

1652

# MORTGAGE

THIS MORTGAGE DEED, dated this 15th day of January, 19 88, by and between JANKO, INC. hereinafter called the Mortgagor, and BANCBOSTON MORTGAGE CORPORATION, a corporation organized and existing under the laws of Florida, hereinafter called the Mortgagee.

WITNESSETH:

WHEREAS, The Mortgagor is indebted to the Mortgagee in the principal sum of Ninety Seven Thousand Five Hundred DOLLARS (\$ 97,500.00 ) or so much as may from time to time be disbursed hereunder, as evidenced by a promissory note of even date herewith executed by the Mortgagor payable to Mortgagee, together with interest as therein provided, both principal and interest being payable as provided in said promissory note; and

WHEREAS, the Mortgagor has agreed to grant this Mortgage to the Mortgagee in order to secure such sum, or so much hereof as may from time to time be disbursed, including future advances to be advanced from time to time, and any extensions or renewals thereof, and all other indebtedness of the Mortgagor to the Mortgagee, absolute or contingent, whether now owing or hereafter contracted.

NOW THEREFORE, to secure the payment of the said promissory note and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereinafter incurred, and all extensions and renewals hereof or of any indebtedness of the Mortgagor to the Mortgagee, and further to secure the performance of the covenants and agreements hereinafter contained, the Mortgagor does hereby grant, convey and mortgage unto the Mortgagee, its successors and assigns, the following described property situate in the County of Shelby and State of Alabama;

See Attached Exhibit 'A'

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Together with all structures and improvements now and hereafter on said land, and fixtures attached thereto, and all rents, issues, proceeds and profits accruing and to accrue from said premises, all of which are included within the foregoing description and the habendum thereof; also all gas, steam, electric, water and other heating, cooking, refrigerating, lighting, plumbing, ventilating, irrigating and power systems, machines, appliances, furniture, furnishings, fixtures and appurtenances, which now are or may hereafter pertain to, or be used with, in or on said premises, even though they be detached or detachable; also, all building, improvement or construction materials, supplies and equipment hereafter delivered to said land contemplating installation or use in constructions thereon and all rights and interests of the Mortgagor in building permits and architectural plans and specifications relating to contemplated constructions or improvements on said land and all rights and interest of Mortgagor in present or future mortgage loan commitments pertaining to any of said land and improvements thereon.

TO HAVE AND TO HOLD the same, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder or remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said Mortgagor in and to the same, and every part thereof, unto the said Mortgagee, its successors and assigns, absolutely and in fee simple forever.

James Holliman

JANKO

EXHIBIT 'A'

A part of the SW 1/4 of the NE 1/4 of Section 17, Township 19 South, Range 2 West, more particularly described as follows:  
Commence at the Northwest corner of the SW 1/4 of the NE 1/4 of Section 17, Township 19 South, Range 2 West; thence run East along the North line of said SW 1/4 of NE 1/4 for a distance of 100.00 feet to the point of beginning; thence continue along the last described line for a distance of 100.00 feet; thence turn 88 degrees 34 minutes 54 seconds to the right and run South for a distance of 311.64 feet to the Northerly right of way of Sandpiper Lane; thence turn 100 degrees 31 minutes 19 seconds right to tangent of a curve to the right, said curve having a radius of 966.34 feet, an intersection angle of 6 degrees 06 minutes 05 seconds; thence run along arc of said curve and Northerly right of way of said Sandpiper Lane for a distance of 102.90 feet; thence from tangent to curve, turn 73 degrees 22 minutes 36 seconds right and run North for a distance of 289.40 feet to the point of beginning; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

And the Mortgagor does hereby covenant with Mortgagee that the Mortgagor is lawfully seized in fee simple of the Mortgaged property and has a good right to sell and convey the same as aforesaid, that the mortgaged property is free and clear of all liens and encumbrances, and that the Mortgagor will warrant and forever defend the title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

And the Mortgagor covenants and agrees to and with the Mortgagee as follows:

1. **Payment of Secured Obligations.** Mortgagor will pay the principal and interest and the various and sundry sums of money payable by virtue of said promissory note and this mortgage promptly on the days the same become due and to promptly perform and comply with each and every other covenant and agreement in said promissory note and mortgage.

2. **Payment of Taxes.** Mortgagor will pay the taxes, assessments, levies, liens, liabilities, obligations and encumbrances of every nature and kind now on said described property, or that hereafter may be imposed, suffered, placed, levied or assessed thereon, or that hereafter may be levied or assessed upon this mortgage or the indebtedness secured hereby, when due and payable according to law, before they become delinquent, and before any interest attaches or any penalty is incurred; and insofar as any thereof is of record the same shall be promptly satisfied and discharged of record and the original official document evidencing such satisfaction and discharge shall be placed in the hands of said Mortgagee within ten days next after payment.

3. **Hazard Insurance.** Mortgagor will keep the improvements now existing or hereafter erected on the mortgaged property insured against loss by fire and other hazards, casualties and contingencies in such amounts and for such periods as may be required by the Mortgagee. All insurance shall be carried in companies approved by the Mortgagee and the policies and renewals thereof shall be held by the Mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the Mortgagee. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by Mortgagee at its option either to the reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged, or for any other purpose or object satisfactory to the Mortgagee, without affecting the lien of this mortgage for the full amount hereby secured. In event of foreclosure of this mortgage or other transfer of title to the mortgaged property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagor in and to any insurance policies then in force shall pass to the purchaser or grantee. If the Mortgagor fails to keep said property insured as above specified then the Mortgagee may, at its option, insure said property for its insurable value, against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest from the date of payment by the Mortgagee.

4. **Maintenance, Repairs, Alterations.** Mortgagor will permit, commit, or suffer no waste, impairment or deterioration of said property or any part thereof and will keep all buildings and improvements now or hereafter on said property in good repair and will make any repairs which Mortgagee in his discretion shall deem necessary for the proper preservation of said buildings and improvements.

5. **Costs, Charges and Expenses.** Mortgagor will pay all and singular the costs of abstracts of title and title searches, charges, and expenses, including reasonable attorney's fees, incurred or paid at any time by the Mortgagee in applying for a receiver, in protecting its interest in any litigation involving this real estate, in presenting claim under any administration or other proceeding where proof of claims is required by law to be filed, or in foreclosing this mortgage by suit in any court of competent jurisdiction because of the failure on the part of the Mortgagor promptly and fully to perform the agreements and covenants of said note and this mortgage and of the construction loan agreement of even date herewith. Said costs, charges, expenses, and fees shall be immediately due and payable and shall be secured by the lien of this mortgage, and such expenditures shall draw interest at the maximum rate permitted by law.

6. **Rights of Mortgagee on Default.** That (a) in the event of any breach of this mortgage or default on the part of the Mortgagor, of (b) in the event any of said sums of money herein referred to be not promptly and fully paid without demand or notice, or (c) in the event the stipulations, agreements, conditions and covenants of said note and this mortgage or of said construction loan agreement are not duly, promptly and fully performed, then in either or any such event, the said aggregate sum mentioned in said note then remaining unpaid, with interest accrued to that time, and all moneys secured hereby, shall become due and payable forthwith, or thereafter, at the option of said Mortgagee, as fully and completely as if all of the said sums of money were originally stipulated to be paid on such day, anything in said note or in this mortgage to the contrary notwithstanding; and thereupon or thereafter, at the option of said Mortgagee, without notice or demand, suit at law or in equity, may be prosecuted as if all moneys secured hereby have matured prior to its institution. In the event of default, as defined in subsection a, b, or c of this paragraph, the Mortgagee shall have the right to enter upon and take possession of said property and sell after or without taking such

possession of the same at public outcry, in whole or in parcels, in front of the Court House door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money, shall execute to the purchaser at said sale a deed to the property so purchased, the proceeds of such sale shall be applied (1) to the expenses incurred in making the sale, including a reasonable attorney's fee for such services as may be necessary, in the collection of said indebtedness or the foreclosure of the mortgage; (2) to the payment of whatever sum, or sums, the Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (3) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale and the balance, if any, shall be paid over to the Mortgagor, or assigns. Or said Mortgage may be foreclosed as now provided by law in case of past due mortgages, in which event a reasonable attorney's fee shall, among other expenses and costs, be allowed and paid out of the proceeds of the sale of said property. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money and the Mortgagee or the then holder of the indebtedness hereby secured may become the purchaser at said sale and the auctioneer making the sale is hereby authorized and empowered to execute a deed in the name and on behalf of the Mortgagor to such purchaser, and the certificate of the holder of such indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Mortgagee shall also have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

7. Appointment of Receiver. Should default be made in the payment of any insurance premium, taxes, assessments or other liens, or any other sum, as herein provided, the Mortgagee or assigns shall be authorized to pay same and the sum, or sums, so paid shall be and become a part of the indebtedness secured by the Mortgage, or the Mortgagee or assigns may take possession of the mortgaged property, collect the rents due or to become due thereon and apply same in payment of such delinquent taxes, assessments or other liens or, upon application made to any court of competent jurisdiction, be entitled as a matter of right to the appointment of a receiver of the rents, issues and profits to be derived therefrom and with power to lease and control the mortgaged property for the benefit of the Mortgagee or, at its option, the Mortgagee may declare the whole of said indebtedness due and payable at once and the mortgage may be foreclosed as hereinafter provided, but no delay or failure of the mortgagee to exercise this right or any other option herein shall be deemed a waiver of such right. Any such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee, and without reference to the adequacy or inadequacy of the value of the property mortgaged or to the solvency or insolvency of said Mortgagor or the defendants, and such income, profits, rents, issues and revenues shall be applied by such receiver according to the lien of this mortgage and the practice of such court.

8. Default By Mortgagor. If the Mortgagor defaults in any of the covenants or agreements contained herein or in said note, then the Mortgagee may perform the same, and all such expenditures made by the Mortgagee, including a reasonable attorney's fee, in so doing shall draw interest at the maximum rate permitted by law, and shall be repayable immediately and without demand, and all such expenditures shall be secured by the lien of this mortgage. The Mortgagee shall be subrogated, for further security, to the lien of any and all liens or encumbrances paid out of the proceeds of the loan secured by this mortgage, even though the lien or encumbrances so paid from such proceeds be released.

9. Construction Loan Agreement. The Mortgagor shall duly, promptly and fully perform each and every of the terms and provisions of a certain construction loan agreement which has been executed and delivered by the parties hereto simultaneously with the execution and delivery hereof (the proceeds of this mortgage indebtedness being for the purpose of financing construction on said mortgaged property), the terms of which construction loan agreement are by reference made a part hereof. The lien of this mortgage secures the payment of all sums payable to Mortgagee and the performance of all covenants and agreements of Mortgagor under the terms of said construction loan agreement.

10. Future Advances. In addition to all other indebtedness secured by the first lien of this mortgage, this mortgage shall secure also and constitute a first lien on the mortgaged property for all future advances made by the Mortgagee to Mortgagor within five years from the date hereof to the same extent as if such future advances were made on the date of the execution of this mortgage. Any such advances may be made at the option of the Mortgagee. The total amount of the indebtedness that may be secured by this mortgage may increase or decrease from time to time, but the total unpaid balance secured at any one time by this mortgage shall not exceed a maximum principal amount of twice the principal amount stated in the promissory note referred to above, plus interest thereon and any disbursements made by Mortgagee for the payment of taxes, levies or insurance on the property encumbered by this mortgage, with interest on such disbursements.



11. **Partial Release of Mortgage.** If more than one building plot or lot is included in the mortgaged property, a portion of the proceeds of the mortgage indebtedness is to be disbursed and advanced on account of or pertaining to each of said parcels in accordance with the provisions of said construction loan agreement. Mortgagee shall release any one of the parcels covered by this mortgage from the lien hereof upon repayment to the Mortgagee in cash of a sum equal to the portion of the principal of the mortgage indebtedness theretofore so disbursed and advanced, as contemplated by said construction loan agreement or otherwise, on account of or pertaining to the parcel to be released plus, at the option of the Mortgagee, any interest then accrued and unpaid under the terms hereof or secured hereby and any cost, fees and expenses payable to the Mortgagee by the Mortgagor incident to the mortgage loan. Notwithstanding any of the above provisions of this paragraph Mortgagee shall, at its option, be entitled to refuse to release any parcel or parcels at a time when there exists a default in the performance of the agreements of the Mortgagor under the provisions of this mortgage, the note secured hereby or said construction loan agreement. However, Mortgagee may, at its option, give any such release notwithstanding any such default or without requiring the above stipulated payment for release. The cost of recording all partial releases from or satisfaction of this mortgage shall be borne by Mortgagor.

12. **Legal Requirements.** Any and all legal requirements, of any governmental agency wherein the mortgaged property is located, shall be fully complied with by the Mortgagor.

13. **Enactment of Law Affecting Mortgage.** In the event of the enactment of any law, Federal or State, after the date of this mortgage, deducting from the value of the land for the purpose of taxation any lien thereon, or imposing any liability upon the Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of the Mortgagee, without notice to any party, become immediately due and payable.

14. **Condemnation.** If all or any part of the Premises shall be damaged or taken through condemnation (which term when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, rights of action, claims and proceeds as the Mortgagee may require.

15. **Creation of Security Interest.** This Mortgage creates a security interest with respect to all personal property and chattels referred to or described herein as part of the mortgaged property and shall constitute a Security Agreement under the Alabama Uniform Commercial Code. Mortgagor covenants and agrees to execute, file and refile such financing statements, continuation statements, or other documents that Mortgagee shall require.

16. **Captions.** The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

17. **Cross Default.** Any default by Mortgagor under the terms of any mortgage executed by the Mortgagor and held by Mortgagee as security for any indebtedness owed by Mortgagor shall at the option of the mortgagee constitute a default under the terms hereof. Any default by Mortgagor under the terms of this mortgage shall, at the option of Mortgagee, constitute a default under the terms of any other mortgage executed by Mortgagor and held by Mortgagee as security for any indebtedness owed by Mortgagor to Mortgagee.

The term Mortgagor shall be construed singular or plural, masculine or feminine, and corporate, partnership or individual, which ever the context hereof requires or admits. All covenants and agreements herein contained 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 its successors and assigns.

IN WITNESS WHEREOF, the Mortgagor has executed this instrument under seal the day and year first above written.

JANKO, INC.

Jan Watts (Seal)  
Jan Watts, President

\_\_\_\_ (Seal)

\_\_\_\_ (Seal)

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I HEREBY CERTIFY that \_\_\_\_\_

whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the County  
and State aforesaid.

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STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County  
In said State, hereby certify that Jan Watts whose name  
as President of the Janko, Inc.  
a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me  
on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority,  
executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 15th day of January, 19 88.

*Eva J. Smith*

Notary Public in and for the County  
and State aforesaid.

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public, in and for said  
County in said State, hereby certify that \_\_\_\_\_, whose name a  
Partner of \_\_\_\_\_ is signed to the foregoing conveyance and who  
is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance,  
he, in his capacity as such Partner, executed the same voluntarily on the day the same bears date.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Notary Public in and for the County  
and State aforesaid.

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

88 JAN 26 PM 12:16

*Thomas A. Snowden*  
JUDGE OF PROBATE

1. Deed Tax \$ \_\_\_\_\_  
2. Mig. Tax 146.25  
3. Recording Fee 17.50  
4. Indexing Fee 1.00  
TOTAL 164.75