

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

Note: The property herein conveyed  
does not constitute the home  
stead of the Borrower or his  
spouse

### MORTGAGE

**THIS MORTGAGE AGREEMENT** ("Mortgage") is made as of the 15th day of February, 2002, by **Douglas B. Blank**, a married man (the "Borrower"), to and in favor of **Joseph Habshey** (the "Mortgagee").

### RECITALS:

Borrower has obtained a loan from Lender in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) evidenced by a One Hundred Fifty Thousand Dollar (\$150,000.00) Promissory Note dated February 15, 2002 (the "Financing Transaction"). The purpose of the loan by Borrower was to pay a portion of the acquisition and improvement costs of the real property described on the attached Exhibit "A." In connection with the Financing Transaction, Borrower has executed this Mortgage Agreement, the One Hundred Fifty Thousand Dollar (\$150,000.00) Note, and certain other documents and instruments securing or further evidencing the Note and shall be hereinafter collectively referred to as the "Loan Documents."

### AGREEMENT

**WITNESSETH**, that Borrower, for the consideration set forth above and the covenants and promises contained herein, the receipt whereof is hereby acknowledged, does hereby irrevocably grant, bargain, sell, assign, transfer and convey to Mortgagee, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, the following described property (all of which is as described in (A) through (G) below, herein referred to as the "Mortgaged Property"):

(A) The real property (the "Land") described in the attached Exhibit A and all mineral rights, development rights, air rights, water, and water rights, relating to the Land, all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Land, and the reversions, remainders, rents, issues and profits thereof;

(B) All present and future structures, buildings, improvements, septic systems, sewage lines and equipment, appurtenances and fixtures of any kind on the Land, whether now owned or hereafter acquired by the Borrower, including but not limited to all apparatus, equipment and appliances used in connection with the operation or occupancy of the Land, such as heating and air-conditioning systems and facilities used to provide any utility services (including sewage services), refrigeration, ventilation, laundry, drying, dishwashing, garbage disposal, recreation or other services on the Land, including without limitation all furniture fixtures and equipment, and all window coverings, and pumping stations and other equipment used in connection with the existing septic system and any sewage line to be constructed on the land, it being intended and agreed that all such Items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the property (the "Improvements").

(C) All appurtenances of the Land and all rights of the Borrower in and to any streets, roads or public places, easements or rights of way, adjoining or relating to the Land, including but not limited to all rights of the Borrower to any septic system, sewer line, agreements, permits, easements,



equipment, licenses, resolutions, and related rights pertaining to any sewer and septic system constructed on the property.

(D) All of the rents, royalties, profits and income of the Land, and all rights of the Borrower under all present and future leases affecting the Land, including but not limited to any security deposits.

(E) All awards, proceeds and claims arising on account of the exercise of eminent domain or any damage to or taking of the Land or any Improvements there in or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(F) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of being used or useful in connection with the Improvements located or to be located on the property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the Land or not, and whether in storage or otherwise, wheresoever the same may be located. Property herein conveyed and mortgaged shall include, but without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers, disposal, and in general all building materials and equipment of every kind and character used or useful in connection with said Improvements.

(G) All general intangibles relating to the development or use of the Land, including but not limited to all governmental permits relating to construction on the property, all names under or by which the Land or any Improvements on the property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land; and

**THIS CONVEYANCE** is intended to operate and to be construed to pass legal title to the Mortgaged Property to Mortgagee and is made under the provisions of Alabama law to secure the herein described indebtedness due Mortgagee (and interest thereon and other indebtedness as described herein) evidenced by the Note, and to further secure:

(1) Payments and performance of all the indebtedness and obligations of Borrower under the Note, including all extensions, renewals, substitutions, restatements, amendments, and modifications of and to the Note.

(2) The payment and performance by the Borrower of all the obligations under this Mortgage and under all of the other Loan Documents.

(3) The payment of all sums advanced or paid out by the Mortgagee under any provision of this Mortgage or the other Loan Documents or to protect the security of this Mortgage.

(4) To secure the payment and performance of the obligations of Borrower under all other present and future agreements executed by the Borrower in favor of the Mortgagee and relating to the Note or any one or more of the Loan Documents



**TO HAVE AND TO HOLD** the Mortgaged Property and all parts thereof unto Mortgagee and to its successors and assigns forever, subject however to the provisions of Article I, Paragraph 1 below and to the further terms and conditions herein:

**PROVIDED, HOWEVER,** that these presents are upon the condition that, if the Borrower shall pay or cause to be paid to the Mortgagee the principal and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid, then this Mortgage shall be void otherwise to remain in force and effect.

## **ARTICLE I**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER**

In addition to covenants contained elsewhere herein, the Borrower represents and warrants to and covenants and agrees with the Mortgagee as follows:

**1.1 Warranty of Title.** The Borrower warrants and covenants that it is lawfully seized of an indefeasible estate in fee simple in the real property (described in Exhibit "A") hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid and that, except for the Permitted Exceptions which are the exceptions referred to in the title insurance commitments of Lawyers Title Insurance Corporation, the same is free and clear of all liens, charges, and encumbrances whatsoever, including, as to personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature; and that the Borrower will warrant and forever defend the title thereto unto the Mortgagee, its successors and assigns, against the claims of all persons whomsoever, except with respect to the exceptions under title policy number 02-0046 issued by Lawyers Title Insurance Corporation.

**1.2 Performance of Obligations.** To pay and perform all indebtedness and Obligations that are secured by this Mortgage and the other Loan Documents in accordance with the terms thereof.

**1.3 Due Execution; Further Assurances.** The Borrower covenants and represents that all of the Loan Documents have been duly executed and delivered and, to the best of Borrower's knowledge, are valid and enforceable obligations of Borrower in accordance with the terms thereof; and Borrower covenants and agrees not to contest or dispute the validity or enforceability of any of the Loan Documents, all the terms of which Borrower intends to be legally bound by. Borrower agrees to execute and deliver to the Mortgagee on demand and at Borrower's cost and expense any documents, further required mortgages, and instruments of further assurance required or desired by Mortgagee to effectuate, complete, enlarge, or perfect, or to continue and preserve (a) the obligations of the Borrower under the Note, this Mortgage, all of the other Loan Documents, and (b) the lien of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by the Borrower. Upon any failure of Borrower to do so, Mortgagee may execute and record any such instruments for and in the name of Borrower and Borrower irrevocably appoints Mortgagee the agent and the attorney-in-fact of Borrower to do so. The lien hereof will automatically attach, without further act, to all after-acquired property attached to or used in the operation of the Mortgaged Property.

**1.4 Assignment of Rents and Leases.** (a) All of the existing and future rents, royalties, revenues, income and profits of the Mortgaged Property that arise from its use or occupancy (together, the "Rents") and all leases, subleases, occupancy, management or leasing agreements pertaining to the Land or the Improvements (together, the "Leases") are hereby absolutely and presently assigned



to the Mortgagee, each only to the rights of the First Mortgagee. Upon any default by the Borrower, Mortgagee may in its discretion at any time without notice to the Borrower collect the Rents itself or by an agent or receiver. No action taken by the Mortgagee to collect any Rents will make the Mortgagee a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court appointed receiver will not be considered possession by the Mortgagee. All Rents collected by the Mortgagee or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of the indebtedness and obligations secured by this Mortgage in whatever order the Mortgagee directs in its absolute discretion and without regard to the adequacy of its security.

(b) The Borrower will not execute any Leases with third party tenants without first having received the prior written approval from Mortgagee of the same, which approval will not be unreasonably withheld.

(c) Without the prior written consent of the Mortgagee, the Borrower shall not accept any prepayments of Rent exceeding one month under any Leases nor in any manner impair the Borrower's interest in the Rents. The Borrower will perform all covenants of the lessor under any Lease. Upon the Mortgagee's request, the Borrower will execute and deliver to Mortgagee for recordation an assignment of leases on the Mortgagee's form.

(d) If required by the Mortgagee, any lease must provide, in a manner approved by the Mortgagee, that the Lease is junior and subordinate to the lien of this Mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Borrower upon any foreclosure of this Mortgage.

(e) Nothing herein shall render Mortgagee liable under any existing or future lease, regardless of the collection of Rents thereunder, for any of the covenants or agreements of Borrower under such Leases.

**1.5 No Encumbrances.** Without the prior written consent of the Mortgagee the Borrower shall not further encumber any interest in the Mortgaged Property or sell, contract to sell, lease with an option to purchase, or otherwise transfer any interest in the Mortgaged Property. Mortgagee shall not be obligated to consent to any such encumbrance, sale, contract, lease, or other transfer [ all said encumbrances, sales, contracts, leases, and other transfers described above being collectively referred to as a "Prohibited Transfer" ], and Mortgagee's consent may be withheld regardless of whether any Prohibited Transfer may or may not impair Mortgagee's security or whether or not it may or may not be reasonable (commercially or otherwise) for Mortgagee to consent to any Prohibited Transfer. Without limiting the foregoing, Mortgagee's consent may, if given in Mortgagee's sole unfettered discretion, be conditioned upon (by way of illustration only and not being limited to): an increase in the interest rate, an approval of the credit of any such grantee, vendee, optionee, or transferee, a management contract acceptable to Mortgagee with a manager acceptable to Mortgagee, an assignment to Mortgagee of any security given to Borrower in connection with the transaction, including without limitation, any purchase money second mortgage, and/or a change in any of the other terms and conditions of this Mortgage or in any of the Loan Documents. Any Prohibited Transfer made without the consent of Mortgagee shall be void. The First Mortgage lien transaction is not a Prohibited Transfer.

**1.6 Financial Statements.** Prior to March 31 of each year, Borrower will deliver to Mortgagee, whether or not requested by Mortgagee, (i) a statement of income and expenses with respect to the activities and operations of the Borrower at the Mortgaged Property, together with all schedules and exhibits thereto as are customarily required by sound accounting practices, (ii) a rent roll reflecting the name and address of any tenants who have executed Leases or who are in occupancy



of any portion of the Mortgaged Property, (iii) (without limiting Mortgagee's right to approve the same as specified in the Loan Documents) a copy of each Lease not theretofore provided to Mortgagee. Mortgagee shall have the right, upon reasonable notice in writing, to require that the statement of income and expenses described hereinabove be prepared in accordance with generally accepted accounting principles and certified by an independent certified public accountant.

**1.7 Performance by Mortgagee.** Borrower will, at its own expense, appear in and defend any action or proceeding that might affect Mortgagee's security or the rights or powers of the Mortgagee or that purports to affect any of the Mortgaged Property. If the Borrower fails to perform any of its covenants or agreements contained in this Mortgage, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect the Mortgagee's interest in the Mortgaged Property or the Mortgagee's right to enforce its security, then the Mortgagee may, at its option, make any appearances, disburse any sums and take any actions as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of Borrower to perform its covenants (without, however, waiving any default of the Borrower). Borrower agrees to pay all reasonable expenses of the Mortgagee thus incurred (including but not limited to fees and disbursements of counsel and other professionals). Any sums disbursed by the Mortgagee will be additional indebtedness of the Borrower secured by this Mortgage, will bear interest at the default rate required by the Note, and will be payable by the Borrower upon demand. This paragraph will not be construed to require Mortgagee to incur any expenses, make any appearances, or take any actions.

**1.8 Security Agreement.** This Mortgage constitutes a **SECURITY AGREEMENT** with respect to all personal property in which Mortgagee is granted a security interest hereunder, and Mortgagee shall have all of the rights and remedies of a secured party under the **ALABAMA UNIFORM COMMERCIAL CODE** as well as all other rights and remedies available at law or in equity. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Mortgagee the attorney-in-fact of Borrower, to execute, deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as Mortgagee may request or require in order to impose, perfect or continue the perfection of, the lien or security interest created hereby. Upon the occurrence of any default hereunder, Mortgagee shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of Mortgagee hereunder to be sold at any one or more public or private sales as permitted by applicable law, and Mortgagee shall further have all other rights and remedies, whether at law, in equity, or by statute, as are available to secured creditors under applicable law. Any such disposition may be conducted by an employee or agent of Mortgagee. Any person, including both Borrower and Mortgagee, shall be eligible to purchase any part or all of such property at such disposition.

Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Borrower and shall include Mortgagee's attorneys' fees and legal expenses. Borrower, upon demand of Mortgagee, shall assemble such personal property and make it available to Mortgagee at the Premises, a place which is hereby deemed to be reasonably convenient to Mortgagee and Borrower. Mortgagee shall give Borrower at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower.

**1.9 Expenses and Professional Fees.** The Borrower will pay or reimburse the Mortgagee for all reasonable attorney's fees, professional fees, costs and expenses incurred by the Mortgagee in connection with the closing of this loan (whether or not collected at closing and including without limitation all title, recording, survey, appraisal and legal fees and expenses), in any proceeding involving



the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Mortgagee is involved or is made a party, or appears as party plaintiff or defendant, affecting the Note, Mortgage, and other Loan Documents, Borrower or Mortgaged Property, including but not limited to the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof and in any situation where Mortgagee employs an attorney to protect the Mortgagee's rights hereunder, whether or not legal proceedings are commenced or involved; and any such amounts paid by the Mortgagee shall be added to the Indebtedness and secured by the lien of this Mortgage.

**1.10 Septic System.** Borrower understands that any septic system or sewage treatment facility or sewer line on the property or to be constructed from the property to a public sewer line and all personal property and rights therein are conveyed to Mortgagee hereunder as part of the Mortgaged Property, whether located on the property described in Exhibit "A" or adjacent to or connected with the same.

## **ARTICLE II**

### **EVENTS OF DEFAULT**

**2.1 Events of Default.** The Borrower will be in default under this Mortgage if:

(a) Borrower fails to make as and when due any payment required by the Note or by the other Loan Documents; or

(b) Borrower fails to perform any other covenant or agreement contained in this Mortgage, or in the other Loan Documents, and does not cure that failure within thirty (30) days after receipt of notice of such default, except for failures that reasonably require longer than 30 days to cure, in which case Borrower shall have a reasonable time to cure the same provided Borrower proceeds with diligence to cure the same and uses means of cure reasonably calculated to accomplish such cure expeditiously; or

(c) Borrower permits or suffers an attachment or judicial seizure of any substantial part of its assets; or

(d) Borrower files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor-relief under any present or future law relating to bankruptcy or debtor-relief, or such a petition is filed against the Borrower, or against any maker or endorser of the Note, and Borrower does not oppose that filing or the petition is not dismissed within 60 days after filing, or Borrower makes an assignment for the benefit of its creditors; or

(e) There has occurred and is continuing a default or event of default under the First Mortgage Lien, or repayment of the indebtedness thereby secured, any Loan Document; or

(f) There has occurred and is continuing a default or event of default under any Loan Documents; or

(g) Any representation or disclosure made to the Mortgagee by the Borrower or by any guarantor of any indebtedness or obligations secured by this Mortgage, proves to have been materially false or misleading when made, whether or not that representation or disclosure appears in this Mortgage or in any of the other Loan Documents, or in the loan application; or



## ARTICLE III

### REMEDIES

**3.1 Parties Benefitted.** The title, interest, rights and powers granted herein by Borrower to Mortgagee, particularly the power of sale granted herein, shall inure to the benefit of anyone to whom Mortgagee shall assign the indebtedness herein secured or convey the property herein described, as well as to the successors and legal representatives of Mortgagee.

**3.2 Power of Sale.** If an Event of Default shall have occurred and be continuing, Borrower hereby grants to Mortgagee, the following irrevocable power of attorney: To sell all or any part of the Mortgaged Property at auction, at the usual place for conducting sales at the Court House in the County where the land or any part thereof lies, to the highest bidder for cash, after advertising the time, terms and place of such sale once a week for four (4) weeks immediately preceding such sale (but without regard to the number of days) in a newspaper published in the County where the land or any part thereof lies, or in the paper in which the Sheriff's advertisements for such County are published, all other notice being hereby waived by Borrower. Mortgagee (or any person on behalf of Mortgagee) may bid and purchase at such sale and thereupon execute and deliver to the purchaser or purchasers at such sale a sufficient conveyance of the property conveyed in fee simple, which conveyance may contain recitals as to the happening of the default upon which the execution of the power of sale herein granted depends. Borrower hereby constitutes and appoints Mortgagee the agent and attorney in fact of Borrower to make such recitals and hereby covenants and agrees that the recitals so made by Mortgagee shall be binding and conclusive upon Borrower, and that the conveyance to be made by Mortgagee shall be effectual to bar equity of redemption of Borrower in and to said property.

**3.3 Holding Over After Sale.** Borrower further covenants that in case of a sale hereunder, Borrower, or any person in possession under Borrower, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over.

**3.4 Power Coupled with Interest.** The power and agency hereby granted are coupled with an interest and are irrevocable by death, bankruptcy, dissolution, or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

**3.5 Subrogation.** It is agreed that the Mortgagee shall be subrogated to the claims and liens of all parties whose claims or liens are discharged or paid with the proceeds of the Note .

**3.6 Remedies.** Without limiting the foregoing, if the Borrower is in default, the Mortgagee may, at its continuing option, and without notice to or demand upon the Borrower (except as required by law):

- (a) Declare any or all Indebtedness to be due and payable immediately;
- (b) Enter onto the Mortgaged Property, in person or by agent or by court-appointed receiver, and take any and all steps which may be desirable in the Mortgagee's judgment to manage and operate the Mortgaged Property, and the Mortgagee may apply any Rents collected against the Indebtedness without in any way curing or waiving any default to the Borrower;
- (c) Bring a court action at law or in equity (1) to foreclose this Mortgage or (2) to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, either or both, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of



Mortgagee's right to institute or maintain the other, provided that Mortgagee shall have only one payment and satisfaction of the indebtedness;

(d) Cause all or any part of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law;

(e) Exercise any other right or remedy available under law or in equity.

**3.7 Application of Proceeds.** The proceeds of any sale under this Mortgage will be applied in the following manner:

**First:** Payment of the costs and expenses of the sale, including but not limited to Mortgagee's fees, and professional fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Mortgagee, together with interest at the After-Maturity Rate provided in the Note .

**Second:** Payment of all sums expended by the Mortgagee under the terms of this Mortgage and not yet repaid, together with interest on such sums at the After-Maturity Rate provided in the Note .

**Third:** Payment of the Indebtedness and obligations of the Borrower secured by this Mortgage in any order that the Mortgagee chooses.

**Fourth:** The remainder, if any, to the person or persons appearing of record to be the owner of the premises.

**3.8 Receiver.** If an Event of Default shall have occurred and be continuing, the Mortgagee, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents.

**3.9 Mortgagee's Option on Foreclosure.** At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Borrower, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

**3.10 Waiver of Manner of Sale.** Borrower waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshaled upon any sale. Mortgagee may in its discretion sell all the personal and real property in bulk or in parcels, in one or more sales, and in any sequence Mortgagee selects.



## ARTICLE IV

### GENERAL PROVISIONS

**4.1 Partial Invalidity.** The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

**4.2 (this paragraph intentionally omitted)**

**4.3 Other Taxes, Utilities and Liens.** (a) The Borrower will pay promptly, when and as due, and will promptly exhibit to the Mortgagee receipts for the payment of, all taxes, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Mortgagee in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Borrower or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Borrower will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Borrower shall promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property. Provided, however, that Borrower may, in good faith, by appropriate proceedings, contest the validity, applicability or amount of any asserted lien, after written notice of the same to Mortgagee. During such contest, Borrower shall not be deemed in default hereunder if (i) prior to the delinquency of the lien, Borrower deposits with Mortgagee cash or other security, in form satisfactory to Mortgagee in its sole unfettered discretion, adequate to cover the payment of such lien and any obligation, whether matured or contingent, of Borrower or Mortgagee therefor, together with interest, costs and penalties thereon, and (ii) Borrower promptly causes to be paid any amounts adjudged to be due, together with all costs, penalties and interest thereon, before such judgment becomes final. Each such contest shall be concluded and the lien, interest, cost and penalties thereon shall be paid prior to the dates such judgment becomes final or any writ or order is issued under which the Property could be sold pursuant to such judgment.

**4.4 Insurance.** The Borrower will procure for, deliver to, and maintain for the benefit of, the Mortgagee during the life of this Mortgage, insurance policies, in such amounts as the Mortgagee shall require, but in no event less than the greater of (a) the aggregate amount of the Note, or (b) the full replacement cost of the Mortgaged Property, and with no more than \$5,000 deductible from the loss payable for any casualty, insuring the Mortgaged Property against the risk covered by the type of insurance known as "all risk" insurance including, without limitation, coverage against fire, lightning, windstorm, hail, vandalism and malicious mischief, tornado, war damage (if available), collapse, and such other insurable hazards, casualties and contingencies as the Mortgagee may reasonably require. If the property is located in a flood hazard area, flood insurance in an amount acceptable to Mortgagee shall also be provided by Borrower. The policies shall include, without limitation, a "Replacement Cost Endorsement," "Difference in Conditions Endorsement," boiler and machinery insurance covering pressure vessels, sewage treatment facilities, air tanks, boilers, machinery, pressure piping, heating, air conditioning and elevator equipment, and insurance against loss of occupancy or use arising from any such breakdown. Borrower shall also maintain loss of rents or rental value insurance with coverage



in an amount to cover a minimum of six months of projected gross annual rentals at 100% occupancy of the mortgaged property and general comprehensive public liability insurance with limits in the amount of \$500,000.00 for any claim, \$1,000,000.00 for each occurrence, and \$100,000.00 property damage. The form of such policy, and the companies issuing them shall be acceptable to the Mortgagee. All policies shall contain a New York standard, non-contributory mortgagee endorsement making losses payable to the Mortgagee. At least fifteen (15) days prior to the expiration date of all such policies, renewals thereof satisfactory to the Mortgagee shall be delivered to the Mortgagee. The Borrower shall deliver to the Mortgagee receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness secured hereby, all right, title and interest of the Borrower in and to all insurance policies then in force shall pass to the purchaser or grantee.

The Mortgagee is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses, directly to the Mortgagee, instead of to the Borrower and Mortgagee jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of said fund, the Mortgagee may apply the net proceeds, at its option, either (a) toward restoring the Improvements, or (b) as a credit on any portion of the mortgage indebtedness selected by it, whether then matured or to mature in the future. or Mortgagee may elect any combination of (a) or (b), subject to the provisions of Paragraph 4.6(f) below. Mortgagee shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

If requested, the Borrower will pay to the Mortgagee on the first day of each month, together with and in addition to the regular installment of principal and interest until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for insurance. Such amount shall be used by Mortgagee to pay such insurance premiums when due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Mortgagee, and no interest shall be payable in respect thereof. Upon demand of Mortgagee, the Borrower agrees to deliver to the Mortgagee such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Mortgagee to pay such insurance premiums. In the event of a default by the Borrower in the performance of any of the terms, covenants and conditions in the Note or Mortgage, the Mortgagee may apply to the reduction of the sums secured hereby, in such manner as the Mortgagee shall determine, any amount paid in accordance herewith remaining to the Borrower's credit.

**4.5 Condemnation.** If all or any part of the Mortgaged Property in excess of ten percent (10%) of the Land or fifteen percent (15%) of the total square feet of buildings constructed on the Land, shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire Indebtedness shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Borrower's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Borrower to the Mortgagee, who, after deducting therefrom all its expenses, including attorney's fees, (a) may apply any moneys so received by it toward restoring the Improvements, without affecting the lien of this Mortgage, or (b) may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, or Mortgagee may elect any combination of (a) or (b) in its discretion, subject to the provisions of Paragraph 4.6(f) below. The Borrower agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Mortgagee may require. Notwithstanding the foregoing provisions,



the Borrower shall be entitled to receive any proceeds of condemnation over and above the unpaid principal balance of the Bond or Note secured hereby.

**4.6 Care of the Property.** (a) The Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld with respect to alterations. The Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other personal property or fixtures not necessarily of the same character, but of at least equal value to the Borrower and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Borrower will give immediate written notice of the same to the Mortgagee.

(d) The Mortgagee is hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours.

(e) The Borrower will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(f) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty (a "Casualty"), the Borrower will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available, or are sufficient. If a part of the Mortgaged Property shall be physically damaged through condemnation (a "Taking"), the Borrower will promptly restore, repair or and take such actions as are necessary to make the undamaged or non-taken portion of the Mortgaged Property into a functional economic unit, insofar as is practicable under the circumstances. In the event the Mortgagee requires restoration of the Mortgaged Property as a result of any Taking or Casualty, the Mortgagee shall not have the right to require application of the insurance proceeds or condemnation awards to the indebtedness (except to the extent of any surplus over the amount required for restoration).

**4.7 Performance by Mortgagee of Defaults by Borrower.** If the Borrower shall default in the payment of any lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of insurance premiums; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage or under any prior lien or junior lien or in any lease, then the Mortgagee, at its option, may perform or observe the same, and all payments made for costs paid or incurred by the Mortgagee in connection therewith, shall be secured hereby and shall be, without demand, immediately repaid by the Borrower to the Mortgagee with interest thereon at the default rate set forth in the Note . The Mortgagee shall be the sole judge of the legality, validity and priority of any such lien, assessment, charge, claim and premium; of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. The Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged



Properly or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to the Borrower or any person in possession holding under the Borrower.

**4.8 Estoppel Affidavits.** The Borrower within ten (10) days after written request from the Mortgagee shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note and whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same.

**4.9 Waiver of Exemption.** To the extent permitted by applicable law, Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the indebtedness secured hereby.

**4.10 Delay or Omission No Waiver.** No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to the Mortgagee may be exercised from time to time and as often as may be deemed expedient by the Mortgagee.

**4.11 No Waiver of One Default to Affect Another, etc.** No waiver of any default hereunder shall extend to or shall affect any subsequent or any other than existing default or shall impair any rights, powers or remedies consequent thereon.

If the Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted herein or in the Note ; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (e) consents to the filing of any map, plat or replat thereof; (f) consents to the granting of any easement thereon; (g) makes or consents to any agreement subordinating the lien or change hereof; or (h) enters into any agreement with the Borrower or any partner or stockholder thereof or any one or more of them changing any term of the Note or documents relating to the Note or releasing any partner or stockholder of Borrower or any security or respecting any matter whatsoever, any such act or omission shall not release, discharge, modify, change, or affect the original liability under the Note , this Mortgage or otherwise of the Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof or any maker, co-signer, endorser, surety or guarantor; nor shall any such act or omission preclude the Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in the event of any other default then made or of any subsequent default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Mortgagee shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Mortgagee, without notice to any person or corporation is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

**4.12 Discontinuance of Proceedings - Position of Parties, Restored.** In case the Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Mortgagee, then and in every such case the Borrower and the



Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding has been taken.

**4.13 Remedies Cumulative.** No right, power, or remedy conferred upon or reserved to the Mortgagee by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute.

**4.14 Notices.** (a) All notices given under this Mortgage must be in writing and will be effectively served upon personal delivery or, by mailing in United States mail, postage prepaid, sent to the Mortgagee at \_\_\_\_\_ and sent to the Borrower at its address appearing below its signature, which addresses may be changed by written notice. However, the service of any notice of default or notice of sale under this Mortgage as required by law will, if mailed, be effective on the date of mailing.

**4.15 Entries.** (a) Upon an event of default, the Mortgagee and its respective agents and representatives, will have the right at any reasonable time to enter the Property and inspect all parts thereof, and to examine, copy and audit the books, records, accounting data and other documents of the Borrower relating to the Mortgaged Property.

(b) The Mortgagee is under no duty to supervise or inspect the Mortgaged Property, or operation of the Mortgaged Property, or examine any books and record. Any inspection or examination by the Mortgagee is for the sole purpose of protecting the Mortgagee's security and preserving the Mortgagee's rights under this Agreement. No default of the Borrower will be waived by any inspection by the Mortgagee.

**4.16 Status and Authority.** (a) The Borrower has executed this instrument as a limited liability company and thus the following provisions shall apply: the Borrower warrants that (i) it is duly organized and validly existing in good standing under the laws of the state of its organization, (ii) it is duly qualified to do perform its operations, (iii) it has the power, authority and legal right to carry on its operations and to engage in the transactions contemplated by the Loan Documents and (iv) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary actions of the Borrower.

(b) The Borrower agrees that so long as any of its obligations hereunder, or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence, that it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership, without the prior express written consent of the Mortgagee.

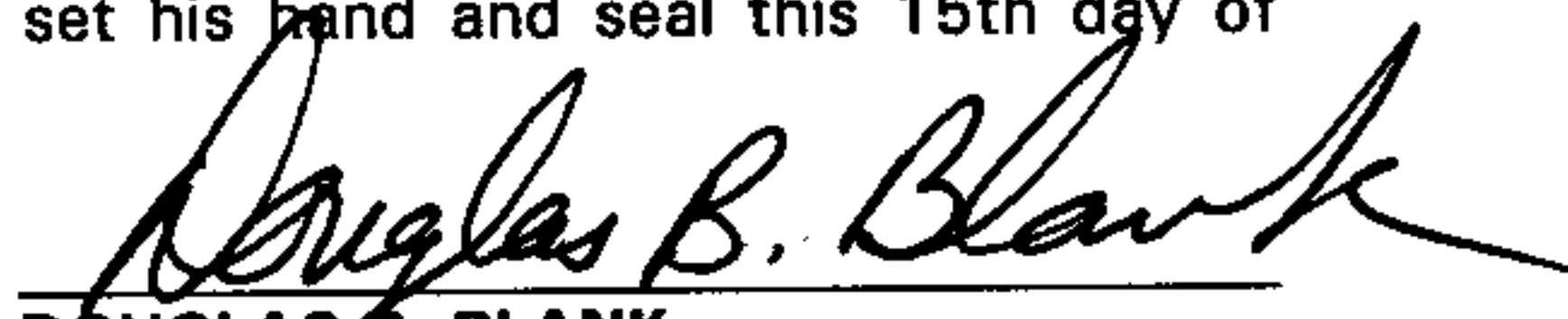
**4.17 Miscellaneous.** The term "Borrower" includes both the original Borrower and any subsequent owner or owners of any of the Mortgaged Property, and the term "Mortgagee" includes the original Mortgagee, and also any future owner or holder, including pledgers, assignees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles of this Mortgage are for convenience only and do not limit its provisions.

**4.18 Successors.** Whenever the terms "Borrower" or "Mortgagee" are used in this Mortgage such terms shall be deemed to include the successors and assigns of said parties. All rights and powers herein granted to the Mortgagee shall inure to and include the successors and assigns of each and all obligations herein imposed on the Borrower shall extend to and include Borrower's successors and assigns.



**4.19 Relationship of Mortgagee and Borrower as Creditor and Debtor Only.** Mortgagee and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in any Loan Document or instrument made in connection with the Note shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Mortgagee and Borrower, or any relationship other than that of creditor and debtor.

**IN WITNESS WHEREOF,** Borrower has hereunto set his hand and seal this 15th day of February, 2002.

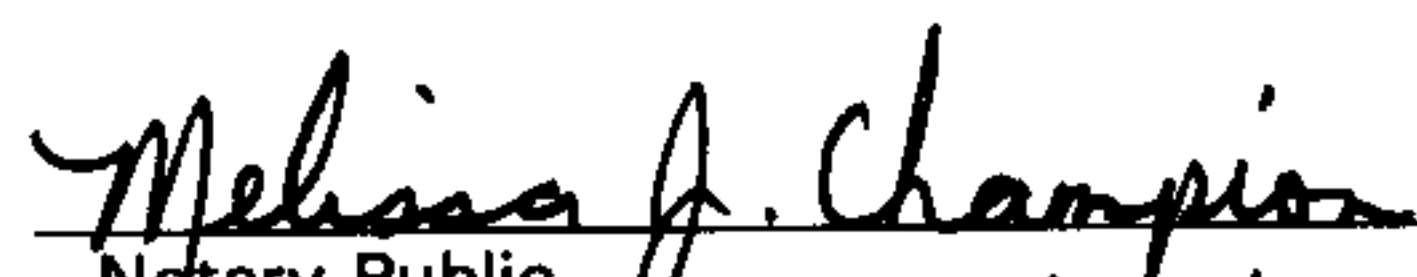
  
DOUGLAS B. BLANK

STATE OF ALABAMA           )  
COUNTY OF JEFFERSON    )

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that **DOUGLAS B. BLANK**, a married man, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he executed the same voluntarily on the day the same bears date.

**GIVEN** under my hand and official seal of office, this 15th day of February, 2002.

[NOTARIAL SEAL]

  
Notary Public  
My Commission Expires: 7/21/02

**THIS INSTRUMENT PREPARED BY:**

C. Ted Major III, Esq.  
Johnston & Conwell, L.L.C.  
800 Shades Creek Parkway  
Suite 325  
Birmingham, AL 35209  
(205) 414-1228

Blank\Mortgage.wpd



**EXHIBIT "A"**

Block Eleven of Joseph Squire's Map of Helena as recorded in map book 3, page 121 in the office of the Judge of Probate of Shelby County, Alabama; LESS AND EXCEPT: Any part lying within the right-of-way of the public streets; AND LESS AND EXCEPT: Lot One of said Block Eleven; AND LESS AND EXCEPT: that part conveyed in Deed Book 56, page 118, described more particularly as follows: one-half acre, more or less, in the Southeast corner of said Block Eleven (said corner being the intersection of the North right-of-way of Second Avenue and the West right-of-way Third Street); thence run North along West right-of-way of Third Street 93.92 feet; thence turn right 02 degrees 33 minutes 56 seconds and continue along said right-of-way 46.08 feet; thence turn left 87 degrees 06 minutes 26 seconds and run West 160.00 feet; thence turn left 88 degrees 15 minutes 54 seconds and run South 146.00 feet to a point on the North right-of-way of said Second Avenue; thence turn left 93 degrees 49 minutes 48 seconds and run East along said right-of-way 176.00 feet to the point of beginning, subject to current taxes, covenants, easements, and restrictions of record.

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Inst # 2002-10337

03/04/2002-10337  
02:56 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
278.00