

## MORTGAGE FORM

State of Alabama }

Shelby County.

## MORTGAGE

THIS INDENTURE is made and entered into this 25 day of June, 19 93 by and between Joan Faith Hopping, unmarried

(hereinafter called "Mortgagor," whether one or more), and David Joseph Smelcer  
(hereinafter called "Mortgagee").

WHEREAS, Joan Faith Hopping

is(are) justly indebted to the Mortgagee in the principal sum of One hundred fifteen thousand and no/100 dollars (\$ 115,000.00 ) as evidenced by that certain promissory note of even date herewith, which bears interest as provided therein, which is payable in accordance with its terms, and which has a final maturity date of August 10, 2003.

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 all interest payable on all of said debt and on any and all such extensions and renewals and, if the Real Property is not a consumer's principal dwelling within the meaning of the Truth in Lending Act, 15 USC Sections 1601 et seq., to secure all other indebtedness, obligations and liabilities owing by the maker of the note or the Mortgagor to the Mortgagee, whether now existing or hereafter incurred or arising, whether absolute or contingent, and whether incurred as maker or guarantor, (the aggregate amount of such debt and interest thereon, including any extensions and renewals and the interest thereon, is hereinafter collectively called "Debt") and the 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

County, Alabama (said real estate being hereinafter called "Real Estate"):

A tract of land situated in the SE 1/4 and SW 1/4 of the Southwest 1/4 of Section 16, Township 19 South, Range 2 West, Shelby County, Alabama, and more particularly described as follows: Begin at the Southwest corner of said 1/4 1/4 Section; thence run in a Northeasterly direction along the diagonal line between the Southwest corner and the Northeast corner of said 1/4 1/4 Section for a distance of 85.22 feet; thence an angle right of 30 deg. 52 min. 46 sec. and run in a Northeasterly direction along the North right of way line of a paved county road, a distance of 283.67 feet; thence an angle left of 139 deg. 37 min. 12 sec. and run Northwest a distance of 172.59 feet to the Southeast right of way line of Valleydale Road; thence an angle left of 74 deg. 42 min. 27 sec. and run Southwest along said right of way a distance of 275 feet to the South line of the Southwest 1/4; thence an angle left of 130 deg. 46 min. 15 sec. and run East along said South line a distance of 1.82 feet to the point of beginning; being situated in Shelby County, Alabama.

Mineral and mining rights excepted.

Less and Except any part lying within the public road.

There is a possibility that the driveway on said property encroaches on adjoining property. Mortgagor accepts full responsibility for curing, removing, or otherwise handling any problem that is caused by the possible encroachment.

Mortgagor has inspected the premises prior to closing. Said property is sold "as is" with no express, written, or implied warranties.

This mortgage has been rerecorded to add an acknowledgment.

Inst # 1994-26975

Inst # 1993-20795

09/01/1994-26975

08:51 AM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

004 REC

07/15/1993-20795

02:07 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

003 REC

100.00

*Carabon Jille*

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 Mortgagee covenants with the Mortgagee that the Mortgagee 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, unless otherwise set forth above; and the Mortgagee will warrant and forever defend the title to the Real Estate unto the Mortgagee, against the lawful claims of all persons.

For the purpose of further securing the payment of the Debt, the Mortgagee agrees to: (1) pay all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), 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 with 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 endorsement, and against loss by such other perils as the Mortgagee may from time to time reasonably determine is prudent or is then required by applicable law, with loss, if any, payable to the Mortgagee, as its interest may appear; such insurance to be in an amount at least equal to the full insurable value of the improvements located on the Real Estate unless the Mortgagee agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements thereof, shall be delivered to and held by the Mortgagee until the Debt is paid in full. The original insurance policy and all replacements thereof must provide that they may not be canceled without the insurer giving at least fifteen days' prior written notice of such cancellation to the Mortgagee. In the event of foreclosure of this mortgage or other transfer of title to the Real Estate in extinguishment of the indebtedness secured hereby, all right, title and interest of the Mortgagee in and to any insurance policies then in force shall pass to the purchaser or grantee.

The Mortgagee hereby assigns and pledges to the Mortgagee, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagee in and to each and every such policy, including but not limited to all of the Mortgagee's right, title and interest in and to any premiums paid on such hazard insurance, including all rights to return premiums. If the Mortgagee 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 Mortgagee to the Mortgagee and at once payable, without demand upon or notice to the Mortgagee, 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 rate provided in the promissory note or notes referred to hereinabove.

As further security for the payment of the Debt, the Mortgagee hereby assigns and pledges to the Mortgagee the following described property, rights, claims, tenets, 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 Mortgagee, so long as the Mortgagee 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. The Mortgagee is hereby authorized on behalf of, and in the name of, the Mortgagee to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses in connection with any proceeding or transaction described in this subparagraph 2, including court costs and attorneys' 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.

(Complete if applicable) This mortgage is junior and subordinate to the following mortgage or mortgages: NONE

Date \_\_\_\_\_, 19\_\_\_\_\_, Recorded in \_\_\_\_\_ Book \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County, Alabama.

Date \_\_\_\_\_, 19\_\_\_\_\_, Recorded in \_\_\_\_\_ Book \_\_\_\_\_, Page \_\_\_\_\_, \_\_\_\_\_ County, Alabama.

The Mortgagee hereby authorizes the holder of a prior mortgage encumbering the Real Estate, if any, 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 thereby; and (5) any other information regarding such mortgage or the indebtedness secured thereby which the Mortgagee may request from time to time.

If this mortgage is subordinate to a prior mortgage, the Mortgagee expressly agrees that if default should be made in the payment of principal, interest or any other sum payable under the terms and provisions of such prior mortgage, or if any other event of default (or event which upon the giving of notice or lapse of time, or both, would constitute an event of default) should occur thereunder, the Mortgagee may, but shall not be obligated to, cure such default, without notice to anyone, by paying whatever amounts may be due, or taking whatever other actions may be required under the terms of such prior mortgage so as to put the same in good standing.

As used in this mortgage, the term "Hazardous Substances" shall mean and include, without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in any local, state or federal law, rule or regulation, whether now or hereafter in effect and as may be amended from time to time, pertaining to environmental regulations, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, and the rules and regulations of the Occupational Safety and Health Administration pertaining to occupational exposure to asbestos. The Mortgagee covenants, warrants and represents and shall be deemed to continually covenant, warrant and represent during the term of this mortgage that, except as has been heretofore disclosed in writing to the Mortgagee with specific reference to this paragraph, (a) there are not now and shall not in the future be any Hazardous Substances on or under the Real Estate or in the improvements on the Real Estate, and no Hazardous Substances have been or will be stored upon or utilized in operations on the Real Estate or utilized in the construction of the improvements on the Real Estate, (b) there are no underground storage tanks, whether in use or not in use, located in, on or under any part of the Real Estate, (c) there are no pending claims or threats of claims by private or governmental or administrative authorities relating to Hazardous Substances, environmental impairment, conditions, or regulatory requirements with respect to the Real Property, (d) the Real Estate and its use fully complies with all applicable building and zoning codes and other land use regulations, any applicable environmental laws or regulations, and any other applicable laws or regulations, (e) no part of the Real Estate has been artificially filled, and (f) Mortgagee shall give immediate oral and written notice to Mortgagee of its receipt of any notice of a violation of any law, rule or regulation covered by this paragraph, or of any notice of any other claim relating to Hazardous Substances or the environmental condition of the Real Estate, or of its discovery of any matter which would make the representations, warranties and/or covenants herein inaccurate or misleading in any respect.

Mortgagee hereby agrees to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in the preceding paragraph, (ii) Mortgagee's failure to perform any obligations of the preceding paragraph, (iii) Mortgagee's or the Real Estate's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions or Hazardous Substances on, under or affecting the Real Estate. This indemnification shall survive the closing of the loan secured by this mortgage, payment of the Debt, the exercise of any right or remedy under this mortgage or any other document evidencing or securing such loan, any subsequent sale or transfer of the Real Estate, and all similar or related events or occurrences.

The Mortgagee hereby waives and relinquishes any and all rights the Mortgagee may now or hereafter have to any notice, notification or information from the Mortgagee, other than or different from such as specifically are provided for in this mortgage (including in this waiver and relinquishment, without limitation, notification of the Note Maker's financial condition, the status of the Note, or the fact of any renewal(s) or extension(s) of the Note).

Mortgagee may, at Mortgagee's discretion, inspect the Mortgaged Property, or have the Mortgaged Property inspected by Mortgagee's servants, employees, agents or independent contractors, at any time and Mortgagee shall pay all costs incurred by Mortgagee in executing any such inspection.

The Mortgagee 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.

Notwithstanding any other provision of this mortgage or the note or notes evidencing the Debt, the Debt shall become immediately due and payable, at the option of the Mortgagee, upon the conveyance of the Real Estate, or any part thereof or any interest therein.

The Mortgagee 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 Mortgagee and signed on behalf of the Mortgagee by one of its officers.

After default on the part of the Mortgagee, 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 Mortgagee pays the Debt (which Debt includes the indebtedness evidenced by the promissory note or notes referred to hereinbefore and any and all extensions and renewals thereof and all interest on said indebtedness and on any and all such extensions and renewals and, if the Real Property is not a consumer's principal dwelling within the meaning of the Truth in Lending Act, 15 USC Sections 1601 et seq., all other indebtedness, obligations and liabilities owing by the maker of the note or the Mortgagee to the Mortgagee, whether now existing or hereafter incurred or arising, whether absolute or contingent, and whether incurred as maker or guarantor) 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 its 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 Mortgagee under this mortgage; (3) default is made in the payment




The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagor 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 Mortgagor 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 statutory warranty 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, corporations, associations, partnerships or other entities. 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.

Diane McCombs  
DIANE McCOMBS-WITNESS

is instrument on the date first written above.

  
JOAN FAITH HOPPING

State of Alabama )  
\_\_\_\_\_) County )

whose name(s) as (general)(limited) \_\_\_\_\_ partner(s) of \_\_\_\_\_  
B(1) \_\_\_\_\_ (general)(limited) \_\_\_\_\_

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_


My commission expires: \_\_\_\_\_

NOTARY MUST AFFIX SEAL.

Inst # 1993-20795

07/15/1993-20795  
02:07 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
003 REC 106.00

ACKNOWLEDGEMENT  
MORTGAGE OF JUNE 25, 1993 FROM  
DAVID JOSEPH SMELCER, MORTGAGEE  
AND JOAN FAITH HOPPING, MORTGAGOR

  
JOAN FAITH HOPPING

ACKNOWLEDGMENT

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Joan Faith Hopping, <sup>unmarried</sup> whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily.

Given under my hand and official seal this 25th day of June, 1993.

  
NOTARY PUBLIC

My Commission Expires:

9/9/95

NOTARY MUST AFFIX SEAL

Inst # 1994-26975

09/01/1994-26975  
09:51 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 NCD 100.50