This Instrument Prepared By
And Should Be Returned To:
Courtney Mason & Associates, PC
P O Box 360187
Birmingham, AL 35236

20050623000312750 1/5 $66.95
Shelby Cnty Judge of Probate,AL
06/23/2005 11:50:03AM FILED/CERT

State of Alabama

Mortgage of Real Estate

County of SHELBY

THIS MORTGAGE is dated JUNE 17TH, 2005.

THE "MORTGAGOR" referred to in this Mortgage is: DERRICK B. VARNEDOE AND LORI R. VARNEDOE HUSBAND AND WIFE.

THE "MORTGAGEE" is BRANCH BANKING AND TRUST COMPANY, whose address is 200 WEST SECOND STREET, WINSTON-SALEM, NC 27101.

THIS "AGREEMENT" is a BB&T Tax Advantage Credit Line Agreement dated JUNE 17TH, 2005 under which Mortgagee may make certain advances of credit to:

DERRICK B. VARNEDOE AND LORI R. VARNEDOE.

The Agreement and any documents renewing, extending or modifying it and any items or documents evidencing future advances are all referred to as the "Agreement" and are considered to be a part of this Mortgage. The amount of debt secured by this Mortgage, including the outstanding amount advanced and the Agreement and all Future Advances under paragraph 11, below, shall at no time exceed $ 29,250.00, plus interest, attorneys' fees, and court costs incurred in collection of amounts due hereunder,and Expenditures by the Mortgagee under paragraph 5 below (the "Debt"). Interest under the Agreement will be deferred, accrued or capitalized, but Mortgagee shall not be required to defer, accrue or capitalize any interest except as may be provided in the Agreement.

All sums advanced or secured hereunder shall be due and payable no later than 30 years from the date of this mortgage.

THIS MORTGAGE is given to secure to Mortgagee the repayment of the following amounts, with interest: (a) the indebtedness evidenced by the Agreement; (b) any Future Advances made under paragraph 12 below; (c) Expenditures by Mortgagee under paragraph 5 below; and (d) attorneys' fees, court costs and other amounts which may be due under the Agreement and this Mortgage. In consideration of the above indebtedness and for other valuable consideration which Mortgagor acknowledges receiving. Mortgagor does hereby grant, bargain, sell, alien and convey to Mortgagee, its successors and assigns, the following described property.

SEE ATTACHED EXHIBIT "A"

Derrick B. Varnedoe and Derrick Varnedoe are one and the same individual.

Lori R. Varnedoe and Lori Varnedoe are one and the same individual.

This mortgage is second and subordinate to that certain mortgage executed by Derrick B. Varnedoe and Lori R. Varnedoe to HomeBanc Mortgage Corporation on June 17, 2005.

TOGETHER with all and singular rights, members, hereditaments and appurtenances belonging or in any way incident or appertaining thereto; all improvements now are hereafter situated thereon; and all fixtures now or hereafter attached thereto (all of the same being deemed part of the Property and included in any reference thereto);

TO HAVE AND TO HOLD all and singular the Property unto Mortgagee and the successors and assigns of Mortgagee forever.

MORTGAGOR covenants that Mortgagor is lawfully seized of the Property in fee simple absolute, that Mortgagor has good right and is lawfully authorized to sell, convey or encumber the same, and that the Property is free and clear of all encumbrances except as expressly provided herein. Mortgagor further covenants to warrant and forever defend all and singular the Property unto Mortgagee and the successors or assigns of Mortgagee from and against Mortgagor and all persons whomsoever lawfully claiming the same or any part thereof.

PROVIDED, HOWEVER, that these presents are upon the condition that (i) if the Mortgagor shall fully pay or cause to be fully paid to the Mortgagee the principal and interest payable with respect of the Debt and the Agreement, and any extensions, renewals, modifications and refinancings of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including but not limited to, attorney's fees, and shall pay any and all other indebtedness, and shall keep, perform and observe all and singular the covenants, conditions, and agreements in this Mortgage, in the Agreement expressed to be kept, performed, and observed by or on the part of the Mortgagor, all without fraud or delay, and (ii) the Mortgagee shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Agreement, any other document (including without limitation advances, obligations or value relating to future advances, open-end, revolving or other lines of credit or letters of credit), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

IT IS AGREED that Mortgagor shall be entitled to hold and enjoy the Property until a Default as herein defined has occurred.

MORTGAGOR further covenants and agrees with Mortgagee as follows:

1. Assignment of Rents and Profits. As further security for all sums secured by this Mortgage, Mortgagor assigns to Mortgagee all rents and profits arising from the Property; provided, however, that so long as no Default as hereinafter defined has occurred. Mortgagor shall be entitled to collect and retain all such rents and profits as the sole property of Mortgagor without accounting to Mortgagee therefor.

2. Maintenance. Mortgagor will maintain the Property in good condition and repair and will neither permit nor allow waste thereof. Mortgagor will promptly repair or restore any portion of the Property which is damaged or destroyed by any cause whatsoever and will promptly pay when due all costs and expenses of such repair of restoration. Mortgagor will not remove or demolish any improvement or fixture which is now or hereafter part of the Property and will cut no timber on the Property without the express written consent of Mortgagee. Mortgagee shall be entitled to specific performance of the provisions of this paragraph.

3. Insurance. Mortgagor will keep all improvements and fixtures which are now or hereafter part of the Property insured by such company or companies as Mortgagee may reasonably approve for the full insurable value thereof against all risks including, if coverage is available, flood and earthquake. Such insurance will by payable to Mortgagee as the interest of Mortgagee may appear pursuant to the New York standard form of mortgagee clause or such other form of mortgagee clause as may be required by the Mortgagee and will not be cancelable by either the insurer or the insured without at least ten (10) days prior written notice to Mortgagee. Mortgagor hereby assigns to Mortgagee the right to collect and receive any indemnity payment otherwise owed to Mortgagor upon any policy of insurance insuring any portion of the Property, regardless of whether Mortgagee is named in such policy as a person entitled to collect upon the same. Any indemnity payment received by Mortgagee from any such policy of insurance may, at the option of Mortgagee,(i) be applied by Mortgagee to payment of any sum secured by this Mortgage in such order as Mortgagee may determine or (ii), be applied in a manner determined by Mortgagee to the replacement, repair or restoration of the portion of the Property damaged or destroyed or (iii) be released to Mortgagor upon such conditions as Mortgagee may determine or (iv) be used for any combination of the foregoing purposes. No portion of any indemnity payment which is applied to replacement, repair or restoration of any portion of the Property which is released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage. Mortgagor will keep the Property continuously insured as herein required and will deliver to Mortgagee the original of each policy of insurance required hereby. Mortgagor will pay each premium coming due on any such policy of insurance and will deliver to Mortgagee proof of such payment at least ten (10) days prior to the date such premium would become overdue or delinquent. Upon the expiration or termination of any such policy of insurance. Mortgagor will furnish to Mortgagee at least ten (10) days prior to such expiration or termination the original of a renewal or replacement policy of insurance meeting the requirements hereof. If Mortgagor fails to insure the Property as herein required. Mortgagee may so insure the Property in the name of Mortgagor or in the name of Mortgagee or both, and the premiums for any such insurance obtained by Mortgagee shall be the obligation of Mortgagor. Upon foreclosure of this Mortgage, all right, title and interest of Mortgagor in and to any policy of insurance upon the Property which is in the custody of Mortgagee, including the right to unearned premiums, shall vest in the purchase of the Property at foreclosure, and Mortgagor hereby appoints Mortgagee as the attorney in fact of Mortgagor to assign all right, title and interest of Mortgagor in and to any such policy of insurance to such purchaser. This appointment is coupled with an interest and shall be irrevocable.

4. Taxes and Assessments. Mortgagor will pay all taxes, assessments and other charges which constitute or are secured by a lien upon the Property which is superior to the lien of this Mortgage and will deliver to Mortgagee proof of payment of the same not less than ten (10) days prior to the date the same becomes delinquent; provided, however, that Mortgagor shall be entitled by appropriate proceedings to contest the amount of validity of such tax, assessment or charge so long as the collection of the same by foreclosure of the lien upon the Property is stayed during the pendency of such proceedings and Mortgagor deposits with the authority to which such tax, assessment or charge is payable or with Mortgagee appropriate security for payment of the same, together with any applicable interest and penalties, should the same be determined due and owing.

5. Expenditures by Mortgagee. If Mortgagor fails to make payment for restoration or repair of the Property, for insurance premiums or for taxes, assessments or other charges as required in this Mortgage, Mortgagee may, but shall not be obligated to, pay for the same, and any such payment by Mortgagee will be secured by this Mortgage and have the same rank and priority as the principal debt secured hereby and bear interest from the date of payment at the rate payable from time to time on outstanding principal under the Agreement. Payments made for taxes by Mortgagee shall be a first lien on the Property to the extent of the taxes so paid with interest from the date of payment, regardless of the rank and priority of this Mortgage. Mortgagor shall pay to the Mortgagee in cash on demand an amount equal to any payment made by Mortgagee pursuant to this paragraph plus interest thereon as herein provided.

6. Condemnation. Mortgagee shall be entitled to be made a party to and to participate in any proceeding, whether formal or informal, for condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Mortgagor hereby assigns to Mortgagee the right to collect and receive any payment or award to which Mortgagor would otherwise be entitled by reason of condemnation or acquisition pursuant to power of eminent domain of any portion of the Property. Any such payment or award received by Mortgagee may, at the option of Mortgagee, (i) be applied by Mortgagee to payment of any sums secured by this Mortgage in such order as Mortgagee may determine or (ii) be applied in a manner determined by Mortgagee to the replacement of the portion of the Property taken and to the repair or restoration of the remaining portion of the Property or (iii) be released to Mortgagor upon such conditions as Mortgagee may determine or (iv) be used for any combination of the foregoing purposes. No portion of an indemnity payment which is applied to replacement, repair or restoration of any portion of the Property or which is released to Mortgagor shall be deemed a payment against any sums secured by this Mortgage.

7. Default. The occurrence of any of the following events shall be deemed a Default under this Mortgage:

(a) Failure of Mortgagor to meet the repayment terms of the loan agreement or failure to pay any sum secured by this Mortgage when due;

(b) Sale, transfer or conveyance of all or any part of the Property or of any interest therein without the prior express written consent of the Mortgagee;

(c) Actual or threatened damage, destruction, waste, or injury to the property which impairs the property or Mortgagee's interest or rights in the Property;

(d) Upon the occurrence of any event permitting termination under the terms of the BB&T Equity Line of Credit Agreement, Tax Advantage Credit Line Agreement, or Tax Advantage Gold Card Agreement.

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8. Remedies. Upon the occurrence of a Default as hereinabove defined, Mortgagee may, without notice to Mortgagor, declare all sums secured by this Mortgage immediately due and payable (accelerate). The remedies provided to Mortgagee in this paragraph shall be in addition to and not in lieu of any other rights and remedies provided in this Mortgage or by law, all of which rights and remedies may be exercised by Mortgagee independently, simultaneously or consecutively in any order without being deemed to have waived any right or remedy previously or not yet exercised. In the event of foreclosure of this Mortgage by judicial proceedings, Mortgagee shall be entitled to collect in such proceeding all expenses of such foreclosure, including, but not limited to, a reasonable attorney's fee, not to exceed 15% of the outstanding balance due, which shall be additional sums secured by this Mortgage.

If a Default shall have occurred, Mortgagee may sell the Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and term of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to the said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money. Mortgagee or any person conducting the sales for Mortgagee is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Mortgagee may bid at said sale and purchase the Property, or any part thereof, if the highest bid thereof. At the foreclosure sale the Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Mortgagee may elect. The provisions of this paragraph shall apply with respect to the Mortgagee's enforcement of rights or interests in personal property which constitutes Property hereunder.

Application of Foreclosure or Sale Proceeds. The proceeds of any foreclosure sale pursuant to this paragraph shall be applied as follows:

(a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Property for sale, and (ii) making the sale, including a reasonable attorney's fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;

(b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, as applicable, which Mortgagee may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note, such repayment to be applied in the manner determined by Mortgagee;

(c) Third, to the payment of the Debt secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Document, as applicable, whether or not all of such Debt is then due;

(d) Fourth, the balance, if any, shall be paid as provided by law.

Mortgagee's Option on Foreclosure. At the option of the Mortgagee, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Mortgagee exercises its option to foreclose this Mortgage in equity, Mortgagee may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make such tenants parties defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor asserted to be by the Mortgagor, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

9. Appointment of Receiver. Upon the occurrence of a Default as hereinabove defined Mortgagee shall be entitled to the appointment of a receiver to enter upon and take and maintain full control of the Property in order to perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Mortgage. The receiver shall be entitled to receive a reasonable fee for so managing the Property. All rents collected pursuant to this paragraph shall be applied first to the costs of taking control of and managing the Property and collecting the rents, including, but not limited to, attorneys' fees, receiver's fees, premiums on receiver's bonds, costs for repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Mortgagor as lessor or landlord of the Property and then to the sums secured by this Mortgage. Mortgagee or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor, or anyone having an interest in the Property by reason of anything done or left undone by Mortgagor under this paragraph. If the rents of the Property are not sufficient to meet the costs of taking control of and managing the Property and collecting the rents. Mortgagee, at its sole option, may advance funds to meet the costs. Any funds expended by Mortgagee for such purposes shall become indebtedness of Mortgagor to Mortgagee secured by this Mortgage. Unless Mortgagee and Mortgagor agree in writing to other terms of payment such amounts shall be payable upon notice from Mortgagee to Mortgagor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in the Agreement. The entering upon and taking and maintaining of control of the Property by Mortgagee or the receiver and the application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy or Mortgagee hereunder.

10. Waiver by Mortgagee. Mortgagee may, in the sole discretion of Mortgagee, from time to time waive or forbear from enforcing any provision of this Mortgage, and no such waiver or forbearance shall be deemed a waiver by Mortgagee of any right or remedy provided herein or by law or be deemed a waiver of the right at any later time to enforce strictly all provisions of this Mortgage and to exercise any and all remedies provided herein and by law.

11. Future Advance. Mortgagee, at its option, may make Future Advances to Mortgagor. Such Future Advances, with interest at the rate payable from time to time on the outstanding principal under the Agreement, shall be secured by this Mortgage when advanced under the terms of the Agreement or of this Mortgage. Mortgagee may make such Future Advances (a) pursuant to the terms of the Agreement; (b) at the request of Mortgagor, whether or not there is any obligation to make Future Advances; (c) pursuant to an advance of funds under paragraph 10 above; or (d) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under any other mortgage or lien affecting the Property.

12. Notices. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to whom directed at the last address of such party known to the party sending the same. This paragraph shall not be deemed to prohibit any other manner of delivering a notice or other document.

13. Waiver of Homestead. Borrower hereby waives all rights of Homestead Exemption on the property.

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14. Miscellaneous.

(a) The agreements herein shall bind and inure to the benefit of the Mortgagor, Mortgagee and their respective heirs, successors and assigns.

(b) Whenever in this Mortgage one of the parties hereto is named or referred to, the heirs, legal representative, successors and assigns of such parties shall be included and all covenants and agreements contained in this Mortgage by or on behalf of the Mortgagor by or on behalf of the Mortgagee shall bind and inure to the benefit of their representatives, heirs, successors and assigns, whether so expressed or not.

(c) The headings of the sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

(d) If any provision of this Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable.

(e) This Mortgage shall be governed by, construed and enforced in accordance with the laws of South Carolina.

(f) Mortgagee may make or cause to be made reasonable entries upon and inspections of the Property upon giving Mortgagor prior notice.

(g) All covenants of Mortgagor shall be joint and several.

(h) If this is not a first mortgage, any prior mortgage(s) and the maximum amount thereof is (are) shown below.

HomeBanc Mortgage Corporation, $156,000.00

(i) **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any Debt secured by or that may be secured by this Mortgage, and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Property be set off against any part of the Debt secured hereby. Except to the extent prohibited by law, Mortgagor waives all appraisement rights relating to the Property.

(j) This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

☐ **If checked, I certify that the Property is my homestead.**

☐ **If checked, I certify that the Property is not my homestead.**

Acknowledgement for Individual

STATE OF ALABAMA

COUNTY OF SHELBY

I, the undersigned, a Notary Public in and for said county in said state, hereby certify that Derrick B. Varnedoe and Lori R. Varnedoe husband and wife, whose name 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 the instrument, (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this 17th day of June, 2005.

[NOTARIAL SEAL] COURTNEY H. MASON, JR. COMMISSION EXPIRES MARCH 5, 2007

Notary Public

My commission expires: 3/5/07

DERRICK B. VARNEDOE (SEAL)

LORI R. VARNEDOE (SEAL)

(SEAL)

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Exhibit "A"

Lot 14, according to the Map and Survey of Lime Creek Chelsea Preserve Subdivision 1, as recorded in Map Book 32, Page 25, in the Probate Office of Shelby County, Alabama.

DVL