

STATE OF ALABAMA)
)
SHELBY COUNTY)

M O R T G A G E

KNOW ALL MEN BY THESE PRESENTS:

THIS MORTGAGE, is made and entered into on this the 20th day of March, 2002, by and between **SOUTHMARK PROPERTIES, L.L.C.** an Alabama limited liability company, and **INTERSTATE RESTAURANT INVESTORS, L.L.P.**, an Alabama limited liability partnership, collectively, d/b/a Highway 52 T.I.C, whose address is 162 Cahaba Valley Road, Pelham, Alabama 35124 (collectively, hereinafter referred to as the "Mortgagor") and **HOME DEPOT U.S.A., INC.**, a Delaware corporation, whose address is 2455 Paces Ferry Road N.W., Building C, 20th Floor, Atlanta, Georgia 30339 (hereinafter referred to as the "Mortgagee"), to secure the payment and performance obligations under a Development Agreement and under an Easement Agreement, both of even date by and between Mortgagor and Mortgagee (collectively, such payment and performance is referred to as the "Indebtedness"), agreed by Mortgagor and Mortgagee to be the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00) as of the date hereof. This Mortgage does secure future advances, and such future advances are part of the Indebtedness.

NOW, THEREFORE, in consideration of the premises, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate situated in Shelby County, Alabama (the "Property"), to-wit:

See Attached Exhibit "A" (the "Property").

TO HAVE AND TO HOLD FOREVER, unto the said Mortgagee, Mortgagee's successors and assigns.

This Mortgage shall constitute a first priority lien against the Property and the Property is warranted free from all encumbrances and against adverse claims, except as set forth in Title Commitment #131718, issued by First American Title Insurance Company.

For the purpose of further securing the payment and performance of the Indebtedness, the Mortgagor agrees to pay all taxes or assessments when imposed legally upon the Property, and should default be made in the payment of same, the Mortgagee may at Mortgagee's option pay off the same; and to further secure the Indebtedness, Mortgagor agrees to keep the improvements on the Property insured against loss or damage by fire, lightning and tornado for the fair and reasonable insurable value thereof, in companies satisfactory to the Mortgagee, with loss, if any, payable to Mortgagee as Mortgagee's interest may appear, and to maintain comprehensive general liability insurance in the same amounts and type required to be carried by the Contractor under the Development Agreement, naming Mortgagee as an additional insured, and to promptly deliver said policies, or any renewal of said policies to Mortgagee; and if the undersigned fails to keep the Property insured as above specified, or fails to deliver said insurance policies to Mortgagee, then Mortgagee, or Mortgagee's assigns, may at Mortgagee's option insure the Property for said sum, for Mortgagee's own benefit, the policy if collected to be credited on the Indebtedness, less cost of collecting same. All amounts so expended by Mortgagee for taxes, assessments or insurance, shall become a debt to Mortgagee or Mortgagee's assigns, additional to the debt hereby specially secured, and shall be covered by this Mortgage, and bear interest at the same interest rate as the Indebtedness secured hereby from date of payment by Mortgagee or Mortgagee's assigns and be at once due and payable.

UPON CONDITION, HOWEVER, that if the Mortgagor pays and fully performs the Indebtedness, and reimburses Mortgagee or Mortgagee's assigns for any amounts Mortgagee may have expended, then this conveyance shall be null and void; but should default be made in the payment of any sum expended by the Mortgagee or Mortgagee's assigns, or should the Indebtedness hereby secured, or any part thereof, or the interest thereon remain unpaid or unperformed at maturity, or should the interest of Mortgagee or Mortgagee's assigns in the Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, then in any one of said events, the whole of the Indebtedness hereby secured, at the option of Mortgagee or Mortgagee's assigns, shall at once become due and payable, and this Mortgage shall be subject to foreclosure as now

provided by law in the case of past due mortgages, and the Mortgagee, Mortgagee's agents or assigns shall be authorized to take possession of the Property hereby conveyed, and with or without first taking possession, after giving notice of the time, place and terms of sale, by publication once a week for three consecutive weeks, in some newspaper published in the county and state where the real estate is located, sell the same in lots or parcels or en masse as Mortgagee, Mortgagee's agents or assigns deem best, in front of the courthouse door of the county (or the division thereof), where the real estate is located, at public outcry, to the highest bidder for cash, and apply the proceeds of sale: First, to the expense of advertising, selling and conveying, including such attorney's fees as are allowed by law; Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes, or the other encumbrances, with interest thereon; Third, to the payment of the indebtedness secured by any superior mortgages in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; Fourth to the payment and performance of the Indebtedness secured hereby in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and Fifth, the balance, if any, to be turned over to the Mortgagor. Mortgagor further agrees that Mortgagee, Mortgagee's agents or assigns may bid at said sale and purchase the Property, if the highest bidder therefor. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

IN WITNESS WHEREOF, the undersigned Mortgagor has executed this Mortgage on the day and year first above written.

MORTGAGOR:

SOUTHMARK PROPERTIES, L.L.C.,
an Alabama limited liability company

By:


James A. Bruno, Manager

INTERSTATE RESTAURANT INVESTORS,
L.L.P., an Alabama limited liability partnership

By:

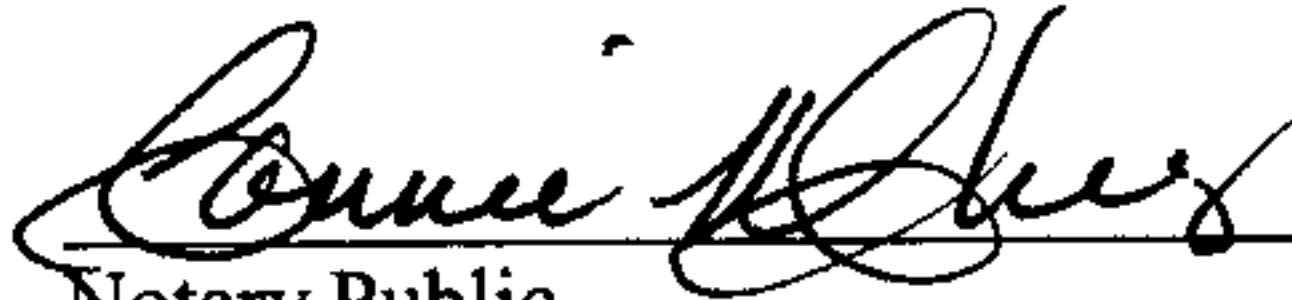

John McGeever, Partner

STATE OF ALABAMA}

JEFFERSON COUNTY}

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that James A. Bruno whose name as Manager of Southmark Properties, L.L.C., an Alabama limited liability company, is signed to the foregoing Mortgage, and who is known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

GIVEN under my hand and official seal this the 20th day of March, 2002.



Notary Public
My Commission Expires: 10-27-2003

STATE OF ALABAMA}

JEFFERSON COUNTY}

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John McGeever, whose name as Partner of Interstate Restaurant Investors, L.L.P., an Alabama limited liability partnership, is signed to the foregoing Mortgage and who are known to me, acknowledged before me on this day that, being informed of the contents of said Mortgage, he, as such Partner and with full authority, executed the same voluntarily for and as the act of said limited liability partnership on the day the same bears date.

GIVEN under my hand and official seal this the 20th day March, 2002.



Notary Public
My Commission Expires: 10-27-2003

THIS INSTRUMENT PREPARED BY:

Steven A. Brickman, Esq.
SIROTE & PERMUTT, P.C.
2311 Highland Avenue South
Birmingham, AL 35205

EXHIBIT "A"

CONNECTOR ROAD:

Commence at the NW corner of Section 24, Township 20 South Range 3 West, Shelby County, Alabama; thence S 87 deg-46'-00" E, a distance of 1669.02'; thence S 18 deg-40'-00" W, a distance of 190.46'; thence S 11 deg-40'-00" W, a distance of 369.40'; thence N 81 deg-15'-00" E, a distance of 37.50'; thence S 14 deg-37'-00" W, a distance of 75.00'; thence S 81 deg-15'-00" W, a distance of 350.40'; thence continue along the last described course, a distance of 137.04' to the point of intersection of the easterly proposed and the easterly existing rights-of-way of U. S. Hwy. 31 and the POINT OF BEGINNING; thence continue along the last described course and leaving said proposed R.O.W. Line along said existing R.O.W. Line a distance of 25.06' to the beginning of a curve to the right having a central angle of 3°22'04", a radius of 1,650.00' and subtended by a chord which bears S 2°27'00" E a chord distance of 96.97'; thence along said curve and continuing along said R.O.W. Line a distance of 96.99' to the point of beginning of a curve to the right having a central angle of 42°12'12", a radius of 40.00' and subtended by a chord which bears N 20°20'08" E a chord distance of 28.80'; thence along said curve and leaving said R.O.W. Line a distance of 29.46' to a point lying on the proposed Easterly R.O.W. Line of U.S. Hwy. 31, said point also being a point of compound curve to the right having a central angle of 54°01'17", a radius of 40.00' and subtended by a chord which bears N 68°26'12" E a chord distance of 36.31'; thence along said curve a distance of 37.71' to the point of beginning of a curve to the right having a central angle of 2°30'53", a radius of 250.00' and subtended by a chord which bears S 83°17'42" E a chord distance of 10.97'; thence along said curve a distance of 10.97' to a point of compound curve to the right having a radius of 250.00' and a central angle of 03 deg-00'-29", said curve subtended by a chord bearing S 80 deg-31'-59" E and a chord distance of 13.12'; thence easterly along the arc, a distance of 13.13'; thence S 79 deg-01'-44" E a distance of 510.56' to a point of a curve to the right having a radius of 450.00' and a central angle of 05 deg-45'-09", said curve subtended by a chord bearing S 76 deg-09'-10" E and a chord distance of 45.16'; thence easterly along the arc a distance of 45.18'; thence S 73 deg-16'-36" E, a distance of 86.39' to a point of a curve to the right having a radius of 45.00' and a central angle of 90 deg-00'-00", said curve subtended by a chord bearing S 28 deg-16'-36" E and a chord distance of 63.64'; thence southeasterly along the arc a distance of 70.69' to the westerly right-of-way of Shelby County Hwy 33; thence N 16-deg-44'-55" E along said right-of-way, a distance of 77.60'; thence N 14 deg-26'-26" E along said right-of-way a distance of 115.13' to a point of a curve to the right having a central angle of 92 deg-16'-58" and a radius of 45.00', said curve subtended by a chord bearing S 60 deg-33'-03" W and a chord distance of 64.89'; thence southwesterly along the arc and leaving said right-of-way, a distance of 72.48'; thence N 73 deg-16'-36" W, a distance of 81.87' to a point of a curve to the left having a radius of 550.00' and a central angle of 05 deg-45'-09" said curve subtended by a chord bearing N 76 deg-09'-10" W and a chord distance of 55.20'; thence westerly along the arc a distance of 55.22'; thence N 79 deg-01'-44" W, a distance 510.55' to a point of a curve to the left having a central angle of 06 deg-05'-47" and radius of 350.00', said curve subtended by a chord bearing N 82 deg-04'-38" W and a chord distance of 37.22'; thence northwesterly along the arc, a distance of 37.24' to a point of reverse curve having a central angle of 78 deg- 50'-28" and a radius of 40.00', said curve subtended by a chord bearing N 45 deg-42'-17" W and a chord distance of 50.80'; thence along the arc, a distance of 55.04' to the existing easterly right-of-way of U. S. Highway 31 and also a point of curve to the right having a central angle of 01 deg-42'-17" and a radius of 2528.74', said curve subtended by a chord bearing S 05 deg-25'-55" E and a chord distance of 75.24'; thence along the arc and along said existing right-of-way a distance of 75.24' to the POINT OF BEGINNING.

Containing 1.78 acres, more or less.

WATER TANK PARCELS:

From the NW corner of the NE ¼ of the NW ¼ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, thence run Easterly along the North boundary line of said 1/4 - 1/4 for 355.15 feet; thence turn an angle of 102 deg. 23 min. to the right and run Southwesterly

559.2 feet to the point of beginning of the land herein described and conveyed; thence continue Southwesterly along the last said course for 75.00 feet; thence turn an angle of 113 deg. 22 min. to the left and run Northeasterly for 37.5 feet; thence turn an angle of 86 deg. 38 min. to the left and run Northeasterly for 75.0 feet; thence turn an angle of 113 deg. 22 min. to the left and run Southwesterly 37.5 feet to the point of beginning.

AND:

From the NW corner of the NE $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, thence run Easterly along the North boundary line of said $\frac{1}{4}$ - $\frac{1}{4}$ for 355.15 feet; thence turn an angle of 102 deg. 23 min. to the right and run Southwesterly 559.2 feet to the point of beginning of the land herein described and conveyed; thence continue Southwesterly along the last said course 75.0 feet; thence turn an angle of 66 deg. 38 min. to the right and run Southwesterly 37.5 feet; thence turn an angle of 113 deg. 22 min. to the right and run Northeasterly 75.00 feet; thence turn an angle of 66 deg. 38 min. to the right and run Northeasterly 37.5 feet to the point of beginning.

SCHEIN SLOPE EASEMENT:

Commence at the Northwest corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence South 87 deg. 46 min. 00 sec. East a distance of 1,669.02 feet; thence South 18 deg. 40 min. 00 sec. West a distance of 190.46 feet; thence South 11 deg. 40 min. 00 sec. West a distance of 85.02 feet to the point of beginning; thence continuing along the last described course a distance of 284.38 feet; thence South 81 deg. 15 min. 00 sec. West a distance of 37.50 feet; thence South 14 deg. 37 min. 00 sec. West a distance of 75.00 feet; thence South 81 deg. 15 min. 00 sec. West a distance of 275.94 feet to a point lying on the Northerly right of way line of a City of Pelham street; thence North 79 deg. 01 min. 45 sec. West along said ROW line a distance of 55.64 feet; thence North 73 deg. 09 min. 09 sec. East and leaving said ROW line a distance of 208.52 feet; thence North 60 deg. 57 min. 13 sec. East a distance of 102.92 feet; thence North 38 deg. 41 min. 41 sec. East a distance of 112.45 feet; thence North 23 deg. 05 min. 23 sec. East a distance of 206.55 feet to the point of beginning; being situated in Shelby County, Alabama.

Inst # 2002-13468

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03/21/2002-13468
04:02 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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