

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

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20021114000566350 Pg 1/12 2,456.90
Shelby Cnty Judge of Probate, AL
11/14/2002 07:43:00 FILED/CERTIFIED

MORTGAGE

THIS MORTGAGE ("Mortgage") is made and entered into as of the 7th day of November, 2002 by and between SHELBY LAND PARTNERS, LLC, an Alabama limited liability company ("Mortgagor"), in favor of JAMES I. MCCORMICK, JR. ("Mortgagee").

R E C I T A L S:

Mortgagor is justly indebted to Mortgagee in the principal sum of One Million Six Hundred Eight Thousand Five Hundred Eighty Eight and No/100 Dollars (\$1,608,588.00), as evidenced by a Promissory Note of even date herewith (said Note, as the same may hereafter be renewed, extended or modified, is hereinafter referred to as the "Note") in said principal amount executed and delivered contemporaneously herewith by Mortgagor to Mortgagee.

Mortgage

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor and Mortgagee agree as follows:

ARTICLE 1

SECTION 1.1 Rules of Construction. For the purposes of this Mortgage, except as otherwise expressly provided herein to the contrary or unless the context otherwise requires:

- (a) Words of masculine, feminine or neuter gender include the correlative words of other genders. Singular terms include the plural as well as the singular, and vice versa.
- (b) All references herein to designated "Articles," "Sections" and other subdivisions or to lettered Exhibits are to the designated Articles, Sections and subdivisions hereof and the Exhibits annexed hereto unless expressly otherwise designated in context. All Article, Section, other subdivision and Exhibit captions herein are used for convenience of reference only and do not limit or describe the scope or intent of, or in any way affect, this Mortgage.
- (c) The terms "include", "including", and similar terms shall be construed as if followed by the phrase "without being limited to".
- (d) The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Mortgage as a whole and not to any particular Article, Section, or other subdivision or Exhibit.
- (e) All Recitals set forth in, and all Exhibits to, this Mortgage are hereby incorporated in this Mortgage by reference.
- (f) No inference in favor of or against any party shall be drawn from the fact that such party or such party's counsel has drafted any portion hereof.
- (g) All references in this Mortgage to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

SECTION 1.2 Definitions. As used in this Mortgage, capitalized terms that are not otherwise defined herein shall have the following meanings:

- (a) **Business Day** means any day other than a Saturday, a Sunday or a day on which banking institutions are required or authorized to close in Birmingham, Alabama.

(b) **Event of Default** is defined in Section 4.2.

(c) **Impositions** means all taxes, assessments, dues, fines, rents, levies, fees, permits and other governmental and quasi-governmental charges imposed or levied upon the Property (or any part thereof), the operations thereon, the use or occupancy thereof, the liens or other interests created by this Mortgage or the filing or recording of this Mortgage.

(d) **Improvements** is defined in Section 2.1(b).

(e) **Land** is defined in Section 2.1(a).

(f) **Obligations** means (i) the payment of all amounts now or hereafter becoming due under the Note; (ii) the observance and performance by Mortgagor of all of the provisions of this Mortgage; and (iii) the payment of all sums advanced or paid by Mortgagee in exercising any of its rights, powers or remedies under this Mortgage.

(g) **Permitted Encumbrances** means any matters affecting title to the Property, including, without limitation, real estate ad valorem taxes due and payable October 1, 2002 and all subsequent years thereafter and all easements, restrictions, right-of-way, reservations and other matters of record.

(h) **Property** is defined in Section 2.1.

(i) **Real Property** is defined in Section 2.1(b).

ARTICLE 2

Granting Clauses

SECTION 2.1 Granting Clauses. As security for the Obligations, Mortgagor hereby grants, bargains, sells, assigns and conveys unto Mortgagee, and hereby grants to Mortgagee a security interest in, all of Mortgagor's right, title and interest in, to and under the following property and interests in property (collectively, the "Property"):

(a) **Land**. The land located in Shelby County, Alabama which is more particularly described in Exhibit A and all hereditaments, easements, rights-of-way, privileges and appurtenances to said land, now or hereafter belonging or in anywise appertaining thereto (collectively, the "Land").

(b) **Improvements**. All buildings, structures, facilities and other improvements now or hereafter located on the Land and all fixtures used in connection therewith, now owned or hereafter acquired by Mortgagor (collectively, the "Improvements" and, together with the Land, collectively, the "Real Property").

(c) **Insurance Policies**. All policies of hazard insurance now or hereafter in effect that insure the Real Property, together with all right, title and interest of Mortgagor in and to each and every such policy, and all proceeds thereof, including any premiums paid and rights to returned premiums.

(d) **Litigation Awards**. All judgments, damages, settlements, awards, payments and compensation, including all interest thereon, that may be made or due to Mortgagor or any subsequent owner of any of the Real Property as a result of the exercise of the right of eminent domain or condemnation, the alteration of the grade of any street or any other injury to or diminution or decrease in value of the Real Property.

SUBJECT, HOWEVER, to the Permitted Encumbrances.

TO HAVE AND TO HOLD the Property, together with all the rights, privileges and appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, forever.

ARTICLE 3

Representations, Warranties and Covenants of Mortgagor

SECTION 3.1 Valid Title and Debt. Mortgagor represents and warrants to the Mortgagee that (a) subject to the Permitted Encumbrances, Mortgagor is lawfully seized in fee simple of the Real Property and is the lawful owner of, and has good title to, the remainder of the Property, and Mortgagor has good right to mortgage the Real Property as aforesaid; (b) subject to the Permitted Encumbrances, Mortgagor has full power to encumber, assign and convey the Property as provided herein; (c) this Mortgage is and will remain a valid and enforceable first priority mortgage lien on the Real Property, subject only to the Permitted Encumbrances; and (d) Mortgagor shall forever warrant and defend the title to the Property unto Mortgagee against the lawful claims of all persons whomsoever, except those claiming under the Permitted Encumbrances.

SECTION 3.2 Payment and Performance of Obligations and Impositions. Mortgagor covenants and agrees to pay and perform all of the Obligations in a prompt and punctual manner and in accordance with all of the terms, provisions and requirements of this Mortgage. Mortgagor shall pay or cause to be paid all Impositions. Mortgagor may, at Mortgagor's own expense, in good faith contest any such Impositions and, in the event of any such contest, may permit the Impositions so contested to remain unpaid during the period of such contest and any appeal therefrom, provided that during such period enforcement of the contested items shall be effectively stayed.

SECTION 3.3 Condemnation.

(a) **Mortgagor's Responsibilities; Proceedings.** Mortgagor, immediately upon obtaining knowledge thereof, shall notify Mortgagee of any pending or threatened proceedings for the condemnation of any of the Property or of the exercise of any right of eminent domain with respect thereto, or of any other pending or threatened proceedings arising out of injury or damage to any of the Property. Mortgagee may participate in any such proceedings, and Mortgagor from time to time shall execute and deliver to Mortgagee all instruments requested by Mortgagee to permit such participation. Mortgagor shall, at Mortgagor's expense, diligently prosecute any such proceedings, deliver to Mortgagee copies of all papers served in connection therewith and consult and cooperate with Mortgagee, its attorneys and agents, in carrying on and defending any such proceedings. No settlement of any such proceedings shall be made by Mortgagor without Mortgagee's consent, not to be unreasonably withheld.

(b) **Mortgagee's Rights to Proceeds.** All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property shall be paid to Mortgagee and applied by Mortgagee as provided in Section 3.3(c) below. Mortgagor authorizes Mortgagee to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Mortgagee shall not be liable for any failure to collect, or exercise diligence in the collection of, any of the same.

(c) **Application of Proceeds.** Mortgagee shall apply any proceeds, judgments, decrees or awards referred to in Section 3.3(b), first, to reimburse Mortgagee for all reasonable costs and expenses, including attorneys' fees and disbursements, incurred in connection with the proceeding in question or the collection of such amounts, second, to the repayment of all amounts due under the Note and third, the balance, if any, shall be paid to Mortgagor.

ARTICLE 4

Defeasance, Default and Remedies

SECTION 4.1 Defeasance. This Mortgage is made upon the condition that if all of the Obligations are paid in full, then this conveyance shall be null and void. Notwithstanding any provision of this Mortgage to the contrary, Mortgagee shall execute and deliver to Mortgagor a full release of the lien of this Mortgage upon the payment in full of the Obligations.

SECTION 4.2 Events of Default. The occurrence of any of the following events shall constitute an event of default (an "Event of Default") under this Mortgage:

(a) default shall be made in the payment when due of any of the Obligations and such default shall continue unremedied for more than 10 days after written notice thereof has been given by Mortgagee to Mortgagor; or

(b) default shall be made in the due observance or performance of any covenant, condition or agreement on the part of Mortgagor to be observed or performed pursuant to the terms of this Mortgage, including, without limitation, the covenant to pay taxes and other Impositions under paragraph 3.2 hereof, and such default shall continue unremedied for more than 30 days after written notice thereof has been given by Mortgagee to Mortgagor; or

(c) Mortgagor shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or other custodian for Mortgagor or for any of Mortgagor's properties or assets (including the Property), (ii) fail or admit in writing its inability to pay its debts generally as they become due, (iii) make a general assignment for the benefit of creditors, (iv) suffer or permit an order for relief to be entered against it in any proceeding under the federal bankruptcy code, or (v) file a voluntary petition in bankruptcy, or a petition or an answer seeking an arrangement with creditors or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under such law or statute; or

(d) a petition shall be filed, without the application, approval or consent of Mortgagor in any court of competent jurisdiction, seeking bankruptcy, reorganization, rearrangement, dissolution or liquidation of Mortgagor or of all or a substantial part of its properties or assets, or seeking the appointment of a receiver, trustee, liquidator or other custodian of Mortgagor or of all or a substantial part of its properties or assets, and such petition shall not have been stayed or dismissed within 90 days after the filing thereof; or

(e) Mortgagor shall become insolvent, suspend its business or be dissolved or liquidated or any writ of execution, attachment or garnishment shall be issued against the assets of Mortgagor and such writ of execution, attachment or garnishment shall not be dismissed, discharged or quashed within 60 days of issuance; or

(f) Mortgagor shall fail to maintain casualty insurance on the improvements now or hereafter located on the Property in amounts and coverages reasonably determined by Mortgagor; or

(g) subject to the provisions of Section 5.13 below, unless the written consent of Mortgagee is first obtained (which consent may be withheld in Mortgagee's sole discretion), there occurs any transfer of the Property, or any interest therein, or any further encumbrance of the Property.

SECTION 4.3 Rights and Remedies of Mortgagee Upon Default.

(a) **Acceleration of Obligations.** Upon the occurrence and during the continuation of an Event of Default hereunder, Mortgagee shall have the right without further notice to Mortgagor to declare all of the Obligations immediately due and payable.

(b) **Possession and Operation of Property.** Upon the occurrence and during the continuation of an Event of Default hereunder, in addition to all other rights herein conferred on Mortgagee, Mortgagee (or any person designated by Mortgagee) may, but will not be obligated to, (i) enter upon the Real Property and take possession of any or all of the Property without being guilty of trespass or conversion, exclude Mortgagor therefrom, and hold, use, administer, manage and operate the same to the extent that Mortgagor could do so, without any liability to Mortgagor resulting therefrom; (ii) collect, receive and receipt for all proceeds accruing from the operation and management of the Property; (iii) make repairs and purchase needed additional property; (iv) insure or reinsure the Property; (v) maintain and restore the Property; (vi) prepare the Property for resale, lease or other disposition; (vii) have furnished to the Property utilities and other materials and services used on or in connection with the Property; and (viii) exercise every power, right and privilege of Mortgagor with respect to the Property.

(c) **Judicial Proceedings; Right to Receiver.** Upon the occurrence and during the continuation of an Event of Default hereunder, Mortgagee, in lieu of or in addition to exercising the power of sale hereinafter given, may proceed by suit to foreclose its lien on the Property, to sue Mortgagor for damages on account of said default, for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. Mortgagee shall be entitled, as a matter of right, upon bill filed or other proper legal proceedings being commenced for the foreclosure of this Mortgage, to the appointment by any competent court or tribunal, without notice to Mortgagor or any other party, of a receiver of the rents, issues, profits and revenues of the Property, with power to lease and control the Property and with such other powers as may be deemed necessary.

(d) **Power of Sale.** Upon the occurrence and during the continuation of an Event of Default hereunder, this Mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and Mortgagee shall be authorized, at its option, whether or not possession of the Property is taken, to sell the Property (or such part or parts thereof as Mortgagee may from time to time elect to sell) under the power of sale which is hereby given to Mortgagee, at public outcry, to the highest bidder for cash, at the front or main door of the courthouse of the county in which the Land to be sold, or a substantial and material part thereof, is located, after first giving notice by publication once a week for three successive weeks of the time, place and terms of such sale, together with a description of the Property to be sold, by publication in some newspaper published in the county or counties in which the Land to be sold is located. If there is Land to be sold in more than one county, publication shall be made in all counties where the Land to be sold is located, but if no newspaper is published in any such county, the notice shall be published in a newspaper published in an adjoining county for three successive weeks. The sale shall be held between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power of sale hereunder. Mortgagee may bid at any sale held under this Mortgage and may purchase the Property, or any part thereof, if the highest bidder therefor. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. At any sale all or any part of the Property, real, personal or mixed, may be offered for sale in parcels or en masse for one total price, and the proceeds of any such sale en masse shall be accounted for in one account without distinction between the items included therein and without assigning to them any proportion of such proceeds, Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case Mortgagee, in the exercise of the power of sale herein given, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property not previously sold shall have been sold or all the Obligations shall have been paid in full and this Mortgage shall have been terminated as provided herein.

(e) **Foreclosure Deeds.** To the extent permitted by applicable law, Mortgagor hereby authorizes and empowers Mortgagee or the auctioneer at any foreclosure sale had hereunder, for and in the name of Mortgagor, to execute and deliver to the purchaser or purchasers of any of the Property sold at foreclosure good and sufficient deeds of conveyance or bills of sale thereto.

(f) **Order of Application of Proceeds.** All payments received by Mortgagee as proceeds of any of the Property, as well as any and all amounts realized by Mortgagee in connection with the enforcement of any right or remedy under this Mortgage, shall be applied by Mortgagee as follows: (i) to the payment of all expenses incident to the exercise of any remedies under this Mortgage, including reasonable attorneys' fees and disbursements as provided in this Mortgage and foreclosure notice costs, (ii) to the payment in full of the Obligations, and (iii) the remainder, if any, shall be paid to Mortgagor or such other persons as may be entitled thereto by law.

(g) **Waiver of Certain Laws.** Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisal before sale of any portion of the Property (commonly known as appraisal laws), or (ii) any extension of time for the enforcement of the collection of the Obligations or any creation or extension of a period of redemption from any sale made in collecting the Obligations (commonly known as stay laws and redemption laws).

SECTION 4.4 Remedies Cumulative. The rights, powers and remedies of the Mortgagee under this Mortgage are cumulative and not exclusive of any other rights, powers, or remedies now or hereafter existing at law or in equity.

ARTICLE 5

Miscellaneous

SECTION 5.1 Notices.

(a) Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Mortgage to be made upon, given or furnished to, or filed with, Mortgagor or Mortgagee must (except as otherwise expressly provided in this Mortgage) be in writing and be delivered by one of the following methods: (i) by personal delivery at the hand delivery address specified below, (ii) by first-class, registered or certified mail, postage prepaid, addressed as specified below, or (iii) if facsimile transmission facilities for such party are identified below or pursuant to a separate written notice from such party, sent by facsimile transmission to the number specified below or in such notice.

(b) The hand delivery address, mailing address and (if applicable) facsimile transmission number for receipt of notice or other documents by such parties are as follows:

Mortgagor:

Shelby Land Partners, LLC
P. O. Box 55465
Birmingham, AL 35255
Attention: James A. Jackson
Facsimile: (205) 930-4526

with a copy to:

Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, AL 35203
Attention: Thomas C. Clark, III, Esq.
Facsimile: (205) 254-1999

Mortgagee:

James I. McCormick, Jr.
1850 Shades Crest Road
Birmingham, AL 35216
Facsimile: (205) 326-7775

with a copy to:

David F. Ovson, Esq.
1130 Ridge Park Building, Suite 4800
Birmingham, AL 35205
Facsimile: (205) 930-0093

Any of such parties may change the address or number for receiving any such notice or other document by giving notice of the change to the other parties named in this Section 5.1.

(c) Any such notice or other document shall be deemed delivered when actually received by the party to whom directed (or, if such party is not an individual, to an officer, director, partner or other legal representative of the party) at the address or number specified pursuant to Section 5.1(b), or, if sent by mail, three Business Days after such notice or document is deposited in the United States mail, addressed as provided above.

SECTION 5.2 Expenses. Mortgagor shall promptly on demand pay all reasonable costs and expenses, including the fees and disbursements of counsel to Mortgagee, incurred by Mortgagee in connection with the enforcement of this Mortgage following an Event of Default.

SECTION 5.3 Successors and Assigns. This Mortgage is assignable by Mortgagee and any assignment hereof by Mortgagee shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Mortgagee. Whenever in this Mortgage any party hereto is referred to, such reference shall be deemed to include the successors and assigns of such party and all covenants and agreements of Mortgagor contained in this Mortgage shall bind Mortgagor's successors and assigns and shall inure to the benefit of the successors and assigns of Mortgagee.

SECTION 5.4 Governing Law. This Mortgage shall be construed in accordance with and governed by the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

SECTION 5.5 Date of Mortgage. The date of this Mortgage is intended as a date for the convenient identification of this Mortgage and is not intended to indicate that this Mortgage was executed and delivered on that date.

SECTION 5.6 Separability Clause. If any provision of this Mortgage shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 5.7 Counterparts. This Mortgage may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

SECTION 5.8 No Oral Agreements. This Mortgage is the final expression of the agreement between the parties hereto, and this Mortgage may not be contradicted by evidence of any prior oral agreement between such parties. All previous oral agreements between the parties hereto have been incorporated into this Mortgage and there is no unwritten oral agreement between the parties hereto in existence.

SECTION 5.9 Waiver and Election. The exercise by Mortgagee of any option given under this Mortgage shall not constitute a waiver of the right to exercise any other option. The filing of a suit to foreclose the lien granted by this Mortgage, either on any matured portion of the Obligations or for the whole of the Obligations, shall not be considered an election so as to preclude foreclosure by judicial foreclosure the Lien granted by this Mortgage. No failure or delay on the part of Mortgagee in exercising any right, power or remedy under this Mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further exercise thereof or the exercise of any other right, power or remedy. No modification, termination or waiver of any provisions of this Mortgage, nor consent to any departure by Mortgagor therefrom, shall be effective unless in writing and signed by Mortgagee, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on Mortgagor in any case shall entitle Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 5.10 Advances by the Mortgagee. If an Event of Default occurs and is continuing hereunder, Mortgagee may (but shall not be required to) make advances to cure any such Event of Default and, where necessary, enter the Property for the purpose of performing Mortgagor's obligations to the extent necessary to cure such Event of Default. Mortgagor agrees to repay all such sums advanced upon demand and all sums so advanced shall be a part of the Obligations. The making of any such advances shall not be construed as a waiver by Mortgagee of any Event of Default resulting from Mortgagor's failure to pay such amounts.

SECTION 5.11 Rights, Liens and Obligations Absolute. All rights of Mortgagee hereunder, all liens granted to Mortgagee hereunder, and all obligations of Mortgagor hereunder, shall be absolute and unconditional and shall not be affected by (a) any lack of validity or enforceability as to any other person of any provision of this Mortgage, (b) any change in the time, manner or place of payment of, or any other term of the Obligations, (c) any amendment or waiver of any of the provisions of the Guaranty Agreement or this Mortgage as to any other person, and (d) any exchange, release or non-perfection of any other collateral or any release, termination or waiver of any guaranty, for any of the Obligations.

SECTION 5.12 Compliance with Applicable Environmental Law. The term "Applicable Environmental Law" shall be defined as any statutory law or case law pertaining to health or the environment, or petroleum products, or oil, or hazardous substances, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as codified at 42 U.S.C. Section 9601 et seq.; the Resource Conservation and Recovery Act of 1976, as amended, as codified at 42 U.S.C. Section 6901 et seq.; and the Superfund Amendments and Reauthorization Act of 1986, as codified at 42 U.S.C. Section 9671 et seq.; the terms "hazardous substance" and "release" shall have the meanings specified in CERCLA; provided, in the event CERCLA is amended to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and provided, to the extent that the laws of the State of Alabama establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, such broader meaning shall apply. The Mortgagor represents and warrants to the Mortgagee that, to the best of its knowledge, the Property and the Mortgagor are not in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to the Property; that, to the best of its knowledge, the Mortgagor has not obtained and is not required to obtain, any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Property by reason of any Applicable Environmental Law; that, to the best of its knowledge, the Mortgagor has taken all steps necessary to determine and has determined that no petroleum products, oil, hazardous substances, or solid wastes have been disposed of or otherwise released on the Property; and that, to the best of its knowledge, the use which the Mortgagor has made, makes or intends to make of the Property will not result in the location on or disposal or other release of any petroleum products, oil, hazardous substances or solid waste on or to the Property. The Mortgagor hereby agrees to pay any fines, charges, fees, expenses, damages, losses, liabilities or response costs arising from or pertaining to the application of any such Applicable Environmental Law to the Property and to indemnify and forever save the Mortgagee harmless from any and all judgments, fines, charges, fees, expenses, damages, losses, liabilities, response costs, or attorneys' fees and expenses arising from the application of any such Applicable Environmental Law to the Property or the Mortgagee; provided, however, that the foregoing obligations of Mortgagor to pay such fines and expenses and to indemnify Mortgagee shall not apply to any violations of any Applicable Environmental Law (i) which occurred prior to

the date of this Mortgage, (ii) resulting from the acts or omissions of any previous owners of any of the Property (including Mortgagee) or (iii) which occur at any time after the foreclosure of this Mortgage or the conveyance of the Property by Mortgagor to Mortgagee by deed in lieu of foreclosure. The Mortgagor agrees to notify the Mortgagee in the event that any governmental agency or other entity notifies the Mortgagor that it may not be in compliance with any Applicable Environmental Laws. The Mortgagor agrees to permit the Mortgagee to have access to the Property at all reasonable times in order to conduct, at the Mortgagee's expense, any tests which the Mortgagee deems are necessary to ensure that the Mortgagor and the Property are in compliance with all Applicable Environmental Laws.

SECTION 5.13 Releases.

(a) **Release Property.** Notwithstanding anything provided in this Mortgage to the contrary, Mortgagee agrees to release the Property, in whole or in part, from the lien of this Mortgage as follows:

(i) With respect to any portion of the Property which constitutes a Public Road, as herein defined, Mortgagee agrees, upon written request of Mortgagor and the satisfaction of the provisions of items (i) and (ii) of Section 5.13(b) below, to release the same without the payment of any release price or other consideration; provided, however, that Mortgagee's obligations pursuant to this Section 5.13 (a)(i) shall be limited to releases of the Property which, in the aggregate, will not exceed more than ten percent (10%) of the gross acreage of the property. As used herein, the term "Public Road" means any public roadway not more than fifty (50) feet in width reflected on a subdivision plat for any portion of the Property which has been approved by all applicable governmental agencies having jurisdiction thereof and has been either (1) completed by Mortgagor and accepted as a public roadway by the applicable governmental body having jurisdiction over such public roadway or (2) bonded for completion in accordance with subdivision regulations of the applicable governmental body having jurisdiction over such public roadway; and

(ii) With respect to any other portions of the Property which Mortgagor desires to be released from the lien of this Mortgage (a "Release Parcel"), Mortgagee agrees to release the Release Parcel upon the (1) satisfaction of the terms and provisions of Section 5.13 (b) below and (2) the pledge of and grant of a security interest in a deposit account in which the principal balance at all times shall be not less than that percentage of the then outstanding Obligations equal to one hundred ten percent (110%) of the aggregate percentage of the Property released under this paragraph 5.13(a)(ii).

(b) **Conditions for Release.** Mortgagee shall have no obligation to release any portion of the Property unless each of the following is satisfied by Mortgagor: (i) at the time any such release is requested, no Event of Default shall have occurred and be continuing hereunder, (ii) Mortgagor, at Mortgagor's expense, shall have prepared a boundary survey of the Release Parcel (including any Public Road to be released) which contains a calculation of the gross acreage of the Release Parcel and reflects that the remainder of the Property subject to this Mortgage has access to a public roadway and (iii) to the extent Mortgagor is requesting a release of any portion of the Property other than a Public Road, the Release Parcel must consist of at least 10,000 gross square feet; provided, however, that the foregoing minimum square footage requirement shall not be applicable to the release of any portion of the Property which is being sold to the owner of a contiguous Release Parcel which has been previously released from the lien of this Mortgage. Any costs associated with any releases executed by Mortgagee or the substitution of collateral shall be paid by Mortgagor.

SECTION 5.14 Limitation of Liability of Mortgagor. Notwithstanding anything provided herein or in the Note to the contrary, neither Mortgagor nor any of its members or managers shall be personally liable for the payment of any sum or the performance of any Obligations and Mortgagee acknowledges and agrees that its sole remedy upon a default in the payment or performance of any of the Obligations shall be to foreclose this Mortgage, it being the intent of the parties that no deficiency judgment shall be sought or taken against Mortgagor or any of its members or managers. Furthermore, neither Mortgagor nor its members or managers shall be liable for any deficiency or other personal money judgment with respect to any of the Obligations for the payment of any sums or the performance of any obligations set forth in this Mortgage or the Note.

SECTION 5.15 Purchase Money Mortgage. This Mortgage is a purchase money mortgage given to secure a portion of the purchase price for the Property. The entire proceeds of the Note have been applied to the purchase price of the Property which has been conveyed simultaneously herewith by Mortgagee to Mortgagor.

IN WITNESS WHEREOF, the undersigned Mortgagor has caused this Mortgage to be executed as of the day and year first above written.

SHELBY LAND PARTNERS, LLC

By: [Signature]

Its: Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that JAMES A. JACKSON, whose name as MANAGER of Shelby Land Partners, LLC, an Alabama limited liability company, 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of such company.

Given under my hand and official seal this the 7th day of November, 2002.

Notary Public: [Signature]

My Commission Expires: 7-20-2006

THIS INSTRUMENT PREPARED BY
AND UPON RECORDING SHOULD BE
RETURNED TO:

Thomas C. Clark, III, Esq.
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North, Suite 2400
Birmingham, Alabama 35203

EXHIBIT A

LEGAL DESCRIPTION OF LAND

An undivided one-half interest in that certain tract of land lying and being in the County of Shelby, State of Alabama, and being more particularly described as follows:

PARCEL I:

The W-1/2 of NW-1/4 of SE-1/4, Section 1, Township 21, Range 3 West, EXCEPT portion conveyed to State of Alabama for U.S. Highway 65 right of way.

PARCEL II:

The NW-1/4 of NE-1/4, Section 1, Township 21 South, Range 3 West; EXCEPT tract conveyed to Green Valley Homes by John A. Hines, Jr. by deed recorded in Deed Book 263, Page 21, in said Probate Office;

ALSO, the E-1/2 of SE-1/4, Section 1, Township 21 South, Range 3 West.

LESS AND EXCEPT any part lying within the right of way of a public road.

LESS AND EXCEPT those two parcels shown as Parcel ID # 23-1-01-1-001-003.001, (assessed by Mary A. Underwood); and Parcel ID # 23-1-01-1-001-003.002, (assessed by Annie Mae and Walter Cunningham), on Shelby County tax map.

PARCEL III:

The SW-1/4 of SE-1/4, Section 36, Township 20 South, Range 3 West, EXCEPT a tract in the SW corner thereof as recorded in Deed Book 353, Page 325; ALSO EXCEPT a tract sold to Sarah Jane Thomas in 1941, as shown by deed recorded in Deed Book 115, Page 170, in the Probate Office of Shelby County, Alabama. ALSO, the W-1/2 of SE-1/4 of SE-1/4 and the S-1/2 of NE-1/4 of SE-1/4, Section 36, Township 20 South, Range 3 West, EXCEPT right of way for U.S. Highway I-65.

LESS AND EXCEPT that portion conveyed to the State of Alabama for U.S. Highway 65 right of way.

PARCEL IV:

The N-1/2 of NE-1/4 of SE-1/4 of Section 36, Township 20 South, Range 3 West; ALSO, the E-1/2 of SE-1/4 of SE-1/4 of Section 36, Township 20, Range 3 West.

PARCEL VI, (Continued):

The SW-1/4 of SE-1/4 of Section 1, Township 21 South, Range 3 West, EXCEPT lot sold to Fletcher Swayne described as follows: Begin at SW corner of said forty; thence East along said South forty line 630 feet; thence North 210 feet; thence West 630 feet to said forty line; thence South 210 feet to point of beginning of said exception. ALSO EXCEPT lot sold to Mattie and Davies Harris as described in Deed Book 210, Page 569, and EXCEPT tract sold to Ed and Nettie Norris as described in Deed Book 205, Page 619, and EXCEPT tract sold to Clifford Moore as described in Deed Book 216, Page 669, and EXCEPT tract sold to James Ross as described in Deed Book 250, Page 523; ALSO EXCEPTING right of way of U. S. Highway #31, and EXCEPTING right of way of U.S. I-65 Highway.

LESS AND EXCEPT the following: Commence at the SW corner of the SW-1/4 of the SE-1/4 of Section 1, Township 21 South, Range 3 West, Shelby County, Alabama, and run in a Northerly direction along the West line of said 1/4-1/4 for a distance of 454.70 feet to a point; thence turn an angle to the right of 92 degrees 50 minutes 03 seconds and run in an Easterly direction for a distance of 168.92 feet to the point of beginning of the property herein described; from the point of beginning, thence turn an angle to the right of 72 degrees 47 minutes 00 seconds and run in a Southeasterly direction for a distance of 210 feet to a point; thence turn an angle to the left of 90 degrees 00 minutes and run in a Northeasterly direction for a distance of 210 feet; thence turn an angle to the left of 90 degrees 00 minutes and run in a Northwesterly direction for a distance of 210 feet to a point; thence turn an angle to the left of 90 degrees 00 minutes and run in a Southwesterly direction for a distance of 210 feet to the point of beginning.

LESS AND EXCEPT that property described in Deed Book 335, Page 65; Deed Book 335, Page 335; Deed Book 349, Page 937, and Real Volume 206, Page 80.

PARCEL VII:

Beginning at the NE corner of NW-1/4 of SE-1/4 of Section 1, Township 21, Range 3 West, thence along the forty line South 2 degrees 30 minutes East 600 feet; thence North 89 degrees 30 minutes West 598 feet; North 00 degrees 30 minutes East 375.0 feet; thence South 89 degrees 30 minutes East 110.0 feet; thence North 00 degrees 30 minutes East 210 feet to the North line of said forty; thence along the North line South 89 degrees 30 minutes East 450.0 feet to point of beginning, in Shelby County, Alabama.

PARCEL VIII:

The South 210 feet of the SW-1/4 of NW-1/4 of Section 6, Township 21 South, Range 2 West.

All situated in Shelby County, Alabama.

PARCEL V:

The NE-1/4 of NE-1/4, Section 1, Township 21 South, Range 3 West.

A part of the SE-1/4 of NE-1/4 of Section 1, Township 21 South, Range 3 West, more particularly described as follows: Begin at the NW corner of said forty and run South 188 yards; thence East parallel with North line of said forty to a point which is 70 yards West of the East line of said forty; thence North 70 yards; thence East 70 yards to East line of said forty; thence North 118 yards to Northeast corner of said forty; thence West to point of beginning.

ALSO part of SE-1/4 of NE-1/4 of Section 1, Township 21 South, Range 3 West, described as follows: Commence at NW corner of said forty and run South along West line of said 1/4-1/4 Section 564 feet to point of beginning; thence turn an angle of 87 degrees 59 minutes to left and run 974.59 feet; thence turn an angle of 113 degrees 26 minutes to right and run 255.98 feet; thence turn an angle of 66 degrees 30 minutes to right and run a distance of 864.60 feet to West line of said forty; thence turn an angle of 88 degrees 03 minutes to right and run along 1/4-1/4 Section line a distance of 235 feet to point of beginning.

PARCEL VI:

The N-1/2 of NW-1/4 of Section 6, Township 21 South, Range 2 West.

The SW-1/4 of NW-1/4 of Section 6, Township 21 South, Range 2 West, EXCEPT the South 210 feet of said tract.

The SE-1/4 of NE-1/4 of Section 1, Township 21 South, Range 3 West, EXCEPT tract sold to Judge Allen as described in Deed Book 89, Page 27, and EXCEPT tracts sold to James Merritt as described in Deed Book 100, Page 543, Deed Book 115, Page 207, and in Deed Book 207, Page 456, in the Probate Office of Shelby County, Alabama.

LESS AND EXCEPT that property described in Deed Book 132, Page 812.

The SW-1/4 of NE-1/4 of Section 1, Township 21 South, Range 3 West. EXCEPT a tract sold to Will and Lilie J. Watts as described in Deed Book 43, Page 64, and also EXCEPT a tract sold to W. M. Clarke as described in Deed Book 39, Page 259, in said Probate Office.

LESS AND EXCEPT that property described in Deed Book 310, Page 989, Instrument #1994-27620 and Instrument #2000-14541.

The E-1/2 of NW-1/4 of SE-1/4 of Section 1, Township 21 South, Range 3 West, EXCEPT tract sold as described in deed recorded in Deed Book 255, Page 695, in said Probate Office.