

THIS INSTRUMENT PREPARED BY:

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2000 SouthBridge Parkway
Suite 500
Birmingham, Alabama 35209**

20050411000166320 1/5 \$323.00
Shelby Cnty Judge of Probate, AL
04/11/2005 09:21:36AM FILED/CERT

MORTGAGE

STATE OF ALABAMA)

COUNTY OF SHELBY)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the undersigned, Brett Harp and Suzanne Harp, jointly and severally, each a resident of the state of Alabama ("Mortgagor") are justly indebted to Stanley Smith and Delphia Smith, or the other or survivor of them, each a resident of the state of Alabama ("Mortgagee") in the amount of \$200,000 pursuant to the terms of that certain Promissory Note dated January 28, 2005 ("Note"), with a maturity date, if not sooner paid, of January 28, 2015; and

WHEREAS, it is desired by the undersigned to secure the prompt payment of said indebtedness with all charges and interest set forth in such Note when the same falls due.

NOW THEREFORE, in consideration of the said indebtedness, and to secure the prompt payment of the same at maturity, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee the Mortgagor's undivided interest in that certain real property situated in Shelby County, Alabama which is described on Exhibit A attached hereto and incorporated herein by reference.

This conveyance is made subject to the following:

1. The lien for ad valorem taxes due in the current year or the subsequent year but not yet payable.
2. All other easements, liens, rights-of-way, any reservations of mineral rights, and other matters of record in the Probate Office of Shelby County, Alabama, together with any deficiencies in quantity of land, easements, discrepancies as to boundary lines, overlaps, etc., which would be disclosed by a true and accurate survey of the property conveyed herein.

TO HAVE AND TO HOLD the above granted premises unto the said Mortgagee forever; and for the purpose of further securing the payment of said indebtedness, the undersigned, agrees to pay all taxes, or assessments, when legally imposed upon said premises, and should default be made in the payment of same, said Mortgagee has the option of paying off the same; and to further secure said indebtedness, the undersigned agrees to keep the improvements on said real estate insured against loss or damage by fire, lightning and tornado for the reasonable insurable value thereof, in companies satisfactory to the Mortgagee, with loss, if any, payable to said Mortgagee, as the interest of said Mortgagee may appear, and promptly to deliver said policies, or any renewals of said policies to said Mortgagee; and if the undersigned fail to keep said property insured as above specified, or fail to deliver said insurance policies to said Mortgagee then said Mortgagee has the option of insuring said property for said sum for the benefit of said Mortgagee, the policy, if collected, to be credited on said indebtedness, less cost of collecting same; all amounts so expended by said Mortgagee for taxes, as Mortgagee, additional to the debt hereby specifically secured and shall be covered by this Mortgage, and bear interest from the date of payment by said Mortgagee and be at once due and payable.

Upon condition however, that if the said Mortgagor pays said indebtedness and reimburses said Mortgagee for any amounts Mortgagee may have expended for taxes, assessments and insurance, and the interest thereon, then this conveyance to be null and void, but should default be made in the payment of any sum expended by the said Mortgagee or should said indebtedness hereby secured, or any part thereof or the interest thereon remain unpaid at maturity, or should the interest of said Mortgagee in said property become endangered by reason of the enforcement of any prior lien or encumbrance thereon, so as to endanger the debt hereby secured, or if any statement of lien is filed under the statutes of Alabama relating to the liens of mechanics and materialmen without regard to form and contents of such statement and without regard to the existence or nonexistence of the debt or any part thereof or of the lien on which such statement is based, or if any other "Event of Default" (as hereinafter defined) shall occur then in any one of said events, the whole of said indebtedness hereby secured shall at once become due and payable and this mortgage be subject to foreclosure as now provided by law in case of past due mortgages and the said Mortgagee shall be authorized to take possession of the premises hereby conveyed and with or without first taking possession, after giving twenty-one days notice by publishing once a week for three consecutive weeks, the time, place and terms of sale, in some newspaper published in said County and State, to sell the same in lots or parcels, or en masse, as Mortgagee may deem best in front of the Court House door in said County, at public outcry, to the highest bidder for cash and apply the proceeds of said sale, First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; Second, to the payment of any amounts that may have been expended, or that it may be necessary then to expend in paying insurance, taxes, or other encumbrances, with interest thereon; Third, to the payment of said indebtedness in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale, and Fourth, the remainder if any, to be turned over to the said Mortgagor, and the undersigned, further agree that said Mortgagee may bid at said sale and purchase said property, if the highest bidder therefore, as though a stranger hereto, and the person acting as auctioneer at such sale is hereby authorized and empowered to execute a deed to the purchaser thereof in the name of the Mortgagor by such auctioneer as agent, or attorney in fact, and the undersigned further agree to pay a reasonable

attorney's fee to said Mortgagee for the foreclosure of this mortgage in Chancery, should the same be so foreclosed, said fee to be a part of the debt hereto secured.

It is expressly understood that the word "Mortgagee" wherever used in this mortgage refers to the person, or to the persons or to the corporation named as grantee or grantees in the granting clause herein.

Any estate or interest herein conveyed to said Mortgagee, or any right or power granted to said Mortgagee in or by this mortgage is hereby expressly conveyed and granted to the heirs, and agents, and assigns, of said Mortgagee, or to the successors and agents and assigns of said Mortgagee, if a corporation.

If all or any part of the property or any interest therein is sold or transferred by Mortgagor without Mortgagee's prior written consent, excluding the creation of a lien or encumbrance subordinate to this mortgage, Mortgagee may, at Mortgagee's option, declare all the sums secured by this mortgage to be immediately due and payable. Mortgagee shall have waived such option to accelerate if, prior to the sale or transfer, Mortgagor and the person to whom the property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to the Mortgagee and that the interest payable on assumption secured by this mortgage shall be at such rate as Mortgagee shall request. If Mortgagee has waived the option to accelerate provided in this paragraph, and if the Mortgagor's successor in interest has executed a written assumption agreement accepted in writing by the Mortgagee, Mortgagee may release Mortgagor from all obligations under this mortgage and Note referred to herein. If Mortgagee exercises such option to accelerate, Mortgagee shall mail Mortgagor notice of acceleration which notice shall provide a period of not less than thirty (30) days from the date the notice is mailed within which Mortgagor may pay the sum declared due. If Mortgagor fails to pay such sum prior to the expiration of such period, Mortgagee may, without further notice or demand on Mortgagee, invoke any remedies or rights available to the Mortgagee as contained herein as relates to default of payment of money indebtedness due or any and all other remedies available by law.

In addition to the foregoing, any of the following shall constitute an "Event of Default":

- (a) the insolvency or filing by or with respect to the Mortgagor of a voluntary or involuntary petition seeking protection under any State or Federal bankruptcy statute;
- (b) the adjudication of the Mortgagor as a bankrupt or insolvent; or
- (c) a final judgment or judgments for the payment of money in excess of an aggregate of \$10,000.00 shall be rendered against the Mortgagor and the same shall remain undischarged for a period of 30 days during which execution shall not be effectively stayed.

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed on this
31 day of MAR., 2005.

MORTGAGOR

Brett Harp

Suzanne Harp

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that Brett Harp, whose name is signed to the foregoing conveyance as Mortgagor, a resident of the state of Alabama, and who is known to me, acknowledged before me on this day that being informed of the contents herein with full authority, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal on this the 31 day of MAR., 2005.

Notary Public

My Commission Expires:

STATE OF ALABAMA)

COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public, in and for said County in said State, hereby certify that Suzanne Harp, whose name is signed to the foregoing conveyance as Mortgagor, a resident of the state of Alabama, and who is known to me, acknowledged before me on this day that being informed of the contents herein with full authority, she executed the same voluntarily on the day the same bears date.

GIVEN under my hand and official seal on this the 31 day of MAR., 2005.

Notary Public

My Commission Expires:



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EXHIBIT "A"

Lot 16, according to the Map and Survey of Greystone, 4th Sector, as recorded in Map Book 16, Page 89 A, B & C, in the Probate Office of Shelby County, Alabama.