

Account No. _____

This instrument was prepared by:

✓ Jack R. Thompson, Jr.

(Name)

808 29th Street South, Suite 300
Birmingham, Alabama 35205

(Address)

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MORTGAGE

THIS MORTGAGE is made this 28th day of October, 1988, between the Mortgagor, Richard Hunter Counsell and wife, Linda L. Counsell (herein "Borrower"), and the Mortgagee, First Union Home Equity Corporation, a corporation organized and existing under the laws of North Carolina, whose address is 601 Vestavia Parkway, Suite 265, Birmingham, Alabama 35216 (herein "Lender").

WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. \$22,000.00, which indebtedness is evidenced by Borrower's note dated October 28, 1988 and extensions, modifications and renewals thereof (herein "Note"), providing for monthly installments of principal and interest, with the balance of indebtedness, if not sooner paid, due and payable on November 1, 1993;

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage; and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender the following described property located in the County of Shelby, State of Alabama:

Lot 9, according to the survey of Meadowridge, a residential subdivision, as recorded in Map Book 11, Page 40 A & B, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

Mineral and mining rights excepted.

Subject to Ad Valorem Taxes for the year 1988.

Subject to any prior reservation or conveyance of record pertaining to mineral and mining rights in, on, or under subject property.

Subject to any and all easements, restrictions, covenants, rights of way and any other condition of record.

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which has the address of 2816 Downing Circle Birmingham, Alabama 35242
(Street) (City) (State) (Zip Code)

(herein "Property Address");

Any Rider ("Rider") attached hereto and executed of even date is incorporated herein and the covenant and agreements of the Rider shall amend and supplement the covenants and agreements of this Mortgage, as if the Rider were a part hereof.

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents all of which shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) are hereinafter referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note. This Mortgage secures payment of said Note according to its terms, which are incorporated herein by reference.

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2. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender first to interest due on the Note, second to the principal due on the Note, and then to late charges due on the Note.

3. Prior Mortgages and Deeds of Trust; Charges; Liens. Borrower shall perform all of Borrower's obligations, under any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

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If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage.

5. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. If this Mortgage is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such actions as is necessary to protect Lender's interest.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Mortgage.

9. Borrower Not Released; Forbearance By Lender Not a Waiver. The Borrower shall remain liable for full payment of the principal and interest on the Note (or any advancement or obligation) secured hereby, notwithstanding any of the following: (a) The sale of all or a part of the premises, (b) the assumption by another party of the Borrower's obligations hereunder, (c) the forbearance or extension of time for payment or performance of any obligation hereunder, whether granted to Borrower or a subsequent owner of the property, and (d) the release of all or any part of the premises securing said obligations or the release of any party who assumes payment of the same. None of the foregoing shall in any way affect the full force and effect of the lien of this Mortgage or impair Lender's right to a deficiency judgment (in the event of foreclosure) against Borrower or any party assuming the obligations hereunder.

Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Mortgage, but does not execute the Note: (a) is co-signing this Mortgage only to mortgage, grant and convey that Borrower's interest in the Property to Lender under the terms of this Mortgage, (b) is not personally liable on the Note or under this Mortgage, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Mortgage or the Note without that Borrower's consent and without releasing that Borrower or modifying this Mortgage as to that Borrower's interest in the Property.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower or the current owner at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and any other person personally liable on this Note as these person's names and addresses appear in the Lender's records at the time of giving notice and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

12. Governing Law; Severability. The state and local laws applicable to this Mortgage shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Mortgage. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflicts shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage and the Note are declared to be severable. As used herein "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note, this Mortgage and Rider(s) at the time of execution or after recordation hereof.

14. Rehabilitation Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

15. Transfer of the Property or a Beneficial Interest in Borrower, Assumption. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at Lender's option, for any reason, declare all the sums secured by this Mortgage to be immediately due and payable. However, this option shall not be exercised by Lender if exercise is prohibited by Federal law as of the date of this Mortgage.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. If Borrower fails to pay in full these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Mortgage without further notice or demand on Borrower.

This Mortgage may not be assumed by a purchaser without the Lender's consent. If an assumption is allowed, the Lender may charge an assumption fee and require the person(s) assuming the loan to pay additional charges as authorized by law.

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NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

16. Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this entire Mortgage, including the covenants to pay when due any sums under the Note secured by this Mortgage, Lender, at Lender's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without demand or notice, notice of the exercise of such option being hereby expressly waived; and the Lender shall have the right to enter upon and take possession of the property hereby conveyed and after or without taking such possession shall have the right to sell the same before the courthouse door in Shelby County, Alabama at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale, in some newspaper published in said county, and upon payment of the purchase money, the Lender, or owner of the debt and Mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors, a good and sufficient deed to the property sold; the Lender shall apply the proceeds of said sale: first, to the expense of advertising, selling and conveying said property, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness 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 date of said sale; and fourth, the balance if any, shall be paid over to the said Borrowers or to whom ever then appears of record to be the owner of said property. The Lender may bid and become the purchaser of the mortgaged property at any foreclosure sale hereunder.

17. Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration and/or foreclosure under paragraph 16 hereof, or abandonment of the Property, Lender, in person or by agent shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the property including those past due. the Lender shall be liable to account only for those rents actually received prior to foreclosure sale as provided in paragraph 16. Lender shall not be liable to account to Borrower or to any other person claiming any interest in the Property for any rents received after foreclosure.

18. Loan Charges. If the loan secured by this Mortgage is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed permitted limits, then: (1) any such loan charges shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (2) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by mailing a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

19. Legislation. If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Mortgage or any Rider, unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in this Mortgage or the Note, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Mortgage to be immediately due and payable.

20. Release. Upon payment of all sums secured by this Mortgage, the conveyance of the property pursuant to this Mortgage shall become null and void and Lender or Trustee shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any. Lender, at Lender's option, may allow a partial release of the Property on terms acceptable to Lender and Lender may charge a release fee.

21. Waiver of Homestead. Borrower hereby waives all rights of homestead exemption in the Property and relinquishes all rights of dower and courtesy in the Property.

**REQUEST FOR NOTICE OF DEFAULT AND FORECLOSURE
UNDER SUPERIOR MORTGAGES OR DEEDS OF TRUST**

Borrower and Lender request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to Lender, at Lender's address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, Borrower has executed this Mortgage and adopted as his seal the word ("SEAL") appearing beside his name.

Signed, sealed and delivered in the presence of:

Richard Hunter Counsell (SEAL)
Borrower
Richard Hunter Counsell

Linda L. Counsell (SEAL)
Borrower
Linda L. Counsell

STATE OF ALABAMA

COUNTY OF JEFFERSON

Richard Hunter Counsell and wife,
Linda L. Counsell, whose names are
signed to the foregoing conveyance and who are
known to me, acknowledge before me on this day, that, being informed of the contents of this
conveyance, they executed the same voluntarily on the date the
same bears date.

GIVEN under my hand and official seal this 28th day of October, 19 88.

[Signature]
Notary Public

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ADJUSTABLE RATE RIDER

THIS ADJUSTABLE RATE RIDER (the "Rider") is made this 28 day of October, 19 88, and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust, Security Deed or Deed to Secure Debt (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Adjustable Rate Note (the "Note") to First Union Home Equity Corporation (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

2816 Downing Cir., Birmingham, Al 35242
(Property Address)

ADDITIONAL COVENANTS. In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

A. Interest Rate And Monthly Payment Changes

The Note provides for an initial interest rate of 10.00 %. The Note provides for changes in the interest rate and the monthly payments, as follows:

4. Interest Rate And Monthly Payment Changes

A. Change Dates

The interest rate I will pay may change on the first day of the month every three months during the term of this Note, beginning on the first day of March, 19 89, except the interest rate will not change during the last eleven (11) months of the loan term. Each date on which my interest rate could change is called an "Interest Rate Change Date." The fourth Interest Rate Change Date and every fourth Interest Rate Change Date thereafter will be called an "Interest Rate and Monthly Payment Change Date."

My monthly payment will change on the first day of December, 19 89, and on that date every twelfth (12th) month thereafter. Each date on which my monthly payment could change is called an "Interest Rate and Monthly Payment Change Date."

B. The Index

The "Index" is the weekly average auction rate of U. S. Treasury Bills with a maturity of 13 weeks, as made available by the Federal Reserve Board. If the Index is no longer available, the Note Holder will choose a new Index which is based on comparable information and will give me notice of this choice.

C. The Current Index Value

The "Current Index Value" is the average of the indexes for the preceding 13 weekly auctions ending with the last weekly auction during the second calendar month prior to the Change Date. Any change in the rate of interest will be based on changes in the Current Index Value.

The initial interest rate on this Note is based upon the Index Value of 7.06.

D. Calculation Of Interest Rate Changes And Interest Rate Limit

Before each Interest Rate Change Date or Interest Rate and Monthly Payment Change Date, the Note Holder will calculate my new interest rate by adding Five and One Half (5.50 %) percentage points to the Current Index Value. This sum will be my new interest rate until the next Interest Rate Change Date or Interest Rate and Monthly Payment Change Date.

The interest rate I am required to pay until the first Interest Rate and Monthly Payment Change Date will not be greater than 12.00 %. Thereafter, my interest rate will never be increased during the twelve (12) month period between Interest Rate and Monthly Payment Change Dates by more than Two (2 %) percentage points added to the interest rate calculated on the Interest Rate and Monthly Payment Change Date. My interest rate will never be greater than 18.50 %.

E. Calculation Of Monthly Payment Change

Before each Interest Rate and Monthly Payment Change Date, the Note Holder will calculate my new monthly payment. The new monthly payment is the amount of the monthly payment that would be sufficient to repay in substantially equal payments the unpaid principal of this Note on the maturity date at the rate of interest described in Sections 2 or 4(D).

F. Effective Date Of Changes

My new interest rate will become effective on each Interest Rate Change Date and on each Interest Rate and Monthly Payment Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Interest Rate and Monthly Payment Change Date until the amount of my monthly payment changes again.

G. Notice Of Changes


The Note Holder will deliver or mail to me a notice of any changes in the interest rate or monthly payment at least 30 days before the effective date of any change. The notice will include information required by law and also the title and telephone number of a person who will answer any question I may have regarding this notice.

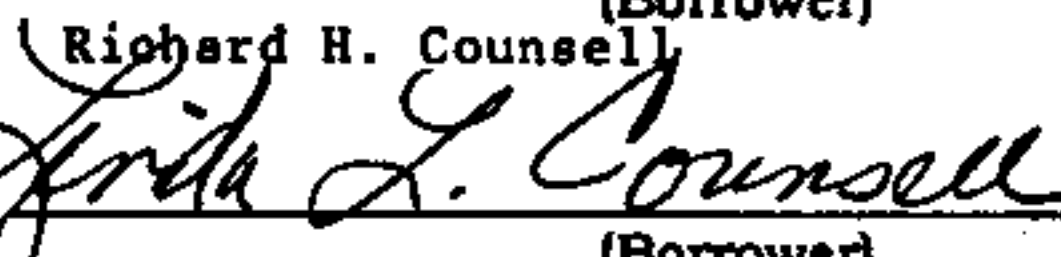
Transfer Of The Property Or A Beneficial Interest In Borrower

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee, as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide of period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

 (SEAL)
(Borrower)

 (SEAL)
(Borrower)

STATE OF ALA. SHERIFF
I CERTIFY THIS
INSTRUMENT WAS FILED

88 NOV -3 AM 11:01


JUDGE OF PROBATE

1. Debt Tax \$ _____
2. Mtg. Fee 33.00
3. Recording Fee 17.50
4. Indexing Fee 1.00
TOTAL 51.50

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