

This instrument prepared by  
and after recording return to:

Bradley M. Harris, Esq.  
Burr & Forman LLP  
420 North Twentieth Street, Suite 3100  
Birmingham, Alabama 35203

**THE MAXIMUM PRINCIPAL INDEBTEDNESS SECURED HEREBY IS \$448,000.00.**

**MORTGAGE AND SECURITY AGREEMENT**

**THIS MORTGAGE AND SECURITY AGREEMENT** (this "Mortgage"), is made and entered into as of the 4th day of November, 2003, by **STRICKLAND TRADING, INC.**, an Alabama corporation, whose address is 101 Carnoustie, Shoal Creek, Alabama 35242, Attention: Mr. William R. Strickland (the "Borrower") in favor of **SOUTHTRUST BANK**, a banking corporation organized and existing under the Laws of the State of Alabama with principal offices in Birmingham, Alabama, whose address is 420 North 20th Street, 1100 SouthTrust Tower, Birmingham, Alabama 35203, Attention: Middle Market Banking Department (the "Bank"). Capitalized terms used herein but not defined shall have the meaning ascribed to such terms in that certain Credit Agreement dated of even date herewith between Borrower and Bank (as amended from time to time, the "Credit Agreement").

**WITNESSETH:**

**WHEREAS**, Borrower is justly indebted to Bank in the principal amount of Seven Million Four Hundred Forty-Eight Thousand and No/100 Dollars (\$7,448,000.00), or such portion thereof as has been disbursed from time to time under the provisions of the Credit Agreement; and

**WHEREAS**, Borrower and Bank desire to secure the Obligations, including but not limited to the obligation (i) to pay the principal of and interest on the Notes in accordance with the respective terms thereof or of the Credit Agreement, including any and all extensions, modifications, and renewals thereof and substitutions therefor, and (ii) to pay, repay or reimburse Bank for all amounts owing under any of the Loan Documents, including all Indemnified Losses and Default Costs.

**NOW, THEREFORE**, for and in consideration of Bank extending the credit under the Credit Agreement and to secure the prompt payment and performance of the Obligations, Borrower does hereby irrevocably **MORTGAGE, CONVEY, WARRANT, GRANT, BARGAIN, SELL, ASSIGN, TRANSFER, PLEDGE, SET OVER UNTO, HYPOTHECATE AND AFFECT** to and in favor of Bank, and the successors and assigns of Bank, all of Borrower's Interest in and to 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 (herein referred to collectively as the "Mortgaged Property"):

(A) All those certain tracts, pieces or parcels of land, and interests in land, located in Shelby County, Alabama, more particularly described in Exhibit A attached hereto and by this reference made a part hereof (the "Land");

(B) All buildings, structures and improvements of every nature whatsoever now or hereafter situated on the 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 Borrower 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 Land (collectively, the "Improvements");

(C) 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 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 Borrower;

(D) All estate, right, title and interest of Borrower, as landlord or lessor or otherwise, in and to all leases of and other agreements for, affecting or related to the use and occupancy of all or any portion of the Mortgaged Property, now or hereafter entered into [including any use or occupancy arrangements created pursuant to Section 365(d) of Title 11 of the United States Code (the "Bankruptcy Code") or otherwise in connection with the commencement or continuance of any bankruptcy, reorganization, arrangement, insolvency, dissolution, receivership or similar proceedings, or any assignment for the benefit of creditors, in respect of any tenant or other occupant of all or any portion of the Mortgaged Property and all extensions, amendments and modifications thereto heretofore or hereafter entered into]; and

(E) All rents, issues, profits, revenues and proceeds from any sale, lease or other disposition of the Mortgaged Property, or any part thereof, from time to time accruing (including without limitation all payments under any 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 Borrower of, in and to the same.

**TO HAVE AND TO HOLD** the Mortgaged Property and all parts, rights, members and appurtenances thereof, to the use and benefit of Bank and the successors, successors-in-title and assigns of Bank, forever; and Borrower covenants that Borrower 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 hereto, and Borrower does hereby 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.

The Lien of this Mortgage automatically will attach to any further, greater, additional or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time hereafter acquired by Borrower by whatsoever means and without any further action or filing or recording on the part of Borrower or Bank or any other Person.

**BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS:**

**ARTICLE 1**

**1.01 Payment and Performance of Loan Documents.** Borrower will perform, observe and comply with all the provisions hereof, and of each of the other Loan Documents, including, but not limited to, the due and punctual payment of the principal amount due under the Notes, together with interest thereon, and all other sums of money required to be paid by Borrower pursuant to any one or more of the Loan Documents.

**1.02 Security Agreement.** With respect to all personal property (the "Personal Property") constituting part of the Mortgaged Property which is subject to the provisions of Article 9 of the Uniform Commercial Code as enacted in the state wherein the Land is situated (the "UCC"), this Mortgage is hereby made and declared to be a security agreement encumbering each and every item of such Personal Property in compliance with the provisions of the UCC, and Borrower hereby grants to Bank a Lien (and security interest) in, on and upon said Personal Property. Borrower is the "debtor" for purposes of the UCC, and Bank is the "secured party" for purposes of the UCC, and Borrower is the record owner of the Land. A financing statement or statements reciting this Mortgage to be a security agreement affecting all of such Personal Property shall be executed by Borrower and Bank and appropriately filed by Bank. The remedies for any violation of the covenants, terms and conditions of the security agreement contained in this Mortgage, or otherwise in respect of an Event of Default, shall be (a) as prescribed herein or in any other Loan Document with respect thereto, or (b) as prescribed by applicable Law, including the UCC, all at Bank's sole election. Borrower agrees that the filing of such financing statement(s) in the records normally having to do with personal property shall not in any way affect the agreement of Borrower and Bank that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Mortgage, is, and at all times and for all purposes and in all proceedings both legal or equitable, shall be regarded as part of the real estate conveyed hereby regardless of whether (i) any such item is physically attached to the Improvements, (ii) serial numbers are used for the better identification of certain items capable of being thus identified in an Exhibit to this Mortgage, or (iii) any such item is referred to or reflected in any such financing statement(s) so filed at any time. Similarly, the mention in any such financing statement(s) of the rights in and to (A) the proceeds of any fire and/or hazard insurance policy, or (B) any award in eminent domain proceedings for taking or for loss of value, or (C) Borrower's interest as lessor in any present or future lease or rights to income growing out of the use and/or occupancy of the Mortgaged Property, whether pursuant to lease or otherwise, shall not in any way alter any of the rights of Bank as determined by this instrument or affect the priority of Bank's Lien granted

hereby or by any other recorded document, it being understood and agreed that such mention in such financing statement(s) is solely for the protection of Bank in the event any court shall at any time hold, with respect to the foregoing items (A), (B), or (C), that notice of Bank's priority of interest, to be effective against a particular class of persons, must be filed in the UCC records. This Mortgage may be filed as a financing statement in any office where Bank deems such filing necessary or desirable and Borrower will promptly upon demand reimburse Bank for the costs therefor.

**1.03 Use of Mortgaged Property.** Borrower shall at all times use the Mortgaged Property only in connection with the operation of Borrower's business. Borrower shall not be permitted to alter or change the use of the Mortgaged Property without the prior written consent of Bank, which consent shall not be unreasonably withheld, delayed or conditioned.

**1.04 Conveyance of Mortgaged Property.** Except as otherwise expressly permitted by the Credit Agreement, Borrower shall not directly or indirectly encumber (by lien, junior mortgage, or otherwise), pledge, convey, transfer or assign any or all of its interest in the Mortgaged Property without the prior written consent of Bank.

## **ARTICLE 2**

**2.01 Events of Default.** The term "Event of Default", wherever used in this Mortgage, shall mean an "Event of Default" as defined in the Credit Agreement.

**2.02 Rights and Remedies.**

(a) If an Event of Default shall have occurred, then in addition to the rights and remedies provided for under any other Loan Document or under applicable Law, then at the option of Bank this Mortgage may be foreclosed in any manner now or hereafter provided by the Laws of the State of Alabama, and Bank, or its agent, may sell such Mortgaged Property or any part of such Mortgaged Property at one or more public sales after having first given notice of the time, place and terms of sale as may be required by applicable Law. At any such sale, Bank may execute and deliver to the purchaser a conveyance of the Mortgaged Property or any part of the Mortgaged Property. Bank, or its agent, shall have the right to enforce any of its remedies set forth herein Without Notice (except any notice as may be required pursuant to the terms of the Credit Agreement). In the event of any sale under this Mortgage by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Mortgaged Property may be sold as an entirety or in separate parcels and in such manner or order as Bank in its sole discretion may elect, and if Bank so elects, Bank, or its agent, may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the UCC, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers, until the entire Mortgaged Property is sold or the Obligations are paid in full. If the Obligations are now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, Bank at its option may exhaust the remedies granted under any of said security instruments or this Mortgage either concurrently or independently, and in such order as Bank may determine.



To the extent not otherwise prohibited by applicable Law, said sale may be adjourned by Bank, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set.

(b) In the event of any sale of the Mortgaged Property as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the non-payment or non-performance of the Obligations or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

**2.03 Purchase by Bank.** Upon any foreclosure sale or sale of all or any portion of the Mortgaged Property under the power herein granted, Bank may bid for and purchase the Mortgaged Property and shall be entitled to apply all or any part of the Obligations as a credit to the purchase price.

**2.04 Borrower as Tenant Holding Over.** In the event of any such foreclosure sale or sale under the powers herein granted, Borrower (if Borrower shall remain in possession) and all Persons holding under Borrower shall be deemed tenants holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over.

**2.05 Waiver of Appraisalment, Valuation, Etc.** Borrower agrees, to the full extent permitted by law, that in case of a default on the part of Borrower hereunder, neither Borrower nor anyone claiming through or under Borrower will set up, claim or seek to take advantage of any appraisalment, valuation, stay, extension, homestead, exemption or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or the delivery of possession thereof immediately after such sale to the purchaser at such sale, and Borrower, for itself and all who may at any time claim through or under it, hereby waives to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets subject to the security interest of this Mortgage marshaled upon any foreclosure or sale under the power herein granted.

**2.06 Waiver of Homestead.** Borrower hereby waives and renounces all homestead and exemption rights provided for by the Constitution and the Laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Obligations, or any part thereof.

**2.07 Leases.** Bank, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceeding instituted by Bank to collect the sums secured hereby.

**2.08 Discontinuance of Proceedings.** In case Bank shall have proceeded to enforce any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been

determined adversely to Bank, then in every such case, Borrower and Bank shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Bank shall continue as if no such proceedings had occurred.

### **ARTICLE 3**

**3.01 Successors and Assigns.** This Mortgage shall be binding upon Borrower, its successors and assigns and subsequent owners of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Bank, its successors and assigns and any holder of any Note.

**3.02 Applicable Law.** This Mortgage shall be interpreted, construed and enforced according to the Laws of the State of Alabama.

**3.03 Notices.** Except as otherwise provided herein, all notices provided for herein shall be given and deemed received when given and received in accordance with the terms of the Credit Agreement.

**3.04 Assignment.** This Mortgage is assignable by Bank and any assignment of this Mortgage by Bank shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Bank.

**3.05 Future Advances.** Upon request of Borrower, Bank, at Bank's option so long as this Mortgage secures indebtedness held by Bank, may make future advances to Borrower. Such future advances, with interest thereon, shall be secured hereby if made under the terms of this Mortgage, the Notes, the Credit Agreement or any other Loan Document, or if made pursuant to any other promissory note, instrument or agreement stating that sums advanced thereunder are secured hereby.

**3.06 Seal.** This Agreement is intended to take effect as an instrument under seal.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, this Mortgage has been duly executed and delivered as of the day and year first above written.

STRICKLAND TRADING, INC.  
an Alabama corporation

By: [Signature]  
Its: PRUS / CEO

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that William R. Strickland, whose name as President/CEO of Strickland Trading, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 4th day of November, 2003.

Notary Public  
My Commission Expires: [Stamp: (SEAL) MY COMMISSION EXPIRES OCTOBER 21, 2004]

**EXHIBIT A**

The following described property located in Shelby County, Alabama, and more particularly described as follows:

Lot 162A, being a Resurvey of Lots 161 and 162 of Shoal Creek, as recorded in Map Book 32, page 16, in the Probate Office of Shelby County, Alabama.