

## MORTGAGE

THIS INDENTURE, made as of the 29th day of December, 1998, by and between Wickes Lumber Company, of Pelham, Alabama, hereinafter called "Mortgagee", and Intermountain Developers, Inc. and Jim Leslie, both as an agent of Intermountain Developers, Inc., as well as individually, of Chelsea, Alabama, hereinafter called "Mortgagor".

### W I T N E S S E T H : AMOUNT OF LIEN: "NOTE"

WHEREAS, Mortgagor is justly indebted to Mortgagee in the sum of Seventeen Thousand Three Hundred Nine DOLLARS and 85/100 (\$17,309.85) in lawful money of the United States, and has agreed to pay the same, with interest thereon, according to the terms of a certain note (the "Note") given by Mortgagor to Mortgagee, bearing even date herewith.

### DESCRIPTION OF PROPERTY SUBJECT TO LIEN: "PREMISES".

NOW, THEREFORE, in consideration of the premises and the sum hereinabove set forth, and to secure the payment of the Secured Indebtedness as defined herein, Mortgagor has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto Mortgagee property situate in Shelby County, Alabama, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof;

TOGETHER with all buildings, structures and other improvements now or hereafter located on, above or below the surface of the property hereinbefore described, or any part and parcel thereof; and,

TOGETHER with all and singular the tenements, hereditaments, easements, riparian and littoral rights, and appurtenances thereunto belonging or in anywise appertaining, whether now owned or hereafter acquired by Mortgagor, and including all rights of ingress and egress to and from adjoining property (whether such rights now exist or subsequently arise) together with the reversion or reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, claim and demand whatsoever of Mortgagor of, in and to the same and of, in and to every part and parcel thereof; and,

TOGETHER with all machinery, apparatus, equipment, fittings, fixtures, whether actually or constructively attached to said property and including all trade, domestic and ornamental fixtures, and articles of personal property of every kind and nature whatsoever (hereinafter collectively called "Equipment"), now or hereafter located in, upon or under said property or any part thereof and used or usable in connection with any present or future operation of said property and now owned or hereafter acquired by Mortgagor; and,

TOGETHER with all the common elements appurtenant to any parcel, unit or lot which is all or part of the Premises; and, ALL the foregoing encumbered by this Mortgage being collectively referred to herein as the "Premises";

TO HAVE AND TO HOLD the Premises hereby granted to the use, benefit and behalf of the Mortgagee, forever.

Inst # 1999-00489

01/03/1999-00489  
04:07 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
49.60  
007 CRH

## U.C.C. SECURITY AGREEMENT

It is agreed that if any of the property herein mortgaged is of a nature so that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a Security Agreement and Mortgagor agrees to join with the Mortgagee in the execution of any financing statements and to execute any and all other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

### EQUITY OF REDEMPTION

Conditioned, however, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee, at its address listed in the Note, or at such other place which may hereafter be designated by Mortgagee, its or their successors or assigns, with interest, the principal sum of Seventeen Thousand Three Hundred Nine DOLLARS and 85/100 (\$17,309.85) with final maturity, if not sooner paid, as stated in said Note unless amended or extended according to the terms of the Note executed by Mortgagor and payable to the order of Mortgagee, then these presents shall cease and be void, otherwise these presents shall remain in full force and effect.

### ARTICLE ONE

#### COVENANTS OF MORTGAGOR

Mortgagor covenants and agrees with Mortgagee as follows:

##### 1.01 Secured Indebtedness.

This Mortgage is given as security for the Note and also as security for any and all other sums, indebtedness, obligations and liabilities of any and every kind arising, under the Note or this Mortgage, as amended or modified or supplemented from time to time, and any and all renewals, modifications or extensions of any or all of the foregoing (all of which are collectively referred to herein as the "Secured Indebtedness"), the entire Secured Indebtedness being equally secured with and having the same priority as any amounts owed at the date hereof.

##### 1.02 Performance of Note, Mortgage, Etc..

Mortgagor shall perform, observe and comply with all provisions hereof and of the Note and shall promptly pay, in lawful money of the United States of America, to Mortgagee the Secured Indebtedness with interest thereon as provided in the Note, this Mortgage and all other documents constituting the Secured Indebtedness.

##### 1.03 Extent Of Payment Other Than Principal And Interest.

Mortgagor shall pay, when due and payable, (1) all taxes, assessments, general or special, and other charges levied on, or assessed, placed or made against the Premises, this instrument or the Secured Indebtedness or any interest of the Mortgagee in the Premises or the obligations secured hereby; (2) premiums on policies of fire and other hazard insurance covering the Premises, as required herein; (3) ground rents or other lease rentals; and (4) other sums related to the Premises or the indebtedness secured hereby, if any, payable by Mortgagor.

#### **1.04 Insurance.**

Mortgagor shall, at its sole cost and expense, keep the Premises insured against all hazards as is customary and reasonable for properties of similar type and nature located in Shelby County, Alabama.

#### **1.05 Care of Property.**

Mortgagor shall maintain the Premises in good condition and repair and shall not commit or suffer any material waste to the Premises.

#### **1.06 Prior Mortgage.**

With regard to the Prior Mortgage, Mortgagor hereby agrees to:

(i) Pay promptly, when due, all installments of principal and interest and all other sums and charges made payable by the Prior Mortgage;

(ii) Promptly perform and observe all of the terms, covenants and conditions required to be performed and observed by Mortgagor under the Prior Mortgage, within the period provided in said Prior Mortgage;

(iii) Promptly notify Mortgagee of any default, or notice claiming any event of default by Mortgagor in the performance or observance of any term, covenant or condition to be performed or observed by Mortgagor under any such Prior Mortgage.

(iv) Mortgagor will not request nor will it accept any voluntary future advances under the Prior Mortgage without Mortgagee's prior written consent, which consent shall not be unreasonably withheld.

### **ARTICLE TWO**

#### **DEFAULTS**

#### **2.01 Event of Default.**

The occurrence of any one of the following events which shall not be cured within ten (10) days after written notice of the occurrence of the event, if the default is monetary, or which shall not be cured within ten (10) days after written notice from Mortgagee, if the default is non-monetary, shall constitute an "Event of Default":

(a) Mortgagor fails to pay the Secured Indebtedness, or any part thereof, or the taxes, insurance and other charges, as hereinbefore provided, when and as the same shall become due and payable;

(b) Any material warranty of Mortgagor herein contained, or contained in the Note, proves untrue or misleading in any material respect;

(c) Mortgagor materially fails to keep, observe, perform, carry out and execute the covenants, agreements, obligations and conditions set out in this Mortgage, or in the Note;

(d) Foreclosure proceedings (whether judicial or otherwise) are instituted on any mortgage or any lien of any kind secured by any portion of the Premises and affecting the priority of this Mortgage.

## **2.02 Options Of Mortgagee Upon Event Of Default.**

Upon the occurrence of any Event of Default, the Mortgagee may immediately do any one or more of the following:

(a) Declare the total Secured Indebtedness, including without limitation all payments for taxes, assessments, insurance premiums, liens, costs, expenses and attorney's fees herein specified, without notice to Mortgagor (such notice being hereby expressly waived), to be due and collectible at once, by foreclosure or otherwise;

(b) Pursue any and all remedies available under the Uniform Commercial Code; it being hereby agreed that ten (10) days' notice as to the time, date and place of any proposed sale shall be reasonable;

(c) In the event that Mortgagee elects to accelerate the maturity of the Secured Indebtedness and declares the Secured Indebtedness to be due and payable in full at once as provided for in Paragraph 2.02(a) hereinabove, or as may be provided for in the Note, or any other provision or term of this Mortgage, then Mortgagee shall have the right to pursue all of Mortgagee's rights and remedies for the collection of such Secured Indebtedness, whether such rights and remedies are granted by this Mortgage, any other agreement, law, equity or otherwise, to include, without limitation, the institution of foreclosure proceedings against the Premises under the terms of this Mortgage and any applicable state or federal law.

## **ARTICLE THREE**

### **MISCELLANEOUS PROVISIONS**

#### **3.01 Prior Liens.**

Mortgagor shall keep the Premises free from all prior liens (except for those consented to by Mortgagee).

#### **3.02 Notice, Demand and Request.**

Every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request delivered in accordance with the provisions of the Note relating to notice

#### **3.03 Meaning of Words.**

The words "Mortgagor" and "Mortgagee" whenever used herein shall include all individuals, corporations (and if a corporation, its officers, employees or agents), trusts and any and all other persons or entities, and the respective heirs, executors, administrators, legal representatives, successors and assigns of the parties hereto, and all those holding under either of them.

The pronouns used herein shall include, when appropriate, either gender and both singular and plural. The word "Note" shall also include one or more notes and the grammatical construction of sentences shall conform thereto.

#### **3.04 Severability.**

If any provision of this Mortgage or any other Loan Document or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the

remainder of the instrument in which such provision is contained, nor the application of the provision to other persons, entities or circumstances, nor any other instrument referred to hereinabove shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.

### 3.05 Governing Law.

The terms and provisions of this Mortgage are to be governed by the laws of the State of Alabama. No payment of interest or in the nature of interest for any debt secured in part by this Mortgage shall exceed the maximum amount permitted by law. Any payment in excess of the maximum amount shall be applied or disbursed as provided in the Note in regard to such amounts which are paid by the Mortgagor or received by the Mortgagee.

### 3.06 Descriptive Headings.

The descriptive headings used herein are for convenience of reference only, and they are not intended to have any effect whatsoever in determining the rights or obligations of the Mortgagor or Mortgagee and they shall not be used in the interpretation or construction hereof.

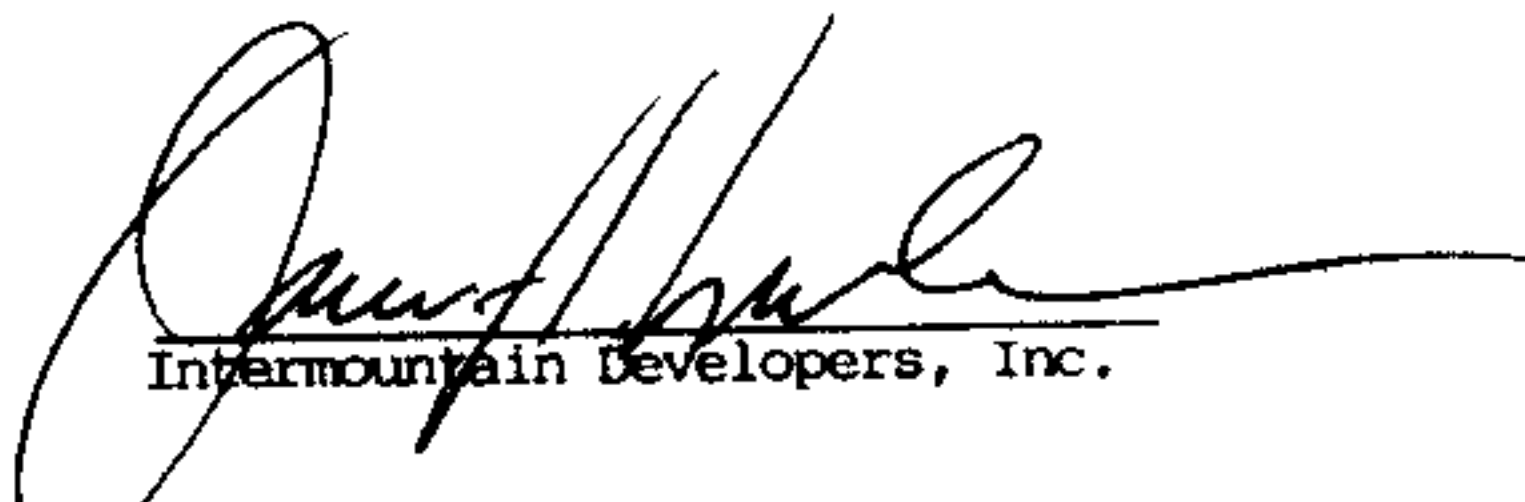
### 3.07 Attorney's Fees.

As used in this Mortgage, attorneys' fees shall include, but not be limited to, fees incurred in all matters of collection and enforcement, construction and interpretation, before, during and after suit, trial, proceedings and appeals. Attorneys' fees shall also include hourly charges for paralegals, law clerks and other staff members operating under the supervision of an attorney.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be duly executed as of the day and year first above written.

Witnesses:

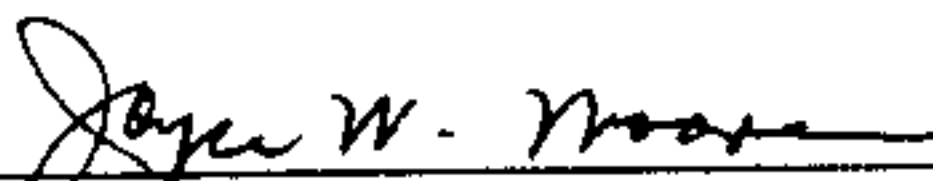
Ali Ali-Shaver  
Shelly Godsey  
Charlotte Smitthman

  
Intermountain Developers, Inc.  
James H. Leslie, IV

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, Joyce W. Moore, a Notary Public in and for said County and State, hereby certify that James H. Leslie IV whose name is signed to the foregoing complaint and who is known to me, acknowledged before me this day, that being informed of the contents of said petition executed the same voluntarily on the day same bears date.

Given under my hand this 30<sup>th</sup> day of December, 1998.

  
NOTARY PUBLIC, State at Large

My Commission Expires: 4-15-2000

## **EXHIBIT "A"**

**Described as:**

**Lot #11 Brookchase Estates, Phase I, Map Book 21, Page 49,  
Probate Office of Shelby County**



PROMISSORY NOTE Inst. # 1999-00489

Principal amount: \$17,309.85  
Due Date: February 25, 1999

01/05/1999-00489  
04:07 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE

FOR VALUE RECEIVED, the undersigned hereby jointly and severally promise to pay to the order of Wickes Lumber Company the sum of Seventeen Thousand Three Hundred Nine DOLLARS and 85/100 (\$17,309.85) by 12:00 noon on February 25, 1999. Said sum shall be paid in the following manner:

All payments shall be applied to the balance of the principal. This note may be prepaid, at any time, in whole or in part, without penalty.

This note shall be at the option of any holder thereof be immediately due and payable upon the occurrence of any of the following: 1) Failure to make any payment due hereunder within on or before its due date. 2) Breach of any condition of any security interest, mortgage, loan agreement, pledge agreement or guarantee granted as collateral security for this note. 3) Breach of any condition of any loan agreement, security agreement or mortgage, if any, having a priority over any loan agreement, security agreement or mortgage on collateral granted, in whole or in part, as collateral security for this note. 4) Upon the death, incapacity, dissolution or liquidation of any of the undersigned, or any endorser, guarantor to surety hereto. 5) Upon the filing by any of the undersigned of an assignment for the benefit of creditors, bankruptcy or other form of insolvency, or by suffering an involuntary petition in bankruptcy or receivership not vacated within thirty (30) days.

In the event this note shall be in default and placed for collection, then the undersigned agree to pay all reasonable attorney fees and costs of collection. Payments not made by 12:00 noon on February 25, 1999, will be subject to a late charge of 1.5% of said balance. All payments hereunder shall be made to such address as may from time to time be designated by any holder.

The undersigned and all other parties to this note, whether as endorsers, guarantors or sureties, agree to remain fully bound until this note shall be fully paid and waive demand, presentment and protest and all notices hereto and further agree to remain bound notwithstanding any extension, modification, waiver, or other indulgence or discharge or release of any obligor hereunder or exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change in terms, hereunder granted by any holder hereof, shall be valid and binding upon each of the undersigned, notwithstanding the acknowledgement of any of the undersigned, and each of the undersigned does hereby irrevocably grant to each of the others a power of attorney to enter into any such modification on their behalf. The rights of any holder hereof shall be cumulative and not necessarily successive. This note shall take effect as a sealed instrument and shall be construed, governed and enforced in accordance with the laws of the State of Alabama.

Witnessed:

James W. Moore  
Witness

Shelly G. Gadsby  
Witness

Intermountain Pipeline  
Borrower

James H. Gadsby  
Borrower