

Inst # 1994-24721

08/08/1994-24721

12:08 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

006 NEL

61.50

**MORTGAGE**

THIS MORTGAGE is made this **July 26, 1994** between the Mortgagor,  
**CHARLES A. BATTS AND DAGMAR C. BATTS**

(herein "Borrower"), and the Mortgagee, **TMS MORTGAGE, INC., DBA THE MONEY STORE, A NJ CORP.**  
a corporation organized and existing under the laws of New Jersey whose address is  
**3000 RIVERCHASE GALLERIA, STE. 800**  
**BIRMINGHAM, ALABAMA 35244** (herein "Lender").



WHEREAS, Borrower is indebted to Lender in the principal sum of U.S. **\$27,000.00**,  
together with interest, which indebtedness is evidenced by Borrower's note dated **July 26, 1994**  
(the "Note"), providing for monthly installments of principal and interest, with the balance of the  
indebtedness, if not sooner paid, due and payable on **August 1, 2009**.

TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon;  
extensions and renewals of the Note; the payment of all other sums, with interest thereon, advanced in  
accordance with this Mortgage to protect the security of this Mortgage; and the performance of the covenants  
and agreements of Borrower contained in this Mortgage, Borrower does hereby mortgage, grant and convey to  
Lender, with power of sale, the following described property located in the  
, ~~JEFFERSON~~ **JEFFERSON** County, **STATE OF ALABAMA**  
**SHELBY**



Being the same premises conveyed to the Borrower by deed of  
dated the **2-28-86**, recorded on the **3rd** day of **March, 1986**  
in Book **62** of Deeds, page **117**, in the **JEFFERSON** County **PROBATES** Office,  
and which has the address of **SHELBY**

**5112 MEADOWBROOK RD.**  
**BIRMINGHAM, AL 35242**

being the same property commonly known as:

**5112 MEADOWBROOK RD.**  
**BIRMINGHAM, AL 35242**

and to hold this property unto Lender and Lender's successors and assigns forever. ("Property Address") to have

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. All of the foregoing, together with such property (or the leasehold estate if this Mortgage  
is on a leasehold) are called the "Property".

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the  
right to mortgage, grant and convey the Property, and that the Property is unencumbered, except for encum-  
brances of record. Borrower warrants and covenants that Borrower will defend generally the title to the  
Property against all claims and demands, subject to encumbrances of record. Borrower further warrants,  
represents and covenants as follows: Page 1 of 5

**1. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal and interest indebtedness and all other charges evidenced by the Note.

**2. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender shall be applied first to interest accrued through the date the payment is received and the remainder, if any, to the principal balance.

If Borrower owes Lender any late charges, or other fees or charges ("other charges"), they will be payable upon demand of Lender. Unless prohibited by law, the application of payments may be affected by the imposition of other charges. Therefore, payments of other charges, whether paid to Lender in addition to the monthly payment or separately, will be applied in a manner at the absolute discretion of the Lender.

**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, if any, 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. 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", flood and any other hazards as Lender may require and in such amount 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.

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 nor permit waste or 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 Rights in the Property; Mortgage Insurance.** If Borrower fails to perform the covenants and agreements contained in the Mortgage, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs or abate nuisances. Although Lender may take action under this Paragraph 6, Lender does not have to do so.

Any amounts disbursed by Lender under this Paragraph 6 shall become additional debt of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon demand of Lender.

If Lender required mortgage insurance as a condition of making the loan secured by this Mortgage, Borrower shall pay the premiums required to maintain the insurance in effect until such time as the requirement for the insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

**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 therefore 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.** Extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender on one or more occasions in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the later exercise of that or any other right or remedy.

10. **Successors and Assigns Bound; Joint and Several Liability; 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 14 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who signs this Mortgage, but does not execute the Note, (a) is 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 may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Mortgage or Note without that Borrower's consent.

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 at the mailing address shown in the signed loan application or at such other address as Borrower may designate by notice to Lender as provided herein, 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 conflict 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 and of this Mortgage at the time of execution or after recordation hereof.

14. **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 Mortgage. 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. The notice shall provide a 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 Mortgage. If Borrower fails to pay 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.

15. **Acceleration; Remedies.** Except as provided in Paragraph 14 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender prior to acceleration shall give notice to Borrower as provided in Paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not

less than 10 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage, foreclosure by judicial proceeding or advertisement and sale of the property.

The notice shall further inform Borrower of the right to reinstate this Mortgage after acceleration and the right to bring a court action or to assert in the judicial proceeding the nonexistence of a default or any other defense of Borrower to acceleration and foreclosure. If the breach is not cured on or before the date specified in the notice, Lender, at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding or invoke the power of sale hereby granted and any other remedies permitted by applicable law. Lender shall be entitled after default to collect all expenses of collection and foreclosure, including, but not limited to, reasonable attorneys' fees, court costs, and costs of documentary evidence, abstracts and title reports.

If Lender invokes the power of sale, Lender shall mail a copy of a notice of sale to Borrower in the manner provided in Paragraph 11 hereof. Lender shall publish and post the notice of sale and Property shall be sold in the manner prescribed by applicable law. Lender or Lender's designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Mortgage; and (c) the excess, if any, to the person or persons legally entitled thereto.

**16. Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Mortgage due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Mortgage discontinued at any time prior to sale of the Property or entry of a judgment enforcing this Mortgage if: (a) Borrower pays Lender all sums which would be then due under this Mortgage and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Mortgage; and (c) Borrower pays all reasonable attorneys' fees and court costs; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Mortgage, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Borrower, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**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 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under Paragraph 15 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, 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. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorneys' fees, and then to the sums secured by this Mortgage. Lender and the receiver shall be liable to account only for those rents actually received.

**18. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 18, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 18, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

19. Release. Upon payment of all sums secured by this Mortgage, Lender shall release the Mortgage. Borrower shall pay any release fees and costs of recordation unless applicable law provides otherwise.

20. Waiver. Borrower waives all rights of exemption pertaining to the real property secured by the mortgage.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Mortgage and in any rider(s) executed by Borrower and recorded with it.

Charles A. Batts (Seal)  
CHARLES A. BATTS -Borrower

Dagmar C. Batts (Seal)  
DAGMAR C. BATTS -Borrower

\_\_\_\_\_  
-Borrower (Seal)

\_\_\_\_\_  
-Borrower (Seal)

STATE OF ALABAMA )  
County of Jefferson ) SS.

I, F. Wayne Keith, hereby certify that Charles A. Batts and wife, Dagmar C. Batts whose name(s) is/are 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, they executed the same voluntarily on the day the same bears date. Given under my hand this 2nd day of August, 1994.

[Signature]  
Notary Public  
My commission expires: 12-9-97

This instrument was prepared by:

F. Wayne Keith  
229 Lorna Square  
Birmingham, Alabama 35216

**SCHEDULE A TO MORTGAGE**

Dated: July 26, 1994

Mortgagor: CHARLES A. BATTS AND DAGMAR C. BATTS

Mortgagee: TMS MORTGAGE, INC. DBA THE MONEY STORE, A NJ CORP.



LOT 12, ACCORDING TO THE SURVEY OF MEADOW BROOK 8TH SECTOR, 2ND PHASE, AS RECORDED IN MAP BOOK 9, PAGE 63, IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA.

THIS INSTRUMENT IS SECOND ONLY TO THAT CERTAIN CURRENT FIRST PRIORITY SECURITY DEED IN FAVOR OF FIRST FEDERAL, AND IT IS AGREED THAT ANY DEFAULT UNDER SAID PRIOR SECURITY DEED MAY AT THE OPTION OF THE GRANTEE HEREIN OR ITS SUCCESSORS IN TITLE BE DECLARED AND DEEMED TO BE A DEFAULT UNDER THE TERMS OF THE WITHIN INSTRUMENT. THE GRANTOR HEREIN HEREBY ASSIGNS AND AUTHORIZES PAYMENT TO THE GRANTEE HEREIN AND ITS SUCCESSORS IN TITLE OF ANY SURPLUS FUNDS ARISING FROM FORECLOSURE OF SAID SECURITY DEED.

Inst # 1994-24721

08/08/1994-24721  
12:08 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
006 HEL 61.50

Said Premises Known as: 5112 MEADOWBROOK RD.  
BIRMINGHAM, AL 35242

BEING the same premises conveyed to the mortgagor by deed dated 2-28-86, filed 3-3-86, in the PROBATES Office of the County of ~~JEFFERSON~~ in Book 62, page 717.  
SHELBY

