

## REAL ESTATE MORTGAGE AND SECURITY AGREEMENT

Mortgagor:

Joe A. Scotch, Jr.  
Wayne J. Scotch  
503-C Cahaba Park Circle  
Birmingham, Alabama 35424

Mortgagee:

The Trustees Under the Testamentary  
Trusts Created Under the Last Will  
And Testament of Joe A. Scotch, Sr.,  
Deceased, for the benefit of Shellie  
Jo Scotch and Susanne D. Scotch

This instrument was prepared by:  
Peter E. Barber  
Wallace, Jordan, Ratliff, Byers & Brandt  
525 SouthBridge Building  
2000 SouthBridge Parkway  
Birmingham, Alabama 35209

STATE OF ALABAMA     )  
SHELBY COUNTY         )

**KNOW ALL MEN BY THESE PRESENTS:** That whereas **JOE A. SCOTCH, JR.** and **WAYNE J. SCOTCH** have become justly indebted to **THE TRUSTEES** (or any successors thereto) **UNDER THE LAST WILL AND TESTAMENT OF JOE A. SCOTCH, SR.,** deceased, for the benefit of **SHELLIE S. JONES** (f/k/a Shellie S. Scotch) and **SUZANNE D SCOTCH** (together with their successors and assigns, hereinafter called "Mortgagees") in the sum of One Hundred Thirty Three Thousand and No/100 Dollars (\$133,000.00) each together with interest thereon, for a total principal indebtedness of Two Hundred Sixty-Six Thousand and No/100 Dollars (\$266,000.00) as evidenced by two Promissory Notes 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 thereof and the interest thereon, and all other indebtedness (including future advances) now or hereafter owed by any of the above-named to Mortgagees, 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

Inst # 1994-14408  
05/03/1994-14408  
02:08 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
430.00  
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hereinafter contained, the undersigned Joe A. Scotch, Jr. and Wayne D. Scotch (whether one or more, hereinafter called "Mortgagor") do hereby assign, grant, bargain, sell and convey unto Mortgagees the following described real property situated in Shelby County, State of Alabama, viz:

**SOURCE OF TITLE:**

The Northwest quarter of the Southeast quarter of Section 7, Township 19 South, Range 1 West, LESS AND EXCEPT: The South 400' of said quarter - quarter section deeded by separate deed dated May 3, 1984, Map Book 355, Page 387 in Shelby County Probate Office.

(the "Property") 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 Mortgagor 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 Mortgagees, its successors and assigns forever.

And for the consideration aforesaid, and as additional security for all of the indebtedness described above (including future advances), Mortgagor hereby assigns and transfers to Mortgagees, and grant to Mortgagees a security interest in, all building materials, household appliances, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by Mortgagor, or any of them, if more than one, 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 Mortgagor, or any of them, if more than one, located or stored on any other real property, which are or shall be purchased by Mortgagor, or any of them, if more than one, 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 Mortgagor warrants, covenants and agrees with Mortgagees, its successors and assigns, as follows:

1. That Mortgagor is lawfully seized in fee and possessed of the mortgaged property and has a good right to convey the same as aforesaid, that Mortgagor 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 Mortgagor will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed upon the mortgaged property, and should default by made in the payment of the same, or any part thereof, Mortgagees may pay the same (but Mortgagees is not obligated to so do). If the mortgaged property or any part thereof is a unit in a condominium or a planned unit development, Mortgagor shall perform all of Mortgagor's 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 Mortgagor default in any of such obligations, Mortgagees may perform Mortgagor's obligations (but Mortgagees is not obligated to do so).
3. That Mortgagor will keep the buildings on the mortgaged property continuously insured in such amounts, in such manner and with such companies as may be satisfactory to Mortgagees against loss by fire (including so-called extended coverage), wind and such other hazards (including flood and water damage) as Mortgagees may specify from time to time, with loss, if any, payable to Mortgagees, and will deposit with Mortgagees policies of such insurance or, at Mortgagees's election, certificates thereof, and will pay the premiums therefore as the same become due. Mortgagor shall have the right to provide such insurance through a policy or policies independently obtained and paid for by Mortgagor or through an existing policy. Mortgagees may, for reasonable cause, refuse to accept any policy of insurance obtained by Mortgagor. Mortgagor shall give immediate notice in writing to Mortgagees of any loss or damage to the mortgaged property from any cause whatever. If Mortgagor fails to keep said property insured as above specified, Mortgagees may insure said property (but Mortgagees is not obligated to do so) for its insurable value against loss by fire, wind and other hazards for the benefit of Mortgagor and Mortgagees or for the benefit of Mortgagees alone, at Mortgagees's election. The proceeds of such insurance shall be paid by the insurer to Mortgagees, which is hereby granted full power to settle and compromise claims under all policies, to endorse in the name of Mortgagor 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 premises on the mortgaged property, at Mortgagees's election. Any application of the insurance proceeds to repairing or reconstructing the premises on the mortgaged property shall not 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 Mortgagees and continuing until the indebtedness secured hereby is paid in full, Mortgagor will pay to Mortgagees 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 Mortgagees), less any sums already paid to Mortgagees therefore, 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 Mortgagees 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 Mortgagor each month or other payment period in a single payment to be applied by Mortgagees 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 sum 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 therefore, Mortgagor shall without demand forthwith make good the deficiency. Failure by Mortgagor 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 Mortgagees 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 Mortgagor 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 Mortgagor 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 along excepted. If Mortgagor fails to make repairs to the mortgaged property, Mortgagees may make such repairs at Mortgagor's expense (but Mortgagees is not obligated to do so). Mortgagees, 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 Mortgagees for insurance or for the payment of taxes or assessments or to discharge liens on the mortgaged property or other obligations



of Mortgagor or to make repairs to the mortgaged property or any improvements thereon shall become a debt due Mortgagees, 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 Mortgagees, and such debt and the interest thereon shall be secured by this mortgage. Upon failure of Mortgagor to reimburse Mortgagees for all amounts so expended, at the election of Mortgagees and with or without notice to any person, Mortgagees 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 Mortgagees 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 Mortgagor, and that the procurement of insurance or payment of taxes or other liens or assessments or obligations by Mortgagees 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 Mortgagor that no terms or conditions contained in this mortgage can be waived, altered or changed except by a writing signed by Mortgagees.

8. That those parties 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 the Mortgagor to Mortgagees, 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, Mortgagees 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 Mortgagor hereby consent without regard to the sufficiency of the security or the solvency of any party), and Mortgagees may notify the lessees or other payors thereof to make payment directly to Mortgagees. Any rents, income and profits collected by Mortgagees 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 Mortgagees 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 hereby secured.

10. That if possession of the mortgaged property is allowed to remain in any other person or entity to the exclusion of Mortgagor for a period of one year or more, or if all or any part of the mortgaged property or any interest therein is sold, assigned, transferred or

conveyed by Mortgagor, or any of them, if more than one, without Mortgagees's prior written consent, excluding only (a) the creation of a lien or encumbrance expressly subordinate to this mortgage, (b) the creation of a purchase money security interest for personal property, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant, or (d) the grant of any leasehold interest of one year or less (including all mandatory or optional renewal periods) not containing an option to purchase, Mortgagees may, at Mortgagees's option, declare all indebtedness secured by this mortgage to be due and payable immediately with or without notice to Mortgagor. Mortgagees may condition its consent to any such transfer of possession of, or an interest in, the mortgaged property upon the transferee's agreement 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 Mortgagees's approval of the creditworthiness of the transferee, and upon the transferee's payment to Mortgagees of a reasonable transfer or assumption fee. Upon breach by Mortgagor, or any of them, if more than one, of the covenants herein contained, Mortgagees 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 Mortgagor 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 Mortgagees shall insure to the benefit of the successors and assigns of Mortgagees.

12. That 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 Mortgagees herein are cumulative with the rights and remedies of Mortgagees at law and in equity, and such rights and remedies may be exercised concurrently or consecutively. A carbon or photostatic copy of this mortgage may be filed as a financing statement in any public office. Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

**UPON CONDITION, HOWEVER,** that if Mortgagor shall well and truly pay and discharge all the indebtedness hereby secured (including future advances) as the same shall become due and payable and shall in all things do and perform all acts and agreements by Mortgagor 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 Mortgagees under the authority of any provision of this mortgage, or should



the interest of Mortgagees 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 Mortgagor 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 Mortgagees, notice of the exercise of such option being hereby expressly waived by Mortgagor, and Mortgagees 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, 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, Mortgagees or the auctioneer at said sale is authorized to execute to the purchaser for and in the name of Mortgagor a good and sufficient deed to the property sold. And upon the occurrence of any such event, Mortgagees 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 Mortgagees. At Mortgagees's request, Mortgagor agrees to assemble such property and to make the same available to Mortgagees at such place as Mortgagees shall reasonably designate. Mortgagor agrees 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 Mortgagor or mailed to Mortgagor at the address set forth above, or such other address as Mortgagor shall have furnished to Mortgagees in writing for that purpose, not less than five (5) days before the date of such sale or other intended disposition of said property. Mortgagees 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 not exceeding 15% of the unpaid debt after default if the original amount financed exceeded \$300; 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 of the indebtedness hereby secured and interest thereon in such order as Mortgagees may elect, whether such debts shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any,

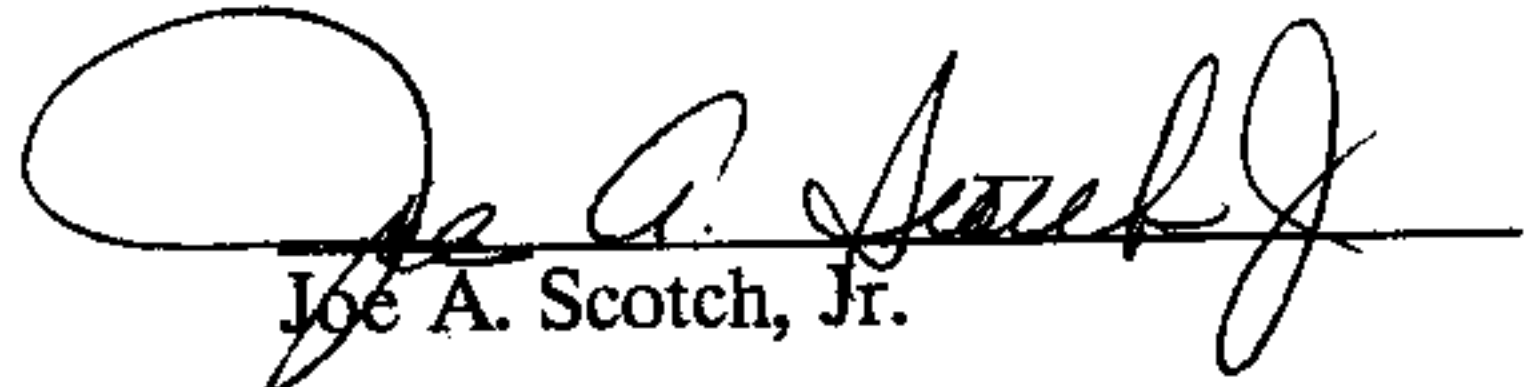
to be paid over to Mortgagor or to whomsoever then appears of record to be the owner of Mortgagor's interest in said property. Mortgagees may bid and become the purchaser of this mortgaged property at any foreclosure sale hereunder. Mortgagor hereby waives any requirement that the mortgaged property be sold in separate tracts and agree that Mortgagees may, at its option, sell said property en masse regardless of the number of parcels hereby conveyed.

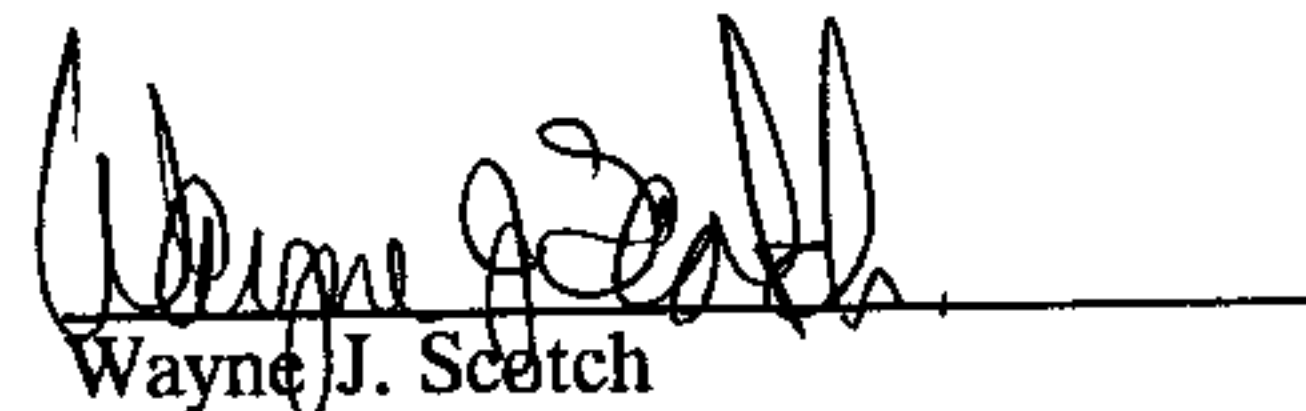
The Mortgagee agrees to release portions of the Mortgaged Property from the lien of this Mortgage, provided that no event of default has occurred, on the following terms and conditions:

- (1) The portions to be released shall consist of separate sections of the Mortgaged Property and shall be described in accordance with a recorded subdivision plan that is satisfactory to the Mortgagee.
- (2) Releases shall be made only to the extent of two times the amount of principal indebtedness, and not to the extent of any interest indebtedness, that has been paid on the Note.
- (3) Each request for a release shall include a field survey of the area to be released if the Mortgagee so requests, a release instrument in form and substance satisfactory to the Mortgagee, and a check in the appropriate amount.
- (4) All costs incident to the preparation and recordation of release documents shall be borne by the Mortgagor.

The Mortgagee further agrees to release a portion of the Property for a roadway suitable for public dedication such roadway to be substantially in compliance with the preliminary survey attached hereto as Exhibit A, such release to be granted on the condition that Mortgagor is not in default of any provision of this Mortgage not the promissory notes which this mortgage secures and upon condition that evidence is given showing roadway is needed for public dedication.

IN WITNESS WHEREOF, the undersigned have hereunto set their signature and seal this the 29 day of April, 1994.

  
Joe A. Scotch, Jr.

  
Wayne J. Scotch



STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Joe A. Scotch, Jr., an individual whose name is signed to the foregoing Real Estate Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said Mortgage, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 29 day of April, 1994.

Anne C. Vines  
Notary Public

My Commission Expires: 10/11/95

STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that Wayne J. Scotch, an individual whose name is signed to the foregoing Real Estate Mortgage and Security Agreement, and who is known to me, acknowledged before me on this day, that, being informed of the contents of said Mortgage, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 29 day of April, 1994.

Anne C. Vines  
Notary Public

My Commission Expires: 10/11/95

# EXHIBIT A TO MORTGAGE

