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Washington Mutual Bank FA  
c/o ACS Image Solutions, 1337 Basswood  
Rd MS908DPIL  
Schaumburg, IL 60173

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# MORTGAGE

Loan #: 0046793253

THIS MORTGAGE (the "Security Instrument") is made this 16th day of August, 2002, among the Mortgagor(s), Deborah C Givens and Ralph E Givens, Husband and Wife.

(marital status) (collectively, the "Borrower"), whose address is 1192 West Dominion Dr, Mobile, AL 36695 and the Mortgagee,

Washington Mutual Bank, FA, organized and existing under the laws of United States of America, its successors and assigns, and whose address is 9451 Corbin Ave., Northridge, CA 91324 ("Lender").

Borrower owes Lender the principal sum of Twenty Six Thousand Nine Hundred and 00/100-----

----- Dollars (U.S. \$ 26,900.00-----). This debt ("Loan") is evidenced by Borrower's note dated the same date as this Security Instrument, and all renewals, extensions, modifications, replacements and substitutions of such note (collectively, "Note"), with the full debt, if not paid earlier, due and payable on September 1, 2017 or on such later date as may be permitted by Lender in writing, or at such earlier date in the event such indebtedness is accelerated in accordance with the terms of the Note and/or this Security Instrument. This Security Instrument secures to Lender: (a) the prompt repayment of the Loan evidenced by the Note, with interest thereon at the rate provided in the Note; (b) the payment of all other sums with interest thereon at the rate provided in the Note, (i) advanced to protect the security of this Security Instrument, (ii) incurred by Lender in connection with the enforcement of its rights under this Security Instrument and/or the Note, and/or (iii) required to be paid as set forth herein or in the Note; and (c) the performance of Borrower's covenants and agreements under this Security Instrument, the Note and any prior mortgage or deed of trust. For this purpose, Borrower irrevocably mortgages, warrants, grants and conveys to Lender and Lender's successors and assigns, with power of sale, the property located in the Town/City of Birmingham, County of Shelby, State of Alabama, and more particularly described as follows:

See legal description attached hereto and made a part hereof.

which has the street address of 4370 Milner Road West, Birmingham, AL 35242 (the "Property Address").

CLAYTON T. SWEENEY, ATTORNEY AT LAW

TOGETHER WITH all the improvements now or hereafter erected on the above-described property, and all existing and hereinafter acquired easements, rights, appurtenances, leases, rents (subject, however, to the rights and authority given herein to Lender to collect and apply such rents), profits, water, water rights, and water stock, and contract rights, pertaining to, arising from or situated at, upon or under the land located generally at the Property Address, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be, and shall remain a part of the property covered by this Security Instrument. All of the foregoing, together with said property (or the leasehold estate if this Security Instrument is on a leasehold), are collectively referred to as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property; that the Property is unencumbered, except for any prior mortgage or deed of trust ("Prior Mortgage") and declarations, easements or restrictions of record listed in a schedule of exceptions to coverage in the title insurance policy insuring Lender's interest in the Property or as otherwise approved by Lender; and that Borrower shall warrant and defend generally the title to the Property against all claims and demands.

Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest, Late Charges and Other Charges.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and all late charges and other charges provided herein or authorized by the Note. Payments due under the Note and this Security Instrument shall be made by cash, if permitted by Lender, check or money order in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may, at its option, require that all subsequent payments due under the Note and this Security Instrument be made by cash or by certified, bank treasurer's or cashier's check drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity. Payments are deemed made when received by Lender at the location designated in the Note or as otherwise designated by Lender. Lender may return any partial payment or payments, at its option, if the payment or payments are insufficient to bring the Loan current. Lender may, at its option, accept and apply any partial payment or payments insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights upon default. No offset or claim which the Borrower may have now or in the future against Lender shall relieve the Borrower from making payments or performing the obligations secured by this Security Instrument.

2. **Funds for Taxes, Insurance and Other Items.** If required by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sufficient sum ("Funds") to pay amounts due prior to delinquency for the following items, and for such other purposes and items as Lender may reasonably designate: (a) taxes and assessments and other items which may attain priority over this Security Instrument as a lien on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) hazard or property insurance premiums; (d) flood insurance premiums, if any; (e) earthquake insurance premiums, if any; and (f) mortgage insurance premiums, if any. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds, including reserves in excess of the amounts actually needed, using such methods of calculation as may be authorized or not prohibited, and in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974, as amended from time to time, 12 U.S.C. § 2601 *et seq.* ("RESPA"), unless another law that applies to the Funds requires a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items. Borrower shall not be obligated to make such payments of funds to Lender to the extent that Borrower makes such payments to the holder of the Prior Mortgage if such holder is an institutional lender.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender may require Borrower to pay a charge for a real estate tax verification and/or reporting service and a charge for a flood zone verification, certification and/or tracking services used by Lender in connection with this Security Instrument. Lender shall not be required to pay Borrower any interest or earnings on the Funds, unless expressly required by law to do so. Lender shall give to Borrower, without charge, an annual accounting of the Funds, showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for all sums secured by this Security Instrument.

If an accounting reflects a "Surplus" of Funds as defined by RESPA, Lender shall account to Borrower for the Surplus in accordance with the requirements of RESPA. Late charges due under the Note or fees and charges due under this Security Instrument may be paid by Lender from the Surplus. In accordance with RESPA, Lender shall account to Borrower for a Shortage or Deficiency and Lender may either collect the amount of Shortage or Deficiency or adjust the amount of Funds that Borrower shall pay Lender to eliminate such Shortage or Deficiency.

Lender may at its sole discretion waive Borrower's obligation to pay to Lender Funds as provided in the first paragraph of this Paragraph 2, in exchange for Borrower's promise to pay directly, when and where payable, the amounts due for each of the specified items. In the event that Borrower fails to pay such amounts when due, such event shall constitute a default under this Security Instrument and Lender may at its sole discretion require Borrower to establish the payment to Lender of Funds to pay amounts due prior to delinquency for such items. In addition, Lender may require Borrower to pay to Lender any delinquent amounts due which have been paid by Lender.

Upon payment in full of all sums secured by this Security Instrument, Lender shall refund to Borrower within 45 days any Funds held by Lender. If, under Paragraph 16, Lender shall acquire or sell the Property, Lender, prior to the acquisition or sale of the Property, shall apply any Funds held by Lender at the time of acquisition or sale as a credit against the sums due under the Note or this Security Instrument.

**3. Application of Payments.** All payments received by Lender under the Note and this Security Instrument shall be applied: first, to any prepayment charges due under the Note and/or this Security Instrument; second, to disbursements or advances made by Lender hereunder; third, to interest due; fourth, to principal due; fifth, to any Escrow Items payable under Paragraph 2 hereof; sixth, to other fees, charges and amounts due under the Note and/or this Security Instrument; and last, to any late charges due under the Note.

**4. Prior Mortgages and Deeds of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under the Prior Mortgage, including, but not limited to, Borrower's covenant to make payments when due.

If Borrower fails to make any payment when so due under such loan, or otherwise defaults thereunder, Lender shall have the right, but not the obligation, to make such payment directly to the holder of the loan secured by the Prior Mortgage, to cure such default or to pay in full, the entire indebtedness secured by the Prior Mortgage. All costs and expenses incurred by Lender to cure such default or to pay the entire indebtedness secured by the Prior Mortgage: (a) shall bear interest from the date advanced until paid at the interest rate in effect under the Note from time to time; (b) shall be immediately due and payable by Borrower to Lender without notice or demand for payment; and (c) shall be and become a part of the indebtedness secured by this Security Instrument.

The curing by Lender of any default under the Prior Mortgage, or the payment by Lender of the entire indebtedness secured thereby, shall not constitute a curing or waiver of the default under this Security Instrument caused by Borrower's default under the Prior Mortgage, and Lender shall remain entitled to exercise all of the rights and remedies available to it by virtue of such default.

Any act or omission by Borrower which would constitute a default or an event of default under the Prior Mortgage shall constitute a default hereunder, without the necessity of giving any notice to Borrower or affording Borrower any time in which to cure such act or omission. Borrower shall notify Lender within five (5) days after receipt by Borrower of any notice from the holder of, or trustee named in the Prior Mortgage, noting or claiming the occurrence of any default, non-payment or non-performance by Borrower or notice of acceleration under the Prior Mortgage. Borrower warrants and represents that the granting of this Security Instrument is not a default or an event of default under the Prior Mortgage and that any required consents thereunder have been obtained and delivered to Lender.

Borrower shall pay or cause to be paid, prior to the date on which they become delinquent, all taxes, assessments and other charges, fines, association fees, impositions and other items attributable to the Property which may attain a priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the manner provided in Paragraph 2, or if not required to be paid in that manner, Borrower shall pay or cause to be paid such obligations on time directly to the person or governmental authority owed such payment or payments. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph if such amounts are to be paid as provided for in Paragraph 2. If Borrower makes these payments directly, Borrower shall promptly deliver to Lender receipts evidencing all such payments.

Borrower shall promptly discharge any lien, other than the Prior Mortgage, unless Borrower: (i) expressly agrees in writing to the payment of the obligation secured by the lien in a manner deemed acceptable to Lender; (ii) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which, in Lender's opinion, operate to prevent the enforcement of the lien or forfeiture of any part of the Property; or (iii) obtains from the holder of such lien an agreement satisfactory to Lender subordinating that lien to this Security Instrument. If Borrower contests or defends against the lien in accordance with (ii) above, and the contest or defense fails, Borrower shall promptly discharge the lien or take one of the actions described in (i) and (iii) above. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument (other than the Prior Mortgage), Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within ten (10) days after the giving of notice.

**5. Preservation and Maintenance of Property; Condominiums; Planned Unit Developments; Leaseholds; Use and Occupancy.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property, reasonable wear and tear excepted, or use the Property for purposes other than residential use. Borrower shall take steps promptly to repair the Property if damaged.

If this Security Instrument is on a unit in a condominium or a planned unit development, Borrower shall perform all of the Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development and constituent documents.

Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's sole discretion could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in Paragraph 16, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest. Borrower shall also be in default if Borrower, or other third persons or entities, acting on behalf or at the request or with the knowledge of the Borrower, during the loan application process, gave materially false or inaccurate information or statements to Lender (or failed to provide Lender with any material information) in connection with the Loan evidenced by the Note, including, but not limited to, representations concerning Borrower's occupancy of the Property as a principal residence.

If this Security Instrument is on a leasehold, Borrower shall comply with the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and fee shall not merge unless Lender agrees in writing to the merger. In no event shall any such merger extinguish the lien of this Security Instrument.

Borrower shall occupy, establish, and use the Property as Borrower's principal residence, unless Lender otherwise agrees in writing. Borrower shall not abandon the Property or allow it to become vacant. Borrower shall comply with all laws, rules, orders, ordinances and regulations affecting the Property. Borrower shall notify Lender promptly upon the occurrence of a notice of violation of any laws applicable to the Property.

**6. Hazard or Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards, including flood or flooding, earthquakes or hurricanes, Lender may require, from time to time, and in such amounts and for such periods of time that Lender may require (whether or not such hazards are required to be insured against at the time the Loan is made). The insurance carrier providing the insurance shall be chosen by Borrower, subject to the approval of Lender, which shall not be unreasonably withheld. In the event the Property is now, or at any time during the term of this Security Instrument, determined to be in a Special Flood Hazard Area, Borrower must obtain and maintain flood insurance.

All insurance policies and renewals shall be in a form acceptable to Lender and shall include a standard mortgagee clause naming Lender as an insured and providing for at least fifteen (15) days' written notice to Lender prior to the termination, cancellation, amendment to, or reduction in the amount of such policy or policies. Subject to the rights of the holder of the Prior Mortgage, Lender shall have the right to hold the policies and renewals. If Lender requires, Borrower shall promptly give to Lender copies of all receipts of paid premiums and renewal notices. In the event of loss or damage to the Property or any part thereof, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower, and may compromise any claim, appear in any action and collect any insurance proceeds. In the event that Lender acquires the Property through foreclosure or otherwise, Borrower assigns to Lender its rights to any refund of unearned premiums and any other rights of the Borrower under the insurance policy.

To the extent that Borrower obtains any form of insurance coverage for the Property without being directed to do so by Lender, such as additional hazard, flood, earthquake or hurricane coverage, such policy shall include a standard mortgagee clause and shall name Lender as mortgagee. Any insurance proceeds from such policy shall be additional security for the Note and Lender shall have the same rights to such policy and proceeds as it has with regard to Lender required insurance policies discussed in this Paragraph 6.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened as determined by Lender in its sole determination. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds as Lender may deem appropriate until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction. Lender shall have the right to deduct fees for such inspections from the insurance proceeds. Fees for public adjusters or other third parties retained by Borrower shall not be deducted from the proceeds and shall be the sole and separate obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened as determined by Lender in its sole determination, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. Borrower shall remain responsible for any sums remaining due and payable under the Note and this Security Instrument. If Borrower abandons the Property, or does not answer within thirty (30) days after the mailing of a notice from Lender that the insurance carrier has offered to settle a claim, then

Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by the Security Instrument, whether or not then due. If Borrower directly receives any insurance proceeds under the policy or policies that are made payable to Borrower, Borrower shall promptly pay such amounts to Lender by endorsing to Lender any payment check or draft from the insurance carrier. Borrower hereby appoints Lender as its attorney-in-fact to endorse any checks or other payment instruments for insurance proceeds that Lender receives under any policy(ies) of insurance required hereunder, which are made payable to Borrower and delivered to Lender. The foregoing appointment of Lender as attorney-in-fact for Borrower is coupled with an interest and irrevocable. The rights conferred on Lender under this paragraph of Paragraph 6 relative to the insurance coverage required hereunder and the application of any insurance proceeds, shall be subject to the rights of the holder of the Prior Mortgage.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 of this Security Instrument, or change the amount of the payments of principal and interest due under the Note. If, pursuant to Paragraph 16 hereof, the Property is acquired by Lender, Borrower's right to any insurance proceeds resulting from loss of, or damage to, the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

The Borrower stipulates and acknowledges that failure to insure the Property according to the terms and conditions of this Paragraph 6 is an event of default subject to the remedies available to the Lender under this Security Instrument. If Borrower fails to maintain the insurance coverage required under this Paragraph 6, Lender may, but is not obligated, to obtain such coverage at Borrower's expense to protect its rights in the Property in accordance with Paragraph 7. Lender shall have no duty to obtain any insurance protecting Borrower's interest in the Property, or covering risks for which Lender has not required insurance, as described in the first paragraph of this Paragraph 6, even if Borrower has previously obtained or maintained such insurance coverage. Lender may, in its sole discretion, obtain insurance in whatever amounts and types and from whatever insurance provider Lender deems adequate, to protect Lender's interest in the Property, regardless of the unpaid balance remaining under the Note or the amounts remaining due under this Security Instrument and, further, such insurance may provide Borrower with less or no insurance coverage protecting Borrower's interest in the Property and may cost Borrower more than if Borrower were to obtain such coverage. The cost to purchase such coverage, including the amount of any fee, charge or commission paid to Lender by the insurer, shall be added to the amount of the indebtedness secured by this Security Instrument and may significantly exceed the costs the Borrower would have incurred to obtain coverage.

Borrower shall notify Lender promptly upon the occurrence of a fire or other casualty causing damage to the Property.

**7. Protection of Lender's Security Interest in the Property.** Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights under this Security Instrument. Lender's actions may include, but are not limited to, paying any sums secured by a lien which has priority over this Security Instrument, including the sums secured by the Prior Mortgage; procuring insurance; appearing in court; paying reasonable attorneys' fees; paying fees for periodic inspections; and entering on the Property to make repairs or abate nuisances. In addition to these actions, if the Property is abandoned or vacant, Lender may, in its sole discretion, enter on the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, have utilities turned on or off, undertake further inspections until the Property is reoccupied by Borrower, or undertake whatever else is necessary or appropriate to protect the value of the Property and Lender's rights under this Security Instrument. Although Lender may take action under this Paragraph 7, Lender does not have to do so, it is not under any duty or obligation to the Borrower or any other party to do so, and it is agreed that Lender incurs no liability for not taking any action under this paragraph. Lender has the right to determine if the Property is vacant, occupied or abandoned in Lender's or Lender's agent's sole and reasonable discretion. Lender may also enforce the remedies provided for in this Security Instrument, and otherwise available to Lender at law or in equity. No such discretionary action taken by Lender shall constitute a curing or waiver of Borrower's failure to perform the covenants and agreements contained in this Security Instrument.

Any costs and expenses incurred by Lender pursuant to this Paragraph 7 or in furtherance of any other of Lender's rights under this Security Instrument or the Note, at Lender's option, may be added to the outstanding principal amount under the Note and such aggregate principal amount shall be secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, such costs and expenses shall bear interest from the date incurred by Lender at the rate stated in the Note, and in effect from time to time, and shall be payable, with interest, immediately following written demand from Lender to Borrower requesting payment thereof.

**8. Inspection.** Lender or its agent may enter upon and inspect the Property at reasonable times, provided that, if reasonable under the circumstances, Lender shall seek to notify Borrower prior to such inspections, specifying reasonable cause for the inspection as determined by Lender.

9. **Assignment of Settlement, Proceeds, Awards and Causes of Action.** Any compensation, settlement, award of damages, proceeds paid by any third party or right of action for (i) damage to said Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of the value of the Property secured hereby, are hereby assigned to and shall be paid to Lender who may apply and release such money received by it in such manner and with the same effect as provided for the disposition of proceeds of hazard or other insurance.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of all sums secured by this Security Instrument immediately before the taking, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by, (b) the fair market value of the Property immediately before the taking. Any proceeds remaining shall be paid to Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless Borrower and Lender otherwise agree in writing, the proceeds shall be applied to the sums hereby secured, whether or not the sums are then due. The rights conferred on Lender hereunder and the application of the proceeds shall be subject to the rights of the holder of the Prior Mortgage.

If the Property is vacated or abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within thirty (30) days after the mailing of notice by Lender to Borrower of such offer, Lender shall be authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due.

Lender is irrevocably authorized by Borrower to file and prosecute or settle Borrower's claim or claims for any such award or claim for damages, and to collect any such award or payment. Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in Paragraphs 1 and 2 or change the amount of payments of principal and interest under the Note.

Borrower shall notify Lender promptly upon the occurrence of a pending or threatened condemnation of the Property.

10. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Any extension of the time for payment, or any modification of the terms of payment of the sums secured by this Security Instrument granted by Lender to Borrower or to any successor in interest of Borrower, shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or may refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower and Borrower's successors in interest. Any delay or other forbearance by Lender, including, without limitation, Lender's acquiescence in acceptance of payments from third persons, entities, or successors in interest or in amounts less than the amount then due, in exercising any right or remedy under this Security Instrument or the Note, or otherwise granted to Lender by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy of Lender. Such delay or other forbearance by Lender shall not release, waive or diminish Borrower's obligations or liabilities hereunder.

Modifications of any of Borrower's or Lender's covenants or agreements under the Security Instrument or the Note shall not: (i) act as a satisfaction, release or novation; (ii) change or impair Lender's security interest or lien priority in the Property; (iii) affect Lender's rights to prohibit or restrict future modifications requested by Borrower; or (iv) affect Lender's rights or remedies under this Security Instrument or the Note, unless the modification specifically provides for such a change.

11. **Remedies Cumulative.** All remedies provided in this Security Instrument and the Note or granted to Lender at law or in equity, may be exercised concurrently, independently or successively.

12. **Successors and Assigns Bound; Joint and Several Liability; Co-Signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. The preceding sentence shall not be construed as Lender's approval to sell or transfer the Property, it being understood that upon the sale or transfer of the Property, Lender may require the full and immediate repayment of the indebtedness and all other sums secured by this Security Instrument. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (i) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (ii) is not personally obligated to pay the sums secured by this Security Instrument; and (iii) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent and without releasing that Borrower or modifying this Security Instrument as to that Borrower's interest in the Property.

13. **Notices.** Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class or certified mail or by prepaid overnight delivery service. The notice shall be directed to Borrower at the Property Address or at any other single address Borrower designates by written notice to Lender provided that Lender shall not be required to deliver notice to more than one address. If Lender specifies a procedure for reporting Borrower change of address, then Borrower may report a change of address only through that specified procedure. Any notice to Lender shall be given by first class or certified mail directed to Lender at the address set forth above or to any other address that Lender designates by written notice Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this Paragraph.

14. **Transfer or Encumbrance of the Property or a Beneficial Interest in Borrower.** If all or any part of the Property or any interest in it is sold, conveyed, leased, encumbered, or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, and with notice to Borrower, require immediate payment in full of all sums secured by this Security Instrument. Without Lender's prior written consent, Lender shall have no obligation to provide any benefits under this Security Instrument, including but not limited to the insurance coverage referred to in Paragraph 6 above, to any transferee of the Property or beneficial interest in Borrower. If Lender consents to such transfer, Lender may charge Borrower and Borrower shall pay Lender a reasonable fee for the administration of such transfer as a condition of such consent.

If Lender exercises the acceleration option, Lender shall give Borrower written notice of acceleration. The notice shall provide a period of not less than fifteen (15) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay the required sums prior to the expiration of such period, then Lender may invoke any remedies permitted by this Security Instrument without further notice to, or demand on, Borrower. If Lender takes this action it is deemed that acceleration occurred.

15. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security under this Security Instrument, Borrower hereby assigns to Lender the rents of the Property, provided that, prior to acceleration pursuant to Paragraph 16 hereof or abandonment of the Property, Borrower shall have the right to collect and retain such rents as they become due and payable. Upon acceleration under Paragraph 16 or abandonment of the Property, Lender, in person, by agent or by a judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property, and to collect the rents of the Property including those past due. Any rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Instrument. Lender and the receiver shall be liable to account only for those rents actually received.

16. **Events of Default; Acceleration; Remedies.** The occurrence of any one or more of the following events shall, at the election of Lender, constitute an "Event of Default," and shall entitle Lender to accelerate the indebtedness secured hereby: (a) any Borrower commits fraud or makes a material misrepresentation, whether by action or omission, in connection with the Loan evidenced by the Note; (b) any covenant or agreement contained herein is breached; (c) any default occurs under the terms of the Note or any agreement evidencing, securing, or otherwise executed and delivered by Borrower in connection with the Loan; (d) any default occurs under the terms of any other mortgage or deed of trust or other instrument encumbering the Property and/or the holder of any such lien (whether such lien, mortgage, or deed of trust is junior or prior to the lien of this Security Instrument) commences a foreclosure or any other proceeding to execute on such lien or foreclose such mortgage or deed of trust or exercise a power of sale for such deed of trust; or (e) any Borrower dies, becomes insolvent, makes an assignment for the benefit of creditors, or any proceeding is filed or commenced under any state or federal bankruptcy or insolvency law, by Borrower or anyone else, regarding Borrower.

Lender shall give notice to Borrower prior to acceleration arising from an Event of Default (but not prior to acceleration under Paragraph 14 hereof) specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than ten (10) days, or such other shorter period of time as may be necessary to protect Lender from an adverse and material impairment of its security interest, from the date the notice is mailed to Borrower, by which the default must be cured; and (d) that Borrower's failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by power of sale, judicial proceeding, or by any other proceeding permitted by applicable law, and sale of the Property. If the default is not cured on or before the date specified in the notice, Lender, at its option, may require immediate payment in full of all sums secured by this Security Instrument, without further demand, and may foreclose this Security Instrument by judicial proceeding or as otherwise permitted or required and invoke any other remedies permitted by applicable law. At any such foreclosure sale, Lender or Lender's designee may bid and become purchaser of the Property. Lender

shall be entitled to collect all costs and expenses incurred and assess fees and charges in enforcing the terms of the Note and this Security Instrument and pursuing the remedies provided in this Paragraph 16, including, but not limited to, reasonable attorneys' fees, title evidence, and returned check and insufficient funds fees, without regard to whether the Loan is accelerated.

If Lender invokes the power of sale, Lender shall mail a copy of a notice of sale to Borrower in the manner provided in paragraph 13 hereof. Lender shall publish the notice of sale providing the time, place, and terms of sale, together with a description of the property, once a week for three consecutive weeks in a newspaper published in the county where the Property is located, and thereupon shall sell the Property to the highest bidder at public auction at the front door of the County Courthouse of said county. Borrower covenants and agrees that the proceeds of the sale shall be applied in the following order: (i) to all expenses of the sale, including, but not limited to, the balance of all prior liens as of the date of the sale, and reasonable attorneys' fees and costs of title evidence; (ii) to all sums secured by this Security Instrument; and (iii) any excess to the person or persons legally entitled to it.

**17. Governing Law; Severability.** This Security Instrument shall be governed by the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Security Instrument. In the event that any provision of this Security Instrument or the Note is limited, restricted, prohibited or unenforceable under applicable law, such provision shall be construed and enforced as if it had been more narrowly drawn so as not to be in conflict with applicable law. The validity, legality and enforceability of the remaining provisions of the Note and this Security Instrument shall not in any way be affected or impaired thereby. To that end, the provisions of this Security Instrument and the Note are declared to be severable. Lender shall be afforded the full benefit of all of Borrower's waivers and contractual agreements made in connection with the Loan which are permitted to be given under applicable law.

**18. Loan Charges and Fees.** If the Note secured by this Security Instrument is subject to a law which sets maximum loan charges and fees to be paid by the Borrower, and that law is finally interpreted so that the interest or other charges or fees collected, or to be collected, in connection with the Note exceeds the permitted limits, then: (i) any such charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from Borrower which exceeded permitted limits at the time they were paid shall be refunded to Borrower. Lender shall refund such excess either by reducing the principal balance owed under the Note or by making a direct payment to the Borrower. If Lender applies the excess toward reducing the principal balance, such reduction shall be treated as a partial prepayment under the Note without any prepayment charge. All fees and charges paid in connection with the Loan are fully earned when paid and are not subject to refund upon prepayment of the Loan unless otherwise required by applicable law.

Lender shall have the authority to impose additional fees and charges to perform services requested by or on behalf of Borrower, or to otherwise administer and service the Loan. The additional fees and charges may include administrative costs incurred by Lender and/or in reimbursement of payments made by Lender to third parties. Such fees and charges may include, without limitation, any and all costs or fees associated with the origination and/or servicing of such Loan, document copy or preparation fees, transmittal, facsimile or delivery fees, reconveyance and release fees, property inspections and returned check or insufficient funds charges in connection with payments made by or on behalf of Borrower under the Loan and all other such fees for ancillary services performed by Lender for Borrower or at Borrower's request or for services necessitated by or resulting from Borrower's default or malfeasance relating to this Security Instrument or the Note or incurred by Lender or assessed upon Borrower pursuant to the provisions of this Security Instrument or the Note. Such fees and charges shall be secured by this Security Instrument and, unless Borrower and Lender agree to other terms of payment, shall bear interest from the date assessed by Lender at the rate stated in the Note, and in effect from time to time, and shall be payable, with interest, immediately following written demand from Lender to Borrower requesting payment thereof.

**19. Release.** Upon payment of all sums secured by this Security Instrument, Lender shall prepare and file a discharge of this Security Instrument. Borrower shall pay any recordation costs, payments made by Lender to third parties and administrative costs incurred by Lender for the preparation of release documents.

**20. Hazardous Substances.** Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate for normal residential uses and for maintenance of the Property.

Borrower shall promptly give Lender written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge. If Borrower learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Paragraph 20, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Paragraph 20, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

**21. Lender Defined; Sale of Note; Change of Loan Servicing Contractor.** Lender shall include the Lender, its successors and assigns, and its Loan Servicing Contractor. The Note or a partial interest in the Note (together with this Security Instrument) may be sold one or more times without prior notice to Borrower. A sale may result in a change in the entity (known as the "Loan Servicing Contractor") that collects monthly payments and carries out and enforces the terms and obligations under the Note and this Security Instrument as an independent contractor for and on behalf of Lender but does not have a beneficial interest in the Loan. There also may be one or more changes of the Loan Servicing Contractor unrelated to a sale of the Note. If there is a change of the Loan Servicing Contractor, Borrower will be given written notice of the change. Borrower agrees that Lender or Loan Servicing Contractor may retain the services of third parties, acting in the capacity of agent, attorney or independent contractor, to collect monthly payments and/or carry out and enforce the terms and obligations under the Note and this Security Instrument.

**22. Borrower's Waivers.** Borrower waives and releases: (a) unless expressly provided for in the Note or this Security Instrument, all notices of Borrower's default or of Lender's election to exercise, or Lender's actual exercise of any right or remedy under the Note or this Security Instrument; and (b) all benefit that might accrue to Borrower by virtue of any present or future law exempting the Property, or any part of the proceeds arising from any sale thereof, from attachment, levy or sale on execution, or providing for any stay of execution, exemption from civil process or extension of time for payment.

**23. Lender's Rights.** Lender shall be deemed to have the full benefit of all rights, remedies, and actions authorized under current and future federal and state laws which are generally and specifically available to lenders making or collecting loans of money, or offering credit, secured in either event by residential real estate, although such rights and remedies may not be expressly herein stated or conferred on Lender. Nothing herein stated shall be deemed to limit or prevent Lender from asserting such rights, remedies or actions in connection with the enforcement of Borrower's obligations under, or Lender's administration of, the Note and/or this Security Instrument.

**24. Bankruptcy.** In any proceeding in bankruptcy involving Borrower, Lender shall have a secured claim for the amount of Lender's total debt regardless of the current market value of the Property. In addition, Lender shall be entitled to recover interest at the rate specified in the Note on any pre-petition and post-petition arrearages, to be paid through a confirmed bankruptcy plan and to recover any fees and costs, including actual attorneys' fees incurred in the proceeding for protecting Lender's interests under this Security Instrument.

**25. Captions.** Lender has tried to appropriately divide and caption this Security Instrument by its various paragraphs. Captions are a part of this Security Instrument, but obviously cannot and do not completely or adequately explain each paragraph of the entire agreement. Lender recommends that Borrower read with care each and every paragraph of this Security Instrument and not just the captions alone. No court may treat the captions and headings as if they explain what the paragraph means.

**26. Request for Notice of Default and Foreclosure Under Prior Mortgage.** Borrower and Lender hereby request the holder of the Prior Mortgage or of any other mortgage, deed of trust or other encumbrance with a lien which has priority over this Security Instrument, to give notice to Lender, at Lender's address set forth on page one of this Security Instrument, of any default under the Prior Mortgage or any other superior encumbrance and of any sale or other foreclosure action.

**27. Receipt of Copy.** Borrower acknowledges receipt of a copy of the Note and this Security Instrument.

IN WITNESS WHEREOF, Borrower has executed this Security Instrument with Borrower's seal as of the date first above written.

Deborah C Givens (SEAL)  
Deborah C Givens Borrower

Ralph E Givens (SEAL)  
Ralph E Givens Borrower

\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_ (SEAL)  
Borrower

\_\_\_\_ (SEAL)  
Borrower

State of **ALABAMA** ,

County of **JEFFERSON**

I Clayton T. Sweeney , a Notary Public, hereby certify that

**Deborah C. Givens and Ralph E. Givens**

whose name 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/she/they executed the same voluntarily on the day the same bears date. Given under my hand and seal of office this **16th** day of **August, 2002** ,

\_\_\_\_\_  
Notary Public

My Commission Expires: 06/5/03

This instrument was prepared by: **PATRICIA WATTS**

(Name)

**3050 Highland Pkwy**

(Address)

**Downers Grove, IL 60515**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 99, according to the Survey of Final Record Plat of Greystone Farms Milner's Crescent Sector Phase 3, as recorded in Map Book 23, Page 71, in the Probate Office of Shelby County, Alabama.