

STATE OF ALABAMA )  
SHELBY COUNTY )

MORTGAGE

THIS INDENTURE, made and entered into this 2nd day of December, 1997, by and between TIMOTHY J. MAGHAN and wife, MARY ELIZABETH MAGHAN (hereinafter jointly, severally and collectively referred to as "Mortgagor"), whose address is 150 Chestnut Drive, Alabaster, Alabama 35007, and SIMS BEAVERS (hereinafter referred to as "Mortgagee"), whose address is 1066 Sun Valley Road, Harpersville, Alabama 35078.

WITNESSETH:

WHEREAS, Timothy J. Maghan is justly indebted to the Mortgagee in the principal sum of Nineteen Thousand One Hundred Forty Four and 17/100 Dollars (\$19,144.17) in lawful money of the United States, as evidenced by that certain renewal promissory note of even date executed by Timothy J. Maghan in favor of Mortgagee, and to be repaid in accordance with the terms and conditions as more fully described in said Promissory Note; and

WHEREAS, Mortgagor hereby executes this Mortgage for the purpose of securing the payment of said Promissory Note.

NOW, THEREFORE, Mortgagor, in consideration of the premises, and to secure the payment of said indebtedness and the compliance with all the stipulations herein contained, does hereby grant, bargain, sell, alien, and convey unto Mortgagee, his heirs, personal representatives, and assigns, the real estate described on Exhibit "A" attached hereto and incorporated herein by this reference, and which is situated in the County of Shelby, State of Alabama.

Together with all the rights, privileges, tenements, and appurtenances thereunto belonging or in any wise appertaining, all of which shall be deemed realty and conveyed by this Mortgage.

TO HAVE AND TO HOLD the said premises, and every part thereof, unto the Mortgagee, his heirs, personal representatives, and assigns forever. And the undersigned covenants with the Mortgagee that the undersigned is lawfully seized in fee simple of said premises and has a good right to sell and convey the same as aforesaid; that the said premises is free of all encumbrances except for that certain mortgage in favor of HERITAGE MORTGAGE CORPORATION dated May 6, 1994 in the original principal amount of \$168,900.00, and the undersigned will warrant and forever defend the title to the same unto the Mortgagee, his heirs, personal representatives, and assigns against the lawful claims of all persons whomsoever.

And for the purpose of further securing the payment of said indebtedness the Mortgagor hereby agrees to pay all taxes, assessments or other liens taking priority over this mortgage, when

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imposed legally upon said premises, and should default be made in the payment of same, or any part thereof, said Mortgagee, at his option, may pay the same; and to further secure said indebtedness first above named, and every portion thereof, the undersigned agree to keep said property continuously insured in such manner and in such companies as may be satisfactory to the mortgagee, for its insurable value against loss by fire and against loss by tornado, with loss, if any, payable to said mortgagee, as his interest may appear, and if the undersigned fail to keep said property insured as above specified, then the mortgagee may, at his option, insure said property for its insurable value against loss by fire and tornado, for his own benefit, the proceeds from such insurance, if collected to be credited on the indebtedness secured by this mortgage, less cost of collecting same, or, at the election of the mortgagee, may be used in repairing or reconstructing the premises; all amounts so expended by said Mortgagee for the payment of taxes, assessments, or any other prior liens, shall become a debt due and at once payable, without demand upon or notice to any person, to said Mortgagee, additional to the indebtedness hereby specially secured and shall be secured by the lien of this mortgage, and shall bear interest from date of payment by said Mortgagee, and at the election of the Mortgagee, and without notice to any person, the Mortgagee may declare the entire indebtedness secured by this Mortgage immediately due and payable, and this mortgage subject to foreclosure, and same may be foreclosed, as hereinafter provided.

The Mortgagor agrees to take good care of the premises described herein, and not to commit or permit any waste thereon, and to keep the same repaired, and at all times to maintain the same in as good condition as they now are, reasonable wear and tear alone excepted.

The undersigned agrees that no delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of his right to exercise such option, or to declare such forfeiture, either as to any past or present default, and it is further agreed that no terms or conditions contained in this mortgage can be waived, altered or changed except as evidenced in writing, signed by the undersigned, and by the Mortgagee.

After any default on the part of the Mortgagor and the failure to cure such default within any applicable cure period, the Mortgagee shall, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, be entitled, as a matter of right, to the appointment by any competent court or tribunal, without notice to any party, of a receiver of the rents, issues and profits of said premises, with power to lease and control the said premises, and with such other powers as may be deemed necessary.

UPON CONDITION, HOWEVER, That if Mortgagor pays said Indebtedness and any renewals or extensions thereof secured by this Mortgage and reimburses said Mortgagee for any amount it may have expended in payment of taxes and insurance or other liens, and interest thereon, and shall do and perform all other acts and things herein agreed to be done, this conveyance to be null and void; but should default be made in the payment of any sum expended



by the said Mortgagee under the authority of any of the provisions of this Mortgage, or should said indebtedness hereby secured, and any renewals or extension thereof, or any part thereof, or any interest thereon, remain unpaid at maturity, or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, then, in any one of said events and the failure of Mortgagor to cure such default within any applicable cure period, all obligations secured hereby shall at once become due at the option of said Mortgagee, and this mortgage be subject to foreclosure and may be foreclosed as now provided by law in case of past due mortgages; and the Mortgagee shall be authorized to take possession of the premises hereby conveyed, and after giving twenty-one days' notice by publication once a week for three consecutive weeks, of the time, place and terms of sale, by publication in some newspaper published in the County wherein said property is located, to sell the same in front of the Courthouse door of the County wherein said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended, or that may then be necessary to expend, in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the principal indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; but no interest shall be collected beyond the day of sale; and fourth, the balance, if any, to be turned over to the Mortgagor. If no cure period is otherwise specified for a default under this Mortgage, then for breach of any payment obligations Mortgagor shall have a period of ten (10) days following receipt of notice from the Mortgagee specifying the nature of such default in which to cure the default. For a breach of any obligation other than payment, Mortgagor shall have a period of twenty (20) days following receipt of notice from the Mortgagee specifying the nature of such default in which to cure the default.

And the Mortgagor further agrees that said Mortgagee, his heirs, personal representatives, and assigns, may bid at any sale had under the terms of this mortgage, and purchase said property, if the highest bidder therefor; and the Mortgagor further agrees to pay a reasonable attorney's fee to said Mortgagee, his heirs, personal representatives, and assigns, for 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, said fee to be a debt hereby secured, and the purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money.

In the event of a sale hereunder, the Mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the undersigned a good and sufficient deed to the property sold.

The undersigned agree that the debt hereby secured shall at once become due and payable and this Mortgage subject to foreclosure herein provided, at the option of the holder hereof, when and if any statement of lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen, without regard to form and contents of such statement, and without regard to

the existence or nonexistence of the debt, or any part thereof, or of the lien, on which such statement is based.

Plural or singular words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons, a corporation, or a limited liability company; and all covenants and agreements herein made by the Mortgagor shall bind the successors and assigns of the Mortgagor, and every option, right and privilege herein reserved or secured to the Mortgagee, shall inure to the benefit of his heirs, personal representatives, and assigns.

IN TESTIMONY WHEREOF, the Mortgagor has hereunto set its hand and seal, on this the day of and year first above written.

**MORTGAGOR:**

*Timothy J. Maghan*  
TIMOTHY J. MAGHAN  
*Mary Elizabeth Maghan*  
MARY ELIZABETH MAGHAN

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that TIMOTHY J. MAGHAN, whose name is signed to the foregoing Mortgage and who is known to me, acknowledged before me on this day that being duly informed of the contents of said Mortgage, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 2<sup>ND</sup> day of December, 1997.

*Catherine Collins Leonard*  
NOTARY PUBLIC NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Sept. 22, 2001.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA     )  
JEFFERSON COUNTY    )

I, the undersigned, a Notary Public in and for said County and State, hereby certify that MARY ELIZABETH MAGHAN, whose name is signed to the foregoing Mortgage and who is known to me, acknowledged before me on this day that being duly informed of the contents of said Mortgage, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the <sup>2<sup>ND</sup></sup> day of December, 1997.

*Catherine Collins Leonard*  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Sept. 22, 2001.  
My Commission Expires: \_\_\_\_\_  
ISSUED THRU NOTARY PUBLIC UNDERWRITERS.

THIS INSTRUMENT WAS PREPARED BY AND  
UPON RECORDATION SHOULD BE RETURNED TO:

Karen B. Johns  
Spain & Gillon, L.L.C.  
2117 Second Avenue North  
Birmingham, Alabama 35203

**EXHIBIT "A"**

Lot 47, according to the Map of Harvest Ridge Subdivision, Second Phase, as recorded in Map Book 12, page 49 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.

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