

ACCOMMODATION MORTGAGE

HARRY D. HORTON

DIANNE B. HORTON

112 WEATHERLY WAY

PELHAM, ALABAMA 35124

MORTGAGOR

"I" includes each mortgagor above.

This instrument was prepared by

(Name) GENE W. GRAY, JR.

(Address) 2100 SOUTHERIDGE PARKWAY SUITE 650
BIRMINGHAM, ALABAMA 35209

BANK OF ALABAMA

1209 DECATUR HIGHWAY

FULTONDALE, ALABAMA 35068

MORTGAGEE

"You" means the mortgagee, its successors and assigns.

REAL ESTATE MORTGAGE: For value received, I, HARRY D. HORTON AND WIFE, DIANNE B. HORTON

to secure the payment of the secured debt described below, on DECEMBER 02, 1994, mortgage, grant, bargain, sell and convey to you, with power of sale, the real estate described below and all rights, easements, appurtenances, rents, leases and existing and future improvements and fixtures (all called the "property").

PROPERTY ADDRESS: 112 WEATHERLY WAY PELHAM Alabama 35124
(Street) (City) (State) (Zip Code)

LEGAL DESCRIPTION:

LOT 189, ACCORDING TO THE SURVEY OF WEATHERLY, SECTOR 2, PHASE 1, AS RECORDED IN MAP BOOK 14 PAGE 12, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

SEE EXHIBIT "A" FOR ADDITIONAL TERMS AND CONDITIONS.

12/03/1994-35722
01:50 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
14.50

located in SHELBY

County, Alabama

TITLE: I covenant and warrant title to the property, except for MORTGAGE FROM HARRY D. HORTON AND DIANNE B. HORTON TO FIRST FEDERAL BANK DATED 06/11/92 AND RECORDED IN INSTRUMENT #1992-14360

SECURED DEBT: This mortgage secures repayment of the secured debt and the performance of the covenants and agreements contained in this mortgage and in any other document incorporated herein. Secured debt, as used in this mortgage, includes any amounts I owe you under this mortgage or under any instrument secured by this mortgage and all modifications, extensions and renewals thereof.

The secured debt outstanding on the date of this mortgage is evidenced by (List all instruments and agreements secured by this mortgage and the dates thereof.):

☐

☐ Future Advances: All amounts owed under the above agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

☐

Revolving credit loan agreement dated _____ All amounts owed under this agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

The above obligation is due and payable on _____ if not paid earlier

The total unpaid balance secured by this mortgage at any one time shall not exceed a maximum principal amount of: _____

Dollars (\$ _____)

plus interest, plus any disbursements made for the payment of taxes, special assessments, or insurance on the property, with interest on such disbursements.

☐ Variable Rate: The interest rate on the obligation secured by this mortgage may vary according to the terms of that obligation.

☐ A copy of the loan agreement containing the terms under which the interest rate may vary is attached to this mortgage and made a part hereof.

RIDERS: ☐ Commercial ☐ Home Equity ☐

SIGNATURES: By signing below, I agree to the terms and covenants contained in this mortgage (including those on page 2 which are hereby incorporated onto page 1 of this mortgage form) and in any riders described above and signed by me.

HARRY D. HORTON (Seal)

DIANNE B. HORTON (Seal)

_____ (Seal)

_____ (Seal)

WITNESSES:

ACKNOWLEDGMENT: STATE OF ALABAMA, JEFFERSON County ss

I, GENE W. GRAY, JR., a Notary Public in and for said county and in said state, hereby certify that

HARRY D. HORTON AND WIFE, DIANNE B. HORTON

Individual

whose name(s) ARE signed to the foregoing conveyance, and who ARE known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, THEY executed the same voluntarily on the day the same bears date.

Corporate

whose name(s) as _____ of the _____ a corporation, 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, _____ as such officer and with full authority executed the same voluntarily for and as the act of said corporation

Given under my hand this the 2nd day of DECEMBER, 1994

My commission expires: 11/09/98

GENE W. GRAY, JR. (Notary Public)

ALABAMA

COVENANTS

1. **Payments.** I agree to make all payments on the secured debt when due. Unless we agree otherwise, any payments you receive from me or for my benefit will be applied first to any amounts I owe you on the secured debt (exclusive of interest or principal), second, to interest and then to principal. If partial prepayment of the secured debt occurs for any reason, it will not reduce or excuse any scheduled payment until the secured debt is paid in full.

2. **Claims against Title.** I will pay all taxes, assessments, liens and encumbrances on the property when due and will defend title to the property against any claims which would impair the lien of this mortgage. You may require me to assign any rights, claims or defenses which I may have against parties who supply labor or materials to improve or maintain the property.

3. **Insurance.** I will keep the property insured under terms acceptable to you at my expense and for your benefit. All insurance policies shall include a standard mortgage clause in favor of you. You will be named as loss payee or as the insured on any such insurance policy. Any insurance proceeds may be applied, within your discretion, to either the restoration or repair of the damaged property or to the secured debt. If you require mortgage insurance, I agree to maintain such insurance for as long as you require.

4. **Property.** I will keep the property in good condition and make all repairs reasonably necessary.

5. **Expenses.** I agree to pay all your expenses, including reasonable attorneys' fees if I break any covenants in this mortgage or in any obligation secured by this mortgage. Attorneys' fees include those awarded by an appellate court. I will pay these amounts to you as provided in Covenant 10 of this mortgage.

6. **Default and Acceleration.** If I fail to make any payment when due or break any covenants under this mortgage, any prior mortgage or any obligation secured by this mortgage, you may accelerate the maturity of the secured debt and demand immediate payment and exercise any other remedy available to you. In the event that the indebtedness owing hereunder shall not be paid upon demand following any acceleration or maturity, then this mortgage shall be subject to foreclosure at your option, with notice to me of your exercise of such option being hereby expressly waived. In that event, you shall have the right to enter upon and take possession of the property and alter or without taking such possession to sell the same, between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power to sell the property, before the courthouse door of the county (or division thereof) where the property, or any substantial part of the 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. If the property is located in more than one county, a similar publication will be made in all counties where the property is located. Upon payment to you of the purchase price at such foreclosure, you are authorized to execute to the purchaser for and in our names a good and sufficient deed to the property sold. You agree to apply the proceeds of any such sale or sales under this mortgage as follows: (a) to the expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to the payment of any amounts that may have been expended or may be necessary to expend in paying insurance, taxes and other encumbrances; (c) to the payment of the secured debt hereby secured; and (d) the balance, if any, will be paid over to us or to whomsoever shall be legally entitled to it. You may bid and become the purchaser of the property at any foreclosure sale hereunder. Under this Mortgage, you are granted a "power to sell" and a "power of sale" (as those quoted terms are used in Article 1A of Title 35 of the Code of Alabama).

7. **Assignment of Rents and Profits.** I assign to you the rents and profits of the property. Unless we have agreed otherwise in writing, I may collect and retain the rents as long as I am not in default. If I default, you, your agent, or a court appointed receiver may take possession and manage the property and collect the rents. Any rents you collect shall be applied first to the costs of managing the property, including court costs and attorneys' fees, commissions to rental agents, and any other necessary related expenses. The remaining amount of rents will then apply to payments on the secured debt as provided in Covenant 1.

8. **Waiver of Homestead.** I hereby waive all right of homestead exemption in the property.

9. **Leaseholds; Condominiums; Planned Unit Developments.** I agree to comply with the provisions of any lease if this mortgage is on a leasehold. If this mortgage is on a unit in a condominium or a planned unit development, I will perform all of my duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

10. **Authority of Mortgagee to Perform for Mortgagor.** If I fail to perform any of my duties under this mortgage, you may perform the duties or cause them to be performed. You may sign my name or pay any amount if necessary for performance. If any construction on the property is discontinued or not carried on in a reasonable manner, you may do whatever is necessary to protect your security interest in the property. This may include completing the construction.

Your failure to perform will not preclude you from exercising any of your other rights under the law or this mortgage.

Any amounts paid by you to protect your security interest will be secured by this mortgage. Such amounts will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect on the secured debt.

11. **Inspection.** You may enter the property to inspect if you give me notice beforehand. The notice must state the reasonable cause for your inspection.

12. **Condemnation.** I assign to you the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the property. Such proceeds will be applied as provided in Covenant 1. This assignment is subject to the terms of any prior security agreement.

13. **Waiver.** By exercising any remedy available to you, you do not give up your rights to later use any other remedy. By not exercising any remedy, if I default, you do not waive your right to later consider the event a default if it happens again.

14. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** All duties under this mortgage are joint and several. If I co-sign this mortgage but do not co-sign the underlying debt I do so only to mortgage my interest in the property under the terms of this mortgage. I also agree that you and any party to this mortgage may extend, modify or make any other changes in the terms of this mortgage or the secured debt without my consent. Such a change will not release me from the terms of this mortgage.

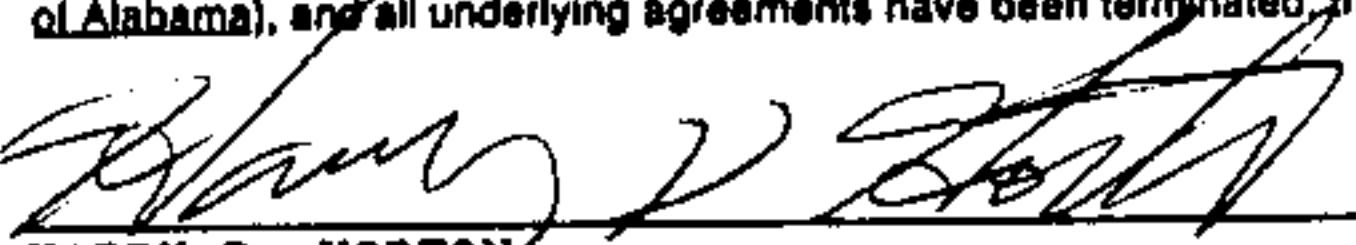
The duties and benefits of this mortgage shall bind and benefit the successors and assigns of either or both of us.

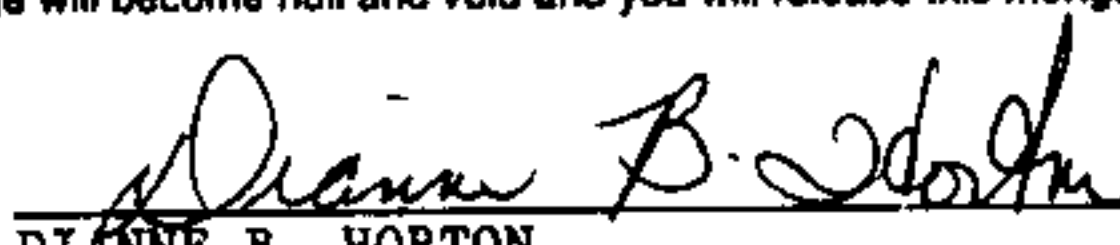
15. **Notice.** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by certified mail addressed to me at the Property Address or any other address that I tell you. I will give any notice to you by certified mail to your address on page 1 of this mortgage, or to any other address which you have designated.

Any notice shall be deemed to have been given to either of us when given in the manner stated above.

16. **Transfer of the Property or a Beneficial Interest in the Mortgagor.** If all or any part of the property or any interest in it is sold or transferred without your prior written consent, you may demand immediate payment of the secured debt. You may also demand immediate payment if the mortgagor is not a natural person and a beneficial interest in the mortgagor is sold or transferred. However, you may not demand payment in the above situations if it is prohibited by federal law as of the date of this mortgage.

17. **Release.** When there shall occur the "Payment or satisfaction of the real property mortgage debt" (as such term is defined at §35-10-28 of the Code of Alabama), and all underlying agreements have been terminated, this mortgage will become null and void and you will release this mortgage.


HARRY D. HORTON

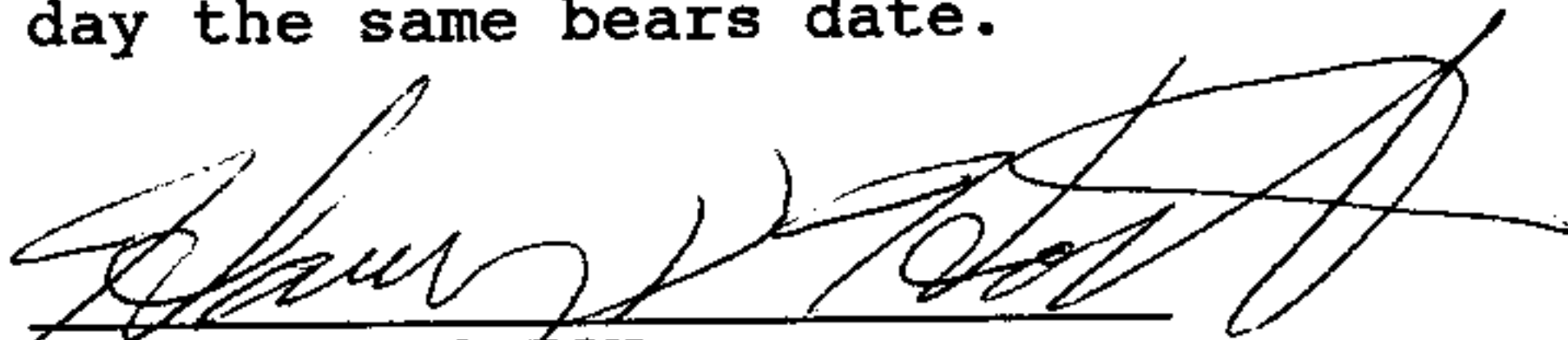

DIANNE B. HORTON

**EXHIBIT "A" TO ACCOMMODATION MORTGAGE FROM
HORTON TO BANK OF ALABAMA**

Whereas, **SUNSHINE MANOR, INC.** (Borrower) has become indebted to **BANK OF ALABAMA** in the amount of \$255,000.00, the money being used as part of the capital required to acquire certain real property from **WILLIAM STUART COMPANY, INC.** on this date and construct certain improvements upon said property. As part of the terms and conditions of the loan made by **BANK OF ALABAMA** to **SUNSHINE MANOR, INC.**, **HARRY D. HORTON** and spouse, **DIANNE B. HORTON**, being shareholders and officers of the Borrower, did agree to execute and deliver to **BANK OF ALABAMA** a personal guaranty of the said debt and offer as additional security for said loan, a second mortgage on the property hereinabove described.

Now Therefore, this mortgage is given to **BANK OF ALABAMA** as additional security for the debt of **SUNSHINE MANOR, INC.**

In Witness Whereof, this mortgage has been executed and delivered under the terms and conditions as set forth herein on the day the same bears date.


HARRY D. HORTON


DIANNE B. HORTON

Inst # 1994-35722

**12/05/1994-35722
01:50 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
003 MCD 14.50**