

STATE OF ALABAMA)

SHELBY COUNTY)

MORTGAGE

THIS INDENTURE, made and executed as of the 1st day of May, 1996, by **MARK A. FRECHETTE and CHARLENE J. FRECHETTE**, husband and wife, (hereinafter collectively referred to as the "Mortgagor").

WITNESSETH:

WHEREAS, Mortgagor is justly indebted to **DOUGLAS K. JONES** (hereinafter referred to as the "Mortgagee") in the principal sum of Forty Thousand Dollars (\$40,000.00) as evidenced by that certain Promissory Note (the "Note") executed and delivered of even date herewith, the entire balance of principal and accrued interest of which shall become due and payable not later than May 1, 2016.

WHEREAS, Mortgagor desires to grant Mortgagee a Mortgage.

NOW, THEREFORE, the undersigned Mortgagor, in consideration of the indebtedness above mentioned and to secure the prompt payment of same, with the interest thereon, and any extension or renewals of same, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, has bargained and sold and by execution and delivery of this Mortgage does hereby **GRANT, BARGAIN, SELL and CONVEY** unto the Mortgagee, her heirs, executors, administrators and assigns, Mortgagor's entire interest in the following described real estate (hereinafter sometimes referred to as the "Mortgaged Property"), to-wit:

Lot 231, according to the Survey of Brook Highland, an Eddleman Community, 6th Sector, 2nd Phase, as recorded in Map Book 15, Page 50A and B, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the land described above and all fixtures thereto;

TOGETHER WITH all easements, rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the property hereinabove described or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor;

TOGETHER WITH all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the premises or any

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part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the premises or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets;

TOGETHER WITH all funds held in any escrow account to cover taxes and insurance with respect to said property and all right, title and interest in and to any prepaid items, including, without limitation, insurance premiums paid with respect to said property together with the right to the insurance proceeds.

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

AND the Mortgagor covenants and agrees with the Mortgagee as follows:

ARTICLE 1

COVENANTS OF MORTGAGOR

1.01. Warranty of Title: The Mortgagor is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, subject only to the Exceptions, and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges, and encumbrances whatsoever, except as reflected herein.

1.02. Performance of Note and Mortgage: The Mortgagor will perform, observe and comply with all provisions hereof and of the Note, and will duly and punctually pay to the Mortgagee the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by the Mortgagor pursuant to the provisions of this Mortgage, all without any deductions or credit for taxes or other similar charges paid by the Mortgagor.

1.03. Covenants to Pay Taxes, Etc.: The Mortgagor, from time to time when the same shall become due, will pay and discharge all taxes of every kind and nature (including real and personal property taxes and income, franchise, withholding, profits and gross receipts taxes), all general and special assessments, levies, permits, inspection and license fees, all water and sewer rents and charges, all charges for public utilities, and all other public charges whether of a like or different nature, ordinary or extraordinary, foreseen or unforeseen, imposed upon or assessed against the Mortgaged Property or any part thereof or upon the revenues, rents, issues, income and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof being hereinafter sometimes collectively referred to as "taxes and other assessments."

1.04. Insurance:

(a) The Mortgagor will at all times keep the Mortgaged Property insured, for the mutual benefit of the Mortgagee and the Mortgagor, as their respective interests may appear, with insurance against loss or damage by fire and other casualty with extended coverage and vandalism, malicious mischief and flood insurance, if applicable, covering the Mortgaged Property and all improvements thereon, together with all replacements, additions and improvements thereto, and all fixtures therein, in an amount sufficient to cover the indebtedness secured hereby and by the Prior Mortgage and in any event not less than the full insurable value thereof. Subject to the rights of the holder of the Prior Mortgage (the "Prior Mortgagee"), any amounts payable on account of a loss, shall be payable to the Mortgagee.

(b) Such insurance shall be evidenced by a valid and enforceable policy in form and substance, and issued by and distributed among insurers of recognized responsibility, in all respects reasonably satisfactory to the Mortgagee. At Mortgagee's request, all such policies shall be delivered to the Mortgagee concurrently with the execution and delivery hereof and, thereafter, all renewal or replacement policies shall be so delivered to the Mortgagee not less than ten (10) days prior to the expiration date of the policy to be renewed or replaced and accompanied by evidence satisfactory to the Mortgagee that all premiums payable with respect to such policies have been paid. Such policies shall contain (i) no endorsement permitting cancellation for default in payment of a loan whereby the premium has been financed and (ii) a provision for fifteen (15) days notice to Mortgagee before cancellation. The Mortgagee, at its sole option, may accept duplicate original policies. All such policies shall contain a New York standard, non-contributory mortgage endorsement making losses payable to the Mortgagee.

(c) If any portion of the Mortgaged Property or any improvements, fixtures or equipment thereof, thereon, therein or appurtenant thereto are damaged or destroyed by fire or other casualty, Mortgagor shall forthwith give notice thereof to Mortgagee, and shall make prompt proof of loss to the applicable insurance companies. All insurance proceeds shall be made available to Mortgagor for the purpose of paying for the cost of restoration and repair of the damage. Any excess over the cost of restoration shall be applied to the indebtedness represented by the Note.

1.05. Condemnation: In the event the Mortgaged Property or any part thereof, is taken under the power of eminent domain or by condemnation, Mortgagee may, at its option, apply such proceeds to the debt hereby secured or make the award available to Mortgagee for the purpose of paying for the cost of restoration and repair resulting from such condemnation.

1.06. Care of the Property: The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any

waste and will not do or suffer to be done anything which will increase the risk of fire, or other hazard to the Mortgaged Property or any part thereof; will not permit or perform any act which would in any way impair the value of the Mortgaged Property; and shall not demolish any building or improvement located on said property without the written consent of Mortgagee.

1.07. Inspection: The Mortgagee or its duly authorized representative is hereby authorized to enter upon and inspect the Mortgaged Property at any reasonable time.

1.08. Compliance: The Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

1.09. Mortgagee's Cure of Mortgagor's Defaults: If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, and the period applicable thereto within which Mortgagor may correct the same has expired (provided that in the event of an emergency or where in Mortgagee's reasonable judgment its rights or security hereunder would be impaired by delay, Mortgagee may act without notice or delay of any kind), then the Mortgagee, at its option, may perform or observe the same and all payments made for costs or incurred by the Mortgagee with interest thereon at the rate provided in the Note. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereto becoming liable to the Mortgagor, or any person in possession holding under the Mortgagor.

1.10. Assignment of Rents: The Mortgagor hereby assigns unto the Mortgagee, its successors and assigns, the rents, if any, accrued and to accrue from all tenants in occupancy of the Mortgaged Property, or any part thereof, during the lifetime of this Mortgage, it being understood that as long as there is no default in the performance or observance of any of the covenants or agreements herein contained, Mortgagor shall have the privilege of collecting and receiving all rents accruing under leases or contracts of tenancy for the Mortgaged Property, or any part thereof.

ARTICLE II

EVENTS OF DEFAULT; REMEDIES OF MORTGAGEE

2.01. Event of Default: The term "Event of Default," wherever used in this Mortgage, shall mean any one or more of the following events:

- (a) Failure by the Mortgagor to pay any installments of principal or interest due under the Note within ten (10) days after written demand;
- (b) Failure by the Mortgagor to duly observe any other covenant, condition or agreement contained in this Mortgage, the Note, or in any other document executed by the Mortgagor relating to this Mortgage transaction, within thirty (30) days after notice of default;
- (c) The filing by the Mortgagor of a voluntary petition in bankruptcy, or the Mortgagor's adjudication as a bankrupt or insolvent, or the filing by the Mortgagor of any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal or state law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Mortgagor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of all or any substantial part of the Mortgaged Property or any or all of the rents, revenues, issues, earnings, profits or income thereof, if any, or the making of any general assignment for the benefit of creditors or the admission in writing of Mortgagor's inability to pay its debts generally as they become due;
- (d) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against the Mortgagor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any federal or state law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof without the consent or acquiescence of the Mortgagor, which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive);
- (e) The occurrence of any act or condition whereby the interest of Mortgagee in the Mortgaged Property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon.

2.02. Acceleration of Maturity: If any Event of Default shall have occurred, then the entire principal amount of the indebtedness under the Note, with interest accrued thereon shall, at the option of the Mortgagee, become due and payable.

2.03. Right of Mortgagee to Enter and Take Possession: If an Event of Default shall have occurred, the Mortgagor, upon demand of the Mortgagee, shall forthwith surrender to the Mortgagee the actual possession of the Mortgaged Property; and if and to the extent permitted by law, the Mortgagee may enter and take possession of the Mortgaged Property, and may exclude the Mortgagor and his or her agents and employees wholly therefrom.

2.04. Mortgagee's Power of Enforcement: If an Event of Default shall have occurred and be continuing, the Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term thereof or any other right thereunder; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, as provided by law; and (c) to pursue any other remedy available to it, all as the Mortgagee shall deem most effectual for such purposes. The Mortgagees shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, as the Mortgagee may determine.

2.05. Power of Sale: If an Event of Default shall have occurred, Mortgagee may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication one 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 the sale for Mortgagee is authorized to execute to the purchaser at said sale a deed to the premises so purchased. Mortgagee may bid at said sale and purchase said premises, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Mortgagee may elect.

2.06. Application of Foreclosure Proceeds: The proceeds of any foreclosure sale shall be applied as follows:

- (a) First, to the reasonable expenses of the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of the indebtedness or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon, which Mortgagee may have paid, or is liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided;
- (c) Third, to the payment and satisfaction of the Note with interest to date of sale;

(d) Fourth, the balance, if any, shall be paid to the party or parties appearing of record as the owner of the Mortgaged Property at the time of the sale after deducting any expenses incurred in ascertaining the identity of such owner.

2.07. Delay or Omission - No Waiver: No delay or omission of the Mortgagee in exercising any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy granted hereunder.

2.08. Remedies Cumulative: No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy 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.

ARTICLE III

MISCELLANEOUS

3.01. Condition: This Mortgage is given upon the condition that if the Mortgagor shall pay in full or cause to be paid to the Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein and herein, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, and shall have no further force or effect.

3.02. Successors and Assigns Included in Parties: Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors and assigns of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor or by or on behalf of the Mortgagee shall bind and inure to the benefit of their respective heirs, administrators, executors, successors and assigns, whether so expressed or not.

3.03. Captions: The captions of the articles, section subparagraphs and subdivisions of this Mortgage are for convenience of reference only and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

3.04. Invalid Provisions to Affect No Others: In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage or in the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note shall be in no way affected, prejudiced or disturbed thereby.

IN WITNESS WHEREOF, the undersigned have set their hands and seals as of the day and year first above written.

Mark A. Frechette
Mark A. Frechette

Charlene J. Frechette
Charlene J. Frechette

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Mark A. Frechette**, 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 the foregoing instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 7th day of June, 1996.

Jane W. Glasscock
Notary Public

My Commission Expires: MY COMMISSION EXPIRES NOVEMBER 22, 1997

STATE OF ALABAMA)

SHELBY COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **Charlene J. Frechette**, 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 the foregoing instrument, she executed the same voluntarily on the day the same bears date.

Given under my hand this 7th day of June 1996.



Notary Public

MY COMMISSION EXPIRES NOVEMBER 23, 1997

My Commission Expires: _____

This Instrument Prepared by:
Lori L. Duwve
Berkowitz, Lefkovits, Isom & Kushner
1600 SouthTrust Tower
Birmingham, Alabama 35203

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