

Please Return To:  
First Capital Mortgage Corporation  
II Chase Corporate Center #80 - Post Closing  
Birmingham, AL 35244

(Space Above This Line For Recording Date)

## MORTGAGE

Loan No.: 00

Inst # 1997-29960

09/17/1997-29960  
10:03:03 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
24.50  
09/17/97

THIS MORTGAGE ("Security Instrument") is given on

September 8

1997

The mortgagor is Billy Joe Kendrick and Pollie Kendrick, husband and wife

("Borrower").

This Security Instrument is given to First Capital Mortgage Corporation

whose address is II Chase Corporate Center, Suite 80, Birmingham, AL 35244

("Lender").

Borrower owes Lender the principal sum of one hundred sixty five thousand and NO/100ths

Dollars (U.S. \$ 165,000.00

). This debt is evidenced by Borrower's note dated the same date as

this Security Instrument ("Note"), which provides for monthly payments, with the full debt, if not paid earlier, due and payable on

October 1, 2012

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in

Shelby County, Alabama:

A parcel of land in the NW 1/4 of the NE 1/4 of Section 4, Township 20 South, Range 1 West, Shelby County, Alabama, more particularly described as follows:

Commence at the NW corner and run South to the SW corner, run thence East 297 feet; thence run North and parallel to the 1/4 Section line to a point 297 feet East of the NW corner; thence run West 297 feet to the point of beginning; being situated in Shelby County, Alabama.

LESS AND EXCEPT the following described parcel: Commence at the NW corner of the NW 1/4 of the NE 1/4 of Section 4, Township 20 South, Range 1 West, Shelby County, Alabama thence run Southerly and along the West line for a distance of 621.07 feet to a point in the centerline of a Public Churt Access Road and the point of beginning; thence continue along same line for a distance of 691.72 feet; thence turn 90 deg. 50 min. to the left and run Easterly for a distance of 178.72 feet; thence turn 89 deg. 10 min. to the left for a distance of 484.92 feet; thence turn 90 deg. 00 min. to the left for a distance of 153.70 feet; thence turn 90 deg. 00 min. to the right for a distance of 204.20 feet; thence turn 90 deg. 00 min. to the left for a distance of 25.00 feet to a point of beginning; being situated in Shelby County, Alabama.

which has the address of 335 County Road 338, Chelsea

(Street)

(City)

Alabama

35043

("Property Address");

(Zip Code)

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

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Initials: BK

PK



**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

**1. Payment of Principal and Interest; Prepayment and Late Charges.** Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

**2. Funds for Taxes and Insurance.** Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If the Funds held by Lender exceed the amounts permitted to be held by applicable law, Lender shall account to Borrower for the excess Funds in accordance with the requirements of applicable law. If the amount of the Funds held by Lender at any time is not sufficient to pay the Escrow Items when due, Lender may so notify Borrower in writing, and, in such case Borrower shall pay to Lender the amount necessary to make up the deficiency. Borrower shall make up the deficiency in no more than twelve monthly payments, at Lender's sole discretion.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender. If, under paragraph 21, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums secured by this Security Instrument.

**3. Application of Payments.** Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

**4. Charges; Liens.** Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower 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.** Borrower 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 any other hazards, including floods or flooding, for which Lender requires insurance. This insurance shall be maintained in the amounts and for the periods that Lender requires. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's approval which shall not be unreasonably withheld. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

All insurance policies and renewals shall be acceptable to Lender and shall include a standard mortgage clause. Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 21 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

**6. Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within sixty days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate as provided in paragraph 18, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence. If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

**7. Protection of Lender's Rights in the Property.** If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Lender to Borrower requesting payment.

**8. Mortgage Insurance.** If Lender required mortgage insurance as a condition of making the loan secured by this Security Instrument, Borrower shall pay the premiums required to maintain the mortgage insurance in effect. If, for any reason, the mortgage insurance coverage required by Lender lapses or ceases to be in effect, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the mortgage insurance previously in effect, at a cost substantially equivalent to the cost

Initials: B.K. QK



to Borrower of the mortgage insurance previously in effect, from an alternate mortgage insurer approved by Lender. If substantially equivalent mortgage insurance coverage is not available, Borrower shall pay to Lender each month a sum equal to one-twelfth of the yearly mortgage insurance premium being paid by Borrower when the insurance coverage lapsed or ceased to be in effect. Lender will accept, use and retain these payments as a loss reserve in lieu of mortgage insurance. Loss reserve payments may no longer be required, at the option of Lender, if mortgage insurance coverage (in the amount and for the period that Lender requires) provided by an insurer approved by Lender again becomes available and is obtained. Borrower shall pay the premiums required to maintain mortgage insurance in effect, or to provide a loss reserve, until the requirement for mortgage insurance ends in accordance with any written agreement between Borrower and Lender or applicable law.

**9. Inspection.** Lender or its agent may make reasonable entries upon and inspections of the Property. Lender shall give Borrower notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

**10. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any 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 Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of such payments.

**11. Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender 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 Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of 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 Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

**13. Loan Charges.** If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

**14. Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

**15. Governing Law; Severability.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

**16. Borrower's Copy.** Borrower shall be given one conformed copy of the Note and of this Security Instrument.

**17. Transfer of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower 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 Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

**18. Borrower's Right to Reinstate.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

**19. Sale of Note; Change of Loan Servicer.** The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Note and this Security Instrument. There also may be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change in accordance with paragraph 14 above and applicable law. 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.

**20. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Borrower shall promptly give Lender written notice 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 Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 20, "Hazardous Substances" are those 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. As used in this paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

Initials: B.K. PK



NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

21. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Paragraph 17 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice to Borrower in the manner provided in paragraph 14. Lender shall publish the notice of sale once a week for three consecutive weeks in a newspaper published in Shelby County, Alabama, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of this County. Lender shall deliver to the purchaser Lender's deed conveying the Property. Lender or its designee may purchase the Property at any sale. Borrower covenants and agrees that the proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it.

22. Release. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument to Borrower. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under applicable law.

23. Waivers. Borrower waives all right of homestead exemption in the Property and relinquishes all rights of curtesy and dower in the Property.

24. Riders to this Security Instrument. If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Security Instrument as if the rider(s) were a part of this Security Instrument.

[Check applicable box(es)].

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> Adjustable Rate Rider                      | <input type="checkbox"/> Condominium Rider              | <input type="checkbox"/> 1-4 Family Rider       |
| <input type="checkbox"/> Graduated Payment Rider                               | <input type="checkbox"/> Planned Unit Development Rider | <input type="checkbox"/> Biweekly Payment Rider |
| <input type="checkbox"/> Balloon Rider   | <input type="checkbox"/> Rate Improvement Rider         | <input type="checkbox"/> Second Home Rider      |
| <input checked="" type="checkbox"/> Other(s) [specify] Special Provision Rider |   |   |
|  | Agreement to Mediate                                    |   |

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Witnesses:

Margaret McRee  
Margaret McRee

Billy Joe Kendrick (Seal)  
Billy Joe Kendrick -Borrower

Pollie Kendrick (Seal)  
Pollie Kendrick -Borrower

\_\_\_\_ (Seal)  
-Borrower

\_\_\_\_ (Seal)  
-Borrower

[Space Below This Line For Acknowledgment]

STATE OF ALABAMA, Jefferson County ss:

On this 8th day of September, 1997, I, Margaret McRee

\_\_\_\_, a Notary Public in and for said county and in said state, hereby certify that Billy Joe Kendrick and Pollie Kendrick, Husband and Wife

whose name(s) are \_\_\_\_\_ signed to the foregoing conveyance, and who are \_\_\_\_\_ known to me, acknowledged before me that, being informed of the contents of the conveyance, they executed the same voluntarily and as their act on the day the same bears date.

Given under my hand and seal of office this 8th day of September, 1997

My Commission Expires: 2-5-99

Margaret McRee  
Notary Public

Prepared by:  
Frank L. Nelson  
389 Shades Crest Road  
Birmingham, AL 35226



## RIDER TO SECURITY INSTRUMENT

### (Optional Interest Rate and Monthly Payment Changes)

THIS RIDER is made this 8th day of September, 1997 and is incorporated into and shall be deemed to amend and supplement the Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Fixed Rate Note (With One-Time Lender Option to Adjust Rate) (the "Note") to First Capital Mortgage Corp (the "Lender") of the same date and covering the property described in the Security Instrument and located at:

335 County Road 338 Chelsea, AL 35043

(Property Address)

THE NOTE PROVIDES FOR ONE CHANGE IN THE BORROWER'S INTEREST RATE THAT MAY BE MADE AT THE EXCLUSIVE OPTION OF THE LENDER OR NOTE HOLDER. THE NOTE LIMITS THE AMOUNT THE BORROWER'S INTEREST RATE CAN CHANGE AND THE MAXIMUM RATE THE BORROWER MUST PAY.

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

#### 1. OPTIONAL INTEREST RATE AND MONTHLY PAYMENT CHANGES

The Note provides for an initial yearly fixed interest rate of 9.25 %. The Note provides for an optional change in the initial yearly fixed interest rate and monthly payment as follows:

The Note Holder may at its exclusive option change my interest rate and the resulting amount of my monthly payment on the Change Date in accordance with this Section 1. My interest rate and monthly payment may only be changed once during the term of the Note. If the Note Holder elects to exercise its option under this Section 1 to change my interest rate and monthly payment on the Change Date, the Note Holder will deliver the Notice of Change to me as required by (F) of this Section 1. The Note Holder will in no event be obligated to exercise its option under this Section 1 or to change my interest rate and monthly payment. If the Note Holder fails to provide the Notice of Change in the manner and within the time period prescribed by (F) of this Section 1 for any reason, its right and option to change my interest rate and monthly payment will terminate and, in that event, my interest rate and the amount of my monthly payment under the Note will continue without change in accordance with the provisions of Section 2 and Section 3 of the Note. If the Note Holder elects to change my interest rate and monthly payment and delivers the Notice of Change prescribed by (F) of this Section 1 to me, my interest rate and the amount of my monthly payment for the remainder of the term of the Note will be determined by the Note Holder in accordance with the provisions of this Section 1 which follow:

##### A. Change Date

The initial fixed interest rate I will pay will change on the first day of October 2002 which is called the "Change Date."

##### B. The "Index"

At the Change Date, my interest rate will be based on an Index. The "Index" is the Federal National Mortgage Association's required net yield for 15-year fixed rate (Actual/Actual) whole loans subject to a 60-day mandatory delivery commitment, as made available by the Federal National Mortgage Association. The most recently available index at the close of business as of the date 45 days before; but not including, the Change Date is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

##### C. Calculation of Changes

Before the Change Date, the Note Holder will calculate my new interest rate by adding a margin of

Two percentage point(s) ( 2%) (the "Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). Subject to the limit stated in Section 1 (D) below, this rounded amount will be my new interest rate until the Maturity Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

##### D. Limits on Interest Rate Change

The yearly interest rate I am required to pay at the Change Date will not be greater than 15.25%, which is called the "Maximum Rate."

##### E. Effective Date of Change

My new interest rate will become effective on the Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date.



## **F. Notice of Change**

The Note Holder will deliver or mail to me a notice of any change in my interest rate and the amount of my monthly payment (the "Notice of Change") at least 25, but no more than 120, calendar days before the due date of the first monthly payment in the new amount. The Notice of Change will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

## **2. CHARGES; LIENS**

Uniform Covenant 4 of the Security Instrument is amended to read as follows: "4. Charges; Liens. Borrower shall pay all taxes, assessments, and other charges, liens and impositions attributable to the Property which may attain a priority over this Security Instrument and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 of the Security Instrument or, if not paid in such manner, by Borrower making payment, when due, directly to the Note Holder thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Security Instrument; provided, that Borrower shall not be required to discharge any such lien so long as Borrower: (a) shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to the Lender; (b) shall in good faith contest such lien by, or defend against enforcement of such lien in legal proceedings which in the opinion of the Lender operate to prevent the enforcement of the lien or forfeiture of the property or any part thereof; or (c) shall secure from the holder of such lien an agreement in a form satisfactory to Lender subordinating such lien to this Security Instrument. If the Lender determines that all or any part of the Property is subject to a lien which may attain a priority over this Security Instrument, Lender shall send Borrower notice identifying such lien. Borrower shall satisfy such lien or take one or more of the actions set forth above within ten (10) days of the giving of notice."

## **3. LOAN CHARGES**

The Note Holder may require an escrow account for the payment of taxes and insurance. The Note Holder may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Note Holder pays Borrower interest on the Funds and applicable law permits Note Holder to make such a charge. However, Note Holder may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Note Holder in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Note Holder shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Note Holder may agree in writing, however, that interest shall be paid on the Funds.

The Note Holder may also collect reasonable fees for special loan services to include but not limited to recording, copies of documents, assumptions, modifications, partial releases, fax transmission services or any other fees or charges permitted by the Government-sponsored agencies, FHA, VA, FNMA or FHLMC.

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

## **4. ANNUAL STATEMENT OF ACCOUNT**

The Note Holder may in its sole discretion, from time to time, provide Borrower with an annual statement and accounting of all transactions and charges in conjunction with the Note. This statement and accounting will describe the application of all payments to principal, interest and escrow, and disclose all fees charged and any escrow transactions. The annual statement and accounting will also reconcile beginning and ending principal and escrow balances and reflect the current interest rate. A separate annual statement will disclose the calculation of any adjustable interest rate changes at the time any rate changes apply. The Borrower agrees to read the annual statements and accounting and immediately notify the Note Holder of any discrepancies or of any calculation which Borrower believes to be incorrect.

It is agreed that the Borrower shall have one year from the date of receipt of the annual statement and/or accounting to notify the Note Holder of any errors or exceptions in fees charged, or the application of payments including any calculation required of any adjustable interest rate used for the statement period.

Unless the Note Holder is notified of any errors or exceptions within one year from the date of receipt of the statement and accounting or the adjustable interest rate calculation, then Borrower agrees that the unpaid principal and escrow balances presented in the statement and accounting shall be deemed to be correct and the Borrower agrees that all further requirements for any and all corrections, including interest rate calculations, shall be forever barred and waived.

The Borrower further acknowledges that monthly payments originally determined or from time to time modified may not fully amortize the loan principal and agrees to pay any unpaid principal balance that may remain after the anticipated number of payments have been concluded.

## **5. GIVING OF NOTICES**

All notices must be in writing. Unless applicable law requires a different method of giving notice, any notice that must be given to me under this Security Instrument will be given by delivering it or by mailing it by first class mail addressed to me at the property address or at a different address if I give the Lender a notice of my different address.

Any notice that must be given to the Lender under this Note will be given by mailing it by first-class mail to the Lender at the address stated in Section 1 of the Note or at a different address if I am given notice of that different address.



## 6. UNIFORM DEED OF TRUST, MORTGAGE OR SECURITY DEED; GOVERNING LAW; SEVERABILITY

Uniform Covenant 15 of the Uniform Deed of Trust, Mortgage or Security Deed is amended to read as follows: "15. Governing Law; Severability. This form of Security Instrument combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Security Instrument and the Note are declared to be severable."

The Borrower and any successor of the Borrower to this instrument and any party who now or hereafter acquires a security interest in the property and who has either actual or constructive notice hereof, thereby consents to the terms contained herein and to the Note referenced herein.

## 7. LIMITATIONS OF MY RIGHT TO ASSIGN THIS LOAN

I understand that the terms of this loan have been granted to me based upon current market conditions and my personal financial statements, as well as other matters considered relevant by the Lender. Accordingly, in addition to the provisions of Paragraph 17 of the Uniform Covenant of the Security Instrument, I agree that if I sell, lease, or convey the property described in the Security Instrument, which secures this loan, then the Lender may accelerate the entire indebtedness or at Lender's option may require (a) a change in the current Interest Rate, or (b) a change in (or removal of) the limit on the amount of any one interest rate change (if there is a limit), or (c) a change in the Index and/or Margin, or (d) charge a transfer fee, or (e) such other reasonable modifications it deems in its best interest, or all or part of these, as a condition or conditions of Lender's waiving the option to accelerate.

## 8. LEGISLATION

If, after the date hereof, enactment or expiration of applicable laws have the effect either of rendering the provisions of the Note, the Security Instrument or this Adjustable Rate Rider (other than this paragraph) unenforceable according to their terms, or all or any part of the sums secured hereby uncollectible, as otherwise provided in the Security Instrument and this Adjustable Rate Rider, or of diminishing the value of Lender's security, then Lender, at Lender's option, may declare all sums secured by the Security Instrument to be immediate due and payable. In such event, Borrower shall not have the right to reinstate, otherwise provided in Uniform Covenant 18 of the Security Instrument.

IN WITNESS WHEREOF, Borrower has executed this Rider to Security Instrument.

WITNESS the hand(s) and seal(s) of the undersigned.

➔

(SEAL) ➔ Billy Joe Kendrick (SEAL)  
Billy Joe Kendrick

➔

(SEAL) ➔ Pollie Kendrick (SEAL)  
Pollie Kendrick



## SPECIAL PROVISION RIDER

This Special Provision Rider is made this 8th day of September, 1997 and is incorporated into and shall be deemed to amend and supplement the Deed of Trust, Mortgage or Security Deed (the "Security Instrument") of even date herewith given by the undersigned (herein "Borrower") to secure Borrower's Note, of the same date, to First Capital Mortgage Corp (herein "Lender") and covering the property described in the Security Instrument and located at:

335 County Road 338, Chelsea, AL 35043

(Property Address)

**ADDITIONAL COVENANTS.** In addition to the covenants and agreements made in the Security Instrument, Borrower and Lender further covenant and agree as follows:

- A. In addition to the aforesaid indebtedness and any and all extensions or renewals of the same or any part thereof, this Security Instrument does secure any and all other debts, obligations, or liabilities, direct or contingent, of any one or more of the Borrowers herein owed to the Lender whether now existing or hereafter arising at any time before cancellation of record of this Security Instrument, and whether the same be evidenced by Note, open account, overdraft, assignment, endorsement, guaranty, pledge or otherwise, including any and all advances made by the Lender and this Security Instrument is a continuing security by way of lien on the property hereby conveyed for any other indebtedness that the Borrower may owe the Lender. At the time of the execution of this Rider, Borrower may not owe Lender any other indebtedness of any kind. However, in the future, other debts, obligations, or liabilities, direct or contingent, might be owed to the Lender. It is express intention of the Lender and the Borrower that this paragraph shall specifically cover any such future indebtedness and failure to pay additional recording fees at this time should not be construed as a rejection of the intention of the parties.
- B. If the indebtedness secured hereby is now or hereafter further secured by Security Agreements, Financing Statements, chattel mortgages or deeds of trust, mortgages, security deeds, pledges, contracts of guaranty, assignments of leases, financial agreements, or other securities: Lender may at its option, exhaust any one or more of said securities and the security hereunder, either concurrently or independently, and in such order as it may determine; and no delay by Lender or Trustee in exercising any right or remedy hereunder, or otherwise afforded by law, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder, and Lender may probate or file proof of its claim with any court without waiving its rights under this Security Instrument or being deemed to have elected its remedy.
- C. The Borrower agrees that this Security Instrument may be cancelled, at Borrower's expense, in any manner permitted by applicable law, and that this Security Instrument is a renewal and extension of all previous Deeds of Trust, Mortgages or Security Deeds executed by the Borrower to the Lender covering all or part of the property herein described; and also is a renewal and extension of all previous Security Instruments executed by any other Borrower to the Lender and the indebtedness secured thereby having been assumed by the Borrower is the same as if said Security Instrument was specifically described herein.
- D. Notwithstanding the provisions of Paragraph 2 of the Security Instrument, any waiver by Lender of the required deposits may be revoked by Lender at its sole discretion upon notice to Borrower. Lender shall not be obligated to disburse said deposits until presented with a statement by the Borrower. Notwithstanding the provisions of Paragraph 5 of the Security Instrument, the insurance proceeds or any part thereof may be applied by the Lender at its option either to the reduction of the indebtedness or the restoration or repair of the property.  
In the event of foreclosure of this Security Instrument or other transfer of title to the Property that extinguishes the indebtedness, all right, title and interest of Borrower in and to insurance policies in force shall pass to the purchaser.
- E. Without affecting the liability of Borrower or any other person (except any person expressly released in writing) for payment of any indebtedness secured hereby or for performance of any obligation contained herein, and without affecting the rights of Lender with respect to any security not expressly released in writing, Lender may, at any time and from time to time, either before or after the maturity of said Note, and without notice or consent; (1) Release any person liable for payment of all or any part of the indebtedness or for performance of any obligation; (2) Make any agreement extending the time or otherwise altering the terms of payment of all or any part of the indebtedness or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (3) Exercise or refrain from exercising or waive any right Lender may have; (4) Accept additional security of any kind; (5) Release or otherwise deal with any property, real or personal, securing the indebtedness, including all or any part of the property herein described.
- F. In the event of transfer of properties under Paragraph 17 of the Security Instrument, whether the original Borrower is released or not released from liability, in every case, the Lender may charge a transfer fee and any such action on the part of the Lender shall not in any manner be construed as releasing any person from liability for the payment of the indebtedness hereby secured from such obligation unless such release be in writing and agreed to by Lender.
- G. Notwithstanding the limitations of warranty contained in the uniform Security Instrument, the undersigned(s) warrant the title to the real and personal property hereby conveyed and agree to defend said title and save Lender harmless from all costs, expenses and legal fees relating to the same.
- H. The Lender is hereby subrogated to the rights of all deeds of trust, mortgages, security deeds, lienholders and owners paid off by the proceeds of the loan hereby secured and to the extent allowed by law shall be entitled to all warranties, expressed or implied, in favor of Borrower. The covenants and agreements herein contained shall bind, and the benefits and advantages shall inure to, the respective heirs, executors, administrators, successors and/or assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
- I. This Security Instrument is executed in accordance with, and is governed by the provisions of, the Home Owners' Loan Act of 1933, and amendments thereto, and insofar as applicable, the rules and regulations of the Office of Thrift Supervision and the Charter and By-Laws of said Bank are made a part hereof.
- J. Each maker and endorser waives the right of exemption under the Constitution and the laws of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee as applicable.
- K. Borrower and Lender, in addition to the covenants and agreements made in the Security Instrument, further covenant and agree as follows:
  1. **Use of Property; Compliance with Law.** Borrower shall not seek, agree to or make a change in the use of the property or zoning classification, unless Lender has agreed in writing to the change. Borrower shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the property.
  2. **Assignment of Leases.** Upon Lender's request, Borrower shall assign to Lender all leases of the property and all security deposits made in connection with leases of the property. Upon the assignment, Lender shall have the right to modify, extend or terminate the existing leases and to execute new leases, in Lender's sole discretion. As used in this paragraph, the word "lease" shall mean "sublease" if the Security Instrument is on a leasehold.
  3. **Assignment of Rents.** Borrower unconditionally assigns and transfers to Lender all the rents and revenues of the property. Borrowers authorizes Lender or Lender's agents to collect the rents and revenues and hereby directs each tenant of the Property to pay the rents to Lender's agents. However, prior to Lender's notice to Borrower of Borrower's breach of any covenant or agreement in the Security Instrument, Borrower shall collect and receive all rents and revenues of the Property as trustee for the benefit of Lender and Borrower. This assignment of rents constitutes an absolute



assignment and not an assignment for additional security only. If Lender gives notice of breach to Borrower; (i) all rents received by Borrower shall be held by Borrower as trustee for benefit of Lender only, to be applied to the sums secured by the Security Instrument; (ii) Lender shall be entitled to collect and receive all of the rents of the property; and (iii) each tenant of the Property shall pay all rents due and unpaid to Lender or Lender's agent written demand to the tenant.

Borrower has not executed any prior assignment of the rents and has not and will not perform any act that would prevent Lender from exercising its rights under this paragraph.

Lender shall not be required to enter upon, take control of or maintain the Property before or after giving notice of breach to Borrower. However, Lender or a judicially appointed receiver may do so at any time there is a breach. Any application of rents shall not cure or waive any default or invalidate any other right or remedy of Lender. This assignment of rents of the Property shall terminate when the debt secured by the Security Instrument is paid in full.

4. **Annual Statement of Account.** Lender may in its sole discretion, from time to time, provide Borrower with an annual statement and accounting of all transactions and charges in conjunction with the Borrower's Note. This statement and accounting will describe the application of all payments to principal, interest and escrow, and disclose all fees charged and any escrow transactions. The annual statement and accounting will also reconcile beginning and ending principal and escrow balances and reflect the current interest rate. A separate annual statement will disclose the calculation of any adjustable interest rate changes at the time any rate changes apply. The Borrower agrees to read the annual statements and accounting and immediately notify Lender of any discrepancies or of any calculation which Borrower believes to be incorrect.

It is agreed that the Borrower shall have one year from the date of receipt of the annual statement and/or accounting to notify the Lender of any errors or exceptions in fees charged, or the application of payments including any calculation required of any adjustable interest rate used for the statement period.

Unless the Lender is notified of any errors or exceptions within one year from date of receipt of the statement and accounting or the adjustable interest rate calculation, then Borrower agrees that the unpaid principal and escrow balances presented in the statement and accounting shall be deemed to be correct and the Borrower agrees that all further requirements for any and all corrections, including interest rate calculations, shall be forever barred and waived.

The Borrower further acknowledges that monthly payments originally determined or from time to time modified may not fully amortize the loan principal and agrees to pay any unpaid principal balance that may remain after the anticipated number of payments have been concluded.

5. **Loan Charges.** The Lender may require an escrow account for the payment of taxes and insurance. The Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an independent real estate tax reporting service used by Lender in connection with this loan, unless applicable law provides otherwise. Unless an agreement is made or applicable law requires interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender may agree in writing, however, that interest shall be paid on the Funds.

The Lender may also collect reasonable fees for special loan services to include but not limited to recording, copies of documents, assumptions, modifications, partial releases, fax transmission services or any other fees or charges permitted by the Government-sponsored agencies, FHA, VA, FNMA or FHLMC.

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits will be refunded to the Borrower. The Lender may choose to make this refund by reducing the principal Borrower owes under Borrower's Note or by making a direct payment to Borrower. If a refund reduces principal, the reductions will be treated as a partial prepayment.

6. **Construction Agreement.** The Borrower further agrees that if the loan is for the purpose of repairs or construction and there is a Construction Agreement entered into by the Borrower and the Lender concerning the real property hereinabove described, then it is hereby incorporated in this Security Instrument for all purposes and default of any of the terms and conditions contained therein shall be a default in the Security Instrument.

L. It is further understood and agreed by and between the parties that in the event the Note and Security Instrument referred to herein are sold and assigned either to Federal National Mortgage Association (FNMA) or Federal Home Loan Mortgage Corporation (FHLMC), then this Special Provision Rider shall not be in effect when owned by FNMA or FHLMC; however, if reassigned by FNMA or FHLMC to Lender this Special Provision Rider shall be reinstated in full force and effect to the benefit of Lender and its assigns; provided, however, Lender shall have the right to cancel this Special Provision Rider at its sole election. At all times when this Rider shall be in effect the provision hereof shall control over those of the Security Instrument. Time is of the essence to this loan contract.

M. This Security Instrument is second and subject to a prior Security Instrument to

dated

at Page/Folio  
County/Parish,  
and recorded in Book/Liber/Real/Instrument Number  
in the records of

; and it is further understood and agreed by and between the parties hereto that any default or failure of the Borrower herein to comply with all the terms and conditions of the said first Security Instrument shall be and are default under the terms and conditions of this Security Instrument. Upon such default or failure or any other failure or default herein, the holder may declare the indebtedness hereby secured at once due and payable and may foreclose immediately or may exercise any other right hereunder, or take any other proper action as by law provided.

WITNESS the hand(s) and seal(s) of the undersigned.

→ Billy Joe Kendrick (SEAL) →  
Billy Joe Kendrick

(SEAL)

→ Pollie Kendrick (SEAL) →  
Pollie Kendrick

(SEAL)



## AGREEMENT TO MEDIATE OR ARBITRATE

Loan No.: 005-405169

READ THIS AGREEMENT CAREFULLY. IT LIMITS CERTAIN OF YOUR RIGHTS, INCLUDING YOUR RIGHT TO GO TO COURT. In this agreement to mediate or arbitrate (this "Agreement"), (1) "Transaction" means any (a) payment of money, (b) transfer or exchange of property or any other thing of value, (c) any one or more past, present, or future extensions of, advertisement, solicitation, applications for, or inquiries about, credit, or forbearance of payment, such as a loan, a credit sale, or otherwise, from Lender to Borrower, including this Transaction, (d) gift, or (e) promise to enter into a Transaction; and (2) "Claim" means any case, controversy, dispute, tort, disagreement, lawsuit, claim, or counterclaim, and other matters in question now or hereafter existing between Lender and Borrower. A Claim includes, without limitation, anything arising out of, in connection with, or relating to: (a) this Agreement; (b) to the advertisement, solicitation, application, processing, closing or servicing of this Transaction or any instruments executed in conjunction with it (collectively the "Loan Agreements" including but not limited to the terms of the loan, representations, promises, undertakings or covenants made relating to the Loan, or Loan Agreements executed in conjunction with the Note and the Security Instrument, services provided under the Loan Agreements, and the validity and construction of the Loan Agreements); (c) any Transaction; (d) the construction, manufacture, advertisement, sale, installation or servicing of any real or personal property which secures this Transaction, (e) any past, present, or future insurance, service, or product that is offered or sold in connection with a Transaction; (f) any documents or instruments that contain information about or document any Transaction, insurance, service, or product; and (g) any act or omission by Lender regarding any Claim.

**Mediation.** Except as set forth below, all Claims, shall be MEDIATED prior to the filing of any legal proceeding related to any dispute relating to this Transaction. If Borrower and Lender cannot agree on the selection of a mediator for a dispute, the mediator shall be selected as follows: within 5 business days of the notice that either Borrower or Lender have decided to mediate, Borrower and Lender shall each name a mediator and notify that mediator and the other party of the selection. Within 5 business days of their selection the mediators shall jointly select an independent mediator to mediate the dispute. The mediation shall occur not later than 30 days after the mediator is selected at a time and place mutually convenient to all parties within a fifty-mile radius of Borrower's residence.

Borrower and Lender agree to participate in the mediation in good faith with the intention of resolving the dispute, if possible. Legal counsel may, but is not required to represent Borrower or Lender at the mediation. All mediation sessions will be private and all information disclosed during the mediation will be confidential. The mediator may prescribe other rules for the mediation. Expenses of the mediation including the mediator's fee shall be shared equally between Lender and Borrower. Attorneys fees and related expenses are each party's responsibility.

This Agreement to mediate is specifically enforceable.

If for any reason the mediation is not completed within 45 days after the mediator is selected, or if after the mediation, any Claim is still unresolved, such Claim shall be resolved solely and exclusively by arbitration in accordance with this Agreement.

**Arbitration.** To the extent allowed by applicable law, any Claim, except those set forth below, shall be resolved by binding arbitration in accordance with (1) the Federal Arbitration Act, 9 U.S.C. §§ 1-9; (2) the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association (the "Arbitration Rules") then in effect; and (3) this Agreement. If the terms of this Agreement and the Arbitration Rules are inconsistent, the terms of this Agreement shall control. A copy of the Arbitration Rules, free of charge, may be obtained by calling (800) 778-7879. The laws applicable to the arbitration proceeding shall be the laws of the state in which the property which secures the Transaction is located. The parties agree that the arbitrator shall have all powers provided by law, this Agreement, and the Loan Agreements. However, the arbitrator shall have no power to vary or modify any of the provisions of the Loan Agreements. Any party to this Agreement may bring an action in any court having jurisdiction, including a summary or expedited proceeding, to specifically enforce this Agreement, or to compel arbitration of any Claim. An action to specifically enforce this Agreement, or a motion to compel arbitration may be brought at any time, even after a Claim has been raised in a court of law or a Transaction has been completed, discharged, or paid in full.

**Place of Arbitration.** The arbitration shall be conducted in the county of Borrower's residence, or at any other place mutually acceptable to the Lender and the Borrower.

**Timing of Hearing.** The arbitration hearing shall commence within forty-five (45) days of the demand for arbitration.

Initials: B.K. Q K



NO CLASS ACTIONS; NO JOINDER OF PARTIES; WAIVER OF RIGHT TO JURY TRIAL. THE ARBITRATION WILL TAKE THE PLACE OF ANY COURT PROCEEDING INCLUDING A TRIAL BEFORE A JUDGE OR A JUDGE AND JURY. ANY SUCH ARBITRATION SHALL BE CONDUCTED ON AN INDIVIDUAL BASIS, AND NOT AS PART OF A COMMON OR CLASS ACTION. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED BY BORROWER AND LENDER THAT ANY PURPORTED COMMON ISSUES OF LAW OR FACT SHALL BE RESOLVED ON SUCH AN INDIVIDUAL BASIS. IF THE APPOINTED ARBITRATOR SHOULD AWARD ANY DAMAGES, SUCH DAMAGES SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL IN NO EVENT INCLUDE CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR TREBLE DAMAGES AS TO WHICH BORROWER AND LENDER EXPRESSLY WAIVE ANY RIGHT TO CLAIM TO THE FULLEST EXTENT PERMITTED BY LAW.

**Judgment.** The award rendered by the arbitrator shall be final, nonappealable and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**Confidentiality.** Borrower and Lender agree that the mediation and arbitration proceedings are confidential. The information disclosed in such proceedings cannot be used for any purpose in any other proceeding.

**Claims Excluded from Mediation and Arbitration.** Notwithstanding the foregoing, neither Borrower or Lender can require the other to mediate or arbitrate (i) foreclosure proceedings, whether pursuant to judicial action, power of sale, assent to a decree or otherwise, proceedings pursuant to which Lender seeks a deficiency judgment, or any comparable procedures allowed under applicable law pursuant to which a lien holder may acquire title to or possession of any property which is security for this Transaction and any related personal property (including an assignment of rents or appointment of a receiver), upon default by the Borrower on the Transaction or (ii) an application by or on behalf of the Borrower for relief under the federal bankruptcy laws or any other similar laws of general application for the relief of debtors, through the institution of appropriate proceedings; or (iii) any Claim where Lender seeks damages or other relief because of Borrower's default under the terms of a Transaction. Enforcement of this section will not waive the right to arbitrate any other Claim, including a Claim asserted as a counterclaim in a lawsuit brought under this section.

**Effect of Rescission.** If you have the right to rescind this Transaction, rescinding it will not rescind this Agreement.

**No Other Arbitration Agreements.** This Agreement is the only agreement between Lender and Borrower regarding alternative dispute resolution, and supersedes any prior agreements to mediate or arbitrate Claims. This Agreement may only be modified by a written agreement between Lender and Borrower.

BORROWER AND LENDER AGREE TO WAIVE ANY RIGHTS TO TRIAL BY JURY OF ANY AND ALL CLAIMS.

Billy Joe Kendrick  
Billy Joe Kendrick (Borrower)(Date)

LENDER:  
First Capital Mortgage Corporation

By: Philip L. King

Pollie Kendrick  
Pollie Kendrick (Borrower)(Date)

Its: \_\_\_\_\_

\_\_\_\_\_  
(Borrower)(Date)

\_\_\_\_\_  
(Borrower)(Date)

Inst # 1997-29960

09/17/1997-29960  
03:03 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
011 HCD 34.50