

STATE OF ALABAMA)
 :
SHELBY COUNTY)

This instrument was prepared by:
✓ Frank C. Galloway III
Galloway & Moss, L.L.C.
11 Oak Street
Birmingham, Alabama 35213

Inst # 1998-00910

01/12/1998-00910

[Space Above This] ~~00-86-AM~~ CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 NCD 197.75

MORTGAGE

Inst # 1998-00910

THIS MORTGAGE ("Security Instrument") is given on this 12th day of January, 1998. The grantors are **John F. Kizer, Jr.** and his wife, **Clara S. Kizer** (collectively referred to hereinafter as "Mortgagors"). This Security Instrument is given to (i) **Laura Finch**, (ii) **Brian Wiggonton** and his wife, **Susan Wiggonton**, and (iii) **Valerie Vining**, whose address is c/o **Jesse P. Evans III, Najjar Denaburg, 2125 Morris Avenue, Birmingham, AL 35203** (collectively referred to hereinafter as "Lenders").

Lenders presently have a judgment against Clara S. Kizer for the total sum of Ninety Thousand and 00/100 Dollars (\$90,000.00). The individual judgments held by Lenders are:

- (i) *Laura Finch*: Sixty Thousand and 00/100 Dollars (\$60,000.00);
- (ii) *Brian Wiggonton and Susan Wiggonton*: Fifteen Thousand and 00/100 Dollars (\$15,000.00) (jointly and severally); and
- (iii) *Valerie Vining*: Fifteen Thousand and 00/100 Dollars (\$15,000.00)

which judgments were procured by Lenders pursuant to verdicts awarded them on counterclaims filed in the case of *Clara S. Kizer v. Laura Finch, et al.*, CV-93-864NJ in the Circuit Court of Shelby County, Alabama. The judgments were entered on May 6, 1997.

Clara S. Kizer has appealed the decision in such case to the Supreme Court of Alabama and the appeal is presently pending before the Alabama Court of Civil Appeals. In order to stay the Lenders' execution on their judgments pending the resolution of Clara S. Kizer's appeal, Lenders and Mortgagors agree that this Security Instrument shall serve as security for Lenders of the judgments while the appeal is processed by the appropriate appellate courts.

In accordance with an order from the trial court that the amount of a supersedes bond needed to be posted by Clara S. Kizer to stay execution of the judgments is One Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$112,500.00), this Security Instrument shall likewise encumber the hereinbelow described real property to secure the balance of the judgments up to One Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$112,500.00). Provided however, each of the parties constituting the Lenders shall be entitled to only the amount of their judgment balance. If the One Hundred Twelve Thousand Five Hundred and 00/100 Dollars (\$112,500.00) does not amply secure all of the judgment balances, the parties constituting the Lenders shall be secured to an equal percentage of their respective judgment balances.

This Security Instrument secures to Lenders: (a) the repayment of the aforesaid judgments, with interest as provided by law; (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 Mortgagors' covenants and agreements under this Security Instrument. For this purpose, Mortgagors do hereby mortgage, grant and convey to Lenders and Lenders' heirs and assigns, with power of sale, the following described property located in Shelby County, Alabama:

**Lot 44, according to the Map and Survey of
Dearing Downs 4th Addition as recorded in Map
Book 14, page 46, in the Office of the Judge of
Probate of Shelby County, Alabama.**

which has the address of 1930 Seattle Slew Drive, Helena, Alabama 35080.

TO HAVE AND TO HOLD this property unto Lenders and Lenders' 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".

Mortgagors COVENANT that they are lawfully seized of the estate hereby conveyed and have the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Mortgagors 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.

UNIFORM COVENANTS. Mortgagors and Lenders covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges.** Mortgagors shall promptly pay the balance of the aforesaid judgments, if any, within thirty (30) days of the final resolution of the appeal. If the case is remanded to the trial court, Mortgagors' obligations to repay shall not be triggered until such time as the trial finally adjudicated the case and any appeal rights therefrom are exhausted. However, if the case is remanded to the trial court for a new trial, this Security Instrument shall be deemed void and of no effect. Clara S. Kizer may request in writing for Lenders to satisfy this Security Instrument of record. If they fail to do so within fifteen (15) days of such request, Clara S. Kizer may then satisfy this Security Instrument by filing a satisfaction which has an exhibit attached showing the appellate court's order of remand with instructions for a new trial.

2. **Funds for Taxes and Insurance.** Mortgagors shall timely pay the (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; and (e) municipal fees owing on the Property such as garbage fees and library fees, if any.

3. **Application of Payments.** Unless applicable law provides otherwise, all payments received by Lenders 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; and fourth, to principal due on the judgments on a prorated basis.

4. **Charges; Liens.** Mortgagors 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. Mortgagors shall pay these obligations in the manner provided in paragraph 2, or if not paid in that manner, Mortgagors shall pay them on time directly to the person owed payment. Mortgagors shall promptly furnish to Lenders all notices of amounts to be paid under this paragraph. If Mortgagors makes these payments directly, Mortgagors shall promptly furnish to Lenders receipts evidencing the payments.

Mortgagors shall promptly discharge any lien which has priority over this Security Instrument unless Mortgagors: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lenders, (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lenders' opinion operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lenders subordinating the lien to this Security Instrument. If Lenders determine that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lenders may give Mortgagors a notice identifying the lien. Mortgagors shall satisfy the lien or take one or more of the actions set forth above within thirty (30) days of the giving of notice.

5. **Hazard or Property Insurance.** Mortgagors 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 Lenders require insurance. This insurance shall be maintained in the amount of at least One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) and for the periods that Lenders require. If Mortgagors fail to maintain coverage described above, Lenders may, at Lenders' option, obtain coverage to protect Lenders' rights in the Property in accordance with paragraph 7.

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

Unless Lenders and Mortgagors 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 Lenders' security is not lessened. If the restoration or repair is not economically feasible or Lenders' 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 Mortgagors. If Mortgagors abandons the Property, or does not answer within thirty (30) days notice from Lenders that the insurance carrier has offered to settle a claim, then Lenders may collect the insurance proceeds. Lenders 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 thirty (30) day period will begin when the notice is given.

Unless Lenders and Mortgagors 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 19 the Property is acquired by Lenders, Mortgagors' right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lenders 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; Mortgagors' Loan Application; Leaseholds. Mortgagors shall occupy, establish, and use the Property as Mortgagors' principal residence within sixty (60) days after the execution of this Security Instrument and shall continue to occupy the Property as Mortgagors' principal residence for at least one year after the date of occupancy, unless Lenders otherwise agree in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Mortgagors' control. Mortgagors shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Mortgagors shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lenders' good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lenders' security interest. Mortgagors may cure such a default and reinstate, as provided in paragraph 16, by causing the action or proceeding to be dismissed with a ruling that, in Lenders' good faith determination, precludes forfeiture of the Mortgagors' interest in the Property or other material impairment of the lien created by this Security Instrument or Lenders' security interest.

7. Protection of Lenders' Rights in the Property. If Mortgagors fail to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lenders' rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lenders may do and pay for whatever is necessary to protect the value of the Property and Lenders' rights in the Property. Lenders' 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 Lenders may take action under this paragraph 7, Lenders do not have to do so.

Any amounts disbursed by Lenders under this paragraph 7 shall become additional debt of Mortgagors secured by this Security Instrument. Unless Mortgagors and Lenders agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the rate of eight percent (8%) annual interest and shall be payable, with interest, upon notice from Lenders to Mortgagors requesting payment.

8. Inspection. Lenders or their agent may make reasonable entries upon and inspections of the Property. Lenders shall give Mortgagors forty-eight (48) hours written notice at the time of or prior to an inspection specifying reasonable cause for the inspection.

9. 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 Lenders.

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 Mortgagors. 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 Mortgagors and Lenders 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 Mortgagors. 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 Mortgagors and Lenders 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 Mortgagors, or if, after notice by Lenders to Mortgagors that the condemnor offers to make an award or settle a claim for damages, Mortgagors fails to respond to Lenders within 30 days after the date the notice is given, Lenders 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 Lenders and Mortgagors 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.

10. Mortgagors Not Released; Forbearance By Lenders Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lenders to any successor in interest of Mortgagors shall not operate to release the liability of the original Mortgagors or Mortgagors' successors in interest. Lenders 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 Mortgagors or Mortgagors' successors in interest. Any forbearance by Lenders in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

11. 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 Lenders and Mortgagors, subject to the provisions of paragraph 15. Mortgagors' covenants and agreements shall be joint and several. John F. Kizer, Jr., who co-signs this Security Instrument but is not a debtor of the subject judgment (a) is co-signing this Security Instrument only to mortgage, grant and convey his 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, but (c) acknowledges that Lenders' forbearance of their right to conduct a sheriff's sale of the Property is good and sufficient consideration to him, for such a sale would subject the Property to partition and/or bill for sale and division which would adversely affect his interest in and use and enjoyment of the Property. The receipt and sufficiency of such consideration is hereby acknowledged by John F. Kizer, Jr.

12. **Notices.** Any notice to Mortgagors 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 Mortgagors designate by notice to Lenders. Any notice to Lenders shall be given by first class mail to Lenders' address stated herein or any other address Lenders designate by notice to Mortgagors. Any notice provided for in this Security Instrument shall be deemed to have been given to Mortgagors or Lenders when given as provided in this paragraph.

13. **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 conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument are declared to be severable.

14. **Mortgagors' Copies.** Mortgagors shall be given two conformed copies of this Security Instrument.

15. **Transfer of the Property, or a Beneficial Interest in Mortgagors.** Except for the execution of a subordinate mortgage on the Property, if all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Mortgagors is sold or transferred and Mortgagor is not a natural person) without Lenders' prior written consent, Lenders may, at their option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lenders if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lenders exercise this option, Lenders shall give Mortgagors notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Mortgagors must pay all sums secured by this Security Instrument. If Mortgagors fail to pay these sums prior to the expiration of this period, Lenders may invoke any remedies permitted by this Security Instrument without further notice or demand on Mortgagors.

16. **Mortgagors' Right to Reinstate.** If Mortgagors meet certain conditions, Mortgagors shall have the right to have enforcement of this Security Instrument discontinued at any time. Those conditions are that Mortgagors (a) pay Lenders all sums which then would be due under this Security Instrument and the judgments as if no acceleration had occurred; (b) cure any default of any other covenants or agreements; (c) pay all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) take such action as Lenders may reasonably require to assure that the lien of this Security Instrument, Lenders' rights in the Property and Mortgagors' obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Mortgagors, 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 15.

17. **Sale of Judgment.** The judgment or a partial interest in the Judgment (together with this Security Instrument) may be sold one or more times without prior notice to Mortgagors. If there is a change of the ownership of the judgments or of this Security Instrument, Mortgagors will be given written notice of the change in accordance with paragraph 12 above and applicable law. The

notice will state the name and address of the new owner(s) and the address to which payments should be made. The notice will also contain any other information required by applicable law.

18. Hazardous Substances. Mortgagors shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Mortgagors 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.

Mortgagors shall promptly give Lenders 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 Mortgagors have actual knowledge. If Mortgagors learn, or are notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Mortgagors shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this paragraph 18, "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 18, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

NON-UNIFORM COVENANTS. Mortgagors and Lenders further covenant and agree as follows:

19. Acceleration; Remedies. Lenders shall give notice to Mortgagors prior to acceleration following Mortgagors' breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 15 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 thirty (30) days from the date the notice is given to Mortgagors, 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 Mortgagors 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 Mortgagors to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lenders, at their 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. Lenders shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorneys' fees.

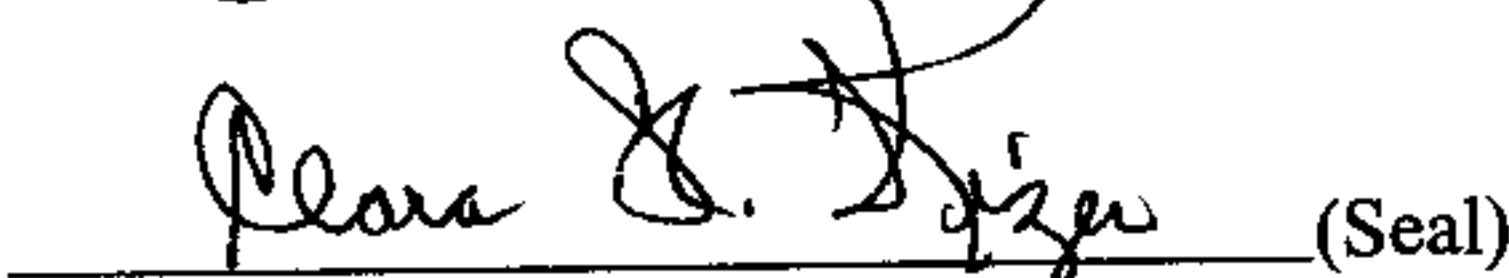
If Lenders invoke the power of sale, Lenders shall give a copy of a notice to Mortgagors in the manner provided in paragraph 1A. Lenders shall publish the notice of sale once a week for three (3) consecutive weeks in a newspaper published in Shelby County, Alabama, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the Courthouse of Shelby County. Lenders shall deliver to the purchaser Lenders' deed conveying the

Property. Lenders or its designee may purchase the Property at any sale. Mortgagors covenant and agree 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.

20. **Release.** Upon payment of all sums secured by this Security Instrument, Lenders shall release this Security Instrument without charge to Mortgagors. Mortgagors shall pay any recordation costs.

21. **Waivers.** Mortgagors waive all rights of homestead exemption in the Property and relinquish all rights of courtesy and dower in the Property.

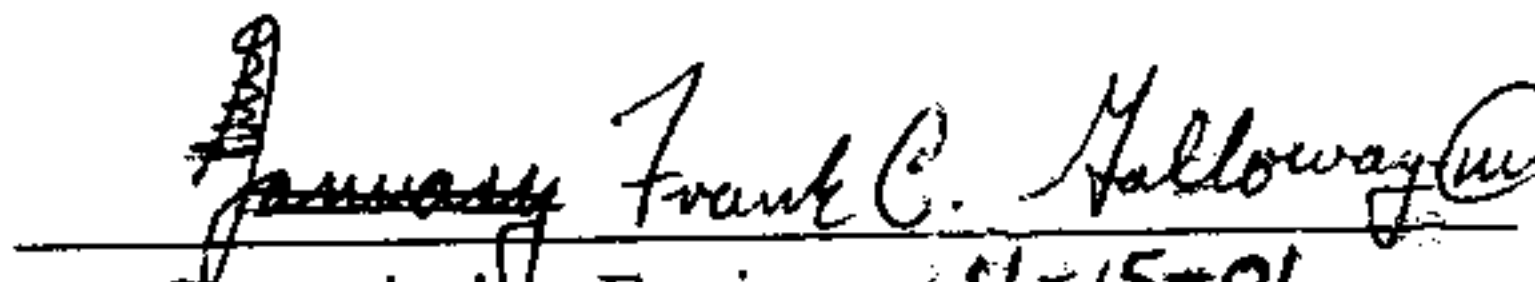
BY SIGNING BELOW, Mortgagors accept and agree to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Mortgagors and recorded with it.

 (Seal)
John F. Kizer, Jr.
 (Seal)
Clara S. Kizer

STATE OF ALABAMA)
 :
SHELBY COUNTY)

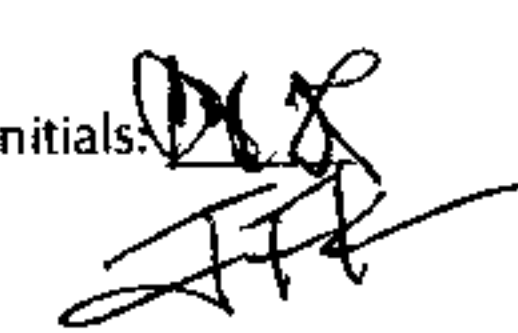
On this 10th day of January, 1998, I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, John F. Kizer, Jr. and Clara S. Kizer, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me that, being informed of the 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 10th day of January, 1998.


My Commission Expires: 11-15-01

Inst # 1998-00910

01/12/1998-00910
09:06 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 MCD 197.75

Initials: 

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