

This document prepared by:
Debbie Myers
and after recording return to:
MBNA Consumer Services, Inc.
400 Christiana Road
MS 700883
Newark, DE 19713
App. # 04423997
1-302-453-9930

Inst # 1996-03393

02/01/1996-03393
12:19 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 66.00

STATE OF ALABAMA)
Shelby COUNTY)

ALABAMA
OPEN-END MORTGAGE
Home Equity Line of Credit

husband & wife → **THIS MORTGAGE** ("Mortgage") is given on January 30, 1996. The Mortgagor is Henry J. Aigner and Deetta F. Aigner, As Joint Tenants With Full Rights Of Survivorship (Borrower). This Mortgage is given to MBNA Consumer Services, Inc. ("MBNA CSI"), a Delaware corporation located at 400 Christiana Road, Newark, DE 19713. In this Mortgage, "you" and "your" refer to the Borrower, whether one or more, and "we," "us" and "our" refer to the lender, MBNA CSI.

Pursuant to a Home Equity Line of Credit Agreement in favor of MBNA CSI ("Agreement"), dated the same date as this Mortgage, you may incur indebtedness in amounts fluctuating from time to time up to the maximum principal sum of Thirty Thousand and 00/100 Dollars (U.S. \$30,000.00). This Mortgage shall continue to secure all sums now or hereafter advanced under the terms of the Agreement including, without limitation, sums advanced whether or not at the time the sums are advanced there is any principal outstanding under the Agreement.

This Mortgage secures to us: (a) repayment of the debt evidenced by the Agreement, with interest, and any refinancing, renewal, extension and modification of the Agreement; (b) payment of all other sums, with interest, advanced under this Mortgage to protect the security of this Mortgage; and (c) performance of your covenants and agreements under this Mortgage and the Agreement. You irrevocably grant and convey to us and our successors and assigns, with power of sale, the property located in Shelby County, Alabama and more fully described in Exhibit A attached hereto and made a part hereof, which property is commonly known 2571 Dalton Drive, Pelham, Alabama 35124 ("Property Address");

TO HAVE AND TO HOLD this property unto us and our successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

YOU COVENANT that you are lawfully seized of the estate hereby conveyed and have the right to mortgage, grant, bargain, sell and convey the Property and that the Property is unencumbered, except for encumbrances of record, municipal and zoning ordinances and general real estate taxes not yet due and payable. You warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

YOU AND WE covenant and agree as follows:

1. Payment of Principal and Interest; Late and Other Charges; Prepayment. You shall promptly pay when due the principal and interest owing under the Agreement and any late or other charges due under the Agreement. You may prepay at any time, without penalty.

2. This paragraph intentionally left blank.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by us under paragraph 1 shall be applied: first, to interest due; second, to principal due; and last, to any late charges due under the Agreement.

4. Charges; Prior Liens. You shall perform all of your obligations under any mortgage, deed of trust or other security instrument with a lien which has priority over this Mortgage or any advance under this Mortgage, including your covenants to make payments when due. You shall pay all taxes, assessments, charges, fines and

impositions attributable to the Property which may attain priority over this Mortgage or any advance under this Mortgage, and leasehold payments or ground rents, if any. Upon our request, you shall promptly furnish to us all notices of amounts to be paid under this paragraph and receipts evidencing any such payments you make directly.

You shall promptly discharge any lien arising after the date of this Mortgage having priority over this Mortgage unless you: (x) agree in writing to payment of the obligation secured by the lien in a manner acceptable to us; (y) contest in good faith the lien by, or defend against enforcement of the lien in, legal proceedings which in our opinion operate to prevent enforcement of the lien; or (z) secure from the holder of the lien an agreement satisfactory to us subordinating the lien to this Mortgage. If we determine any part of the Property is subject to a lien which may attain priority over this Mortgage, we may give you a notice identifying the lien. You shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. Hazard or Property Insurance. You shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and other hazards, including floods or flooding, for which we require insurance. This insurance shall be maintained in the amounts and for the periods that we require but not in excess of the amount of the term of the Note. You may choose any insurer reasonably acceptable to us.

Insurance policies and renewals shall be acceptable to us and shall include a standard mortgagee clause. If we require, you shall promptly give us all receipts of paid premiums and renewal notices and, subject to the rights of any prior mortgage, deed of trust or other security agreement, the policies and renewals, as well. You shall promptly notify the insurer and us of any loss. We may make proof of loss if you do not promptly do so.

Insurance proceeds shall be applied to restore or repair Property damage, if restoration or repair is economically feasible and our security is not lessened. Otherwise, insurance proceeds shall be applied to sums secured by this Mortgage, whether or not then due, with any excess paid to you. If you abandon the Property, or do not answer within 30 days our notice that the insurer has offered to settle a claim, we may collect the proceeds to repair or restore the Property or to pay sums secured by this Mortgage, whether or not then due. The 30-day period will begin when notice is given.

Any application of proceeds to principal shall not extend or postpone the due date or change the amount of monthly payments due under the Agreement. If we acquire the Property at a forced sale following your default, your right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to us to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

6. Occupancy, Preservation and Maintenance of Property; Leaseholds. You shall occupy, establish and use the Property as your residence unless we otherwise agree in writing, which consent shall not be unreasonably withheld. You shall not destroy, damage, impair or substantially change the Property, allow the Property to deteriorate, or commit waste. If this Mortgage is on a leasehold, you shall comply with all provisions of the lease. If you acquire fee title to the Property, the leasehold and the fee title shall not merge unless we agree to the merger in writing.

7. Protection of Our Rights in the Property. If you fail to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect our rights in the Property (such as proceedings in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then we may do and pay for whatever is necessary to protect the Property's value and our rights in the Property. Our actions may include paying any sums secured by a lien which has priority over this Mortgage or any advance under the Agreement or this Mortgage, appearing in court, paying reasonable attorneys' fees, paying any sums you are required to pay under this Mortgage and entering on the Property to make repairs. We do not have to take any action we are permitted to take under this paragraph. Any amounts we pay under this paragraph shall become your additional debt, secured by this Mortgage. These amounts bear interest from the disbursement date at the rate established under the Agreement and shall be payable, with interest, upon our notice requesting payment.

8. This paragraph intentionally left blank.

9. Inspection. We or our agent may inspect the Property at any reasonable time and upon reasonable notice.

10. Condemnation; Abandonment. The proceeds of any award for damages, direct or consequential, in connection with a condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to us. In the event of a total taking of the Property, the proceeds shall be applied to sums secured by this Mortgage, whether or not then due, with any excess paid to you.

In the event of a partial taking of the Property in which the Property's fair market value immediately before the taking is equal to or greater than the sums secured by this Mortgage immediately before the taking, unless you and we otherwise agree in writing, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of sums secured immediately before the taking, divided by (b) the Property's fair market value immediately before the taking. Any balance shall be paid to you. In the event of a partial taking of the Property in which the Property's fair market value immediately before the taking is less than the amount of sums secured immediately before the taking, unless you and we otherwise agree in writing or unless applicable law otherwise provides, proceeds shall be applied to sums secured by this Mortgage whether or not the sums are then due. Any application of proceeds to principal may extend or postpone the due date of the monthly payments referred to in paragraph 1, but shall not change the amount of such payments.

If you abandon the Property or if, after our notice to you that the condemnor offers to make an award or settle a claim for damages, you fail to respond to us within 30 days after the date the notice is given, we are authorized to collect and apply the proceeds, at our option, either to restoration or repair of the Property or to the sums secured by this Mortgage, whether or not then due.

11. You Are Not Released; Forbearance By Us Not a Waiver. Any extension of time for payment or modification of amortization of sums secured by this Mortgage we grant to you or your successors in interest shall not operate to release your liability or the liability of your successors in interest. We shall not be required to commence proceedings against any successor in interest, 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 you or your successors in interest. Our forbearance in exercising any right or remedy shall not waive or preclude the exercise of any right or remedy.

12. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Mortgage shall bind and benefit your and our successors and permitted assigns. Your covenants and agreements shall be joint and several. Anyone who signs this Mortgage but does not execute the Agreement: (a) is signing this Mortgage only to mortgage, grant and convey such person's interest in the Property; (b) is not personally obligated to pay the Agreement, but is obligated to pay all other sums secured by this Mortgage; and (c) agrees that we and any of you may agree to extend, modify, forbear or make any accommodations regarding the terms of this Mortgage or the Agreement without such person's consent.

13. Loan Charges. If a law governing the loan secured by this Mortgage is finally interpreted so that interest or other loan charges collected or to be collected in connection with the loan exceed permitted limits, then: (a) any such loan charge shall be reduced to the permitted limit; and (b) sums collected from you which exceed permitted limits will be refunded to you. We may make this refund by reducing the principal owed under the Agreement or by direct payment to you. If a refund reduces principal, the reduction will be treated as a prepayment.

14. Notices. Any notice to you provided for in this Mortgage shall be delivered or be mailed by first class mail to the Property Address or any other address you designate by written notice to us, unless applicable law requires use of another method. Any notice to us shall be given by first class mail to our address stated above or any other address we designate by notice to you, unless applicable law requires use of another method. Any notice provided for in this Mortgage shall be deemed given to you or us when given as provided in this paragraph.

15. Governing Law; Severability. This Mortgage shall be governed by federal law and, except as pre-empted by federal law, by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Mortgage or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Agreement which can be given effect without the conflicting provision. The provisions of this Mortgage and Agreement are severable.

16. Your Copy. You shall receive a conformed copy of the Agreement and Mortgage.

17. Transfer of the Property or a Beneficial Interest in Mortgagor. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in a Mortgagor hereof is sold or transferred and such Mortgagor is not a natural person) without our prior written consent, we may, at our option, require immediate payment in full of all sums secured by this Mortgage. However, this option shall not be exercised by us if exercise is prohibited by federal law as of the date of this Mortgage.

If we exercise this option, we shall give you 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 you must pay all sums secured by

this Mortgage. If you fail to pay these sums prior to the expiration of this period, we may invoke any remedies permitted by this Mortgage without further notice or demand on you.

18. Sale of Agreement; Change of Loan Servicer. The Agreement or a partial interest in the Agreement (together with this Mortgage) may be sold one or more times without prior notice to you. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Agreement and this Mortgage. There also may be one or more changes of the Loan Servicer unrelated to sale of the Agreement. If there is a change of the Loan Servicer, you will be given written notice of the change as provided herein. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any other information required by applicable law.

19. Hazardous Substances. You shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. You shall not do, nor allow anyone else to do, anything affecting the Property that violates any Environmental Law. The preceding two sentences shall not apply to the presence or use on the Property of small quantities of Hazardous Substances that are generally recognized as appropriate to normal residential uses and to maintenance of the Property. You shall notify us promptly in writing 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 you has actual knowledge. If you learn that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, you shall promptly take all necessary remedial actions in accordance with Environmental Law.

"Hazardous Substances" mean 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. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

20. Acceleration; Remedies. We shall give notice to you prior to acceleration following your breach of any covenant or agreement described in the Default section of the Agreement that gives rise to a right to accelerate under the Acceleration Upon Default section of the Agreement (but not prior to acceleration under paragraph 17 unless applicable law provides otherwise). Notwithstanding the foregoing, we may accelerate upon your default on any obligation to pay money under the Note or hereunder without notice to you upon the second occurrence of such a default in any 12-month period. If the default is not cured, at our option we may require immediate payment of all sums secured by this Mortgage without further demand and may invoke the power of sale and any other remedies permitted by applicable law. We may collect all expenses incurred in pursuing these remedies including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If we invoke the power of sale, we shall give you written notice of default and of our election to cause the Property to be sold and shall cause the Property to be sold in accordance with applicable law. We shall have the right to enter upon and take possession of the Property hereby conveyed, and after or without taking such possession to sell the same before the courthouse door in the County where the Property is located, at public outcry, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in the County; and, upon payment of the purchase money, we or the auctioneer shall execute to the purchaser for and in your name a good and sufficient deed to the Property sold; applying the proceeds of the sale first to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of the sale; and fourth, the balance, if any, to be paid over to the party by law entitled to any excess. We may bid and become the purchaser of the Property at any foreclosure sale hereunder.

[**21. Release.** Upon payment of all sums secured by this Mortgage, we shall release this Mortgage. You shall pay any recordation costs.

[UPON CONDITION, HOWEVER, that if you shall well and truly pay discharge the indebtedness hereby secured as it shall become due and payable, and shall in all things do and perform all acts and agreements by you agreed to

be done according to the tenor and effect hereof, then and in that event only this conveyance shall be and become null and void.]

22. **Waiver of Homestead.** You waive all homestead exemption rights in the Property.

23. **This paragraph intentionally left blank.**

24. **Riders to this Mortgage.** The covenants and agreements of any one or more riders executed by you and recorded together with this Mortgage shall amend and supplement this Mortgage as if a part of this Mortgage. [Check applicable box(es).]

☐ Condominium Rider ☐ 2-4 Family Rider
☐ Planned Unit Development Rider ☐ Other(s)
[specify]: _____

25. **Request for Notice of Default and Foreclosure.** You and we request the holder of any mortgage, deed of trust or other encumbrance with a lien which has priority over this Mortgage to give Notice to us, at our address set forth on page one of this Mortgage, of any default under the superior encumbrance and of any sale or other foreclosure action.

IN WITNESS WHEREOF, you have hereunto set your hand and seal the day and year first above written.

Witnesses:

BORROWERS/GRANTORS

Henry J. Aigner (Seal)
Henry J. Aigner

Deetta F. Aigner (Seal)
Deetta F. Aigner

STATE OF ALABAMA)

) SS

COUNTY OF Jefferson)

I, Mark E. Tippins, a Notary Public in and for said County in said State, hereby certify that Henry J. Deetta F. Aigner whose name(s) is/are signed to the foregoing conveyance, and who is/are known to me, Aigner 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 30 day of January, 19 96

Mark E. Tippins
Notary Public Mark E. Tippins

My Commissioner Expires: 7/23/97

_____(Space Below This Line Reserved For Lender and Recorder)_____

**EXHIBIT A
TO
MORTGAGE**

This is Exhibit A to a Mortgage in favor of MBNA Consumer Services, Inc., dated January 30, 1996, and executed by Henry J. Aigner and Deetta F. Aigner.

Description of Property:

All that certain parcel of land in City of Pelham, Shelby County, State of Alabama as more fully described in Deed Book 231 Page 193, ID# 13-1-1-3-2-8 being known and designated as Lot 142, Third Sector, Chandalar South, filed in Plat Book 6, Page 68

Clerk: If detached from the above-described document, please return to MBNA Consumer Services, Inc., 400 Christiana Road, Newark, Delaware 19713.

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