

Inst # 2000-34174

THIS INSTRUMENT PREPARED BY:
Christopher R. Smitherman
Attorney at Law
831 Island Street
Post Office Box 261
Montevallo, Alabama 35115
(205) 665-4357

09/28/2000-34174
10:07 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
003 MEL 482.25

STATE OF ALABAMA)
)
SHELBY COUNTY) REAL ESTATE MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: THAT WHEREAS Mesquite Creek Development, Inc., a Georgia Corporation, hereinafter called "Mortgagor," is justly indebted to Jack Whatley, hereinafter called "Mortgagee," in the principal sum of Three Hundred Twelve Thousand Five Hundred & 00/100 Dollars (\$312,500.00) together with interest at Eight (8%) percent as evidenced by a promissory note bearing even date herewith and payable in installments as follows: a first installment of Two Thousand Six Hundred Thirteen and 88/100 Dollars (\$2,613.88) due on or before the 1st day of October, 2000, and 238 subsequent installments of Two Thousand Six Hundred Thirteen and 88/100 Dollars (\$2,613.88) due on or before the 1st day of each month following the month of the initial installment, and a final installment of Two Thousand Six Hundred Eleven and 01/100 Dollars (\$2,611.01) due on or before the 1st day of September, 2020.

NOW, in order to secure the prompt payment of said note, when due, the Mortgagor for and consideration of the premises, and for other good and valuable consideration received, to the Mortgagor by the Mortgagee, does hereby GRANT, BARGAIN, SELL AND CONVEY to the Mortgagee of the following described real estate situated in **Shelby County, Alabama**, to wit:

PARCEL 2:

Commence at the Southwest corner of the Southwest quarter of the Northeast quarter of Section 3, Township 24 North, Range 12 East, Shelby County, Alabama and run thence easterly along the south line of said quarter - quarter a distance of 312.57 feet to a point on the East line of Melton Street in the Town of Montevallo, Alabama; thence run North 01 degree 24 minutes 44 seconds West a distance of 261.11 feet to a rebar corner; thence run North 01 degree 01 minute 29 seconds West along said East line of said Melton Street a distance of 390.80 feet to a found property corner; thence run North 01 degree 35 minutes 03 seconds East along East line of Melton Street a distance of 183.69 feet to a concrete monument on the South margin of Alabama Highway No. 25; thence run North 00 degrees 24 minutes 38 seconds West a distance of 115.77 feet to a found rebar corner on the northerly margin of said Highway 25 and the point of beginning of the property being described; thence run North 06 degrees 11 minutes 12 seconds East along an existing fence line a distance of 172.58 feet to a steel corner at a fence corner; thence run North 16 degrees 26 minutes 22 seconds East along an existing fence line a distance of 76.35 feet to a found nail for concrete corner; thence run North 85 degrees 08 minutes 10 seconds East along an existing fence line a distance of 126.78 feet to a found rebar corner; thence run South 01 degree 15 minutes 46 seconds East part way along an existing fence line a distance of 273.20 feet to a set rebar corner on the North margin of Alabama Highway No. 25; thence run North 84 degrees 10 minutes 55 seconds West along the North margin of said Highway 25 a distance of 173.44 feet to the point of beginning.

According to the survey S. M. Allen, dated July 6, 2000.

Subject to easements, restrictions, and right of way record.

TO HAVE AND TO HOLD the aforegranted premises, together with the improvements and appurtenances thereunto belonging, unto the Mortgagee forever. And the Mortgagor does hereby covenant with the Mortgagee, and the heirs and assigns of the Mortgagee, that the Mortgagor, is lawfully seized in fee simple of said premises; that the said premises are free of and from all encumbrances except as otherwise noted above; and that the Mortgagor will warrant and forever defend the same against the lawful claims and demands of all persons.

BUT THIS CONVEYANCE IS MADE UPON THE FOLLOWING CONDITIONS NEVERTHELESS, that is to say. If the Mortgagor shall well and truly pay, or cause to be paid, the said promissory note, and each and every installment thereof, and interest thereon, when due and all other amounts which may become due hereunder when such become due then this conveyance shall become null and void. But should the Mortgagor fail to pay said note, or any installment thereof when due or shall fail to pay any other sums that become due hereunder when due, and failed to cure said default within twenty (20) days after receipt of written notice, then all of said indebtedness shall become due and payable at once, at the option of the Mortgagee. However, failure of the Mortgagee to enforce this provision as to one or more delinquent installments or other amounts due hereunder shall not be waiver of the right to subsequently invoke such provision. Upon any such default by the Mortgagor, the Mortgagee or the successors, heirs, assigns, agents, or attorneys of the authorized and empowered to sell the said property hereby conveyed at auction for cash at the Courthouse door of the County in which said property is situated, after first having given notice thereof for three (3) weeks by publication in any newspaper then published in the county in which said property is situated, and to execute a property conveyance to the purchaser and out of the sale proceeds to the Mortgagee shall first pay all expenses incident thereto, together with reasonable attorney's fee, then retain enough to pay said note and interest thereon and any sums advanced by the Mortgagee for taxes, assessments, insurance, and other encumbrances, if any. The balance, if any, shall be paid over to the Mortgagor. In the event of such sale, the Mortgagee, or successors, assigns, agents or attorneys of the Mortgagee, are hereby authorized and empowered to purchase the said property the same as if they were strangers to this conveyance and any such sale, and the auctioneer or person making the sale is empowered and directed to make and execute a deed to the purchaser at such sale in the name of the Mortgagor.

It is also agreed that in case the Mortgagee, or the heirs, successors or assigns of the Mortgagor, see fit to foreclose this mortgage in a court having proper jurisdiction, that the Mortgagor will pay a reasonable attorney's fee for the bringing and prosecution of such foreclosure action and for any appeals therefrom, together with all costs of litigation incurred by the Mortgagee, all of which shall be and constitute a part of the debt hereby secured.

The Mortgagor specially waives all exemptions which Mortgagor now or hereafter may be entitled to under the Laws and Constitution of the State of Alabama in regard to the collection of the debt secured hereby.

The Mortgagor reserves unto the Mortgagor, and the heirs, successors and assigns of the Mortgagor the right of possession of the said property until after a foreclosure sale has been effected according to the terms of the conveyance.

The Mortgagor agrees to keep said property in good repair, normal wear and tear excepted, and further agrees to keep said property insured against fire, hail, flood, and

Inst # 2000-34174

windstorm with good and responsible companies acceptable to the Mortgagee for not less than an amount equal to the principal amount of this mortgage debt, and to have each such policy payable to the Mortgagee, as the Mortgagee's interest may appear in said property, and further agrees to deliver copies of such paid-up policies to the Mortgagee.

Should the Mortgagor fail to insure said property, then the Mortgagee is hereby authorized to do so, and the premiums so paid by the Mortgagee shall be and constitute a part of the debt secured hereby.

The Mortgagor agrees to pay all taxes and assessments, general or special, levied upon such property before such become delinquent. Should the Mortgagor fail to pay any taxes or assessments before they become delinquent, then the Mortgagee is hereby authorized to do so, and all such payments shall thereupon constitute a part of the debt secured hereby.

Should the Mortgagor fail to procure proper insurance, or fail to pay any taxes or assessments, as hereinabove provided, and should the Mortgagee pay the same, then the Mortgagor shall be deemed to have materially breached the terms of this instrument if the Mortgagor fails to reimburse the Mortgagee for the same plus interest at the rate specified hereinabove within twenty (20) days after the Mortgagee gives the Mortgagor written demand by first class mail of the amounts due.

Mortgagor reserves the right of possession of said premises until the law day.

IN WITNESS WHEREOF, the Mortgagors has executed this Mortgage with seal affixed on the 1ST day of September, 2000, at 300 Technology Court, Smyrna, Georgia 30082.

MORTGAGOR

Max Lenker (L.S.)
Mesquite Creek Development, Inc. a Georgia corporation

By: Max Lenker, President

Name Title
Authorized Agent [Corporate Seal]

STATE OF GEORGIA)
)
COBB COUNTY) **ACKNOWLEDGMENT**

I, Thanicia A. Childs, a Notary Public for the State at Large, hereby certify that the above posted name, *Max Lenker as President and Authorized Agent for Mesquite Creek Development, Inc., a Georgia Corporation*, which is signed to the foregoing Mortgage, who is known to me, acknowledged before me on this day that, being informed of the contents of the Mortgage, that he as such officer executed the same voluntarily on the day the same bears date.

GIVEN UNDER MY HAND AND OFFICIAL SEAL OF OFFICE on this the 1st day of September, 2000.

Thanicia A. Childs
Notary Public
My Commission Expires: _____
