

This instrument was prepared by JESSICA REEVES (name)  
WEATHINGTON & MOORE, P.C. (address)  
819 Parkway Drive SE  
Leeds, AL 35094

Inst # 1999-13324

03/30/1999-13324  
03:38 PM CERTIFIED  
SHELBY COUNTY CLERK OF COURSE  
1999

State of Alabama

Space Above This Line For Recording Data

## MORTGAGE

(With Future Advance Clause)

1. **DATE AND PARTIES.** The date of this Mortgage (Security Instrument) is 3/25/99 and the parties, their addresses and tax identification numbers, if required, are as follows:

**MORTGAGOR:**

Magic City Title, Inc., a Corporation  
2112 7th Avenue South  
Birmingham, AL 35233

- ☐ If checked, refer to the attached Addendum incorporated herein, for additional Mortgagors, their signatures and acknowledgments.

**LENDER:**

Covenant Bank  
Organized and Existing Under the Laws of the State of Alabama  
P. O. Box 309  
Leeds, AL 35094  
Taxpayer I.D. #

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (defined below) and Mortgagor's performance under this Security Instrument, Mortgagor grants, bargains, conveys, sells and mortgages to Lender, with power of sale, the following described property:

See Exhibit "A"

The property is located in Shelby (County) at  
Caldwell Mill Road Birmingham Alabama 35242  
(Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). When the Secured Debt (hereafter defined) is paid in full and all underlying agreements have been terminated, this Mortgage will become null and void.

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 1,265,000.00. This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.
4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:  
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(s) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (When referencing the debts below it is suggested that you include items such as borrowers' names, note amounts, interest rates, maturity dates, etc.)

B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt executed by Mortgagor in favor of Lender executed after this Security Instrument whether or not this Security Instrument is specifically referenced. If more than one person signs this Security Instrument, each Mortgagor agrees that this Security Instrument will secure all future advances and future obligations that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. All future advances and other future obligations are secured by this Security Instrument even though all or part may not yet be advanced. All future advances and other future obligations are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All obligations Mortgagor owes to Lender, which may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.

D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

This Security Instrument will not secure any other debt if Lender fails to give any required notice of the right of rescission.

5. **PAYMENTS.** Mortgagor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

6. **WARRANTY OF TITLE.** Mortgagor warrants that Mortgagor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to grant, bargain, convey, sell, and mortgage, with the power of sale, the Property. Mortgagor also warrants that the Property is unencumbered, except for encumbrances noted above.

7. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Mortgagor agrees:

A. To make all payments when due and to perform or comply with all covenants.

B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.

C. Not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written consent.

8. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Mortgagor may have against parties who supply labor or materials to maintain or improve the Property.

9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

10. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor shall not commit or allow any waste, impairment, or deterioration of the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Mortgagor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims and actions against Mortgagor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Mortgagor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

11. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may take all steps necessary to protect Lender's security interest in the Property, including completion of the construction.

12. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor irrevocably grants, bargains, conveys, sells and mortgages to Lender as additional security all the right, title and interest in and to any and all existing or future leases, subleases, and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements (all referred to as "Leases") and rents, issues and profits (all referred to as "Rents"). Mortgagor will promptly provide Lender with true and correct copies of all existing and future Leases. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default under the terms of this Security Instrument.

Mortgagor agrees that this assignment is immediately effective between the parties to this Security Instrument. Mortgagor agrees that this assignment is effective as to third parties on the recording of this Mortgage, and that this assignment will remain in effect during any redemption period until the Secured Debt is satisfied and all underlying agreements are ended, and that this assignment is enforceable when Lender takes actual possession of the Property, when a receiver is appointed, or when Lender notifies Mortgagor of the default and demands that Mortgagor and Mortgagor's tenants pay all future Rents directly to Lender. On receiving notice of default, Mortgagor will endorse and deliver to Lender any payment of Rents in Mortgagor's possession and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected will be applied as provided in this Security Instrument. Mortgagor warrants that no default exists under the Leases or any applicable landlord/tenant law. Mortgagor also agrees to maintain and require any tenant to comply with the terms of the Leases and applicable law.

13. **RECORDING OF INSTRUMENTS.** Mortgagor agrees to execute and record any documents necessary to perfect Lender's security interest in the Property, including any assignments, amendments, supplements, and any other documents required by law or by the terms of this Security Instrument.

*RW11* (page 3 of 4)

postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Mortgagor. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

20. **ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

21. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

22. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Mortgagor signs this Security Instrument but does not sign an evidence of debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Mortgagor, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. Mortgagor agrees that Lender and any party to this Security Instrument may extend, modify or make any change in the terms of this Security Instrument or any evidence of debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Security Instrument. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Mortgagor and Lender.

23. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Security Instrument is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

24. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

25. **WAIVERS.** Except to the extent prohibited by law, Mortgagor waives all appraisal rights relating to the Property.

26. **OTHER TERMS.** If checked, the following are applicable to this Security Instrument:

☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.

☒ **Construction Loan.** This Security Instrument secures an obligation incurred for the construction of an improvement on the Property.

☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property. This Security Instrument suffices as a financing statement and any carbon, photographic or other reproduction may be filed of record for purposes of Article 9 of the Uniform Commercial Code.

☐ **Riders.** The covenants and agreements of each of the riders checked below are incorporated into and supplement and amend the terms of this Security Instrument. [Check all applicable boxes]

☐ Condominium Rider    ☐ Planned Unit Development Rider    ☐ Other .....

☐ **Additional Terms.**

See Rider "1" to Mortgage attached hereto and made a part hereof

**SIGNATURES:** By signing below, Mortgagor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Mortgagor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1

..... (Seal)  
(Signature) Magic City Title, Inc. (Date) .....

..... (Seal)  
(Signature) ..... Date: .....

.....  
(Witness as to all signatures)

.....  
(Witness as to all signatures)

**ACKNOWLEDGMENT:**

STATE OF ....., COUNTY OF ..... ss.

I, a notary public, hereby certify that .....

(Individual)

..... whose name(s) is/are signed to the foregoing conveyance, and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he/she/they executed the same voluntarily on the day the same bears date. Given under my hand this ..... day of .....

My commission expires:

(Seal)

.....  
(Notary Public)

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Donald W. Huey, whose name as President of Magic City Title, Inc., a corporation, is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 25<sup>th</sup> day of March, 1999.

Julie W. Jordan  
Notary Public

My Commission Expires:

4-29-2000

## **RIDER "1" TO MORTGAGE**

**Mortgagor:** Magic City Title, Inc.  
**Borrower:** Caldwell Mill Animal Clinic Partnership  
**Loan Number:** 10646  
Covenant Bank

The following provisions constitute a continuation of the terms, conditions and provisions of that certain Mortgage dated March 25, 1999 (the "Mortgage"), executed by Magic City Title, Inc. (the "Mortgagor"), in favor of Covenant Bank ("Secured Party"), and are included as a part of the Mortgage as though fully set out therein. In the event of a conflict between the provisions hereinbelow set forth and the provisions on the preprinted Mortgage, the provisions hereinbelow shall control:

1. Paragraph 4A. of the Mortgage shall be amended to read as follows:

Debt incurred under the terms of all promissory notes, contracts, guaranties or other evidence of debt described below and all their extensions, renewals, modifications or substitutions.

Note dated March 25, 1999, in the original principal amount of \$1,265,000 (the "Note") executed simultaneously herewith by Caldwell Mill Animal Clinic Partnership, an Alabama general partnership (the "Borrower"), and that certain permanent loan note as referenced in the Note, such permanent loan note to be executed at the maturity of the Note."

2. Paragraph 9 of the Mortgage shall be amended to read as follows:

**DUE ON SALE OR ENCUMBRANCE.** Unless Lender's prior written consent is obtained, which consent shall not be unreasonably withheld, Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, any lien, encumbrance, transfer or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Security Instrument is released.

3. Paragraph 16 of the Mortgage shall be amended to read as follows:

**EXPENSES; ADVANCES ON COVENANT; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law Mortgagor agrees to pay all of Lender's reasonable expenses if Mortgagor breaches any covenant in this Security Instrument. Mortgagor will also pay on demand any amount incurred by Lender for insuring, inspecting, preserving or otherwise protecting the Property and Lender's security interest. These expenses will bear interest from the date of the payment until paid in full at the highest interest rate in effect as provided in the terms of the Secured Debt if Mortgage breaches any covenant of this Security Agreement, or the Note or Construction Loan Agreement executed simultaneously herewith. Mortgagor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. This Security Instrument shall remain in effect until released. Mortgagor agrees to pay

for any recordation costs of such release.

4. Paragraph 21 of the Mortgage shall be amended to read as follows:

**FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.**

Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Mortgagor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider reasonably necessary to perfect, continue, and preserve Mortgagor's obligations under this Security Instrument and Lender's lien status on the Property.

5. Notwithstanding anything contained herein to the contrary, the parties hereto acknowledge and agree that the Escrow Agreement dated March 25, 1999 (the "Escrow Agreement") between Lender, Mortgagor and Harco, Inc., is made a part hereof by reference and incorporation. In the event of a conflict between the provisions set forth herein and the provisions set forth in the Escrow Agreement, the provisions of the Escrow Agreement shall control.

6. Notwithstanding anything contained herein to the contrary, Lender acknowledges, agrees and consents to a transfer of the Property pursuant to the terms of the Escrow Agreement, and no further or other consent of Lender shall be required in order to transfer the Property pursuant to the terms of the Escrow Agreement.

IN WITNESS WHEREOF, the undersigned has executed this Rider "1" to Mortgage on this 25th day of March, 1999.

MAGIC CITY TITLE, INC.

By: \_\_\_\_\_

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

*Ronald L. Hargis*  
*President*

**EXHIBIT "A"**

Lot 1, according to the Survey of the Garrett Subdivision as recorded in Map Book 24, Page 95, in the Office of the Judge of Probate of Shelby County, Alabama; and

A non-exclusive perpetual easement more particularly described as follows:

Being a part of Lot 2, Garrett Subdivision, as recorded in Map Book 24, Page 95, in the Probate Office of Shelby County, Alabama, being a parcel of land situated in the Northwest one-quarter of the Northwest one-quarter of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at Southeast corner of the Northwest one-quarter of the Northwest one-quarter of said Section 15; thence north along the east line of said quarter-quarter section 225.38 feet to the point of beginning of the easement herein described; thence continue along the last stated course 25.11 feet; thence turn an interior angle of 239 degrees 40 minutes and run easterly 51.15 feet to the westerly right-of-way line of Caldwell Mill Road; thence turn an interior angle of 105 degrees 56 minutes 44 seconds and run northerly 60.42 feet along said right-of-way line; thence turn an interior angle of 74 degrees 03 minutes 16 seconds leaving said right-of-way line and run southwesterly 33.85 feet; thence turn an interior angle of 120 degrees 19 minutes 40 seconds and run southerly 7.29 feet; thence turn an interior angle of 215 degrees 41 minutes 47 seconds and run southwesterly 74.00 feet; thence turn an interior angle of 234 degrees 16 minutes 12 seconds and run westerly 144.60 feet; thence turn an interior angle of 90 degrees 04 minutes 01 seconds and run southerly 25.00 feet; thence turn an interior angle of 89 degrees 58 minutes and run easterly 187.83 feet to the point of beginning, (the Easement Parcel).

Inst # 1999-13324

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03:38 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE

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