

482 ADJUSTABLE RATE MORTGAGE - 2

THE STATE OF ALABAMA
Jefferson COUNTY

THIS MORTGAGE, made and entered into this 1st day of October

19 87 by and between Malcolm E. Fancher, and wife, Barbara Fancher (hereinafter referred to as "Mortgagor", whether one or more), and America's First Credit Union (hereinafter referred to as "Mortgagee")

WITNESSETH:

WHEREAS, the said Malcolm E. Fancher, and wife, Barbara Fancher is (justly indebted to Mortgagee in the sum of Forty Thousand and 00/100*****dollars (\$ 40,000.00) as evidenced by an Adjustable Rate Mortgage Note (Promissory Note) of even date herewith, which bears interest as provided therein and 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 note and any and all extensions 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 thereon, is hereinafter collectively called "Debt") and compliance with all the stipulations herein contained, 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:

Lot 16, according to the survey of Shadow Brook, as recorded in Map Book 6, Page 102 A & B, in the Probate Office of Shelby, County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

Together with all the rights, privileges, tenements, appurtenances and fixtures 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 ad valorem taxes, the hereinafter described First Mortgage and any other 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.

This mortgage is junior and subordinate to that certain mortgage dated January 3, 1978 recorded in Mortgage Book 373, page 480 in the Probate Office of Shelby

County, Alabama (hereinafter called the "First Mortgage"). It is specifically agreed that in the event default should be made in the payment of principal, interest or any other sums payable under the terms and provisions of the First Mortgage, the Mortgagee shall have the right without notice to anyone, but shall not be obligated, to pay part or all of whatever amounts may be due under the terms of the First Mortgage, and any and all payments so made shall be added to the debt secured by this mortgage and the debt (including all such payments) shall be immediately due and payable at the option of the Mortgagee, and this mortgage shall be subject to foreclosure in all respects as provided by law and by the provisions hereof.

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 hereby; and (5) any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may request from time to time.

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 interests may appear; such insurance to be in an amount sufficient to cover the debt, and the unpaid balance outstanding under any prior mortgage encumbering the Real Estate. The original insurance 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 fifteen 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 in and to any 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; subject, however, to the rights of the holder of the First Mortgage. 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 and this mortgage subject to foreclosure, 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 notice to the Mortgagor, and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by the Mortgagee until paid at the then current junior mortgage rate at said Credit Union; (3) pay promptly when due the principal and interest of the debt and keep and perform every other covenant and agreement of the adjustable rate mortgage note secured hereby.

As further security for the payment of the debt, the Mortgagor hereby assigns and pledges to the Mortgagee, subject to the rights of the holder of the First Mortgage, 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 of 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 of the Adjustable Rate Mortgage Note conflict with applicable law, such conflict shall not affect any other provisions of this Adjustable Rate Mortgage or of the Adjustable Rate Mortgage Note which can be given effect. It is agreed that the provisions of this 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 had never been contained herein.

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

If all or any part of the Real Estate or an 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) a 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 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.

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 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 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 or notes 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 (including, but not limited to, foreclosure or other enforcement of the First Mortgage) thereon; (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 a 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 days' 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 be 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.

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

<u>Malcolm E. Fancher</u>	(SEAL)
Malcolm E. Fancher	(SEAL)
<u>Barbara Fancher</u>	(SEAL)
Barbara Fancher	(SEAL)

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ACKNOWLEDGEMENT

STATE OF ALABAMA
Jefferson County

I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that Malcolm E. Fancher, and wife, Barbara Fancher

whose name(s) is (are) signed to the foregoing instrument, and who is (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 1st day of October, 19 87.

Randi Kay C. Brafield
Notary Public
6-22-91

This instrument prepared by:

(Name) June J. Arrington, Am First C.U.
1200 4th Avenue No., P.O. Box 11349
(Address) Birmingham, Alabama 35202

ADJUSTABLE RATE REAL ESTATE NOTE

THIS ADJUSTABLE RATE REAL ESTATE NOTE CONTAINS A PROVISION ALLOWING FOR CHANGES IN THE INTEREST RATE. INCREASES IN THE INTEREST RATE WILL RESULT IN A HIGHER MONTHLY PAYMENT AMOUNT.

AMERICA'S FIRST CREDIT UNION
1200 4th Avenue, North
Birmingham, Alabama 35202

Property Address:

5200 Timberline Cove

Birmingham, Alabama 35244

1661760 - 31

Account Number

U.S. \$ 40,000.00

Malcolm E. Fancher & Barbara Fancher
Borrower(s) Name

5200 Timberline Cove

Street Address

Birmingham, Shelby, Alabama 35244

City

County

State

Zip

Birmingham

Alabama

1. BORROWER'S PROMISE TO PAY

For value received, the undersigned Borrower or Borrowers (hereinafter referred to as "I", "me" or "my", whether one or more than one Borrower), jointly and severally, promise to pay to the order of AMERICA'S FIRST CREDIT UNION, its successors and assigns, the principal sum of U.S. \$ 40,000.00, plus interest. I agree that the Credit Union may assign or transfer this Note to some other person or entity without my consent and without notice to me. The Credit Union or anyone to whom this Note is transferred or assigned is hereinafter referred to as the "Holder".

2. INTEREST

I will pay interest on the unpaid principal from the date of this Note until the entire amount of principal has been paid. I will pay interest at the rate of 10.00% (the "Initial Interest Rate"). I agree that the interest rate I will pay may be changed and adjusted from time to time in the manner set out in Section 4 of this Note. I will pay the interest rate required by this Section and Section 4 both before and after any default described in this Note or in any Mortgage which secures the payment of this Note.

3. PAYMENTS

I will pay all principal and interest in consecutive monthly payments. I will make my monthly payments on the 15th day of each month, beginning November 15, 1987. I will continue to make these payments each month until I have paid all of the principal and interest that I owe under this Note, plus any other charges described in this Note or the Mortgage which secures the payment of this Note.

Each payment that I make will be applied first to interest, then to any charges other than principal or interest and the remainder to the reduction of the principal amount that I owe. In the event I still owe any amounts under this Note on October 15, 2002, I will pay those amounts in full on that date (the "Maturity Date").

I will make my monthly payments at the main office of the Holder, as designated above, or such other place as the Holder may designate. The initial amount of my monthly payments will be U.S. \$ 431.63. I agree that the amount of my monthly payments will change if the interest rate changes. Increases in the interest rate will result in higher payment amounts. Decreases in the interest rate will result in lower payment amounts.

4. INTEREST RATE AND PAYMENT CHANGES

I agree that the interest rate I will pay under this Note may change on the 1st day of October, 1988, and on that day of the month every 12th month thereafter until all amounts I owe under this Note are paid in full. Each date on which my interest rate could change is called a "Change Date".

Beginning on the first Change Date, my interest rate will be based on changes in an Index. I agree that the "Index" is the weekly auction rate of United States Treasury Bills with a maturity of 26 weeks, as published in the "money rates" section of the Wall Street Journal. If the Index should no longer be made available, I agree that the Holder may set the interest rate by using a comparable Index. The percentage figures obtained from the Index are hereinafter referred to as "Index Figures".

My new interest rate on each Change Date will reflect the change between the most recently published Index Figure that is available on the date of this Note (the "Base Index Figure") and the most recently published Index Figure that is available on each Change Date (the "Current Index Figure").

In order to determine my new interest rate, on each Change Date the Holder will compare the Current Index Figure to the Base Index Figure. If the Current Index Figure is greater than the Base Index Figure, the Holder will add the difference between the two figures to the Initial Interest Rate. If the Current Index Figure is less than the Base Index Figure, the Holder will subtract the difference between the two figures from the Initial Interest Rate. The Holder will then round off the resulting figure to the nearest one-tenth of one percentage point. The results of this addition or subtraction will be my new interest rate which will be effective until the next Change Date.

The minimum interest rate I will be charged under this Note will be 8.00% per year. The maximum interest rate I will be charged under this Note will be 16.00% per year.

At the time my new interest rate is determined, the Holder will also determine the new amount of my monthly payment. Changes in my monthly payment will reflect changes in the unpaid principal and in the interest rate I must pay. To set the amount of my new monthly payment, the Holder will determine an amount that would be sufficient to repay the outstanding principal in full at my new interest rate, in substantially equal payments, by the Maturity Date. The result of this calculation will be the new amount of my monthly payment. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

5. BORROWER'S RIGHT TO REPAY

I may repay the principal amount I owe in whole or in part at any time without the imposition of any prepayment penalty. If I make a partial prepayment, that will not change the due date or amount of any monthly payment, unless the Holder agrees in writing to a change.

6. LATE CHARGES

If any scheduled monthly payment is late Ten (10) days or more following the due date of such payment, I will pay a late charge of 5% of the amount of the monthly payment.

7. SECURITY

The payment of this Note shall be secured by a Mortgage of even date on real estate located in Shelby County, Alabama, executed in favor of the Holder. References to such Mortgage is hereby made for a more particular description of the terms and conditions of acceleration thereof upon which this Note is issued and secured.

8. ACCELERATION

In the event of a default in the payment of any monthly payment due under this Note, or in case of a failure to perform any of the terms and covenants contained in the Mortgage, or if there should be such a change in the affairs (financial or otherwise) of any party liable under this Note, as in the opinion of the Holder would increase the risk or render the debt insecure, the whole of the debt evidenced by this Note, or any balance remaining unpaid thereon, together with any and all accrued interest may, at the option of the Holder, without notice of such acceleration to any party to this Note, become at once due and payable, and a failure of the Holder to so declare such indebtedness to be due shall not constitute a waiver of the right to later declare the entire indebtedness to be at once due and payable.

9. WAIVERS

I and any other person who has obligations under this Note waive presentment, protest, notice of protest, notice of dishonor, demand and all legal diligence in enforcing the collection of this Note and hereby expressly agree that the Holder may defer or postpone collection of the whole or any part of this Note, either principal and/or interest, or may extend or renew the whole or any part thereof.

10. ATTORNEY'S FEES

I will pay all costs the Holder may incur in collecting or securing or attempting to collect or secure this Note, whether by suit or otherwise, including a reasonable attorney's fee.

11. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address stated above or such other address as I may designate by notice to the Holder.

Any notice that must be given to the Holder under this Note shall be given by mailing such notice by first class mail to the address of the Holder as stated above or to such other address as may have been designated by notice to me.

12. GOVERNING LAW

This Note shall be governed as to its validity, interpretation, construction, effect and in all other respects by the laws and decisions of the State of Alabama.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals on this 1st day of October, 1987.

1. Deed Tax

2. Mtg. Tax

3. Recording Fee

4. Indexing Fee

Borrower

Malcolm E. Fancher

STATE OF ALABAMA
COUNTY OF SHELBY
INSTRUMENT NO. 1661760-31
FILED
OCT 15 1987
JUL 9 1987