

494

ADJUSTABLE RATE MORTGAGE

STATE OF ALABAMA)
COUNTY OF SHELBY)

THIS MORTGAGE, made and entered into this 4th day of September, 1986 by and between Mary H. Waite, an unmarried woman, Robert S. Waite, III, an unmarried man, and Nell W. Dumas, a married woman, (hereinafter referred to as "Mortgagor", whether one or more), and Mutual Savings Credit Union, 4615 Gary Avenue, Fairfield, Alabama 35064, (hereinafter referred to as "Mortgagee").

WITNESSETH:

WHEREAS, the said Mortgagor is justly indebted to Mortgagee in the sum of One Hundred Thousand Three Hundred Twenty Seven and 50/100 (\$100,327.50) Dollars as evidenced by an Adjustable Rate Mortgage Note (Promissory Note) of even date herewith which bears interest as provided therein which is payable in accordance with its terms.

NOW, THEREFORE, in consideration of the premises, and to secure the payment of the debt evidenced by said Promissory Note and any and all extension and renewals thereof, or of any part thereof, and any additional interest that may become due on any such extensions and renewals, or any part thereof (the aggregate amount of such debt, including any extensions and renewals and interest due of even date herewith which bears interest as provided therein which is payable in accordance with its terms).

NOW, THEREFORE, in consideration of the premises, and to secure the payment of the debt evidenced by said Promissory Note, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee, the following described real estate, situated in SHELBY County, Alabama (said real estate being hereinafter called "Real Estate"), to-wit:

See attached Exhibit "A" for legal description.

THIS IS A PURCHASE MONEY MORTGAGE.

The above subject property does not constitute a part of the homestead of Nell W. Dumas and her spouse.

Together with all the rights, privileges, tenements, appurtenances fixtures and improvements appertaining to the Real Estate, all of which shall be deemed Real Estate and shall be conveyed by this mortgage.

TO HAVE AND TO HOLD the Real Estate unto the Mortgagee, its successors and assigns forever. 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, except the lien of current and valorem taxes, the hereinafter described First Mortgage and any and all encumbrances expressly set forth above; and the Mortgagor will warrant and forever defend the title to the Real Estate unto the Mortgagee,

against the lawful claims of all persons, except as otherwise herein provided.

For the purpose of further securing the payment of the debt, the Mortgagor agrees to: (1) pay promptly when due all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), when imposed legally upon the Real Estate and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (2) keep the Real Estate continuously insured, in such manner and in such companies as may be satisfactory to the Mortgagee, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsements, with loss, if any, payable to the Mortgagee, as its interest may appear; such insurance to be in an amount sufficient to cover the debt. The original policy, and all replacements therefor, shall be delivered to and held by the Mortgagee until the debt is paid in full. The original insurance policy and all replacements therefor must provide that they may not be cancelled without the insurer giving at least ten days prior written notice of such cancellation to the Mortgagee. The Mortgagor hereby assigns and pledges to the Mortgagee, as further security for the payment of the debt, each and every policy of hazard insurance now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagor in and to each and every such policy, including but not limited to all of the Mortgagor's right, title and interest in and to any premiums paid on such hazard insurance, including all rights to return premiums. If the Mortgagor fails to keep the Real Estate insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the entire debt due and payable and this mortgage subject to foreclosure, and this mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Mortgagee declares the entire debt due and payable, the mortgagee may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss, for its own benefit the proceeds from such insurance (less cost of collecting same), if collected, to be credited against the debt, or, at the election of the Mortgagee, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate. All amounts spent by the Mortgagee for insurance or for the payment of Liens shall become a debt due by the Mortgagor to the Mortgagee and at once payable without demand upon or notices to the Mortgagor, and shall be secured by the lien of this mortgage, and shall bear interest from the date of payment by the Mortgagee until paid at the then current mortgage rate at said Credit Union. The Mortgagor agrees to pay promptly when due the principal and interest of the debt and keep and perform every other covenant and agreement of the Promissory Note secured hereby.

As further security for the payment of the debt, the Mortgagor hereby assigns and pledges to the Mortgagee, the following described property rights, claims, rents, profits, issues and revenues:

1. All rents, profits, issues, and revenues of the Real Estate from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;

2. All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto, including any award for change

or grade of streets, and all payments made for the voluntary sale of the Real Estate, or any part thereof, in lieu of the exercise of the power of eminent domain, shall be paid to the Mortgagee. The Mortgagee is hereby authorized on behalf of and in the name of the Mortgagor to execute and deliver valid acquittances for, appeal from, any such judgments or awards. The Mortgagee may apply all such sums received, or any part thereof, after the payment of all the Mortgagee's expenses incurred in connection with any proceeding or transaction described in this subparagraph 2, including court costs and attorney's fees, on the debt in such manner as the Mortgagee elects, or, at the Mortgagee's option, the entire amount or any part thereof so received may be released or may be used to rebuild, repair or restore any or all of the improvements located on the Real Estate.

The Mortgagor hereby incorporates by reference into this Mortgage all of the provisions of the Adjustable Rate Mortgage Note of even date herewith. Mortgagor agrees that, in the event that any provision or clause of this Adjustable Rate Mortgage or the Adjustable Rate Mortgage Note conflict with applicable law, such conflict shall not affect any other provisions of this Adjustable Rate Mortgage or the Adjustable Rate Mortgage Note which can be given effect. It is agreed that the provisions of the Adjustable Rate Mortgage and the Adjustable Rate Mortgage Note are severable and that, if any one or more of the provisions contained in this Adjustable Rate Mortgage or in the Adjustable Rate Mortgage Note shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof; this Mortgage shall be construed as if such invalid, illegal or unenforceable provision has never been contained herein.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit any waste thereon, and at all times to maintain such improvements in as good conditions as they are, reasonable wear and tear excepted.

If all or any part of the Real Estate or any interest therein is sold or transferred by Mortgagor without Mortgagee'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) the transfer by devise, 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, Mortgagee may, at Mortgagee's option, declare all of the sums secured by this Mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagee and the person to whom the Real Estate is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Mortgagee and that the interest payable on the sums secured by this Mortgage shall be at such rate as Mortgagee shall request.

The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the debt due and payable shall be deemed a waiver of the Mortgagee's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this mortgage may be waived, altered or changed except by a written instrument signed by the Mortgagor and signed on behalf of the Mortgagee by one of its duly authorized representatives.

After default on the part of the Mortgagor, the Mortgagee, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, shall be entitled to the appointment by any competent court, without notice to any part, of a receiver for the rents, issues 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.

UPON CONDITION, HOWEVER, that if the Mortgagor pays the debt (which debt includes the indebtedness evidenced by the Promissory Note hereinabove referred to and any or all extensions and renewals thereof and any interest due on such extensions and renewals) and all other indebtedness secured hereby and reimburses the Mortgagee for any amounts the Mortgagee has paid in payment of Liens or insurance premiums, and interest thereon, and fulfills all of Mortgagor's obligations under this mortgage, this conveyance shall be null and void. But if: (1) any warranty or representation made in this mortgage is breached or proves false in any material respect; (2) default is made in the due performance of any covenant or agreement of the Mortgagor under this mortgage; (3) default is made in the payment to the Mortgagee of any sum paid by the Mortgagee under the authority of any provision of this mortgage; (4) the debt, or any part thereof, remains unpaid at maturity; (5) the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior lien or encumbrance; (6) any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen (without regard to the existence or nonexistence of the debt or the lien on which such statement is based); (7) any law is passed imposing or authorizing the imposition of any specific tax upon this mortgage or the debt or permitting or authorizing the deduction of any such tax from the principal or interest of the debt, or by virtue of which any tax lien or assessment upon the Real Estate shall be chargeable against the owner of this mortgage; (8) any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction; (9) Mortgagor or any of them (a) shall apply for or consent to the appointment of receiver, trustee or liquidator thereof or of the Real Estate or of all or a substantial part of such Mortgagor's assets, (b) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy, (c) fail, or admit in writing such Mortgagor's inability, generally to pay such Mortgagor's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law, (f) file an answer admitting the material allegations of, or consent to, or default in answering a petition filed against such Mortgagor in any bankruptcy, reorganization or insolvency proceedings; or (10) an order for relief or other judgment or decree shall be entered by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Mortgagor, or any of them, if more than one, or appointing a receiver, trustee or liquidator of any Mortgagor or of the Real Estate or of all or a substantial part of the assets of any Mortgagor; then, upon the happening of any one or more of said events, at the option of the Mortgagee, the unpaid balance of the debt shall at once become due and payable and this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages; and the Mortgagee shall be authorized to take possession of the Real Estate and, after giving at least twenty-one day's notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Real Estate is located, to sell the Real Estate in front of the courthouse door of said county, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Real Estate and foreclosing this mortgage, including a reasonable attorney's fee; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, Liens or other encumbrances, with interest thereon; third, to the payment in full of the balance of the debt and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale and any unearned interest shall be credited to the Mortgagor; and fourth, the balance, if any, to be

paid to party or parties appearing of record to the owner of the Real Estate at the time of sale, after deducting the cost of ascertaining who is such owner. The Mortgagor agrees that the Mortgagee may bid at any sale had under the terms of this mortgage and may purchase the Real Estate if the highest bidder therefor. At the foreclosure sale the Real Estate may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner the Mortgagee may elect. The Mortgagor agrees to pay all costs, including reasonable attorney's fees, incurred by the Mortgagee in collecting or securing or attempting to collect or secure the debt, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any lien or encumbrance on the Real Estate, unless this mortgage is herein expressly made subject to any such lien or encumbrance; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the debt and shall be secured by this mortgage. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, the Mortgagee, or the owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagor a deed to the Real Estate.

Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this mortgage, whether one or more natural persons. All covenants and agreements herein made by the undersigned shall bind the heirs, personal representatives, successors and assigns of the undersigned, and every option, right and privilege herein reserved or secured to the Mortgagee, shall inure to the benefit of the Mortgagee's successors and assigns.

IN WITNESS WHEREOF, the undersigned Mortgagor has (have) executed this instrument on the date first written above.

BOOK 089-515

Mary H. Waite (SEAL)
MARY H. WAITE

Robert S. Waite III (SEAL)
ROBERT S. WAITE, III

Nell W. Dumas (SEAL)
NELL W. DUMAS

ACKNOWLEDGEMENT

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that Mary H. Waite, an unmarried woman, Robert S. Waite, III and unmarried man, whose name(s) ~~xxx~~ and Nell W. Dumas, a married woman (are) signed to the foregoing instrument, and who ~~xxx~~(are) known to me acknowledged before me on this day that, being informed of the contents of said instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 4th day of
September, 1986.

Douglas L. Key
NOTARY PUBLIC

My Commission Expires: 10/31/87

THIS INSTRUMENT PREPARED BY:

(NAME)

DOUGLAS L. KEY, ATTORNEY AT LAW

(ADDRESS)

2100 11th Avenue North

Birmingham, Alabama 35234

BOOK 089 PAGE 516

RETURN TO: DOUGLAS KEY, ATTORNEY
2100 - 11TH AVENUE NORTH
BIRMINGHAM, AL 35234

MORTGAGE DEED

STATE OF ALABAMA)
COUNTY OF)

Office of the Judge of
Probate

I hereby certify that the
within mortgage was filed in
this office for record on the
19__ day of __,
at __ M., and was duly
recorded in Volume __
of Mortgages at page __,
and examined.

JUDGE OF PROBATE

EXHIBIT "A"

Parcel I

From the northwest corner of Section 31, Township 19 South, Range 2 West, run easterly along the north boundary line of said section for a distance of 1471.0 feet to the point of beginning of the parcel herein described; thence continue easterly along the north boundary line of Section 31 for a distance of 275.0 feet (deed) 274.97 feet (meas.); thence turn an angle of 86 degrees 32' (deed) 86 degrees 34' 17" (meas.) to right and run southerly for a distance of 300.0 feet (deed) 300.17 feet (meas.); thence turn an angle of 93 degrees 21' 30" (deed) 93 degrees 20' 51" (meas.) to the right and run westerly for a distance of 221.03 feet (deed) and (meas.) to a point on the arc of a circular dedicated driveway, said circle having a radius of 50.0 feet; to locate the chord to the segment of arc herein described from last said course turn an angle of 30 degrees 45' 30" (deed) 33 degrees 18' 12" (meas.) to the right, said chord being 85.94 feet (deed) and (meas.) in length; thence from the point above said arc run along the arc of said circle in a northwesterly direction 103.40 feet (deed) 103.43 feet (meas.), thence from the chord of above segment of arc turn an angle of 56 degrees 27' 30" (deed) 56 degrees 46' 39" (meas.) to the right and run northerly 253.02 feet (deed) 252.86 feet (comp.) to point of beginning.

Parcel II

From the northwest corner of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, run thence in an easterly direction along the north line of said section for a distance of 1745.97 feet; thence turn an angle to the right of 86 degrees 34' 17" and run in a southerly direction for a distance of 300.17 feet; thence turn an angle to the right of 93 degrees 20' 51" and run in a westerly direction for a distance of 173.84 feet to an iron pin set which is the point of beginning of the parcel herein described; thence continue along the same course as before for a distance of 47.19 feet to a point on the arc of a circular dedicated driveway, the radius of said arc being 50 feet, the central angle being 23 degrees 01' 58"; thence run in a southwesterly direction along the arc of said drive for a distance of 20.10 feet to an iron pin; thence run northeasterly for a distance of 55.53 feet to the point of beginning.

Said property situated in Shelby County, Alabama.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 SEP -8 PM 1:26

Thomas A. Henderson, Jr.
JUDGE OF PROBATE

1. Deed Tax	\$ _____
2. Mtg. Tax	_____
3. Recording Fee	<u>17.50</u>
4. Indexing Fee	<u>2.10</u>
TOTAL	<u>19.60</u>

BOOK 089 PAGE 517