

STATE OF ALABAMA)
SHELBY COUNTY)

PURCHASE MONEY MORTGAGE

THIS PURCHASE MONEY MORTGAGE (hereinafter, with all amendments hereto, this "Mortgage") dated as of April 17, 1997 is made and entered into by and between THE SHELBY COUNTY ECONOMIC AND INDUSTRIAL DEVELOPMENT AUTHORITY, an Alabama public corporation (the "Borrower"), and BLUE CIRCLE, INC., a Delaware corporation (the "Lender").

Inst # 1997-15198

Alabama

Recitals

A. The Borrower and the Lender have entered into an Agreement dated as of April 17, 1997 (the "Agreement"), pursuant to which the Lender has agreed to finance the purchase price of certain real property located in Shelby County, Alabama to be purchased by the Borrower from the Lender, as more particularly described on Exhibit A attached hereto and made a part hereof.

B. The amount of the purchase price to be financed by the Lender is \$100,000.00 (the "Loan").

C. The Loan is to be evidenced by the Borrower's Non-Recourse Promissory Note in said principal amount (the "Note") dated as of even date herewith, which Note is payable in full on demand.

D. To secure the Note and to induce the Lender to extend credit to the Borrower, the Borrower has agreed to execute and deliver this Mortgage to the Lender.

Agreement

NOW, THEREFORE, in consideration of the premises, and to induce the Lender to extend credit to the Borrower, the Borrower hereby agrees with the Lender as follows:

I. DEFINITIONS AND RULES OF CONSTRUCTION

SECTION 1.01. Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided or unless the context otherwise requires:

(a) Words of masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number, and vice versa.

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(b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for reference only and in no way limit or describe the scope or intent of, or in any way affect, this Mortgage.

(c) The terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to."

(d) The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, other subdivision or Exhibit.

(e) All recitals set forth in, and all Exhibits to, this Agreement are hereby incorporated in this Mortgage by reference.

SECTION 1.02. Definitions. As used in this Mortgage, the following terms shall have the respective meanings attributed to them as follows:

Governmental Authority: Any national, state, county, municipal or other government, domestic or foreign, and any agency, authority, department, commission, bureau, board, court or other instrumentality thereof.

Impositions: All taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the use or occupancy thereof, the Liens or other interests created by this Mortgage, the filing or recording of this Mortgage or the Obligations.

Lien: Any mortgage, pledge, assignment, charge, encumbrance, lien, security interest or other preferential arrangement.

Loan Documents: The Note and this Mortgage and all other documents now or hereafter executed or delivered in connection with the Loan or any of the foregoing documents, or to evidence or secure the Loan, and all amendments, renewals, extensions, and modifications thereto or thereof.

Obligations: As defined in Section 2.01.

Permitted Encumbrances: Any Liens and other matters affecting title to the Property that are described in Exhibit B.

Property: As defined in Section 2.02.

II. OBLIGATIONS, GRANTING CLAUSES, ASSIGNMENTS, ETC.

SECTION 2.01. Obligations. This Mortgage is given to secure and shall secure the following (collectively, the "Obligations"): (i) the payment of all amounts now or hereafter becoming due and payable under the Note, including the principal of the Loan, and all interest thereon and all other fees, charges and costs (including reasonable attorneys' fees) payable in connection therewith and (ii) all renewals, extensions, modifications and amendments of any or all of the obligations described in clauses (i) above whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

SECTION 2.02. Granting Clauses. As security for the Obligations, the Borrower does hereby grant, bargain, sell, mortgage, assign and convey unto the Lender, its successors and assigns, and does grant to the Lender, its successors and assigns, a security interest in, the following property and interests in property (collectively, the "Property"):

All those certain lot(s), piece(s) or parcel(s) of land located in Shelby County, Alabama more particularly described in Exhibit A, as the description of the same may be amended or supplemented from time to time, and all and singular the reversions and remainders in and to said land and the tenements, hereditaments, easements, rights-of-way or use, rights (including mineral and mining rights, and all water, oil and gas rights), privileges, royalties and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto, including any right, title, interest in, to or under any agreement or right granting, conveying or creating, for the benefit of said land, any easement, right or license in any way affecting other property and in, to or under any streets, ways, alleys, vaults, gores or strips of land adjoining said land or any parcel thereof, or in or to the air space over said land, all rights of ingress and egress by motor vehicles to parking facilities on or within said land, and all claims or demands of Borrower either at law or in equity, in possession or expectancy of, in or to the same.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto the Lender, its successors and assigns forever.

III. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender that: (i) The Borrower is lawfully seized in fee simple of the Property and has good right to mortgage, assign and grant a security interest in the Property as aforesaid; (ii) the Property is free of all Liens other than Permitted Encumbrances; (iii) the Borrower has and will have full power and lawful authority to encumber and convey the Property as provided herein; (iv) this Mortgage is and will remain a valid and enforceable first priority mortgage lien on, and security interest in, the Property, subject only to Permitted Encumbrances; and (v) the Borrower will forever warrant and defend the title to

the Property unto the Lender against the lawful claims of all persons whomsoever, except those claiming under Permitted Encumbrances.

IV. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Borrower covenants and agrees that, until the Obligations are paid and this Mortgage is satisfied:

SECTION 4.01. Payment of Impositions. The Borrower will provide to the Lender, immediately upon its receipt thereof, all notices and any other information received by the Borrower in connection with all Impositions, and the Lender will pay or cause to be paid all Impositions. The Lender may, at the Lender's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom.

SECTION 4.02. Condemnation.

(a) **Borrower's Obligations; Proceedings.** The Borrower, immediately upon obtaining knowledge thereof, will notify the Lender of any pending or threatened proceedings for the condemnation of the Property or any part thereof or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to the Property or any part thereof. The Lender may participate in any such proceedings, and the Borrower from time to time will execute and deliver to the Lender all instruments requested by the Lender to permit such participation. The Borrower shall diligently prosecute any such proceedings, deliver to the Lender copies of all papers served in connection therewith and consult and cooperate with the Lender, its attorneys and agents, in carrying on and defense of any such proceedings, provided that no settlement of any such proceedings shall be made by the Borrower without the Lender's consent, not to be unreasonably withheld.

SECTION 4.03. Liens and Liabilities.

(a) **Discharge of Liens.** The Borrower will pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property, or any part thereof.

(b) **Creation of Liens.** The Borrower will not, without the Lender's consent, create, place or permit to be created or placed, or through any act or failure to act acquiesce in the placing of, or allow to remain, any voluntary or involuntary Lien, whether statutory, constitutional or contractual, against or covering the Property, prior to, on a parity with or subordinate to the Lien of this Mortgage, other than Permitted Encumbrances.

SECTION 4.04. Maintenance of Lien Priority. Except as provided in Section 4.03, the Borrower shall take all steps necessary to preserve and protect the perfection, validity and priority of the Liens on the Property created hereby.

V. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 5.01. Defeasance. This Mortgage is made upon the condition that if the Borrower pays the Obligations, as defined in this Mortgage (which Obligations include all of the debt described in Section 2.01 of this Mortgage), including the payment of all amounts now or hereafter becoming due and payable under the Note, including the principal of the Loan, and all interest, if any, thereon and all other fees, charges and costs payable in connection therewith; then this Mortgage and the grants and conveyances contained herein shall become null and void, and the Property shall revert to the Borrower, and the entire estate, right, title and interest of the Lender will thereupon cease; and the Lender in such case shall, upon the request of the Borrower and the Borrower's cost and expense, deliver to the Lender proper instruments acknowledging satisfaction of this Mortgage; otherwise, this Mortgage shall remain in full force and effect.

SECTION 5.02. Events of Default. The happening of any one or more of the following events, or the happening of any other event of default as specified elsewhere in this Mortgage (collectively, "Events of Default"), shall constitute a default under this Mortgage:

(a) if the Borrower fails to pay to the Lender any of the Obligations when due (at maturity, upon acceleration, as a result of mandatory prepayment or otherwise), and such default continues unremedied for ten days after written notice of such failure has been given by the Lender to the Borrower; or

(b) if the Borrower defaults in the observance or performance of any provision of this Mortgage and such default continues unremedied for 30 days after written notice thereof has been given by the Lender to the Borrower; or

(c) if the Lender determines that any statement, representation or warranty contained in this Mortgage or any of the other Loan Documents, or any report, certificate or other instrument delivered to Lender was misleading or untrue in any material respect at the time it was made; or

(d) if a receiver, trustee, liquidator or other custodian is appointed for the Borrower or for any of the property of the Borrower, or if a petition in bankruptcy or under any insolvency law is filed by or against the Borrower, or if the Borrower applies for the benefits of, or takes advantage of, any law for the relief of debtors, or enters into an arrangement or composition with, or makes an assignment for the benefit of, or makes any transfer in fraud of, creditors.

SECTION 5.03. Rights and Remedies of Lender Upon Default.

(a) **Acceleration of Obligations.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender may at its option and without demand or notice to the Borrower, declare all or any part of the Obligations immediately due and payable, whereupon all such Obligations shall forthwith become due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower, and the Lender may immediately enforce payment of all such amounts and may exercise any or all of its rights and remedies under this Mortgage, the Note, any of the other Loan Documents and applicable law.

(b) **Judicial Proceedings; Right to Receiver.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its Lien on the Property or to enforce any other appropriate legal or equitable right or remedy. The Lender shall be entitled, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(c) **Power of Sale.** Upon the occurrence of any Event of Default, or at any time thereafter, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages, and the Lender shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as the Lender may from time to time elect to sell) under the power of sale which is hereby given to the Lender, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Property to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Property to be sold is located. If there is Property to be sold under this Mortgage in more than one county, publication shall be made in all counties where the Property to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. The Lender, its successors and assigns, may bid at any sale or sales had under the terms of this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale or sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or without assigning to them any proportion of such proceeds, the Borrower hereby waiving the application of any doctrine of marshalling or like proceeding. In case the Lender, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the

power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full.

(d) **Foreclosure Deeds.** To the extent permitted by applicable law, the Borrower hereby authorizes and empowers the Lender or the auctioneer at any foreclosure sale had hereunder, for and in the name of the Borrower, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(e) **Order of Application of Proceeds.** All payments received by the Lender as proceeds of the Property, or any part thereof, as well as any and all amounts realized by the Lender in connection with the enforcement of any right or remedy under or with respect to this Mortgage, shall be applied by the Lender as follows: (i) to the payment of all necessary expenses incident to the execution of any remedies under this Mortgage, including reasonable attorneys' fees as provided herein and in the other Loan Documents, appraisal fees, title search fees and foreclosure notice costs, (ii) to the payment in full of any of the Obligations that are then due and payable (including principal, accrued interest and all other sums secured hereby) and to the payment of attorneys' fees as provided herein and in the other Loan Documents, all in such order as the Lender may elect in its sole discretion and (iii) the remainder, if any, shall be paid to the Borrower or such other persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(f) **Waiver of Certain Laws.** The Borrower waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

VI. MISCELLANEOUS

SECTION 6.01. Collection Costs. The Borrower agrees to pay all reasonable costs, incurred by the Lender in collecting or securing, or attempting to collect the Obligations and all costs incurred in the foreclosure of this Mortgage, either under the power of sale contained herein, or by virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Lender shall be a part of the Obligations.

SECTION 6.02. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Lender shall inure to the benefit of the Lender's successors and assigns.

SECTION 6.03. Waiver and Election. The exercise by the Lender of any option given under the terms of this Mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the Liens granted by this

Mortgage, shall not be considered an election so as to preclude foreclosure under power of sale; nor shall the publication of notices for foreclosure under power of sale preclude the prosecution of a later or simultaneous suit to collect the Obligations or foreclose the Liens granted by this Mortgage. No failure or delay on the part of the Lender in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereunder. The remedies provided in this Mortgage and in the other Loan Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this Mortgage or any of the other Loan Documents, nor consent to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Lender, and then such waiver or consent shall be effective only in this specific instance and for the specific purpose for which given. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances.

SECTION 6.04. Enforceability. If any provision of this Mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Lender to effectuate the provisions hereof.

SECTION 6.05. Meaning of Particular Terms. The words "Borrower" and "Lender" shall include their respective successors and assigns. The term "Borrower" as used in this Mortgage refers to each of the undersigned, jointly and severally, whether one or more natural persons, corporations, associations, trusts, partnerships or other entities or organizations.

SECTION 6.06. Addresses for Notices. Any notice provided with respect to this Mortgage shall be conclusively deemed to have been received by a party hereto and be effective on the day on which delivered to such party at the address set forth below (or at such other address as a party shall specify to the other party in writing) or if sent by registered or certified mail, on the third business day after the day on which mailed to such address:

(a) If to the Borrower, at: 200 West College Street
Post Office Box 150
Columbiana, AL 35051

(b) If to the Lender, at: Blue Circle, Inc.
c/o Maynard, Cooper & Gale, P.C.
2400 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, AL 35203

IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by its duly authorized officer on the date first written above.

THE SHELBY COUNTY ECONOMIC AND INDUSTRIAL DEVELOPMENT AUTHORITY

By: Johnny L. Lowe
Its: Chairman

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Johnny Lowe, whose name as Chairman of The Shelby County Economic and Industrial Development Authority, an Alabama public 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 said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

Given under my hand and official seal, this 17 day of April, 1997.

Melinda K. Walton
Notary Public

[AFFIX SEAL]

My Commission Expires: 10-21-2000

This instrument was prepared by:

Curtis O. Liles, III
MAYNARD, COOPER & GALE, P.C.
2400 AmSouth/Harbert Plaza
1901 Sixth Avenue North
Birmingham, Alabama 35203-2602
(205) 254-1000

EXHIBIT A

(Property Description)

Parcel #1

A Parcel of land laying in the N.E. $\frac{1}{4}$ - S.E. $\frac{1}{4}$ more particularly described as follows: Commence at the N.E. Corner of the N.E. $\frac{1}{4}$ - S.E. $\frac{1}{4}$ - Section 24 - Twp. 22 South - Range 3 West for a point of Commence; thence run south along the east $\frac{1}{4}$ - $\frac{1}{4}$ line for a distance of 803.01 feet; thence turn 90 degrees 00 minutes right for a distance of 299.21 feet to a point of beginning; thence turn 23 degrees 42 minutes 54 seconds left for a distance of 60.00 feet; thence turn 90 degrees 00 minutes left for a distance of 340.00 feet; thence turn 90 degrees 00 minutes left for a distance of 60.00 feet; thence turn 90 degrees 00 minutes left for a distance of 340.00 feet to the point of beginning, containing 0.468 acres more or less.

Parcel #2

A Parcel of land laying in the S.E. $\frac{1}{4}$ - N.E. $\frac{1}{4}$ and the N.E. $\frac{1}{4}$ - S.E. $\frac{1}{4}$ - more particularly described as follows: Commence at the N.E. Corner of the N.E. $\frac{1}{4}$ - S.E. $\frac{1}{4}$ - Section 24 - Twp. 22 South - Range 3 west for a point of Commence; thence run west along the north $\frac{1}{4}$ - $\frac{1}{4}$ line for a distance of 956.30 feet to a point of beginning; thence turn 88 degrees 03 minutes right for a distance of 226.46 feet; thence turn 84 degrees 00 minutes left for a distance of 260.00 feet; thence turn 96 degrees 00 minutes left for a distance of 348.54 feet to the point of beginning, containing 3.41 acres more or less.

Parcel #3

A Parcel of land laying in the S.E. $\frac{1}{4}$ - N.E. $\frac{1}{4}$ more particularly described as follows: Commence at the S.E. Corner of the S.E. $\frac{1}{4}$ - N.E. $\frac{1}{4}$ - Section 24 - Twp. 22 South - Range 3 West for a point of Commence; thence run west along the south $\frac{1}{4}$ - $\frac{1}{4}$ line for a distance of 1089.10 feet; thence turn 102 degrees 34 minutes 45 seconds right for a distance of 799.52 feet to a point of beginning; thence turn 90 degrees 00 minutes right for a distance of 125.00 feet; thence turn 90 degrees 00 minutes left for a distance of 260.00 feet; thence turn 90 degrees 00 minutes left for a distance of 125.00 feet; thence turn 90 degrees 00 minutes left for a distance of 260.00 feet to the point of beginning, Containing 0.746 acres more or less.

EXHIBIT B

(Permitted Encumbrances)

1. The Lien for ad valorem taxes on the Property so long as such taxes are not delinquent.

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