

This instrument prepared by
and to be returned to:
Ray D. Gibbons, Esq.
Gordon, Silberman, Wiggins & Childs, P.C.
1400 SouthTrust Tower
Birmingham, Alabama 35203

FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT

STATE OF ALABAMA)
COUNTY OF SHELBY)

THIS FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT ("First Amendment") is made and entered into as of the 24th day of January, 1996, by and between CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership, whose address is 5718 Westheimer, Suite 2100, Houston, Texas 77057, Attention: Alan E. Ferris ("Mortgagor") and SOUTHTRUST BANK OF ALABAMA, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States of America with principal offices in Birmingham, Alabama, whose address is 420 North 20th Street (35203), P. O. Box 2554, Birmingham, Alabama 35290, Attention: Commercial Real Estate Department (hereinafter referred to as "Mortgagee").

WHEREAS, Mortgagor heretofore executed and delivered that certain Mortgage and Security Agreement dated December 15, 1995 (the "Mortgage") in favor of Mortgagee, the Mortgage being recorded at Instrument Number 1995-36411, in the office of the Judge of Probate of Shelby County, Alabama, and recorded at Instrument Number 9601/3416, in the Office of the Judge of Probate of Jefferson County, Alabama; and

WHEREAS, the Mortgagor has acquired that certain tract, parcel of land, and interests in land, more particularly described on Exhibit "A-1" attached hereto and made a part hereof (the "Additional Land"), and the parties desire for this Additional Land to comprise a portion of the Mortgaged Property (as defined in the Mortgage) for all purposes set out in the Mortgage, and as more specifically hereinafter set forth; and

Inst # 1996-04010

1

02/07/1996-04010
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WHEREAS, the Mortgagor and the Mortgagee have agreed to amend the Mortgage as hereinafter set forth.

NOW, THEREFORE, for and in consideration of One and No/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged:

1. Mortgagee and Mortgagor hereby amend the Mortgage as follows: (a) the definition of the Land (as defined in the Mortgage) is hereby amended to include the Additional Land, (b) the definition of the Improvements (as defined in the Mortgage) is hereby amended to include all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Additional Land, and all gas and electric fixtures, radiators, heaters, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to said buildings, structures or improvements, and all other furnishings, furniture, fixtures, machinery, equipment, appliances, vehicles and personal property of every kind and nature whatsoever now or hereafter owned by Mortgagor and located in, on or about, or used or intended to be used with or in connection with the construction, use, operation or enjoyment of the Mortgaged Property, including all extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds from a permitted sale of any of the foregoing, and all building materials and supplies of every kind now or hereafter placed or located on the Additional Land (the "Additional Improvements"), all of which are hereby declared and shall be deemed to be fixtures and accessions to the Additional Land and a part of the Mortgaged Property as between the parties hereto and all persons claiming by, through or under them, and which shall be deemed to be a portion of the security for the indebtedness herein described and to be secured by the Mortgage and in furtherance thereof and, (c) the definition of the Mortgaged Property (as defined in the Mortgage) is hereby amended to include the Additional Land and the Additional Improvements; and (d) to further secure the prompt payment and performance of the Secured Obligations (as defined in the Mortgage),

Mortgagor does hereby irrevocably CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE and set over unto Mortgagee, and the successors and assigns of Mortgagee, all of the following described land and interests in land, estates, easements, rights, improvements, personal property, fixtures, equipment, furniture, furnishings, appliances and appurtenances, including replacements and additions thereto [which shall be considered a portion of the Mortgaged Property (as defined in the Mortgage)]:

- (i) The Additional Land;
- (ii) The Additional Improvements;
- (iii) All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, flowers, shrubs, crops, trees, timber and other emblements now or hereafter located on the Additional Land or under or above the same or any part or parcel thereof, and all ground leases, estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances, reversions, and remainders whatsoever, in any way belonging, relating or appertaining to the Mortgaged Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor; and
- (iv) All rents, issues, profits, revenues and proceeds from any sale or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under leases, ground leases or tenancies, proceeds of insurance, condemnation payments, tenant security deposits and escrow funds), and all of the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Mortgagor of, in and to the same, reserving only the right to Mortgagor to collect the same so long as there is not existing an Event of Default (after the giving of any required notice and the expiration of any applicable grace or cure period) hereunder or such collection is not otherwise restricted by this Mortgage.

TO HAVE AND TO HOLD the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Mortgagee and the successors, successors-in-title and assigns of Mortgagee, forever; and Mortgagor covenants that Mortgagor is lawfully seized and possessed of the Mortgaged Property as aforesaid and has good right to convey the same, that the same are unencumbered except for those matters expressly set forth in Exhibit A-1 hereto, and Mortgagor does warrant and will forever defend the title thereto against the claims of all persons whomsoever, except as to those matters set forth in said Exhibit A-1.

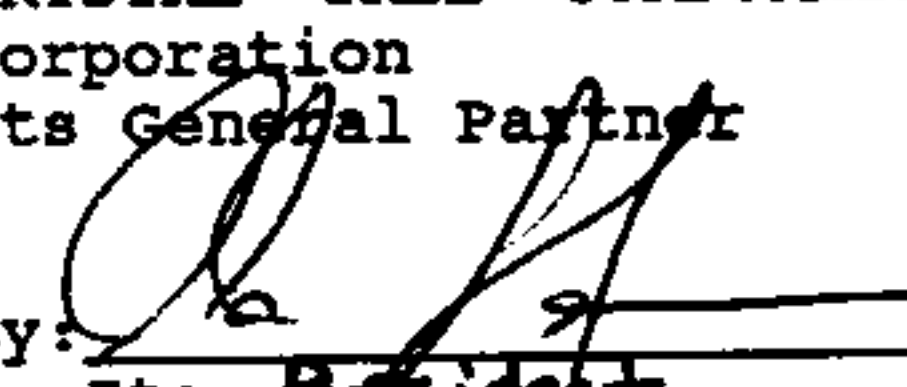
2. Except as hereinabove expressly amended, the terms of the Mortgage are hereby ratified and affirmed.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed by a duly authorized officer of its duly authorized general partner and Mortgagee has caused this instrument to be executed by its duly authorized officer as of the day and year first above written.

MORTGAGOR:

CRYSTAL TREE I LIMITED PARTNERSHIP, a Texas limited partnership

By: CRYSTAL TREE CORPORATION, a Texas corporation
Its General Partner

By: 
Its President

MORTGAGEE:

SOUTHTRUST BANK OF ALABAMA,
NATIONAL ASSOCIATION,
a national banking association

By: 
Its Vice President

[ACKNOWLEDGEMENTS ON FOLLOWING PAGE]

STATE OF TEXAS)
COUNTY OF HARRIS)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that ALAN E. FERRIS, whose name as PRESIDENT of Crystal Tree Corporation, a Texas corporation, as general partner of Crystal Tree I Limited Partnership, a Texas limited partnership, is signed to the foregoing instrument, 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, acting in its capacity as general partner of said limited partnership as aforesaid.

Given under my hand and official seal, this the 24th day of January, 1996.

(SEAL)



Anne Arreaga
Notary Public
My Commission Expires: 10/8/96

STATE OF Alabama)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that W. Jody Henson, whose name as Vice President of SouthTrust Bank of Alabama, National Association, a national banking association, is signed to the foregoing instrument, 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 banking association.

Given under my hand and official seal, this the 25th day of January, 1996.

(SEAL)

Cheryl Robinson
Notary Public
My Commission Expires: 7-10-99

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EXHIBIT A-1

Legal Description

A parcel of land situated in the N.E. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of the N.E. 1/4 of the S.E. 1/4 of Section 25, Township 18 South, Range 2 West and run in an Easterly direction along the South line of said 1/4-1/4 section a distance of 907.79 feet, more or less, to the Southwesterly right-of-way line of Cahaba Beach Road; thence $159^{\circ}31'46''$ to the left in a Northwesterly direction along the Southwesterly right-of-way line of said road a distance of 142.98 feet, more or less, to a point on a line that is 50.00 feet North of and parallel to the South line of said 1/4-1/4 section; thence $20^{\circ}28'14''$ to the left in a Westerly direction along a line that is 50.00 feet North of and parallel to the South line of said 1/4-1/4 section a distance of 565.77 feet, more or less, to a point; thence $90^{\circ}00'$ to the right in a Northerly direction a distance of 10.00 feet to a point on a line that is 60.00 feet North of and parallel to the South line of said 1/4-1/4 section; thence $90^{\circ}00'$ to the left in a Westerly direction along a line that is 60.00 feet North of and parallel to the South line of said 1/4-1/4 section a distance of 150.00 feet to a point; thence $90^{\circ}00'$ to the left in a Southerly direction a distance of 10.00 feet to a point on a line that is 50.00 feet North of and parallel to the South line of said 1/4-1/4 section; thence $90^{\circ}00'$ to the right in a Westerly direction along a line that is 50.00 feet North of and parallel to the South line of said 1/4-1/4 section a distance of 60.00 feet to a point on the West line of said 1/4-1/4 section; thence left in a Southerly direction along the West line of said 1/4-1/4 section a distance of 50.04 feet to the POINT OF BEGINNING.

This conveyance is subject to the following:

1. Taxes due in year 1995;
2. Easement to South Central Bell as shown by instrument recorded in Deed 345, Page 388 in the Probate Office of Shelby County, Alabama;
3. 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 121, Page 414 in the Probate Office of Shelby County; and
4. The restrictive covenants contained on Page 2 of Exhibit A-1 attached hereto and incorporated herein by reference.

EXHIBIT A-1

Restrictions and Covenants

To that certain Warranty Deed by and between Serene K. Bateh, Najwa S. Bateh and Crystal Tree I Limited Partnership.

Grantors own a tract of land of which the Subject Property constitutes a small strip. After the conveyance of the Subject Property, the Grantors shall continue to own the "Grantors' Remaining Property" situated adjacent to the Subject Property. Grantee is the owner of a tract of land ("Grantee's Property") situated adjacent to the westerly end of the Subject Property. It is intended that the Subject Property afford ingress and egress to and from Grantee's Property to Cahaba Beach Road. Accordingly, the following restrictive covenants shall apply to the Subject Property:

- (a) The Subject Property may be improved only as a roadway for ingress and egress to and from Cahaba Beach Road to the Grantee's Property, for installation of utilities and for signage at the entrance of Cahaba Beach Road. Such improvements shall also include the right to fence the roadway and to install an access and security gate.
- (b) No party may be granted use of the roadway except for Grantee, as owner of the Grantee's Property, its successors and assigns, and its employees, contractors, tenants, agents and family members and guests of Tenants, and the Water Works Board of the City of Birmingham, as well as public and emergency vehicles. It is intended that the roadway will be an appurtenance of the Grantee's Property.
- (c) Grantors reserve the right for themselves and their family members, executors, heirs and to any single family residence which fronts on the roadway to use the roadway. Access to the roadway will not be permitted for any multi-family, commercial or other use conducted on the remaining property owned by the Grantors. If Grantee places a lock on the gate at the entry to Cahaba Beach Road, a key to the lock will be delivered to Grantors.
- (d) The covenants contained in paragraphs (a), (b) and (c) above shall remain in effect for a period of forty (40) years or until the Subject Property is no longer used for roadway purposes or until the then owners of the Grantee's Property and the remaining property of Grantors mutually agree.

CRYSTAL TREE I LIMITED PARTNERSHIP

By: CRYSTAL TREE, INC.

By: 

Its: President

Inst # 1996-04010

Ex.A-1, Page 2

02/07/1996-04010
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