

JOSEPH J GARITY

KATE S GARITY

211 EL CAMINO REAL

CHELSEA, ALABAMA 35043

MORTGAGOR

"I" includes each mortgagor above.

This instrument was prepared by

(Name) ~~BRENDA STRAWBRIDGE/NEW SOUTH FEDERAL~~

(Address) ~~215 N. 21st STREET, BHAM, AL 35203~~

NEW SOUTH FEDERAL SAVINGS BANK

P.O. BOX 101508

BIRMINGHAM, ALABAMA 35210

MORTGAGEE

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

REAL ESTATE MORTGAGE: For value received, I, ~~JOSEPH J GARITY AND WIFE, KATE S. GARITY~~

, mortgage, grant, bargain, sell and convey to you, with power of sale, to secure the payment of the secured debt described below, on ~~OCTOBER 25, 1995~~, 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: ~~211 EL CAMINO REAL~~ (Street) ~~CHELSEA~~ (City) Alabama ~~35043~~ (Zip Code)

LEGAL DESCRIPTION:

LOT 15 ACCORDING TO TH SURVEY OF HIGH CHAPERRAL, FIRST SECTOR, AS RECORDED IN MAP BOOK 12, PAGE 57, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

Inst # 1995-32233

11/07/1995-32233  
02:24 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE  
003 SNA 21.00

located in ~~SHELBY~~ County, Alabama.

TITLE: I covenant and warrant title to the property, except for ~~MTG FROM JOSEPH J GARITY AND KATE S GARITY TO COLLATERAL~~

~~1TG, LTD RECORDED 10-18-91 IN REAL 369, PG 29 PROBATE OFFICE OF SHELBY CO., ALABAMA.~~

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 is evidenced by (List all instruments and agreements secured by this mortgage and the dates thereof, each of which shall be deemed incorporated herein.):

☐

☐ 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.

☐ Home Equity Credit Plan Agreement dated ~~OCTOBER 25, 1995~~. 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 ~~OCTOBER 30, 2002~~ if not paid earlier.

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



~~FIVE THOUSAND AND NO/100's~~ Dollars (\$ ~~5,000.00~~), 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 ☐

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

  
JOSEPH J GARITY (Seal)  
  
KATE S. GARITY (Seal)

  
KATE S. GARITY (Seal)

WITNESSES:

ACKNOWLEDGMENT: STATE OF ALABAMA, ~~JEFFERSON~~ County ss:

I, ~~THE UNDERSIGNED~~, a Notary Public in and for said county and in said state, hereby certify that

~~JOSEPH J GARITY AND WIFE, KATE S. GARITY~~

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 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, he 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 ~~25th~~ day of ~~October~~, 1995

My commission expires:

MY COMMISSION EXPIRES MARCH 11, 1997

  
Notary Public

## 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; provided, however, that if the secured debt is evidenced by a Home Equity Credit Plan Agreement, you may only accelerate the maturity of the secured debt and demand immediate payment in accordance with the terms of the Home Equity Credit Plan Agreement, although you may exercise any other remedy you have without restriction. This mortgage gives you the power of sale, which you may also invoke under any circumstances in which you have the right to accelerate the maturity of the secured debt and demand immediate payment. If you invoke the power of sale, you will give notice of the sale by publication once a week for three successive weeks in some newspaper published in the county in which the property or any portion of it is located. This notice will give the time, place and terms of the sale, and a description of the property. After this notice is given, the property will be sold to the highest bidder at public auction at the front door of the County Courthouse of the county in which the notice of sale was published.

**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 the front side 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 I have paid the secured debt in full and all underlying agreements have been terminated, this mortgage will become null and void and you will release this mortgage.

MORTGAGE RIDER

THIS RIDER IS A PART OF AND FULLY INCORPORATED IN THAT CERTAIN MORTGAGE EXECUTED BY THE UNDERSIGNED DATED THIS 25 DAY OF OCTOBER, 1995

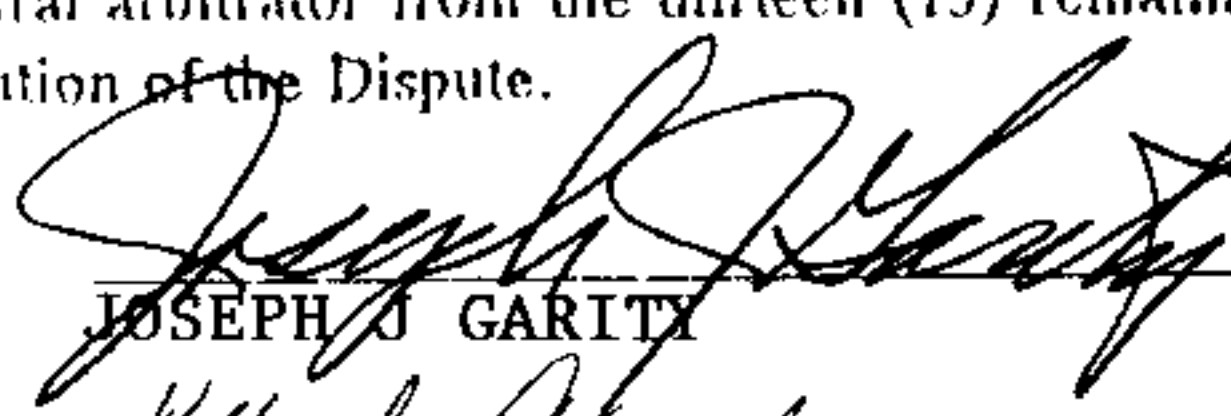
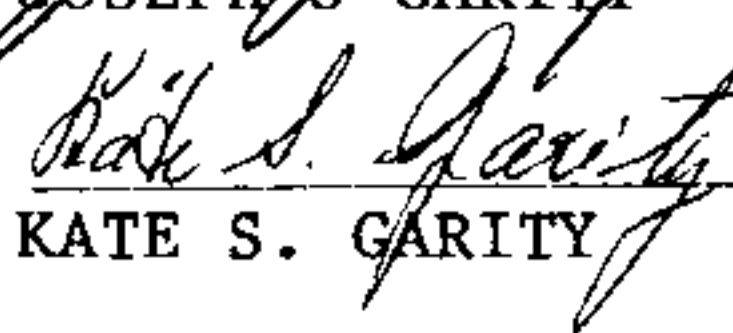
Arbitration; Dispute Resolution; Preservation of Foreclosure Remedies. (a) For purposes of the Note of this Mortgage, Borrower agrees that this transaction contemplates substantial interstate commerce. Except as otherwise specifically set forth below, and IN LIEU OF BORROWER'S RIGHT TO A JURY TRIAL, any action, dispute, claim, counterclaim or controversy ("Dispute" or "Disputes"), between Borrower and Lender, including any claim based on or arising from an alleged tort, shall be resolved in Birmingham, Alabama by ARBITRATION as set forth below. The term "Disputes" shall include all actions, disputes, claims, counterclaims or controversies arising in connection with the Note or this Mortgage, any collection of any indebtedness owed to Lender, any security or collateral given to Lender, any action taken (or any omission to take any action) in connection with any of the above, any past, present and future agreement between or among Borrower and Lender (including the Mortgage), and any past, present or future transactions between or among Borrower and Lender. Without limiting the generality of the above, Disputes shall include actions commonly referred to as lender liability actions.

(b) All Disputes shall be resolved by binding arbitration in accordance with Title 9 of the U.S. Code and the Arbitration Rules for Commercial Financial Disputes (the "Rules") of the American Arbitration Association (the "AAA"). All defenses, including those defenses based on statutes of limitation, estoppel, waiver, laches and similar doctrines, that would otherwise be applicable to an action brought by a party, shall be applicable in any such arbitration proceeding, and the commencement of an arbitration proceeding with respect to the Note or this Mortgage shall be deemed the commencement of an action for such purposes.

(c) Notwithstanding the foregoing, Borrower agrees that Lender shall have the right, but not the obligation, to submit to and pursue in a court of law any claim against Borrower for a debt due. Borrower agrees that, if Lender pursues such a claim in a court of law, (1) Lender's failure to assert any additional claim in such proceeding shall not be deemed a waiver of, or estoppel to pursue, such claim as a claim or counterclaim in arbitration as set forth above, and (2) the institution or maintenance of a judicial action hereunder shall not constitute a waiver of the right of any party to submit any other action, dispute, claim or controversy as described above, even though arising out of the same transaction or occurrence, to binding arbitration as set forth herein.

(d) No provision of, nor the exercise of any rights under this section, shall limit Lender's right (1) to foreclose against any real or personal property by exercise of a power of sale under this Mortgage, or by exercise of any rights of foreclosure or of sale under applicable law, (2) to exercise self-help remedies such as set-off, or (3) to obtain provisional or ancillary remedies such as injunctive relief, attachment or the appointment of a receiver from a court having jurisdiction before, during or after the pendency of any arbitration or referral. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party, including the plaintiff in such an action, to submit the Dispute to arbitration or, in the case of actions on a debt, to judicial resolution.

(e) Whenever arbitration is required hereunder, the arbitrator shall be selected in accordance with the Rules of the AAA, as modified hereby. For claims of \$50,000.00 or less, the AAA shall designate a panel of five (5) neutral potential arbitrators knowledgeable in the subject matter of the Dispute, from which one (1) mutually acceptable arbitrator will be selected by the parties, who shall determine the resolution of the Dispute. The arbitrator shall be selected applying a process of strikes, as more particularly described in the Rules. In the event the parties cannot agree on the mutually acceptable arbitrator, then the AAA shall designate the arbitrator as prescribed in the Rules. For claims of more than \$50,000.00, the AAA shall designate a panel of fifteen (15) neutral potential arbitrators knowledgeable in the subject matter of the Dispute, from which three (3) mutually acceptable arbitrators will be selected by the parties, who shall determine the resolution of the Dispute. The arbitrators shall be selected applying a process of strikes, as more particularly described in the Rules. In the event the parties cannot agree on three (3) mutually acceptable arbitrator(s), then, from the list, each of the parties shall designate one (1) of the neutral, potential arbitrators to serve, and the two arbitrators so designated shall select a third neutral arbitrator from the thirteen (13) remaining potential arbitrators. The panel of three (3) arbitrators shall determine the resolution of the Dispute.

 (Signature)  
JOSEPH J. GARTY  
 (Signature)  
KATE S. GARTY

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