

EQUITY ONE CREDIT CORPORATION

OPEN END MORTGAGE

29050-8661 INST # 1998-05082

KNOW ALL MEN BY THESE PRESENTS that **BENNETT EARL DAVIS, JR. AND SANDRA F. DAVIS, HUSBAND AND WIFE**

together with their heirs, administrators, executors, successors and assigns (hereinafter referred to as the "Grantors"), whose mailing address is **1111 HENRY DRIVE ALABASTER, ALABAMA 35007** for and in consideration of the principal sum of **THIRTY-FIVE THOUSAND AND 00/100** Dollars ( \$ **35,000.00** ) paid to them by EQUITY ONE CREDIT CORPORATION, an Ohio corporation, which indebtedness is evidenced by Grantor's Note (hereinafter known as the "Note") dated **FEBRUARY 6 1998**, providing for monthly payments of principal and interest, plus other charges and fees which may be assessed, with the balance of the indebtedness, if not sooner paid, due and payable **FEBRUARY 6, 2028** do hereby give, grant, bargain, sell, convey, assign and confirm unto said Equity One Credit Corporation, which together with its successors and assigns is hereinafter referred to as the "Grantee", whose address is 1215 Superior Ave., Cleveland, Ohio 44114, the following real estate of which the Grantors are the lawful owners and which, together with the improvements and appurtenances hereinafter described, is herein referred to as the "Premises":

**1111 HENRY DRIVE, ALABASTER, ALABAMA 35007**

Situated in the \_\_\_\_\_ of **ALABASTER** County of **SHELBY** and State of **ALABAMA**

and known, bounded and described as follows:

**LOT 6, ACCORDING TO THE SURVEY OF SCOTTSDALE, SECOND ADDITION, AS RECORDED IN MAP BOOK 7, PAGE 118, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.**

02/16/1998-05082  
10:59 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
D04 MEL 68.50

23-6-14-4-001-002.037

be the same more or less, but subject to all legal highways.

PPN: SEE ABOVE

Together with all of the right, title and interest of the Grantors, either in law or in equity of, in and to the Premises, all privileges, appurtenances and easements thereunto belonging, all rents, issues and profits thereof which shall hereafter arise or accrue therefrom, and together with all right, title and interest of the Grantors in and to any land lying in the bed of any street, road, highway or alley adjacent to the Premises.

And the Grantors do hereby give, grant, bargain, sell, convey and confirm unto the Grantee, its successors and assigns forever, all of their right, title and interest, either in law or in equity, in and to any and all structures, building or improvements now or at any time hereafter erected, installed or placed in or upon the above described Premises, and any and all fixtures, appliances, apparatus, equipment, machinery, chattels, and articles of personal property as are or shall be attached to said Premises by nails, screws, bolts, fasteners, pipes, masonry, adhesive, or in any other manner, all of which are hereby declared and warranted to be the property of the Grantors free from any prior lien, security interest or encumbrances and shall be deemed to be fixtures and accessions to the freehold and a part of the realty and shall be deemed to be a portion of the security for the indebtedness herein described and to be subject to the lien of this Mortgage, including any replacements or substitutions therefor, all of which collectively shall hereinafter be referred to as "Improvements".

In order to further secure said indebtedness, and as a part of the consideration of said transaction, Grantors hereby assign, transfer and set over unto Grantee all the rents now due or which may hereafter become due under or by virtue of any lease, either oral or written, or any letting of, or any agreement for the use or occupancy of any part of the Premises, which may have been heretofore or may be hereafter made or agreed to, or which may be made or agreed to by Grantee under the power herein granted.

This Mortgage secures any renewal, substitution or extension of the Note and any other indebtedness, note, account, debt or obligation whatsoever of said Grantors which the Grantee may hold or acquire during the term of this Mortgage, including specifically all future advances necessary to protect said Premises and any such other indebtedness, note account, debt, obligation or future advance shall, from the time this Mortgage is filed for record, be secured by this Mortgage equally with and have the same priority over the rights to all persons who subsequent to the recording of this Mortgage acquire any rights in or lien upon said Premises;

PROVIDED, HOWEVER, if the Grantors shall well and truly pay the Note according to the tenor thereof, together with all interest, taxes, assessments, and all other sums, amounts or charges which may be payable to the said Grantee by reason of said Note or this Mortgage, and shall fully and punctually keep and perform the terms, covenants, agreements, provisions, and conditions herein to be kept and performed by the Grantors, then this Mortgage shall be void; otherwise, it shall be and remain in full force and effect. Upon payment of all sums secured by this Mortgage, Grantee shall discharge this mortgage upon payment by Grantor to Grantee of a Mortgage Release Fee of \$50.00. Grantors shall also pay all costs of recordation, if any.

*[Handwritten signature]*  
PAGE 1 OF 1

Grantors for themselves, their heirs, executors, administrators, successors and assigns, do hereby covenants, agree and stipulate to and with the said Grantee, its successors and assigns as follows:

1. **Payment of Indebtedness.** The Grantors shall promptly pay when due the principal and interest evidenced by the Note and any prepayment and late charge due under the Note.

2. **Taxes.** The Grantors shall pay prior to the date the same become due and payable, all taxes, assessments, rents, rates, impositions and other charges of whatsoever nature which are now or shall hereafter be levied or assessed or which may other wise be or become a lien upon or against the Premises or any part thereof.

3. **Insurance.** The Grantors shall, until full payment of said indebtedness, keep all improvements upon the Premises continuously insured to their full insurable value (as determined by the Grantee) against loss and damage by fire, flood and such other hazards as may be selected by the Grantee from time to time. All such insurance shall be carried in companies acceptable to the Grantee and, upon request of the Grantee, the policies, duplicate policies or certificates thereof and renewals thereof shall be deposited with and held by the Grantee. Each policy shall require thirty (30) days notice to the Grantee prior to cancellation, and shall contain a standard noncontributing mortgagee clause (in favor of and entitling the Grantee to collect any and all proceeds payable under all such insurance), as well as a standard waiver of subrogation endorsement, all to be in form acceptable to the Grantee.

The Grantors shall not make any change in the use of the Premises which will create a fire or other hazard not in existence on the date hereof, nor shall Grantors in any way increase any hazard.

4. **Compliance with Laws.** The Grantors shall promptly and unceasingly comply with all laws, ordinances, regulations and requirements of any governmental body affecting the Premises and the use of the same.

5. **Maintenance of Improvements.** The Grantors shall: (a) abstain from the commission of waste upon the Premises and shall permit no waste thereon; (b) construct and complete all Improvements upon said Premises in accordance with the terms of any application made to Grantee for the loan secured by this Mortgage; (c) keep and maintain all the Improvements in sound condition and in good and substantial repair; and (d) do or permit no act whatsoever whereby the Premises shall become less valuable. The Grantors shall not remove, demolish or substantially alter any of the Improvements without first obtaining the written consent of the Grantee.

The Grantee, for the protection of its interest in the Premises, is hereby authorized and empowered to enter in and upon the Premises at any and all reasonable times for the purpose of inspecting the same and ascertaining the condition thereof and of the Improvements and appurtenances thereunto belonging.

6. **Insurance and Condemnation Proceeds.** In the event of any destruction or damage to, or taking by eminent domain of, the Premises, or any part thereof, any and all insurance proceeds and condemnation awards shall, subject to the terms of any Prior Encumbrances (hereinafter defined), be applied by the Grantee, upon its receipt thereof, to its reasonable expenses incurred in obtaining such proceeds and awards, and thereafter to the accrued interest and outstanding principal on the Note, whether or not then due and payable and thereafter to any portion, as selected by the Grantee, of the balance of the indebtedness without affecting the lien of this Mortgage.

7. **Sale or Transfer.** If all or any part of the property or an interest therein is sold or transferred by Grantors without Grantee's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Mortgage, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by device, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Grantee may, at Grantee's option, declare all sums secured by this Mortgage to be immediately due and payable.

8. **Protection Against Charges.** If any default be made by the said Grantors in the prompt discharge of any liens, clouds or encumbrances, or in defending the title to said Premises, or in the payment of any taxes, assessments, impositions, rents, rates or charges as aforesaid, or in the procuring and maintaining of insurance, as above provided, or in making of proper repairs to or in the proper maintenance and preservation of the Premises, the Grantee may, at its election, without demand or notice, pay and discharge such liens, clouds or encumbrances, defend the title, pay such taxes, assessments, impositions, rents, rates or charges plus any interest and penalties thereon, procure such insurance in an amount not less than the amount then due on the loan and pay the premiums and its expenses therefor, make such repairs and maintain and preserve the Premises, and all expenditure therefor, including attorney's fees, shall forthwith become due and payable to the Grantee with interest at a rate equal to 2 percent per annum over and above the contract rate of interest specified in the Note until paid and shall, with the interest as aforesaid, be added to the amount of said Note and shall be a further lien on the Premises secured hereby and be secured by this Mortgage all without prejudice to the right of the Grantee to declare the entire principal balance and accrued interest thereon immediately due and payable by reason of the Grantor's default and breach of covenant herein contained.

9. **Obligations with Respect to Prior Encumbrances.** The Grantor hereby represents, warrants and covenants that:

(a) the Grantor shall promptly pay, when due and payable, the interest, installment of principal, and all other sums and charges secured by any other mortgage, deed of trust or security agreement prior to this Mortgage ("Prior Encumbrances");

(b) the Grantor shall, promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by the Grantor under any Prior Encumbrance within the periods provided in the Prior Encumbrance and shall do all things necessary to preserve and to keep all Prior Encumbrances and the obligations secured thereby free from default; and

(c) the Grantor shall, within ten (10) days after written demand from the Grantee, use its best efforts to obtain from any person holding a Prior Encumbrance and deliver to the Grantee a certificate stating that the Prior Encumbrance is in full force and effect, that it is unmodified, that no notice of default thereunder has been served on the Grantor and stating whether or not there are any defaults thereunder, and, if so, specifying the nature of such defaults.

10. **Notice of Default Under Prior Encumbrances.** The Grantor shall, immediately upon receiving any knowledge or notice of an occurrence of an event of default under any Prior Encumbrance, give written notice thereof to the Grantee. The Grantor shall also give to the Grantee, immediately upon receipt thereof, a true copy of each and every notice, summons, legal process, legal paper, or other communication relating in any way to any Prior Encumbrance or the obligations secured thereby or to the performance or enforcement thereof other than notices or comminations relating to the ordinary and usual administration of any Prior Encumbrance or the obligations secured thereby.

11. **Failure to Make Payments Secured by Prior Encumbrances or Other Event of Default under Prior Encumbrances.** The Grantor shall make each payment due under any obligation secured by any Prior Encumbrance before any such payment becomes delinquent. In the event the Grantor shall fail to make any payment due under any obligation secured by any Prior Encumbrance before it becomes delinquent, the Grantee shall have the right, at its option, to make any such payment directly to the person holding the Note evidencing the obligation and any sums so advanced by the Grantee shall bear interest at the highest rate permitted in the Note, from the date of advancement until paid, be immediately due and payable by the Grantor to the Grantee, and be and become a part of the indebtedness secured hereby.

Upon the occurrence of any event of default under any Prior Encumbrance or any loan agreement, security agreement or other document or instrument which may from time to time evidence or secure the payment of any obligation secured thereby (the "Prior Encumbrance Collateral Documents"), the Grantee may, at its option, pay any sum which may be in default under any Prior Encumbrance or the Prior Encumbrance Collateral Documents or advance any sum for the purpose of curing any default thereunder, and any sum so paid or advanced by the Grantee shall bear interest at the highest rate permitted in the Note, from the date of advancement until paid, be immediately due and payable by the Grantor to the Grantee, and be and become a part of the indebtedness secured hereby. The rights and remedies of the Grantee under this paragraph shall be cumulative of all of the other rights and remedies of the Grantee under law and under this Mortgage.

The curing by the Grantee of any event of default under any Prior Encumbrance or the Prior Encumbrance Collateral Documents shall not constitute the curing of the event of default under this Mortgage which occurred by virtue of the default under any Prior Encumbrance or the Prior Encumbrance Collateral Documents.

By curing any event of default under any Prior Encumbrance or the Prior Encumbrance Collateral Documents, the Grantee shall be subrogated to all rights, liens and privileges which before were vested in the holder of such Prior Encumbrance or such Prior Encumbrance Collateral Documents.

The Grantor shall executed and deliver, on request of the Grantee such instruments as the Grantee may deem useful or required to permit the Grantee to cure any event of default under any Prior Encumbrance or Prior Encumbrance Collateral Documents or permit the Grantee to take such other action as the Grantee considers desirable to cure or remedy the matter in default and preserve the interest of the Mortgagee.

12. **Default.** Upon a default in the payment of any installment or sum due upon the Note or any other indebtedness secured hereby, or upon an actual or threatened demolition or removal or any part of the Premises, or upon any breach or default in the due and punctual observance or performance of any of the terms, provision, covenants, agreements or conditions contained herein or in any prior mortgage, or should proceeding be instituted in any court for the collection of any indebtedness secured by or for the foreclosure of any mortgage, judgement or lien affecting the Premises, then, and in any such case, the entire unpaid principal balance of said Note or other indebtedness together with the interest accrued thereon and together with all other sums or amounts payable to the Grantee shall, at the election of the Grantee, be and become immediately due and payable, anything in said Note or in this Mortgage contained to the contrary notwithstanding; and this Mortgage shall become subject to foreclosure.

13. **Additional Rights upon Default.** The Grantee, immediately upon any proceedings being commenced in any court of competent jurisdiction or the foreclosure of this Mortgage or of any other mortgage or lien asserted against the said Premises irrespective of the validity of any such other lien so asserted, shall be entitled as a matter of absolute right to the appointment of a receiver of the rents, issues and profits of the said Premises without notice. To this immediate appointment of a receiver the Grantors do hereby consent without notice and without any regard to or proof of either depreciation of the value of the Premises or the insolvency of the Grantors and without notice and without any regard to the value of the Premises or the adequacy of said mortgaged security to any other security for the indebtedness hereby secured, and the receiver shall have the right to take possession, management and control of and over said Premises and every part thereof and to rent the same in his name or in the name of the Grantors, and to collect and receive the rent, issues and profits thereof and to apply the same after the payment of all charges and expenses, including commission, on account of the indebtedness secured hereby. And further, the Grantee may make such advances as may seem to it to be necessary or desirable to any receiver or trustee of the Premises and this Mortgage shall secure the same.

14. **Grantee's Costs.** In any suit which the Grantee may, in its opinion, be obliged to defend in order to protect the unimpaired priority of the lien hereof, the Grantors agree to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit, and also the reasonable cost of extending the title evidence, together with interest at a rate equal to two (2%) percent per annum over and above the contract rate of interest specified in the Note until paid, which sums shall be added to the amount of said Note and secured hereby.

15. **Advances.** The Grantee shall have a lien by virtue of this Mortgage on said Premises to secure all future advances

- B.E.D.  
- PAGE 3 OF 5  
- S.J.D.

Inst # 1998-0502

15. **Advances.** The Grantee shall have a lien by virtue of this Mortgage on said Premises to secure all future advances necessary to protect said Premises and for all advances made at the option of the parties up to the principal sum secured hereby and the Grantee shall be secured by the lien of this Mortgage and shall have priority over the rights of all persons who subsequent to the recording of this Mortgage acquire any rights in or liens upon said Premises.

16. **Non-Waiver.** Any failure to exercise any right hereunder shall not constitute or be construed as a waiver of that right at any future time.

17. **Notices.** Any notice to Grantor provided for in this Mortgage shall be given by delivering it or by mailing it by first class mail. The notice shall be directed to the mailing address set forth above or to any other address Grantor designates by notice to Grantee. Any notice to Grantee shall be given by mailing it by first class mail to Grantee's address stated above or any other address Grantee designates by notice to Grantor.

18. **Governing Law.** This Mortgage shall be governed by federal law and the law of the jurisdiction in which the Premises are located. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end the provisions of this Mortgage and the Note are declared to be severable.

19. **Hazardous Substances.** Grantor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Premises. Borrower shall not do, nor allow anyone else to do, anything affecting the Premises that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Premises of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Premises.

As used herein, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, material containing asbestos or formaldehyde, and radioactive materials. As used herein, "Environmental Law" means federal laws and laws of the jurisdiction where the Premises are located that relate to health, safety or environmental protection.

20. **Miscellaneous.** All grants, covenants, agreements, terms, provisions and conditions herein contained shall inure to the benefit of, apply and extend to, and bind the heirs, executors, administrators, successors and assigns of each of the Grantors and the successors and assigns of the Grantee, and are intended and shall be held to be real covenants running with the land.

When such interpretation is appropriate, any word used herein denoting gender shall include all persons, natural or artificial, and words used in the plural shall include and apply to the singular.

21. **Release.** Upon payment by Grantors of all sums secured by this Mortgage, Grantee shall discharge this Mortgage without charge to Grantor. Grantor shall pay any recordation costs.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands, this 6TH day of FEBRUARY, A.D. 1998.

Signed, acknowledged and delivered in the presence of:

GRANTOR(S)

[Signature]  
BENNETT EARL DAVIS, JR.

[Signature]  
SANDRA F. DAVIS

02/16/1998-0502  
10:59 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MEL

**INDIVIDUAL ACKNOWLEDGMENT**

STATE OF ALABAMA }  
COUNTY OF ~~SHELBY~~ JEFFERSON } SS.

Before me, a Notary public in and for said County and State, personally appeared BENNETT EARL DAVIS, JR. AND SANDRA F. DAVIS, HUSBAND AND WIFE

the Grantor(s) in the foregoing Open End Mortgage who acknowledged that THEY did read and sign the foregoing instrument and the same is THEIR free act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal, at ALABAMA

this 6th day of February, A.D., 1998.

[Signature]  
Notary Public  
My Commission Expires: 2/22/99