

MORTGAGE AND ASSIGNMENT

STATE OF ALABAMA

KNOW ALL MEN BY THESE PRESENTS; That

COUNTY OF Shelby

Whereas, Gerald P. Schumm, Jr. and wife, Donna B. Schumm

(hereinafter called "Mortgagors," whether one or more) are justly indebted to Sheril Hilyer Construction

(hereinafter called "Mortgagee," whether one or more) in the principal sum of Six thousand five hundred and no/100— Dollars (\$ 6500.00), under that certain

Installment Sale Contract Note and Disclosure Statement (Contract), dated April 12, 1995, payable on the 20th day of each month after date, commencing May 20, 1995, until such sum is paid in full.

AND, WHEREAS, Mortgagors agreed, in incurring said indebtedness that this mortgage should be given to secure the prompt payment thereof according to the tenor and effect of said Contract, and compliance by Mortgagors with the requirements of this Mortgage.

NOW, THEREFORE, in consideration of the premises, and for the purpose of securing the payment of said indebtedness, and any other indebtedness Mortgagors may owe Mortgagee before the payment in full of the amount now due hereunder, Mortgagors do hereby grant, bargain, sell and convey unto Mortgagee the following described real estate, together with all present and future improvements and fixtures thereon and all rents and profits therefrom, situated in Shelby County, State of Alabama, to wit:

**Lot 2, Block 3, according to the survey of Southwind, First Sector as recorded in Map Book 6, Page 72, in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.**

Inst # 1995-10514  
04/24/1995-10514  
10:56 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
002 MCD 20.75

(Said real estate and all other property hereinabove described, whether real or personal, and whether in whole or in part, is hereinafter referred to as "the premises").

TO HAVE AND TO HOLD the premises unto Mortgagee, and Mortgagee's successors, heirs and assigns, forever.

AND, Mortgagors do covenant with Mortgagee that they are lawfully seized in fee simple and possessed of the premises, and have good right to convey the same; that the premises are free from all liens, charges, encumbrances, easements, and restrictions whatsoever not herein specifically mentioned; and that, subject only to exceptions herein specifically mentioned, Mortgagors do warrant and will defend the title to the same unto Mortgagee against the lawful claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions and agreements:

1. Mortgagors shall pay said principal indebtedness and interest thereon when and as due under the terms of the Contract, and under any covenant, condition or agreement herein contained, together with any other indebtedness which Mortgagors may owe to Mortgagee.
2. The terms and conditions contained in the Contract are incorporated herein by reference as if fully set forth herein. The rights, options, powers and remedies provided for herein and under the terms of the Contract shall be cumulative, and no one or more of them shall be exclusive of the other or others, or of any right or remedy now or hereafter given or allowed by law.
3. Mortgagors shall keep the premises in good condition and repair, and shall neither commit nor permit waste of the premises.
4. Mortgagors shall keep the premises free from all taxes, liens, assessments, charges and encumbrances upon the terms provided for in the Contract.
5. Mortgagors shall keep the premises continuously insured with such companies, in such amounts and upon such terms as are provided for in the Contract.
6. If and when this is a second mortgage Mortgagors shall make all payments of principal and interest on such prior mortgage in accordance with its terms and permit no event of default thereunder. Any event of default under any such prior mortgage shall constitute an event of default under the terms of this Mortgage and Mortgagee may, at its option, thereupon declare the entire indebtedness due hereunder immediately due and payable and this Mortgage subject to foreclosure.
7. If Mortgagors fail to insure the premises, or to pay and furnish receipts for all taxes, liens, assessments, charges and encumbrances, or to keep the premises in good condition and repair, or to pay all installments of principal and interest on any prior mortgage, all as hereinabove provided for, Mortgagee may, at its option, procure such insurance, pay such taxes, liens, assessments, charges and encumbrances, enter upon the premises and make such repairs as it may deem necessary, make any such payments which may become due on any prior mortgage, or incur any expenses or obligations on behalf of Mortgagors in connection with any prior mortgage in order to prevent the foreclosure thereof; and Mortgagors shall immediately pay to Mortgagee all sums which Mortgagee shall have so paid, together with interest thereon from the date the same was paid, and Mortgagee's costs, expenses and attorney's fees, and for payment thereof this Mortgage shall stand as security; but the failure of Mortgagee to do any such acts or make any such expenditures shall in no way render Mortgagee liable to Mortgagors.
8. If default be made in the payment of any of the indebtedness secured hereby, or in the performance of any covenant, condition or agreement contained in the Contract or this Mortgage, or should the interest of Mortgagee in the premises become endangered by reason of the enforcement of any prior lien or encumbrance, then the whole indebtedness hereby secured with all interest thereon shall, at the option of Mortgagee, become immediately due and payable and this Mortgage subject to foreclosure as now provided by law in the case of past due mortgages, and Mortgagee shall be authorized to take possession of the premises, and after or without taking possession, to sell the same before the Courthouse Door in the County where the premises is located, at public outcry for cash, after having given notice of the time, place and terms of the sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said County, and upon payment of the purchase money Mortgagee, or any person conducting said sale for Mortgagee, is authorized and empowered to execute to the purchaser a deed to the premises so purchased. Mortgagee may bid at said sale and purchase the premises if the highest bidder therefor. The proceeds of said sale shall be applied; First, to the expense of advertising and selling, including reasonable attorney's fees; Second, to the payment of any amounts that Mortgagee may have expended, or that it may then be necessary to expend, in paying insurance, taxes, assessments, liens or encumbrances as hereinabove provided, with interest thereon; Third, to the payment of the principal indebtedness hereby secured, with interest to the date of the sale; Fourth, the balance, if any,

PLEASE RETURN TO:  
NEW SOUTH FEDERAL SAVINGS BANK  
ATTENTION: ADAM ACREE  
215 NORTH 21ST STREET  
BIRMINGHAM, AL 35282-9573

This instrument was prepared by:  
Sheril Hilyer Construction  
P. O. Box 147  
Saginaw, AL 35007

shall be paid to the party or parties appearing of record to be the owner of the premises at the time of the sale after deducting any expense of ascertaining who is such owner. If this Mortgage shall be foreclosed by a judicial proceeding, reasonable attorney's fees for foreclosing the same shall be paid out of the proceeds of the sale.

9. No delay or failure of Mortgagee to exercise any option herein given shall constitute a waiver of such option or estop Mortgagee from afterwards exercising the same.

10. If Mortgagors shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable, and shall do and perform all acts and agreements to be done and performed by Mortgagors under the terms and provisions of this Mortgage, then this conveyance shall be and become null and void.

11. All awards of damages in connection with any condemnation for public use or injury to any of the premises are hereby assigned and shall be paid to Mortgagee, who may apply the same to the payment of the installments last due under the Contract, and Mortgagee is hereby authorized, in the name of Mortgagors, to execute and deliver valid acquittances thereof and to appeal from any such award.

12. The term "Mortgagors," wherever used herein, shall mean the party or parties executing this Mortgage, jointly and severally, and all the conditions, covenants and agreements hereof shall bind the Mortgagors, their respective heirs, personal representative, successors and assigns and shall inure to the benefit of and be available (jointly and severally if more than one) to Mortgagee, and to the heirs, personal representatives, successors and assigns of Mortgagee. The term "interest" as used herein shall be deemed to be the Annual Percentage Rate provided for in the contract, or if such rate should be in excess of the maximum legal rate then permitted by applicable law, such maximum legal rate.

13. If Mortgagors shall sell, lease or otherwise transfer the premises or any part thereof, without the prior written consent of Mortgagee, Mortgagee shall be authorized to declare at its option all or any part of the indebtedness secured by this Mortgage immediately due and payable.

14. The Mortgagee may sue on the Contract at law, he may file an action in equity to foreclose the mortgage, he may exercise his rights under the power of sale as set forth above in paragraph 8, and he may exercise all these rights at once, or any one of them alone, or any combination thereof. Mortgagors waive all rights of exemption under the law and agree to pay a reasonable attorney's fee for the collection of amounts owed or the enforcement of rights under the Contract or Mortgage.

IN WITNESS WHEREOF, the undersigned Gerald P. Schumm, Jr. & Donna B. Schumm have hereunto set their signature and seal this 12th day of April, 1995

Gerald P. Schumm, Jr. (SEAL)  
Donna B. Schumm (SEAL)

#### INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ALABAMA )  
COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Gerald P. Schumm, Jr. and Donna B. Schumm, whose name(s) is/are signed to the foregoing conveyance and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance he/she/they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 12th day of April, 1995

Robin J. Cameron  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES MAY 27, 1997  
Inst # 1995-10514

#### TRANSFER AND ASSIGNMENT

STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_ )

For value received \_\_\_\_\_ by transfers, assigns and conveys unto PHOENIX FINANCIAL SERVICE, INC., all right, title, interest, powers \_\_\_\_\_ and under the within Mortgage as well as to the land described therein and the indebtedness secured thereby.

In witness whereof the undersigned \_\_\_\_\_ hereunto set \_\_\_\_\_ Hand and Seal, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (SEAL)

#### CORPORATE ACKNOWLEDGEMENT

STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_ )

I, undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of \_\_\_\_\_ is 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, he/she as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

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

NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

#### INDIVIDUAL ACKNOWLEDGEMENT

STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_ )

I the undersigned, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name(s) is/are signed to the foregoing conveyance and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance he/she/they executed the same voluntarily on the day the same bears date.

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

NOTARY PUBLIC  
My commission expires: \_\_\_\_\_

Inst # 1995-10514