

Preparer:

Name  
Robert E. Carter  
604 38th Street South  
Birmingham, Al. 35222

Address

1140 Lighthouse Drive

Alabaster, Alabama 35007

Address of Real Estate



19811229000137190 Pg 1/4 .00  
Shelby Cnty Judge of Probate, AL  
12/29/1981 00:00:00 FILED/CERTIFIED

REAL ESTATE MORTGAGE

THIS REAL ESTATE MORTGAGE, dated as of the 21st day of December, 19 81, by and between James W. Whatley and wife, REGina P. Whatley, husband and wife, (hereinafter jointly called "the Mortgagor"), and United Virginia Mortgage Corporation, a Virginia corporation (hereinafter called the "Mortgagee"), recites and provides.

The Mortgagor has made a promissory note of even date herewith (hereinafter called "the Note"), payable to the Mortgagee or order, in which the Mortgagor waived the benefits of the Homestead Exemption, in the original principal amount of \$ 23,000.00, bearing interest at a rate of seventeen percent (17.75%) per annum such principal and interest to be payable in full by the Mortgagor in monthly installments as follows: \$410.76 Dollars on the 15th day of February, 19 82, and a like amount on the same day of each and every month thereafter for one hundred (120) months, except that the last installment shall be \$410.76; provided, however, that if not sooner paid, the balance of such principal amount together with interest thereon shall be due and payable in full on the 15th day of January, 1992.

NOW THEREFORE, the Mortgagor hereby grants, bargains, sells and conveys to the Mortgagee to secure the payment of the Note and all renewals and extensions thereof, all additional sums, with interest thereon, advanced under the Note and this Mortgage, and the performance of the covenants, agreements, terms, conditions and warranties contained in the Note and in this Mortgage in fee simple, the following property together with all improvements thereon and appurtenances thereunto belonging, all situated in the County of Shelby, Alabama (hereinafter called "the Real Estate"):

Lot 5, according to the survey of Portsouth, First Sector, as recorded in Map Book 6, Page 22, in the Probate Office of Shelby County, Alabama.

Subject to all easements, restrictions and right of ways of record.

This mortgage is second and subordinate to that certain mortgage heretofore executed by Steven Dean Westbrook and wife, Jan Elizabeth Westbrook to Birmingham Federal Savings & Loan Association as recorded in Volume 354, Page 13, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH all buildings, improvements, fixtures and appurtenances now or hereafter erected on the Real Estate, all rights, appurtenances, easements, privileges, remainders and reversions appertaining thereto, all additions, substitutions and accessions thereto or therefor and replacements thereof, including, but not limited to, all apparatus, equipment, fixtures, or articles whether in single units or centrally controlled, used to supply heat, gas, air conditioning, water, light, power, refrigeration, ventilation or other services, and also together with any screens, window shades, storm doors and windows, screen doors, awnings, stoves and water heaters (all of which shall be deemed to be a part of the Real Estate whether physically attached thereto or not).

The Mortgagor covenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Real Estate and has a good right to sell and convey the Real Estate as aforesaid; that the Real Estate is free of all encumbrances unless otherwise set forth above, and that the Mortgagor will warrant and forever defend the title to the Real Estate unto the Mortgagee, its successors and assigns, against the lawful claims of all persons.

FURTHER TOGETHER with any and all awards, refunds and proceeds heretofore or hereafter made or paid, in any condemnation, to the present or subsequent owners of the Real Estate for the acquisition of the Real Estate or any portion thereof, any interest therein, or use thereof for public or other purposes authorized by statute or for consequential damages on account thereof and also any award for any damage to the Real Estate and all proceeds of insurance policies in connection with the Real Estate including, without limitation, hazard insurance; and all of such awards, refunds, proceeds and return premiums are hereby assigned to the holder of the Note ("the Noteholder"), its successors and assigns, with the power to pursue, collect and receive and apply the same as provided for herein, whether or not then due and payable. The Mortgagor shall execute all additional instruments reasonably necessary to perfect this assignment or to substitute or add the Noteholder as petitioner in any such proceeding.

ROBERT E. CARTER, Notary Public

P. O. BOX 9114

BIRMINGHAM, AL 35210

AS FURTHER security for the payment of the Note and the performance of the covenants, agreements, terms, conditions and warranties contained in the Note and this Mortgage, the Mortgagor does hereby assign, transfer and set over to the Noteholder all leases now existing or hereafter made, whether oral or written, of or relating to the Real Estate (the Leases), together with all rents, issues, profits, revenues, royalties, rights of contract and otherwise, and benefits arising from the Real Estate, including, but not limited to, any deposits of cash, securities and property which may be held at any time and from time to time under the terms of the Leases; provided, however, that such assignment shall not constitute a surrender by the Mortgagor of the Leases and such rents, issues, profits, revenues, royalties, rights of contract and otherwise until an event of default hereunder as hereinafter defined and an acceleration of the Note, but such rents, issues, profits, revenues, royalties, rights of contract and otherwise may, notwithstanding such assignment, be exercised and enforced by the Mortgagor until such an event of default and acceleration of the Note.

The Real Estate together with the Leases and all other rights and property hereinabove granted and conveyed shall hereinafter be referred to as "the Properties".

Furthermore, this Mortgage shall be, for the benefit of the Noteholder, a Security Agreement pursuant to the provisions of Title 7 of the Code of Alabama 1975, as amended.

1. Affirmative Covenants of the Mortgagor.

The Mortgagor covenants and agrees as follows:

(a) Payment of the Note. The Mortgagor shall pay the principal of and the interest on the Note when and as the same shall become due.

(b) Performance of Covenants. The Mortgagor shall at all times fully perform and comply with all covenants, agreements, terms, conditions and warranties contained in the Note and this Mortgage.

(c) Maintenance of the Properties. The Mortgagor shall maintain the Real Estate in good condition and repair and shall keep attractive the appearance of the Real Estate. The Noteholder may, at any time, cause an inspection to be made of the Real Estate by its representatives, and such representatives shall be permitted reasonable access to the Real Estate and every part thereof. If any such inspection shows the reasonable need of restoration, repairs or maintenance and the Noteholder makes demand therefor, the Mortgagor shall proceed within thirty (30) days after such demand has been made to effect such restoration, repairs and maintenance and shall expeditiously complete the same. No part of the Real Estate shall be removed, altered or demolished without the prior written consent of the Noteholder.

(d) Insurance. The Mortgagor shall at all times keep the Real Estate insured against loss or damage by fire, storm, wind and other hazards and casualties for the fair and reasonable insurable value thereof, in companies satisfactory to the Noteholder, with loss payable to the Noteholder, as the Noteholder's interest may appear, and to promptly deliver such insurance policies or any renewals thereof to the Noteholder and if the Mortgagor fails to keep the Real Estate so insured, or fails to deliver such insurance policies or renewals to the Noteholder, then the Noteholder may at the Mortgagee's option insure the Real Estate for its own benefit and the cost of the insurance premiums shall be added to the indebtedness secured by this Mortgage.

(e) Liens, Taxes and Assessments. Except with the prior written consent of the Noteholder, the Mortgagor shall keep the Properties free from liens and encumbrances which may have priority over, or which may be inferior to, the lien of this Mortgage, except liens for taxes not yet due and payable and the lien of the certain mortgage (hereinafter called the "First Mortgage"), dated April 21, 1976, recorded April 23, 1976, in the Office of the Judge of Probate of Shelby County, Alabama, in Mortgage Vol. 354 at page 13, to secure the payment of a note (hereinafter called the "First Note") in the original principal amount of \$38,900.00 together with interest as set forth therein. The Mortgagor shall pay when due all taxes and assessments levied against or which constitute liens on the Properties, but the Mortgagor may appropriately contest the levy of any such tax or assessment provided that it makes whatever provision for the protection of the Properties, including the payment of such tax or assessment, that the Noteholder may require. The Noteholder shall have the right but not the obligation to make any payments which are due and payable under the First Mortgage or the First Note, the nonpayment of which would constitute or then does constitute a default under either. All amounts so advanced shall bear interest at the rate specified on the Note from the date of the advance to the date of repayment, shall be payable by the Mortgagor to the Noteholder on demand, shall be secured hereby and shall be held to be a prior charge in the event of foreclosure. The Mortgagor shall comply with all terms, provisions and conditions of the First Note and the First Mortgage, if any.

(f) Assignment of Rents and Leases. The Mortgagor shall make no assignment of the Leases or of any of the rents, issues, profits, revenues, royalties, rights of contract and otherwise relating to the Leases without the prior written consent of the Noteholder.

(g) Eminent Domain. In the event that any proceedings to take the Real Estate or any part thereof by exercise of the power of eminent domain are undertaken or threatened, or in the event of a proposed sale thereof to a proposed condemnor to avoid the exercise of the power of eminent domain, the Mortgagor shall give the Noteholder prompt notice thereof. Any award, refund or proceeds made or paid to the Mortgagor shall immediately be paid over to the Noteholder, and the Mortgagor hereby appoints the Noteholder its attorney in fact (which power of attorney shall be deemed to be coupled with an interest) to receive and give all appropriate discharges for any such award. The Noteholder may, at its option, apply such award first to the payment of any monies paid pursuant to the covenants, agreements, terms, conditions and warranties of the Note and this Mortgage, then to the payment of accrued interest on the Note, then to the prepayment of the installments of principal of the Note in the inverse order of their maturity, and thereafter such installments shall continue to be made at the same time and in the same amounts as if there had not been such prepayment until such times as payment in full of the Note shall have been made. The Noteholder shall pay the residue, if any, of such award not applied as provided hereinabove, to the Mortgagor or to any person or persons entitled thereto by law.

(h) Waiver of Exemptions. Every person liable or who may become liable under the Note or under this Mortgage or who has assumed, served as surety for or guaranteed the obligations under the Note or under this Mortgage hereby waives all exemption rights under the Constitution and laws of the State of Alabama as to the Note and this Mortgage.

(i) Information on Prior Mortgages. The Mortgagor hereby authorizes the holder of any prior mortgage encumbering the Real Estate to disclose to the Mortgagee the following information: (1) the amount of indebtedness secured by such mortgage; (2) the amount of such indebtedness that is unpaid; (3) whether any amount owed on such indebtedness is or has been in arrears; (4) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby; and (5) any other information regarding such mortgage or the indebtedness secured thereby that the Mortgagee may request from time to time.

**2. Events of Default Hereunder.**

The following shall be events of default (the "Events of Default") hereunder and under the Note:

- (a) Failure to pay any amount due under the Note or under this Mortgage after the same shall have become due and payable.
- (b) Failure to comply with or observe any covenant, agreement, term or condition contained in the Note or this Mortgage.
- (c) If any representation or warranty made by the Mortgagor in the Note or this Mortgage shall not be true and correct in all material respects on the date as of which made.
- (d) If the Mortgagor shall die, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a voluntary petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similiar relief under any present or future statute, law or regulation, or shall file any answer admitting or not contesting the material allegations of a petition filed against it, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, fiscal agent or liquidator of all or any substantial part of its assets.
- (e) If the Mortgagor shall abandon, damage, sell, transfer or encumber any portion of the Properties or use any portion of the Properties illegally or if any levy, seizure or attachment shall be made against all or any portion of the Properties.
- (f) If a final judgment in an amount greater than \$1,000 shall have been rendered by a court of competent jurisdiction against the Mortgagor (or any of the persons included in the term "Mortgagor") and if, within thirty (30) days after entry thereof, such judgment shall not have been discharged or execution thereof stayed pending appeal, or if, within thirty (30) days after the expiration of any such stay such judgment shall not have been discharged.
- (g) If there be any default in the First Note, the First Mortgage or any other lien against all or any portion of the Properties, superior to the lien hereof.
- (h) So long as the indebtedness secured by the Mortgage remains outstanding, if the Mortgagor shall sell, convey or transfer, or contract to sell, convey or transfer, all or any portion of the Properties without the prior written consent of the Noteholder. NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

**3. Remedies of the Noteholder Upon an Event of Default.**

Upon the occurrence of one or more of the Events of Default, the Noteholder may, at its option, by written notice to the Mortgagor as required by applicable law, declare the entire balance then unpaid on the Note to be then immediately due and payable, in which event the same shall forthwith mature and become immediately due and payable, together with accrued interest thereon, without presentment, demand or protest, or notice of such presentment, demand or protest, all of which are hereby waived, and the Noteholder may, at its option, exercise one or more of the following remedies. Failure or delay by the Noteholder to exercise any one or more of such remedies pursuant to an Event of Default shall not be deemed a waiver of its right to do so or be a waiver of any such Event of Default.

(a) Foreclosure. Upon notice as prescribed by law, the Noteholder shall have the right to take possession of the Properties and proceed to sell the same as a whole or in parts or parcels, at public auction, for cash or credit to the highest bidder, upon any terms the Noteholder shall deem appropriate. The Mortgagor consents that such sale may be made of the Properties as a whole or in parts or parcels and that real property and personal property may be separately sold or sold as one lot and without requiring any personal property to be physically present at the place of sale, all as the Noteholder in its discretion may determine. Such sale may be held in front of the Court House door of the County (or division thereof) where the Properties are located. Before such sale of the Properties at public auction is made, there shall first be advertisement of the time, place and terms of such sale as may be required by applicable law but not less than once a week for three (3) consecutive weeks in a newspaper having general circulation in the County in which the Real Estate is situated. The Noteholder may purchase the Properties so sold and no purchaser shall be required to see to the proper application of the purchase money. In the event of a sale hereunder, the Mortgagee, or the Noteholder and the holder of this Mortgage, or auctioneer, shall execute to the purchaser, for and in the name of the Mortgagor, a good and sufficient deed to the Real Estate. The proceeds of any such sale shall be applied as follows: (i) to the expense of advertising, selling and conveying, including reasonable attorneys' fees not exceeding 15% of the unpaid debt after default and referral to an attorney not a salaried employee of the Noteholder; then (ii) to the payment of any amounts that may have been expended, or may be necessary to expend, in payment of insurance, taxes or other incumbrances, with interest thereon; then (iii) to the payment of the balance of unpaid principal and interest; then (iv) the balance, if any, is to be paid over to the Mortgagor. The Noteholder shall have the right, exercisable in its discretion, to postpone any advertised sale of the Properties and shall advertise the terms of such postponement one time in the newspaper in which the aforesaid advertisement of sale was printed.

(b) Right to Enter and Take Possession. The Noteholder shall have the right to enter the Real Estate and take possession thereof in its name, and the Mortgagor agrees to surrender the Real Estate to the Noteholder promptly upon demand therefrom. The Noteholder shall have the right to enter and take possession of the Real Estate; to perform any one or more of the covenants, agreements, terms and conditions hereunder and under the Note which the Noteholder deems proper to protect the lien hereof; to manage and operate the Real Estate or any part thereof itself or through agents appointed by it; to make repairs and alterations and to do any acts which the Noteholder reasonably deems proper to protect the Real Estate; and may sue for or otherwise collect all rents, issues, profits, revenues, royalties, rights of contract and otherwise from the Real Estate and the Leases, including those past due and unpaid, deduct from such income from the Real Estate and the Leases all costs of entry, of collection, of administration and reasonable management and counsel fees, and apply the remainder, if any, first to the payment of interest on the Note and then to the payment of principal on the Note. Such exercise by the Noteholder of the remedy provided for hereunder shall not affect the right of the Noteholder to maintain and continue any action theretofore instituted, or to bring any action thereafter, to enforce the payment of the Note. All costs incurred in the exercise of the remedy provided in this subparagraph 3(b) shall be secured by this Mortgage and shall be paid, together with interest at the same rate as set forth in the Note, by the Mortgagor to the Noteholder upon demand therefor. In no event shall the Noteholder in the exercise of the remedy provided in this subparagraph 3(b)a be deemed a mortgagee in possession, and the Noteholder shall not in any way be made liable for any act either of commission or omission in connection with the exercise of this remedy.

(c) Appointment of a Receiver. After the occurrence of any Event of Default, the Mortgagee, upon bill filed or other proper legal proceeding being commenced for the foreclosure of this Mortgage, shall be entitled to the appointment by any competent court, without notice to any party, of a receiver for the rents, issues, revenues and profits of the Real Estate, with power to lease and control the Real Estate, and with such other powers as may be deemed necessary.

(d) Additional Remedies. The Noteholder may exercise any and all other rights and remedies against the Mortgagor and the Properties as are permitted under the laws of the State of Alabama.

4. Additional Instruments.

At any time and from time to time, upon the written demand of the Noteholder, the Mortgagor shall execute and file financing statements in quantities, form and substance satisfactory to the Noteholder and in compliance with the provisions of Title 7 of the Code of Alabama, as amended, or any successor provision of law, and, further, upon the written demand of the Noteholder, shall execute and file in a timely fashion all continuation statements to such financing statements as may be necessary to protect and preserve the security interest created hereby, which continuation statements shall be in quantities, form and substance satisfactory to the Noteholder and in compliance with the aforesaid provisions of the Code of Alabama, as amended.

5. Cumulative Rights and Remedies.

No remedy conferred upon or given under the Note or this Mortgage is intended to be exclusive of any other remedy herein or by law provided, but each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to the Noteholder may be exercised from time to time and as often as may be deemed expedient and the Noteholder may pursue inconsistent remedies. The acceptance of this Mortgage and the exercise of any remedy herein conferred shall not in any manner affect the right of the Noteholder to realize upon or enforce any other security now or hereafter held by the Noteholder as security for the obligation secured hereby.

6. Successors and Assigns.

All rights and liabilities herein given to or imposed upon the parties hereto shall extend to and bind their heirs, administrators, successors and assigns.

7. Saving Clause.

Should any term, provision, covenant or portion thereof or condition of this Mortgage be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Mortgage, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein.

8. Notices.

Any notice or demand required to be sent or delivered to the Mortgagor shall be given by certified mail, return receipt requested, to the Mortgagor at the address listed below or at such other place as the Mortgagor or its successors in interest shall designate in writing to the Noteholder. Any notice to the Noteholder shall be given by certified mail, return receipt requested to the Noteholder at the Noteholder's address stated herein or to such other address as Noteholder may designate in writing to the Mortgagor.

WITNESS the following signatures and seals.

James W. Whatley (SEAL)  
James W. Whatley  
Regina P. Whatley (SEAL)  
Regina P. Whatley

Address of the Mortgagor:

1140 Lighthouse Drive

Alabaster, Alabama 35007

Address of the Noteholder:

P. O. Box 2-0

Richmond, Virginia 23204

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, A Notary Public in and for said county, in said state, hereby certify that James W. Whatley and wife, whose names are Regina P. Whatley signed to the foregoing conveyance and who are known to me, acknowledged before me on this day, that, being informed of the contents of this conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 21st day of December, 19 81.

Calvin J. K...  
Notary Public

19811229000137190 Pg 4/4 .00  
Shelby Cnty Judge of Probate, AL  
12/29/1981 00:00:00 FILED/CERTIFIED

BOOK 417 PAGE 535

RETURN TO:

ROBERT L. CARTER, ATTORNEY  
P. O. BOX 1114  
BIRMINGHAM, AL 35213

James W. Whatley and  
wife, Regina P. Whatley

United Virginia Mortgage  
Corporation