

Charles Nesbitt

Jane Nesbitt

2288 Co. Rd. 109N  
Wilsonville, AL 35186

CONSTRUCTION

MORTGAGOR

"I" includes each mortgagor above.

This instrument was prepared by

(Name) First National Bank of Columbiana

(Address) PO Box 977, Columbiana, AL 35051

FIRST NATIONAL BANK OF COLUMBIANA  
P. O. BOX 977  
COLUMBIANA, AL 35051

MORTGAGEE

"You" means the mortgagee, its successors and assigns.

REAL ESTATE MORTGAGE: For value received, I, Charles Nesbitt and Jane Nesbitt, husband and wife

, mortgage, grant, bargain, sell and convey to you, with power of sale, to secure the payment of the secured debt described below, on October 17, 1994, the real estate described below and all rights, easements, appurtenances, rents, leases and existing and future improvements and fixtures (all called the "property").

PROPERTY ADDRESS: 2288 Co. Rd. 109N, Wilsonville, Alabama 35186  
(Street) (City) (Zip Code)

LEGAL DESCRIPTION: The Eastern one-half of the NW 1/4 of SE 1/4 of Section 17, Township 20 South, Range 1 East, Shelby County, Alabama; being situated in Shelby County, Alabama, described as follows: Commence at the Northeast corner of the Northwest 1/4 of the Southeast 1/4, Section 17, Township 20 South, Range 1 East, said point being the point of beginning; thence run South 0 deg. 36 min. 47 sec. West and along the East line of said 1/4 for a distance of 1314.25 feet to the Southeast corner of said 1/4; thence run North 89 deg. 52 min. 56 sec. West, along the south line of said 1/4 for a distance of 663.63 feet; thence run North 0 deg. 48 min. 13 sec. East for a distance of 1318.83 feet to the north line of said 1/4; thence run South 89 deg. 29 min. 18 sec. East and along the north line of said 1/4 for a distance of 659.22 feet to the point of beginning.

located in Shelby County, Alabama.

TITLE: I covenant and warrant title to the property, except for \_\_\_\_\_

SECURED DEBT: This mortgage secures repayment of the secured debt and the performance of the covenants and agreements contained in this mortgage and in any other document incorporated herein. Secured debt, as used in this mortgage, includes any amounts I owe you under this mortgage or under any instrument secured by this mortgage and all modifications, extensions and renewals thereof.

The secured debt is evidenced by (List all instruments and agreements secured by this mortgage and the dates thereof.):

☒ promissory note and construction loan agreement

☒ Future Advances: All amounts owed under the above agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

☐ Revolving credit loan agreement dated \_\_\_\_\_ All amounts owed under this agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

The above obligation is due and payable on April 17, 1995 if not paid earlier.

The total unpaid balance secured by this mortgage at any one time shall not exceed a maximum principal amount of: \$139,425.00 \* \* \* \* \* Dollars (\$ 139,425.00).

plus interest, plus any disbursements made for the payment of taxes, special assessments, or insurance on the property, with interest on such disbursements.

☐ Variable Rate: The interest rate on the obligation secured by this mortgage may vary according to the terms of that obligation.

☐ A copy of the loan agreement containing the terms under which the interest rate may vary is attached to this mortgage and made a part hereof.

RIDERS: ☐ Commercial ☒ Construction Mortgage Rider ☐ \_\_\_\_\_

SIGNATURES: By signing below, I agree to the terms and covenants contained in this mortgage (including those on page 2 which are hereby incorporated onto page 1 of this mortgage form) and in any riders described above and signed by me.

x Charles Nesbitt (Seal)  
Charles Nesbitt

x Jane Nesbitt (Seal)  
Jane Nesbitt

WITNESSES:

Inst # 1994-31525

ACKNOWLEDGMENT: STATE OF ALABAMA, Shelby

I, William R. Justice

, a Notary Public in and for said state, and in said state, hereby certify that

Charles Nesbitt and Jane Nesbitt, husband and wife

whose name(s) are signed to the foregoing conveyance, and who are 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.

whose name(s) as \_\_\_\_\_ of the \_\_\_\_\_ a corporation, signed to the foregoing conveyance and who \_\_\_\_\_ 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 17th day of October, 1994.

My commission expires:

9/12/95

x William R. Justice  
(Notary Public)

William R. Justice

ALABAMA

## COVENANTS

**1. Payments.** I agree to make all payments on the secured debt when due. Unless we agree otherwise, any payments you receive from me or for my benefit will be applied first to any amounts I owe you on the secured debt (exclusive of interest or principal), second, to interest and then to principal. If partial prepayment of the secured debt occurs for any reason, it will not reduce or excuse any scheduled payment until the secured debt is paid in full.

**2. Claims against Title.** I will pay all taxes, assessments, liens and encumbrances on the property when due and will defend title to the property against any claims which would impair the lien of this mortgage. You may require me to assign any rights, claims or defenses which I may have against parties who supply labor or materials to improve or maintain the property.

**3. Insurance.** I will keep the property insured under terms acceptable to you at my expense and for your benefit. All insurance policies shall include a standard mortgage clause in favor of you. You will be named as loss payee or as the insured on any such insurance policy. Any insurance proceeds may be applied, within your discretion, to either the restoration or repair of the damaged property or to the secured debt. If you require mortgage insurance, I agree to maintain such insurance for as long as you require.

**4. Property.** I will keep the property in good condition and make all repairs reasonably necessary.

**5. Expenses.** I agree to pay all your expenses, including reasonable attorneys' fees if I break any covenants in this mortgage or in any obligation secured by this mortgage. Attorneys' fees include those awarded by an appellate court. I will pay these amounts to you as provided in Covenant 10 of this mortgage.

**6. Default and Acceleration.** If I fail to make any payment when due or break any covenants under this mortgage, any prior mortgage or any obligation secured by this mortgage, you may accelerate the maturity of the secured debt and demand immediate payment and exercise any other remedy available to you. This mortgage gives you the power of sale, which you may also invoke under the circumstances described in the previous sentence. If you invoke the power of sale, you will give notice of the sale by publication once a week for three successive weeks in some newspaper published in the county in which the property or any portion of it is located. This notice will give the time, place and terms of the sale, and a description of the property. After this notice is given, the property will be sold to the highest bidder at public auction at the front door of the County Courthouse of the county in which the notice of sale was published.

**7. Assignment of Rents and Profits.** I assign to you the rents and profits of the property. Unless we have agreed otherwise in writing, I may collect and retain the rents as long as I am not in default. If I default, you, your agent, or a court appointed receiver may take possession and manage the property and collect the rents. Any rents you collect shall be applied first to the costs of managing the property, including court costs and attorneys' fees, commissions to rental agents, and any other necessary related expenses. The remaining amount of rents will then apply to payments on the secured debt as provided in Covenant 1.

**8. Waiver of Homestead.** I hereby waive all right of homestead exemption in the property.

**9. Leaseholds; Condominiums; Planned Unit Developments.** I agree to 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, I will perform all of my duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

**10. Authority of Mortgagee to Perform for Mortgagor.** If I fail to perform any of my duties under this mortgage, you may perform the duties or cause them to be performed. You may sign my name or pay any amount if necessary for performance. If any construction on the property is discontinued or not carried on in a reasonable manner, you may do whatever is necessary to protect your security interest in the property. This may include completing the construction.

Your failure to perform will not preclude you from exercising any of your other rights under the law or this mortgage.

Any amounts paid by you to protect your security interest will be secured by this mortgage. Such amounts will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect on the secured debt.

**11. Inspection.** You may enter the property to inspect if you give me notice beforehand. The notice must state the reasonable cause for your inspection.

**12. Condemnation.** I assign to you the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the property. Such proceeds will be applied as provided in Covenant 1. This assignment is subject to the terms of any prior security agreement.

**13. Waiver.** By exercising any remedy available to you, you do not give up your rights to later use any other remedy. By not exercising any remedy, if I default, you do not waive your right to later consider the event a default if it happens again.

**14. Joint and Several Liability; Co-signers; Successors and Assigns Bound.** All duties under this mortgage are joint and several. If I co-sign this mortgage but do not co-sign the underlying debt I do so only to mortgage my interest in the property under the terms of this mortgage. I also agree that you and any party to this mortgage may extend, modify or make any other changes in the terms of this mortgage or the secured debt without my consent. Such a change will not release me from the terms of this mortgage.

The duties and benefits of this mortgage shall bind and benefit the successors and assigns of either or both of us.

**15. Notice.** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by certified mail addressed to me at the Property Address or any other address that I tell you. I will give any notice to you by certified mail to your address on page 1 of this mortgage, or to any other address which you have designated.

Any notice shall be deemed to have been given to either of us when given in the manner stated above.

**16. Transfer of the Property or a Beneficial Interest in the Mortgagor.** If all or any part of the property or any interest in it is sold or transferred without your prior written consent, you may demand immediate payment of the secured debt. You may also demand immediate payment if the mortgagor is not a natural person and a beneficial interest in the mortgagor is sold or transferred. However, you may not demand payment in the above situations if it is prohibited by federal law as of the date of this mortgage.

**17. Release.** When I have paid the secured debt in full and all underlying agreements have been terminated, this mortgage will become null and void and you will release this mortgage.

## CONSTRUCTION MORTGAGE RIDER

(FORM OCP-MTG-AL)

This Construction Mortgage Rider is made this 17th day of **October, 1994**, and is incorporated into and shall be deemed to amend and supplement the Mortgage of the same date given by the undersigned ("Borrower" or "Mortgagor") to secure Borrower's Note to First National Bank of Columbiana ("Mortgagee") of the same date and covering the property described in the Mortgage.

**ADDITIONAL COVENANTS.** In addition to or in substitution for the covenants and agreements made in the Mortgage, Borrower and Mortgagee further covenant and agree as follows:

**1. Property Description.** The Property described in the Mortgage shall also include all personal property specifically described in the Mortgage and all building permits, contracts, agreements, plans, specifications, surveys, engineering reports, materials, equipment, fixtures, tools, apparatus and fittings of every kind or character now owned or hereafter acquired by Borrower for the purpose of, or used or useful in connection with, the construction of the Improvements, wherever the same may be located.

**2. Construction Loan.** This Mortgage secures a loan incurred to finance the construction of Improvements on the Property, including in some cases the acquisition cost of the Property and certain costs incurred in planning, architectural and engineering studies, zoning or rezoning, and similar expenses. It is understood and agreed that funds to be advanced are to be used in the construction of the Improvements on the Property in accordance with the terms of the Note, Construction Loan Agreement, and other loan documents, which documents are incorporated herein by reference to the same extent as if fully set forth herein and made a part of this Mortgage. This Mortgage secures the repayment of all sums and the performance of all covenants required of Borrower by these documents.

**3. Authority of Mortgagee to Perform for Borrower.** Paragraph 10 entitled "Authority of Mortgagee to Perform for Mortgagor" is amended to include the following provision:

Furthermore, even if Mortgagee obtains insurance, pays taxes, or does or pays for other things necessary to protect the value of the Property and Mortgagee's rights in the Property, Mortgagee may still treat Borrower's failure to perform the covenants and agreements contained in the Mortgage as a default.

**4. Default and Acceleration.** Paragraph 6 entitled "Default and Acceleration" is amended to include the following provision:

Mortgagee may purchase the property at the sale if the highest bidder therefor. Mortgagee, or its agent or auctioneer, may execute and deliver a deed conveying the property to the highest bidder.

**5. Notice.** Paragraph 15 entitled "Notice" is amended to include first class mail as an additional method of notice.

**6. Security Agreement.** This Mortgage constitutes a security agreement under the Uniform Commercial Code and creates a security interest in the personal property included in the Property. Borrower shall execute, deliver, file, and refile any financing statements or other security agreements that Mortgagee may require from time to time to confirm and perfect the lien of this Mortgage with respect to that Property and shall pay all costs of filing. Without limiting the foregoing, Borrower irrevocably appoints Mortgagee attorney-in-fact for Borrower to execute, deliver and file such writings for and on behalf of Borrower.

7. **Release.** Paragraph 17 entitled "Release" is amended to include the following provisions:

Mortgagee will discharge this Mortgage by delivering to Borrower a release stating that the Mortgage has been satisfied. Borrower will not be required to pay for the release but will be responsible for paying the costs of recording the release in the proper official records.

**COMMERCIAL LOANS ONLY**

8. **Submission to Jurisdiction; Waiver of Jury Trial.** If the indebtedness evidenced by the Note secured by this Mortgage is for commercial or business purposes, Borrower irrevocably submits to the jurisdiction of each state court sitting in Shelby County, Alabama, or each federal court sitting in Jefferson County, Alabama, over any suit, action, or proceeding arising out of or relating to any transaction, grievance, or claim under this Mortgage, the Note, or the other loan documents. Borrower further waives any objection that Borrower may now or hereafter have based on improper venue, lack of jurisdiction, or inconvenience of forum in any action brought in any of the courts described above. Borrower hereby waives all rights to a trial by jury in any suit, action, or proceeding set out above. This waiver is knowingly, voluntarily and intentionally being entered into and is part of the consideration and inducement of the parties entering into this Mortgage and the making of the Note.

By signing below, Borrower accepts and agrees to the terms and covenants contained in this Construction Mortgage Rider.

  
Charles Nesbitt

  
Jane Nesbitt

Inst # 1994-31525

10/18/1994-31525  
02:49 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MCD 226.25