



This instrument prepared by:

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**FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO MORTGAGE AND SECURITY AGREEMENT** (this "Amendment") is made and entered into as of the 9<sup>th</sup> day of December, 2003, by and between **CLAYTON-BAILEY REAL ESTATE, L.L.C.**, a Delaware limited liability company (the "Borrower"), and **SOUTHTRUST BANK**, an Alabama banking corporation (the "Bank"). Any capitalized term used herein but not defined shall have the meaning ascribed to such term in that certain Credit Agreement between Borrower and Bank dated as of March 27, 2003 (as amended from time to time, the "Credit Agreement").

**WHEREAS**, Borrower executed in favor of Bank that certain Mortgage and Security Agreement dated as of March 27, 2003, which instrument was recorded under Instrument No. 20030404000200120 the Office of the Judge of Probate of Shelby County, Alabama (as heretofore amended or supplemented from time to time, the "Mortgage"); and

**WHEREAS**, Borrower and Bank desire to amend the Mortgage as hereinafter provided.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower and Bank hereby agree that the Mortgage is amended as follows:

1. The Mortgage is hereby amended by deleting the first "WHEREAS" paragraph of the Mortgage, and by substituting in lieu thereof the following new paragraph:

**WHEREAS**, Borrower is justly indebted to Bank in the principal amount of Six Million One Hundred Thousand and No/100 Dollars (\$6,100,000.00), or such portion thereof as has been disbursed from time to time under the provisions of the Credit Agreement, such indebtedness being represented by the Note; and

2. Except as hereinabove expressly amended, the terms of the Mortgage are hereby ratified and affirmed, and this Amendment shall not be deemed to (a) be a consent to the modification or waiver of any term or condition of the Mortgage not modified or waived herein or of any of the instruments or agreements referred to in the Credit Agreement or herein, or (b) release or prejudice any right or lien which Bank may now have under or in connection with the Credit Agreement or herein.

\* \* \* \* \*

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

CLAYTON-BAILEY REAL ESTATE, L.L.C.

By: [Signature]  
Its: President / Member

SOUTHTRUST BANK

By: Tod Ferguson  
Its: VICE PRESIDENT

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Warren Bailey, whose name as President / Member of Clayton-Bailey Real Estate, L.L.C., a Delaware limited liability company, 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 President / Member, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 5<sup>th</sup> day of December, 2003.

[Signature] [SEAL]  
Notary Public  
My Commission Expires: 3-22-04

STATE OF ALABAMA  
COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that TOD FERGUSON, whose name as VICE PRESIDENT of SouthTrust Bank, an Alabama banking 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 banking corporation.

Given under my hand and official seal, this the 9<sup>th</sup> day of December, 2003.

[Signature] [SEAL]  
Notary Public  
My Commission Expires: 10/24/06