

Inst # 1994-33052

THIS INSTRUMENT PREPARED BY:

Felton W. Smith
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35201
205/251-8100

11/07/1994-33052
08:44 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
DOB MCD 628.10

STATE OF ALABAMA }

COUNTY OF SHELBY }

MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: That

WHEREAS, the undersigned, REAMER DEVELOPMENT CORP., an Alabama corporation (hereinafter called "Mortgagor", whether one or more), is indebted to NEVA WATKINS WEST (hereinafter referred to as "Mortgagee") on a loan in the sum of Four Hundred One Thousand Four Hundred and No/Dollars (\$401,400.00) principal, as evidenced by a promissory note of even date herewith, payable to Mortgagee with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

NOW, THEREFORE, the undersigned Mortgagor and all others executing this Mortgage, in consideration of making the loan above mentioned, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals or modifications of same, and any and all charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorney's fees, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, have bargained and sold and do hereby grant, bargain, sell and convey unto the said Mortgagee, its successors and assigns, the land, real estate, buildings and improvements described on Exhibit "A" attached hereto (hereinafter referred to as the "Property").

TO HAVE AND TO HOLD the Property and all parts thereof unto the Mortgagee, its successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any

deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to attorney's fees, and shall keep, perform and observe all and singular the covenants, conditions and agreements in the Note, and in this Mortgage, expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, determine and be void, but shall otherwise remain in full force and effect. Mortgagee shall have no obligation to effect any partial release of the Property.

Upon the happening of a default in the payment of the Note, or of any installment thereof, principal or interest, when due, or any renewals, extensions, or modifications thereof when due, or upon default in the performance of any of the covenants, conditions or agreements in the Note, or in this Mortgage, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Mortgagor, or any endorser, surety or guarantor of the Note file, or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law or relief of debtors, including but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all indebtedness, obligations, and liabilities secured hereby to be immediately due and payable, and the Mortgagor hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of the county or counties in which all or a portion of said Property is located, as Mortgagee may elect, subject to the provisions of any applicable law. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in the county or counties and state in which all or a portion of said Property is located. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagor, and all recitals made in any deed executed under this Mortgage shall be evidence of the facts therein recited.

The Mortgagor, its successors and assigns hereby covenant with the Mortgagee, her heirs, successors, legal representatives and assigns, that they are seized of an indefeasible estate in fee

simple in and to said Property, that said Property is free from all liens and encumbrances except for ad valorem taxes for 1994, easements and restrictions of record and any mineral and mining rights not owned by Mortgagor, and that it will forever warrant and defend the title thereto and the quiet use and enjoyment thereof unto the said Mortgagee, her heirs, successors, legal representatives and assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

The Mortgagor further expressly agree and covenant as follows:

1. Mortgagor shall pay the Note and all installments of principal, interest and other charges thereunder, when they respectively fall due.
2. Mortgagor shall add Mortgagee as an additional insured on its policy of general and public liability insurance, providing coverage for death, personal injury, property damage and contractual liability. Mortgagor shall carry such insurance at all times while this Mortgage is in effect. Mortgagor shall procure and deliver to Mortgagee renewals of such policy at least ten (10) days before the expiration thereof. Such insurance policy shall be endorsed so that it may not be canceled without thirty (30) days prior written notice being given to Mortgagee and so that the insurer waives all rights of recovery and subrogation against Mortgagee.
3. Mortgagor shall not, without the prior written consent of Mortgagee, file, record or amend any plat covering the Property and shall not, without the prior written consent of Mortgagee initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Property.
4. Mortgagor shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.
5. If it shall become necessary for Mortgagee to employ an attorney to collect the debt or any of the indebtedness hereby secured, or any portion thereof, or to foreclose this Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceedings, then the said Mortgagor shall pay to Mortgagee all reasonable attorney's fees and all reasonable costs of collection or foreclosure.
6. Mortgagor shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.

7. If the said Mortgagor fails to perform any of the duties herein specified, the Mortgagee may perform the same, including but not limited to payment of insurance premiums, taxes, liens and other charges.
8. The Mortgagee may advance to said Mortgagor such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property, or to pay for any work done upon said Property, or materials furnished to said Property.
9. (a) Mortgagor will keep the Property in good condition and repair, will not commit or permit any waste, impairment, deterioration, or contamination of the Property and will not subject the Property to any detriment intended primarily to benefit any contiguous real estate. Without limiting the generality of the foregoing, Mortgagor shall not dump (or permit others to dump) trash, debris or soil on the Property and shall not strip or remove the existing soil from the Property. Furthermore, Mortgagor shall not permit to exist any condition that might cause a discharge of any Hazardous Substances (hereinafter defined) at, upon, under or within the Property or any contiguous real estate. Neither Mortgagor nor any other person or entity acting through, under or on behalf of Mortgagor shall undertake operations at or near the Property that could result in (i) the imposition of liability on any present, subsequent or former owner of the Property under the Hazardous Waste Laws (hereinafter defined), or (ii) the creation of any lien on the Property under the Hazardous Waste Laws. Mortgagor shall comply in all respect with the requirements of the Hazardous Waste Laws. Nothing herein shall be construed to limit Mortgagor's right to conduct reasonable site preparations in conjunction with Mortgagor's use of the Property.

(b) "Hazardous Waste Laws" shall mean (i) the Resources Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendment of 1984, 42 U.S.C., Section 6901, et seq; (ii) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C., Section 9610, et seq; (iii) the Clean Water Act, 33 U.S.C., Section 1251, et seq; (iv) the Toxic Substances and Control Act, 15 U.S.C., Section 2601, et seq; (v) the Clean Air Act, 42 U.S.C., Section 7401, et seq; (vi) any and all applicable environmental laws of the State of Alabama; and (vii) all regulations promulgated under any of the foregoing.

(c) "Hazardous Substances" shall mean any hazardous waste, hazardous substances or toxic substances within the meaning of any Hazardous Waste Laws.

(d) To the extent permitted by law Mortgagor shall defend, indemnify and hold harmless Mortgagee, any holder or owner of any portion of the Note, their respective affiliates, and their respective agents (the "Indemnified Parties") , from and against all claims, damages, losses, liabilities, and expenses (including, without

limitation, reasonable attorney's fees and expenses) arising out of or relating to, directly or indirectly, any violation or alleged violation of the Hazardous Waste Laws, now existing or hereafter arising, except for violations of the Hazardous Waste Laws caused solely by the Indemnified Parties. **This indemnify provision is intended to indemnify each Indemnified Party from its own negligence or fault when the Indemnified party is jointly, comparatively, or concurrently negligent with Mortgagor or any other party (other than solely with another Indemnified Party), unless such claim arises from the sole or gross negligence of the Indemnified Parties.** This indemnity provision shall survive the repayment in full of the indebtedness, and the performance by Mortgagor of all of its obligations under the Note and this Mortgage.

10. The Mortgagee shall have an additional lien upon said Property, secured by this Mortgage, for any sums expended or advanced by Mortgagee pursuant to the provisions of paragraphs 5 through 8 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate of ten percent (10%) per annum, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.
11. Mortgagor shall not sell or otherwise transfer or dispose of the Property without the prior written consent of the Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all indebtedness, obligations, and liabilities secured hereby to be immediately due and payable.
12. The provisions of this Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, successors, legal representatives and assigns.
13. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Mortgage, or the Note, or any other instrument, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.
14. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

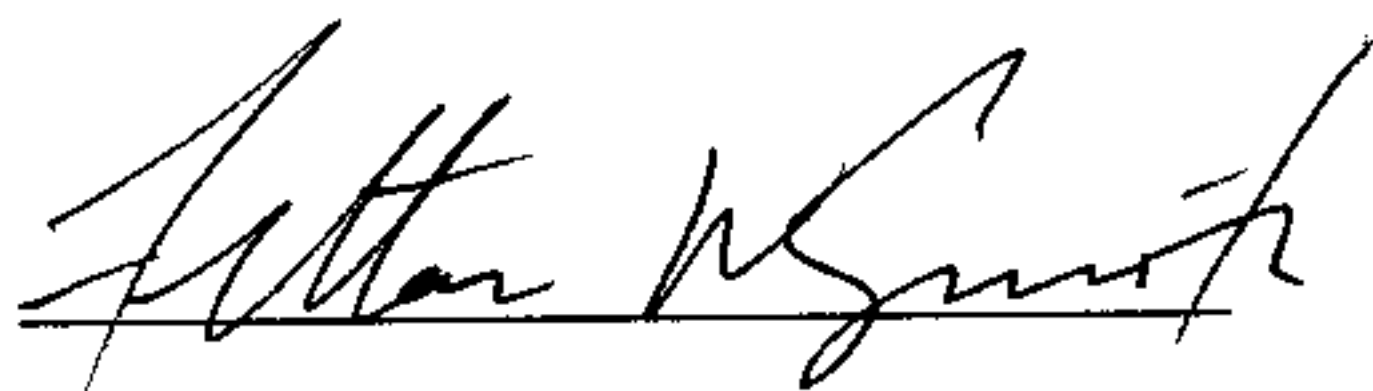
15. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

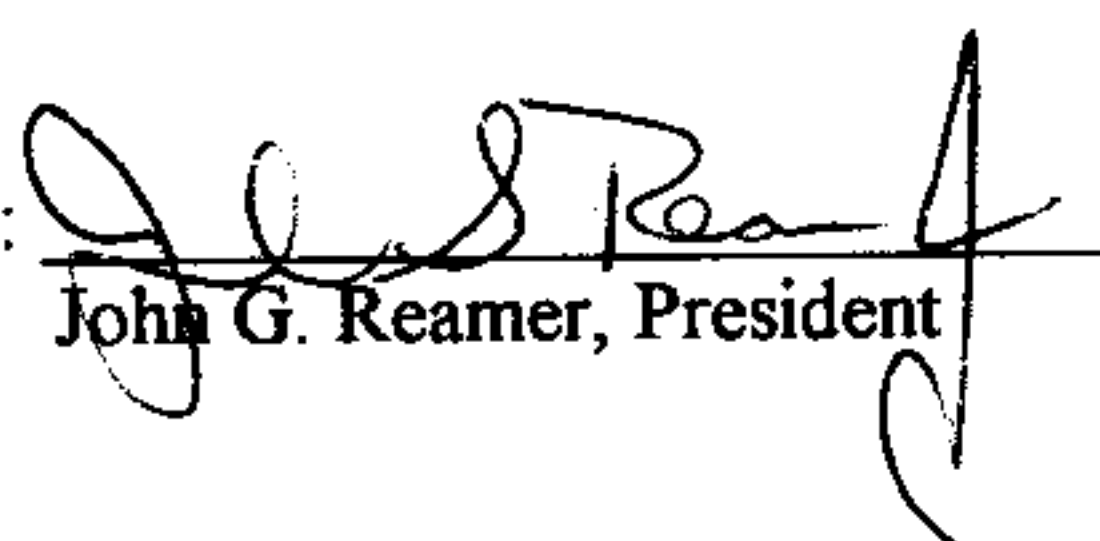
IN WITNESS WHEREOF, said Mortgagor has caused this instrument to be executed on this the 26th day of October, 1994.

MORTGAGOR:

WITNESS:

REAMER DEVELOPMENT CORP.



By: 
John G. Reamer, President

Mortgagor's Address:

REAMER DEVELOPMENT CORP.

P.O. Box 380785
BIRMINGHAM, AL. 35238

Mortgagee's Address:

NEVA WATKINS WEST

P. O. Box 7

Houston, Texas 77001

STATE OF ALABAMA }

COUNTY OF Jefferson }

I, Reva D. Ramey, a notary public in and for said county in said state, hereby certify that JOHN G. REAMER, whose name as President of Reamer Development Corp., a corporation, 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 such instrument, he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 26th day of October, 1994.

Reva D. Ramey
Notary Public

My Commission Expires: 1-8-96

Exhibit "A"

Exhibit to Statutory Warranty Deed dated October 26, 1994 from Neva Watkins West, an unmarried woman, Grantor, to Reamer Development Corporation, covering 80.28 acres, more or less, in Shelby County, Alabama. The description is as follows:

Parcel I: All of that part of the NE 1/4 of the SW 1/4 of Section 17, Township 19 South, Range 2 West lying West of the Cahaba River.

Parcel II: All of that part of the NW 1/4 of the SW 1/4 of Section 17, Township 19 South, Range 2 West described as follows:

Begin at the Southeast corner of the NW 1/4 of the SW 1/4 of Section 17, Township 19 South, Range 2 West and run North along the East line thereof for 270.0 feet; thence 111 deg. 17 min. 37 sec. left and run Southwesterly for 707.07 feet to the South line of said 1/4 1/4 section; thence East along said South Line for 658.93 feet to the point of beginning; being situated in Shelby County, Alabama.

Parcel III: All of that part of the SW 1/4 of the SW 1/4 of Section 17, Township 19 South, Range 2 West lying East of Tract No. 180, Rev. of Project No. I-65-2-(37) of the State of Alabama Highway Department (Interstate Highway 65 right of way), LESS AND EXCEPT the acreage described as follows:

Begin at the Northwest corner of the SW 1/4 of the SW 1/4 of Section 17, Township 19 South, Range 2 West and run South along the West line thereof for 270.0 feet; thence 111 deg. 13 min. 21 sec. left and run Northwesterly for 706.70 feet to the North line of said 1/4 1/4 section; thence West along said North line for 658.93 feet to the point of beginning; being situated in Shelby County, Alabama.

Parcel IV: All of that part of the North thirty-one (31) acres of the NW 1/4 NW 1/4 of Section 20, Township 19 South, Range 2 West lying East of Tract No. 180, Rev. of Project No. I-65-2-(37) of the State of Alabama Highway Department (Interstate Highway 65 right of way).

Parcel V: All of that part of the North fifteen and one-half (15 1/2) acres of the W/2 of the NE 1/4 NW 1/4 of Section 20, Township 19 South, Range 2 West lying West of the Cahaba River.

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reamerA.doc.deeds

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