Notarial Seal)

*Jon Ellen Nix*

My Commission Expires \_\_\_\_\_  
Notary Public  
Nov. 15, 1992

PLEASE RETURN  
TO

REAL ESTATE  
MORTGAGE  
AND SECURITY  
AGREEMENT

THE STATE OF ALABAMA,

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

Office of the Judge of Probate.

hereby certify that the within mortgage was

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

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

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

\_\_\_\_\_ of Mortgages, at page

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

\_\_\_\_\_  
Judge of Probate.

## ADJUSTABLE RATE NOTE

(Interest Rate Limits)

This Note contains provisions allowing for changes in the interest rate. Increases in the interest rate will result in larger monthly payments. Decreases in the interest rate may result in smaller monthly payments, but not smaller than the amount of the initial monthly payment.

Birmingham, Alabama

July 26, 1991

1317, 1319 and 1321 APPLEGATE DRIVE, ALABASTER, ALABAMA 35007

(Property Address)

### 1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 121,343.87 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION. I understand that the Lender may transfer this Note.

Interest will be charged on that part of principal which has not been paid, beginning on the date I receive principal and continuing until the full amount of principal has been paid.

Beginning on the date I receive principal, I will pay interest at a yearly rate of 9.80%. The interest rate I will pay will change in accordance with Section 4 of this Note.

The interest rate required by this Section and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

### 2. DEFINITIONS

When used in this Note, the terms set out below shall mean:

"Change Date" means each date, as described in Section 4(A), on which the interest rate may change under this Note.

"Current Index" means the index as of the first business day of the month immediately preceding each Change Date.

"Index" means the weekly average yield on United States Treasury Securities adjusted to a constant maturity of one year, as made available by the Federal Reserve Board. The index upon which my initial rate of interest has been calculated is 6.30%. If the index is no longer available, the Note Holder will choose a new index which is based upon comparable information. The Note Holder will give me notice of this choice.

"Initial monthly payment" means the amount specified in Section 3(B).

"Initial rate of interest" means the rate specified in Section 1.

"Margin" means 3.50%.

"Maturity Date" means August 1, 2006.

"Mortgage" means the security agreement and/or real estate mortgage described in Section 11.

"Note Holder" means the Lender, or anyone who takes this Note by transfer and is entitled to receive payments under this Note.

"new interest rate" means the rate of interest calculated to be effective on a Change Date.

"new monthly payment" means the monthly payment required, based on the new interest rate and the term remaining until the Maturity Date, to repay in substantially equal monthly payments the outstanding principal and interest. It will not be less than the initial monthly payment.

"prepayment" means a payment of principal only.

### 3. PAYMENTS

#### (A) Time and Place of Payments

I will pay principal and interest by making payments on the first day of each month beginning on September 1, 1991. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on the Maturity Date, I still owe amounts under this Note, I will pay those amounts in full on that date.

I will make my monthly payments at 420 North 20th Street, Birmingham, Alabama or at a different place if required by the Note Holder.

#### (B) Amount of Monthly Payments; Limits on Decreases

My initial monthly payment will be in the amount of U.S. \$ 1289.16. This amount will change if the interest rate that I must pay changes. The Note Holder will determine my new interest rate and my new monthly payment in accordance with Section 4 of this Note. The new monthly payment calculated under Section 4 will not be less than the initial monthly payment.

### 4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

#### (A) Interest Rate Change Dates

The rate of interest I will pay may change eleven months after the date the first monthly payment is due under this Note, and may also change every twelve months thereafter.

#### (B) The Index

Any changes in the rate of interest will be based on changes in the index.

#### (C) Calculation of Changes

**Interest Rate** — Before each Change Date, the Note Holder will calculate my new interest rate by adding the Margin to the Current Index.

**Monthly Payment** — After calculating the new interest rate, the Note Holder will calculate the new monthly payment. It will be based upon the amount of principal outstanding, the remaining term until the Maturity Date and the new interest rate.

#### (D) Limits on Interest Rate Changes

The rate of interest I am required to pay will not increase or decrease on any Change Date by more than 2%. My interest rate will never be greater than 15.80%.

#### (E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

#### (F) Notice of Changes

The Note Holder will mail or deliver to me a notice of any changes in the amount of my monthly payment before the effective date of any change.

359 PAGE 117

## 5. BORROWER'S RIGHT TO PREPAY

I have the right to make prepayments at any time. When I make a prepayment, I will tell the Note Holder in writing that I am doing so. I may make a full prepayment or a partial prepayment without paying any penalty. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no delays in the due dates of my monthly payments unless the Note Holder agrees in writing to those delays. My partial prepayment will reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase, and my monthly payment amount will never be less than the initial monthly amount set forth above in Section 3(B).

## 6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then; (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceed permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

## 7. BORROWER'S FAILURE TO PAY AS REQUIRED

### (A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any of my monthly payments by the end of 10 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5% of my overdue payment of principal and interest, but not more than \$100. I will pay this late charge only once on any late payment.

### (B) Default

If I do not pay the full amount of each monthly payment on time, I will be in default. I will also be in default if the mortgagors or grantors named in the Mortgage described in Section 11 of this Note fail to keep any of the promises made in the Mortgage.

### (C) Requirement that I Pay Entire Unpaid Balance Upon Default

If I am in default, the Note Holder may require me to pay immediately the full amount of the principal which has not been paid, all interest that I owe on the principal, and all unpaid late charges, if any. The Note Holder will not be required to make any demand on me or to give me any notice of its election to require me to pay immediately in full.

### (D) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described in paragraph (C) above, the Note Holder will have the right to be paid back for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

## 8. GIVING OF NOTICES

Unless applicable law requires a different method of giving notice, any notice that must be given to me under this Note or under applicable law may be given by delivering it or by mailing it by first-class mail addressed to me at the Mailing Address below or at a different address if I give the Note Holder a written notice of my different address.

If more than one person signs below as Borrower, a single notice addressed to them or to any of them and mailed or delivered to any of them will be sufficient. Each Borrower hereby appoints the others as his or her agent to receive all such notices and each Borrower agrees that such appointment shall remain effective until the Note Holder receives a written notice of termination.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or mailing it first-class mail to the Note Holder at the address stated in Section 3(A) on the reverse side or at a different address if I am given a notice of that different address.

## 9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note as Borrower, the words "I," "me," and "my" as used in this Note mean each such person and also all of them, and each person is fully and personally obligated to keep all the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety, or endorser of this Note is also obligated to do these things. Any person who takes over my obligations under this Note or any other person who takes over the obligations of a guarantor, surety, or endorser of this Note is also obligated to keep all of the promises made in this Note. (Assumption of obligations under this Note in connection with certain sales or transfers of an interest in, or transfers of possession of, the property described in the Mortgage which secures this Note may be prohibited by the terms of the Mortgage unless the Note Holder first consents in writing.) The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

## 10. WAIVERS

I and any other person who has obligations under this Note waive demand, presentment, dishonor and notice of dishonor, and waive exemption of personal property from levy and execution for the satisfaction of any amount owed under this Note, except that no limitation on the garnishment of wages provided by applicable law is waived hereby.

## 11. THIS NOTE IS SECURED BY A MORTGAGE

In addition to the protections given to the Note Holder under this Note, the Note Holder is also entitled to the benefit and protection of that certain security agreement and/or that certain real estate mortgage dated the same date as this Note. The Mortgage contains provisions under which I may be required to make immediate payment in full of all amounts I owe under this Note. One such provision of the Mortgage permits the Note Holder to require me to pay the outstanding principal and unpaid interest and late charges, if any, immediately if I sell or transfer an interest in, or transfer possession of, the property described in the Mortgage without the Note Holder's consent, except certain permitted transfers described in the Mortgage.

## 12. GOVERNING LAW

This Note shall be governed and enforced in accordance with the applicable laws of the United States and the laws of the State of Alabama.

IN WITNESS WHEREOF, each of the undersigned has executed this Note as Borrower and has affixed his or her seal to this Note on the date set forth on the reverse side.

**CAUTION — It is important that you thoroughly read the contract before you sign it.**

Mailing Address of Borrower:

150 OLD TOWNE ROAD

BIRMINGHAM, ALABAMA 35216

ACCOUNT #1010-335-0

APPLGATE REALTY, INC.  
Borrower RANDALL H. GOGGANS - PRESIDENT (Seal)

Borrower (Seal)

Borrower (Seal)

BOOK 359 PAGE 119

4. The land referred to in this Commitment is described as follows:

Lots 98, 99 and 100, according to a Resurvey of Lots 1 through 64, 89 through 104 and A through C of Applegate Manor, as recorded in Map Book 10 page 25, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama; together with all of the rights, privileges, easements and appurtenant ownership interest in and to premises previously conveyed by Applegate Realty, Inc. to the Applegate Townhouse Association, Inc. by deed recorded in Probate Office of Shelby County, Alabama, in Real 065 page 201 and Real 318 page 135, and as more fully defined in the Declaration of Covenants, Conditions and Restrictions of Applegate Townhouse recorded in the Probate Office of Shelby County, Alabama, in Real 63 page 634, as amended by Corporation Record 43 page 711; being situated in Shelby County, Alabama.

STATE OF ALABAMA BY CO.

1991 AUG 16 AM 8:34

*Thomas A. [Signature]*  
JUDGE OF PROBATE

tax 182.10  
Rec 17.50  
Int 300  
Cert 100  

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203.60