20050429000206110 1/3 $467.00
Shelby Cnty Judge of Probate,AL
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This instrument w ...N

STATE OF ALABAMA

COUNTY OF SHELBY

SEND TAX NOTICE TO:
M. A. FRAZIER CONSTRUCTION, INC.
PO BOX 383023
BIRMINGHAM, AL 35238

110 Office Park Drive
Birmingham, Alabama 35223

CONSTRUCTION LOAN MORTGAGE DEED
AND SECURITY AGREEMENT

THIS INDENTURE made and entered into this 31st day of March, 2005, by and between **M. A. FRAZIER CONSTRUCTION, INC., A CORPORATION**

Parties of the First Part, hereinafter referred to as Mortgagor, and Wachovia Bank, National Association, of Birmingham, Jefferson County, Alabama, a Delaware Corporation, Party of the Second Part, hereinafter referred to as Mortgagee.

W I T N E S S E T H:

WHEREAS, the said **M.A. FRAZIER CONSTRUCTION, INC., a corporation,** has become justly indebted to the mortgagee in the principal sum of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS --- ($300,000.00)DOLLARS** or so much as may from time to time be disbursed hereunder, as evidenced by a note bearing even date herewith, payable to said Mortgagee; with interest thereon, on demand or as otherwise provided therein; and

WHEREAS, the Mortgagor has agreed to grant this Mortgage to the Mortgagee in order to secure such sum, or so much hereof as may from time to time be disbursed, including FUTURE ADVANCES to be advanced from time to time, and any extensions or renewals thereof, and all other indebtedness of the Mortgagor to the Mortgagee, absolute or contingent, whether now owing or hereafter contracted.

NOW, THEREFORE, the undersigned, in consideration of the indebtedness above mentioned, and to secure the prompt payment of same with interest thereon, and all other indebtedness of the Mortgagor to the Mortgagee, whether now existing or hereafter incurred, and all extensions and renewals hereof or of any indebtedness of the Mortgagor to the Mortgagee, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, have bargained and sold, and do hereby bargain, sell, alien, grant and convey unto the Mortgagee, its successors and assigns the following described real estate, lying and being in SHELBY County, Alabama, to wit:

PARCEL I

Lot 537, according to the Survey of Greystone Legacy, 5th Sector, Phase II, as recorded in Map Book 32, Page 85 A & B, in the Office of the Judge of Probate of Shelby County, Alabama.

PARCEL II

Lot 418, according to the Survey of Greystone Legacy, 4th Sector, Phase II, as recorded in Map Book 32, Page 84, in the Office of the Judge of Probate of Shelby County, Alabama.

A portion of the proceeds of this loan have been applied to the purchase price of the property described herein, conveyed to mortgagors simultaneously herewith.

Cahaba Title, Inc.

TOGETHER WITH all building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of or used or useful in connection with the improvements located or to be located on the hereinabove described real estate, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to said real estate or not, and whether in storage or otherwise, wheresoever the same may be located. The personal property herein conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, and in general all building material and equipment of every kind and character used or useful in connection with said improvements.

TOGETHER WITH all rents, issues and profits thereof and the rights, privileges and appurtenances thereunto belonging or in anywise appertaining, including all gas, electric, steam, hot air and other heating, lighting and cooking apparatus, engines, boilers, motors, bathtubs, sinks, water closets, basins, pipes, faucets and other plumbing fixtures which are, or shall be, attached to said building of which shall be deemed realty as between the parties hereto and all persons claiming by, through or under them, and conveyed by this mortgage as a part of the security for said indebtedness.

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All of the foregoing is sometimes hereinafter for convenience called the "Premises".

TO HAVE AND TO HOLD the Premises, and every part hereof, unto the Mortgagee, its successors and assigns, forever. And the Mortgagor convenants with the Mortgagee that the Mortgagor is lawfully seized in fee simple of the Premises and has a good right to sell and convey the same as aforesaid; that the Premises are free and clear of all liens and encumbrances and the Mortgagor will warrant and forever defend the title to the same unto the Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

This mortgage is made and accepted on the understanding that the following covenants, conditions and agreements shall continue in effect so long as any portion of the indebtedness hereby secured remains unpaid, to-wit:

1. THIS IS A FUTURE ADVANCE MORTGAGE, and the indebtedness shall be advanced by Mortgagee to Mortgagor in accordance with a construction loan agreement of even date herewith, the terms of which agreement are made a part of this mortgage. This mortgage shall also secure any and all other indebtedness now or hereafter owing from the Mortgagor to the Mortgagee.

2. At Mortgagee's option, Mortgagor will pay a "late charge" not exceeding five per centum (5%) of any installment when paid more than ten (10) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured thereby.

3. For the benefit of the Mortgagee, the buildings on said Premises shall be constantly insured against loss by fire and other hazards, casualties and contingencies, extended coverage, and other such coverage, in such manner and in such companies and for such amounts as may be required by the Mortgagee, with loss, if any, payable to Mortgagee, as its interest may appear, and the Mortgagor does hereby transfer, assign, set over and deliver to the Mortgagee the fire and other insurance policies covering said property, and it is further agreed that all of the security for said indebtedness shall pass to, and become the property of, the purchaser at any foreclosure sale hereunder, without the necessity of notice, sale, deed or other proceedings in consummation of such foreclosure, and if the Mortgagor fails to keep said property insured as above specified then the Mortgagee may, at its option, insure said property for its insurable value, against loss by fire and other hazards, casualties and contingencies, for its own benefit, and any amount which may be expended for premiums on such insurance policies shall be secured by the lien of this mortgage and bear interest from the date of payment by the Mortgagee; it being understood and agreed between the parties hereto that any sum, or sums, of money received for any damage by fire or other casualty to any building, or buildings, herein conveyed may be retained by the then holder of the indebtedness secured by this mortgage and applied toward payment of such indebtedness, either in whole or in part, or, at the option of the holder of said debt, same may be paid over to a trustee, to be named by the Mortgagee, its successors or assigns, to be applied in payment for any repair or replacement of such building, or buildings, or for any other purpose or object satisfactory to said Mortgagee, without affecting the lien of this mortgage for the full amount hereby secured.

4. The Premises and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, natural wear and tear excepted, and all taxes and assessments or other charges, which may be levied upon or accrue against the Premises, as well as all other sums which may be or become liens or charges against the same, shall be paid and discharged by the undersigned promptly as and when so levied or assessed and shall not be permitted to become delinquent or to take priority over the lien of this mortgage.

5. Any claim of lien which may be filed under the provisions of the Statutes of Alabama, relating to the liens of mechanics or materialmen, shall be promptly paid and discharged by the undersigned and shall not be permitted to take priority over the lien of this mortgage.

6. That any and all legal requirements, of any governmental agency wherein the Premises are located, shall be fully complied with by the Mortgagor.

7. Should default be made in the payment of any insurance premium, taxes, assessments or other liens, or any other sum, as herein provided, the Mortgagee or assigns shall be authorized to pay same and the sum, or sums, so paid shall be and become a part of the indebtedness secured by the mortgage, or the Mortgagee or assigns may take possession of the Premises, collect the rents due or to become due thereon and apply same in payment of such delinquent taxes, assessments or other liens or, upon application made to any court of competent jurisdiction, be entitled as a matter of right to the appointment of a receiver of the rents, issues and profits to be derived therefrom and with power to lease and control the Premises for the benefit of the Mortgagee or, at its option, the Mortgagee may declare the whole of said indebtedness due and payable at once and the mortgage may be foreclosed as hereinafter provided, but no delay or failure of the Mortgagee to exercise this right or any other option herein shall be deemed a waiver of such right.

8. The Mortgagor agrees to pay reasonable attorneys' fees and expenses incurred by the Mortgagee in applying for a receiver, in protecting its interest in any litigation involving this real estate, in presenting claim under any administration or other proceeding where proof of claims is required by law to be filed, or in foreclosing this mortgage by suit in any court of competent jurisdiction, such fees and expenses to be a part of the debt hereby secured.

9. It is further agreed that if the Mortgagor shall fail to pay or cause to be paid in whole, or any portion, of the principal sum, or any installment of interest thereon, and any extensions or renewals thereof, or any other sum, the payment of which is hereby secured, as they or any of them mature, either by lapse of time or otherwise, in accordance with the agreements and covenants herein contained, or should default be made in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes or assessments now, or which may hereafter be, levied against, or which may become a lien on said property, or should default be made in any of the covenants, conditions and agreements herein contained or in the construction loan agreement of even date herewith, then and in that event the whole of said principal sum, with interest thereon, and all other sums secured hereby shall, at the option of the then holder of said indebtedness, be and become immediately due and payable, and the holder of the debt secured shall have the right to enter upon and take possession of said property and sell after or without taking such possession of the same at public outcry, in whole or in parcels, in front of the Court House door of the county wherein said property is located, to the highest bidder for cash, either in person or by auctioneer, after first giving notice of the time, place and terms of such sale by publication once a week for three successive weeks in some newspaper published in said county, and, upon the payment of the purchase money shall execute to the purchaser at said sale a deed to the property so purchased, the proceeds of such sale shall be applied (1) to the expenses incurred in making the sale, including a reasonable attorney's fee for such services as may be necessary, in the collection of said indebtedness or the foreclosure of the mortgage; (2) to the payment of whatever sum, or sums, the Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (3) to the payment and satisfaction of said principal indebtedness and interest thereon to the day of sale and the balance, if any shall be paid over to the Mortgagor, or assigns. Or said Mortgage may be foreclosed as now provided by law in case of past due mortgages, in which event a reasonable attorney's fee shall, among other expenses and costs, be allowed and paid out of the proceeds of the sale of said property. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money and the Mortgagee or the then holder of the indebtedness hereby secured may become the purchaser as said sale and the auctioneer making the sale is hereby authorized and empowered to execute a deed in the name and on behalf of the Mortgagor to such purchaser, and the certificate of the holder of such indebtedness, appointing said auctioneer to make such sale, shall be prima facie evidence of his authority in the premises. Mortgagee shall also have all rights and remedies of a secured party under the Alabama Uniform Commercial Code.

10. In the event of the enactment of any law, Federal or State, after the date of this mortgage, deducting from the value of the land for the purposes of taxation any lien thereon, or imposing any liability upon the Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to the affect this mortgage, the whole of the principal sum secured by this mortgage, together with the interest due thereon, shall, at the option of the Mortgagee, without notice to any party, become immediately due and payable.

11. If all or any part of the Premises shall be damaged or taken through condemnation (which terms when used in this mortgage shall include any damage or taking by any governmental authority, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Mortgagee become immediately due and payable. The Mortgagee shall be entitled to all compensation, awards, and other payments or relief therefor and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Mortgagee, who,after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this mortgage or may apply the same in such manner as the Mortgagee shall determine to the reduction of the sums secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, rights of action, claims and proceeds as the Mortgagee may require.

12. This mortgage creates a security interest in the personal property of the Mortgagee herein described, and shall constitute a Security Agreement under the Alabama Uniform Commercial Code. Mortgagor covenants and agrees to execute, file and refile such financing statements, continuation statements or other documents that Mortgagee shall require.

13. Provided always that if the Mortgagor pay said note and any renewal or extension thereof and all other indebtedness secured by the mortgage including all future advances to be made hereunder, and reimburse said Mortgagee, its successors or assigns, for any amount it may have expended in payment of taxes, assessments, insurance or other liens and interest thereon and shall do and perform all other acts and things herein agreed to be done this conveyance shall be null and void; otherwise it shall remain in full force and effect.

Singular and plural words used herein to designate the Mortgagor shall be construed to refer to the maker or makers of this mortgage, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the heirs, personal representatives, successors and assigns of the undersigned and every option, right and privilege herein reserved or secured to the Mortgagee shall inure to the benefit of its successors and assigns.

IN WITNESS WHEREOF, **M. A. FRAZIER CONSTRUCTION, INC, A CORPORATION** has hereunto set its signature by **MICHAEL A. FRAZIER, ITS: President**, who is duly authorized to sign this the 31st day of March, 2005.

M. A. FRAZIER CONSTRUCTION, INC.

BY: _____
MICHAEL A. FRAZIER, ITS: PRESIDENT

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that , whose name signed to the foregoing conveyance, and who known to me, acknowledged before me on this day that, being informed of the contents of the conveyance executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this day of , 2005.

_____
Notary Public

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STATE OF ALABAMA

COUNTY OF

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that whose name signed to the foregoing conveyance, and who known to me, acknowledged before me on this day that, being informed of the contents of the conveyance executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this day of , 2005.

_____
Notary Public

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that **MICHAEL A. FRAZIER** , whose name as **PRESIDENT** of **M. A. FRAZIER CONSTRUCTION, INC.** a corporation, is signed to the foregoing conveyance, and is who is known to me, acknowledge before me on this day that, being informed of the contents of the conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 31st day of March, 2005.

_____
Notary Public

My Commission expires 8-16-08