

20051005000519200 1/10 \$900.50  
Shelby Cnty Judge of Probate, AL  
10/05/2005 11:54:55AM FILED/CERT

*This instrument prepared by:*  
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Bradley Arant Rose & White LLP  
One Federal Place  
1819 Fifth Avenue North  
Birmingham, Alabama 35203-2104

STATE OF ALABAMA )

SHELBY COUNTY )

## ACCOMMODATION MORTGAGE

**KNOW ALL MEN BY THESE PRESENTS, THAT :**

WHEREAS, **DESHAZO CRANE COMPANY, L.L.C.**, an Alabama limited liability company, and **DESHAZO SERVICE COMPANY, L.L.C.**, an Alabama limited liability company (collectively, the "Borrower"), have become justly indebted to **FIRST COMMERCIAL BANK** (the "Mortgagee"), whose address is P. O. Box 11746, Birmingham, Alabama 35209, for credit extended to the Borrower under the Loans, which are evidenced by and described in that certain Revolving and Term Loan Agreement dated as of August 29, 2002, as the same has been amended from time-to-time by written agreement, including without limitation that certain Third Amendment to Revolving and Term Loan Agreement of even date herewith by and between Borrower and Mortgagee (as amended, the "Loan Agreement"), and together with each and every renewal, extension and modification of the Notes (as defined in the Loan Agreement); and

WHEREAS, in order to induce the Mortgagee to make the Loans to Borrower, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, **MITCHELL INVESTMENT COMPANY, LLC**, an Alabama limited liability company (the "Mortgagor"), whose address is 2055 Highway 87, Alabaster, Alabama 35007, has agreed to enter into this Accommodation Mortgage (this "Mortgage");

WHEREAS, the Mortgagor is an affiliate of the Borrower, and as a result, will obtain a material financial benefit from the making of such Loans;

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of the Notes and any renewals or extensions thereof and the interest thereon, and all other indebtedness now or hereafter owed by Borrower or Mortgagor to Mortgagee, whether such indebtedness is primary or secondary, direct or indirect, contingent or absolute, matured or unmatured, joint or several, and otherwise secured or not, and to secure compliance with all of the covenants and stipulations hereinafter contained, Mortgagor does hereby grant, bargain, sell, and



convey unto Mortgagee that certain real estate (hereinafter called the "Mortgaged Property") situated in Shelby County, Alabama as more fully described on Exhibit A, attached hereto.

Together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements, and appurtenances thereunto belonging or in any way appertaining, including any after-acquired title and easements and all rights, title, and interest now or hereafter owned by Mortgagor in and to all buildings and improvements, storm and screen windows and doors, gas, steam, electric and other heating, lighting, ventilating, air conditioning, refrigerating and cooking apparatus, elevators, plumbing, sprinkling, and other equipment and fixtures attached or appertaining to said Mortgaged Property, all of which shall be deemed realty and conveyed by this Mortgage;

TO HAVE AND TO HOLD the same and every part thereof unto Mortgagee, its successors and assigns forever;

SUBJECT only to those matters set forth on Exhibit A attached hereto (the "Permitted Encumbrances");

**PROVIDED, HOWEVER, that the indebtedness secured by this Mortgage shall be limited to \$575,000.00 of the indebtedness described in the Loan Agreement.**

For the purpose of further securing the payment of said indebtedness, Mortgagor warrants, covenants, and agrees with Mortgagee, its successors and assigns, as follows:

1. Subject to the Permitted Encumbrances, Mortgagor is lawfully seized in fee and possessed of said Mortgaged Property and said Mortgaged Property is free and clear of all encumbrances, easements, and restrictions.
2. Mortgagor has a good right to convey the Mortgaged Property, and Mortgagor will warrant and forever defend the title against the lawful claims of all persons whomsoever.
3. Mortgagor will pay all taxes, assessments, or other liens taking priority over this Mortgage when imposed legally upon said Mortgaged Property. Should default be made in the payment of same or any part thereof, Mortgagee may pay the same (but Mortgagee is not obligated to do so).
4. Mortgagor will keep the buildings on said Mortgaged Property continuously insured in such amounts, in such manner, and with such companies as may be satisfactory to Mortgagee against loss by fire (including so-called extended coverage), wind, and such other hazards as Mortgagee may specify with loss, if any, payable to Mortgagee. Mortgagor will deposit with Mortgagee policies of such insurance or, at Mortgagee's election, certificates thereof and will pay premiums therefor as the same become due. Mortgagor shall give immediate notice in writing to Mortgagee of any loss or damages to said Mortgaged Property caused by any casualty. If Mortgagor fails to keep said property insured as above specified, Mortgagee may insure said property (but Mortgagee is not obligated to do so) for its insurable value against loss by fire, wind, and other



hazards for the benefit of Mortgagor and Mortgagee or Mortgagee alone, at Mortgagee's election. The proceeds of such insurance shall be paid by insurer to Mortgagee, who is hereby granted full power to settle and compromise claims under all policies and to demand, receive, and receipt for all sums becoming due thereunder. Said proceeds, if collected, shall be credited on the indebtedness secured by this Mortgage, less cost of collection of same, or shall be used in repairing or reconstructing the Mortgaged Property, as Mortgagee may elect.

5. All amounts so expended by Mortgagee for insurance, the payment of taxes or assessments, or to discharge prior liens shall become a debt due Mortgagee at once payable without demand upon or notice to any person and shall bear interest at the rate of interest payable on the principal sum of the Note or, if no such rate of interest is specified or if the rate specified would be unlawful, at the rate of interest then applicable under the Revolving Note. Such debt and the interest thereon shall be secured by the lien of this Mortgage. Upon failure of Mortgagor to reimburse Mortgagee for all amounts so expended, at the election of Mortgagee and with or without notice to any person, Mortgagee may declare the entire indebtedness secured by this Mortgage due and payable and this Mortgage subject to foreclosure, and the same may be foreclosed as hereinafter provided.

6. Mortgagor shall take good care of the Mortgaged Property described above and shall not commit or permit any waste thereon. Mortgagor shall keep the Mortgaged Property repaired at all times and shall maintain the same in substantially the same condition as it now is, reasonable wear and tear alone excepted.

7. No delay or failure of Mortgagee to exercise any option to declare the maturity of any debt secured by this Mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present defaults on the part of Mortgagor or Borrower. The procurement of insurance or payment of taxes or other liens or assessments by Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of Mortgagor to procure such insurance or to pay such taxes, liens, or assessments, it being agreed that no terms or conditions contained in this Mortgage can be waived, altered, or changed except as evidenced in writing signed by Mortgagor and Mortgagee.

8. Mortgagor will well and truly pay and discharge every obligation of Mortgagor to Mortgagee hereunder.

9. The indebtedness hereby secured shall become due and payable in full upon the assignment, transfer, or conveyance of all or any portion of the Mortgaged Property or of any beneficial interest of Mortgagor therein unless the prior written consent of Mortgagee is first obtained.

10. After any default on the part of Borrower or Mortgagor, Mortgagee shall, upon complaint filed or other proper legal proceeding being commenced for the foreclosure of this Mortgage, be entitled as a matter of right to the appointment by any competent court or tribunal, without notice to any party, of a receiver of the rents, issues, and profits of said Mortgaged Property,





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with power to lease and control the said Mortgaged Property and with such other powers as may be deemed necessary. A reasonable attorney's fee shall, among other expenses and costs, be fixed, allowed, and paid out of such rents, issues, and profits or out of the proceeds of the sale of said Mortgaged Property.

11. All the covenants and agreements of Mortgagor herein contained shall extend to and bind Mortgagor's heirs, executors, administrators, successors, and assigns, and such covenants and agreements and all options, rights, privileges, and powers herein given, granted, or secured to Mortgagee shall inure to the benefit of the heirs and assigns of Mortgagee.

12. The debt hereby secured shall at once become due and payable and this Mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard to the 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.

13. The provisions of this Mortgage and the Note secured hereby are severable, and the invalidity or unenforceability of any provision of this Mortgage or of the Note shall not affect the validity and enforceability of the other provisions of this Mortgage or of the Note. The remedies provided to Mortgagee herein are cumulative with the rights and remedies of Mortgagee at law and in equity, and such rights and remedies may be exercised concurrently or consecutively.

14. Mortgagor does further represent, warrant and covenant as follows:

(a) To Mortgagor's knowledge, no Hazardous Materials (as hereinafter defined) have been, are, or will be while any part of the indebtedness secured by this Mortgage remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Mortgaged Property. As used herein, the term "Hazardous Materials" include without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, et seq.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, et seq.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Mortgaged Property;



(c) All of the Mortgaged Property complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or, to Mortgagor's knowledge, threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Mortgaged Property;

(e) Mortgagor, at Mortgagor's expense, promptly upon the written request of Mortgagee from time to time, shall provide Mortgagee with an environmental audit report, or an update of such report, all in scope, form and content satisfactory to Mortgagee;

(f) In the event of any spill or disposal of Hazardous Materials on the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any such contiguous real estate, and/or if Mortgagor shall fail to comply with any environmental law or regulation, Mortgagee may, at its election, but without the obligation so to do, give such notices as may be required by law and/or cause any remedial work that may be necessary to be performed at the Mortgaged Property and/or take any and all other actions as Mortgagee shall deem necessary or advisable in order to remedy said spill or disposal of Hazardous Materials or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the default rate (as specified in the Revolving Note) from the date of payment by Mortgagee, shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be added to and become a part of the indebtedness secured hereby and shall have the benefit of the lien hereby created as a part thereof; and

(g) Mortgagor hereby agrees to indemnify and hold Mortgagee harmless from all loss, cost, damage, claim and expense incurred by Mortgagee on account of (i) the violation of any representation, warranty or covenant set forth in this paragraph, (ii) Mortgagor's failure to perform any obligations of this paragraph, (iii) Mortgagor's or the Mortgaged Property's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Mortgaged Property. This indemnification shall survive payment of the indebtedness secured by this Mortgage, the exercise of any right or remedy hereunder or under any other loan document securing or evidencing said indebtedness, any subsequent sale or transfer of the Mortgaged Property, and all similar or related events or occurrences. Mortgagor shall give immediate oral and written notice to Mortgagee of its receipt of any notice of a violation of any law, rule or regulation covered by this paragraph or of any notice or other claim relating to the environmental condition of the Mortgaged Property, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

15. Mortgagee is authorized, without notice or demand and without affecting this Mortgage, from time to time to (a) after the occurrence of an Event of Default, renew, compromise, extend, accelerate or otherwise change the time for payment of or otherwise change the terms of the Notes or any part thereof; (b) take and hold security for the payment of the Notes and exchange,



enforce, waive and release any such security; and (c) apply such security and direct the order or manner of sale thereof as Mortgagee in his discretion may determine. Mortgagee may without notice assign this Mortgage in whole or in part.

16. Mortgagor waives any right to require Mortgagee to (a) proceed against Borrower; (b) proceed against or exhaust any security held from Borrower; or (c) pursue any other remedy in Mortgagee's power whatsoever. Mortgagor waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of the liability of Borrower. Until the Notes have been paid in full and all obligations of Mortgagor to lend money to Borrower or Mortgagor have been terminated, Mortgagor shall have no right of subrogation and waives any right to enforce any remedy which Mortgagee now has or may hereafter have against Borrower, and waives any benefit of and any right to participate in any security now or hereafter held by Mortgagee. Mortgagor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and of the existence, creation or incurring of new or additional indebtedness.

17. It is the intent that this Mortgage shall be and remain unaffected (a) by the existence or nonexistence or validity or invalidity of any pledge, assignment or conveyance given as security for the Notes; or (b) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument or the Notes or notes evidencing any indebtedness of Borrower or any part thereof; or (c) by resort on the part of the Mortgagee to any other security or remedy for the collection of any indebtedness of Borrower or Mortgagor; or (d) by the bankruptcy of the Borrower and, in case of such bankruptcy, by failure of the Mortgagee to file claim against such bankrupt's estate for the amount of such bankrupt's liability to Mortgagee.

18. This Mortgage is independent of the obligations of Borrower, and Mortgagee may exercise his rights under this Mortgage whether or not action is brought against Borrower, and Mortgagor waives the benefit of any statute of limitations or other defenses affecting this Mortgage or the enforcement thereof.

19. All notices, requests, demands and other communications provided for hereunder shall be in writing and mailed or hand delivered to the applicable party at its address indicated on the first page of this Mortgage or at such other address as shall be designated by such party in a written notice to the other party hereto. Any such notice shall be deemed received three (3) days after properly posting and addressing and depositing said letter in the United States Mail, certified, return receipt requested.

20. No amendment, modification or cancellation of this Mortgage shall be valid unless in writing and signed by the party against whom enforcement is sought.

21. This Mortgage shall be governed and construed under the laws of the State of Alabama except to the extent any law, rule or regulation of the federal government of the United States of America may be applicable, in which case, such federal law, rule or regulation shall control.



UPON CONDITION, HOWEVER, that if Borrower or Mortgagor shall well and truly pay and discharge all the indebtedness hereby secured as the same shall become due and payable and shall in all things do and perform all acts and agreement herein agreed to be done by Mortgagor according to the tenor and effect hereof and Mortgagors obligation to advance money to Borrower and Mortgagor shall have been terminated, then and in that event only, this conveyance shall be and become null and void; but should default be made in the prompt payment of the principal of and interest payable on the Notes or any other indebtedness hereby secured or any renewals or extensions thereof or any part thereof, as and when due and payable, or should default be made in the repayment of any sum expended by the Mortgagee under the authority of any of the provisions of this Mortgage, or should an event of default occur under the Loan Agreement, or should the interest of the Mortgagee in the Mortgaged Property become endangered by reason of the enforcement of any lien or encumbrance thereon so as to endanger the debt hereby secured, or should a petition to condemn any part of the Mortgaged Property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this Mortgage or the debt hereby secured or permitting or authorizing the deduction of any such tax from the principal or interest secured by this Mortgage or by virtue of which any tax or assessment upon the Mortgaged Property shall be charged against the owner of this Mortgage and Mortgagor shall not promptly pay or cause to be paid such tax or assessment, or should at any time any of the stipulations contained in this Mortgage be declared invalid or inoperative by any court of competent jurisdiction, or should Mortgagor fail to do and perform any other act or thing herein required or agreed to be done in this Mortgage (each of the foregoing events or conditions is referred to herein as an "Event of Default"), then, in any of said events, the whole of the indebtedness hereby secured, or any portion or part of same which may not at said date have been paid, with interest thereon, shall at once become due and payable and this Mortgage subject to foreclosure at the option of Mortgagee, notice of the exercise of such option being hereby expressly waived. Mortgagee shall have the right to enter upon and take possession of the Mortgaged Property and after or without taking such possession to sell the same before the front or main courthouse door of the county (or the division thereof) where said property, or a substantial part of said property, is located, at public outcry for cash, after first giving notice of the time, place, and terms of such sale by publication once a week for three consecutive weeks prior to said sale in a newspaper published in the county or counties where the Mortgaged Property is located. Upon the payment of the purchase money, Mortgagee or auctioneer is authorized to execute to the purchaser for and in the name of Mortgagor a good and sufficient deed to the Mortgaged Property. Mortgagee shall 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 may then be necessary to expend in paying insurance, taxes, and other encumbrances, with interest thereon; third, to the payment in full of the indebtedness hereby secured and interest thereon, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the date of sale; and fourth, the balance, if any, to be paid over to Mortgagor or to whomsoever then appears of record to be the owner of Mortgagor's interest in the Mortgaged Property. Mortgagee may bid and become the purchaser of the Mortgaged Property at any foreclosure sale hereunder. Mortgagor hereby waives any requirement that the Mortgaged Property be sold in separate tracts and agrees that Mortgagee may, at Mortgagee's option, sell the Mortgaged Property en masse regardless of the number of parcels hereby conveyed.



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IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage on this 15th day of April, 2005.

**Mitchell Investment Company, LLC,**  
an Alabama limited liability company

By: Mitchell Industries, Inc.,  
an Alabama corporation,  
Its Sole Member

By: *Guy K. Mitchell, Jr.*  
Guy K. Mitchell, Jr.  
Its President

STATE OF ALABAMA )

\_\_\_\_\_ COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Guy K. Mitchell, Jr., whose name as President of Mitchell Industries, Inc., an Alabama corporation, which is the Sole Member of Mitchell Investment Company, 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, as such officer of such Sole Member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 26 day of <sup>MAY</sup>~~April~~, 2005.

*Steve F. Barnett*  
Notary Public

[NOTARIAL SEAL]

My commission expires: MY COMMISSION EXPIRES JUNE 24, 2008



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EXHIBIT A

LEGAL DESCRIPTION

A parcel of land in the Southeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 19, Township 21 South, Range 2 West, Shelby County, Alabama, described as follows:

Commence at the Southeast corner of Section 19, Township 21, South, Range 2 West, Shelby County, Alabama and run thence Northerly along the East line of said Section 19 a distance of 2,834.30 feet to a point on the North line of property conveyed to Asplundh Tree Expert Company by deed recorded in Real 207, Page 292, in the Probate Office of Shelby County, Alabama; thence turn 89 degrees 48 minutes 08 seconds left and run Westerly along the North line of property owned by Asplundh Tree Expert Company 110.01 feet to a steel pin corner on the West margin of Shelby County Highway No. 87 and the point of beginning of the property being described; thence continue along last described course a distance of 212.31 feet to a steel pin corner; thence turn 90 degrees 00 minutes 00 seconds right and run Northerly a distance of 212.48 feet to a steel pin corner in the centerline of an existing gravel road or driveway; thence turn 89 degrees 59 minutes 59 seconds right and run Easterly along the centerline of said gravel road or drive a distance of 209.25 feet to a steel pin corner on the same said Westerly margin of same said Highway 87; thence turn 89 degrees 10 minutes 29 seconds right and run Southerly along said margin of said Highway a distance of 212.50 feet to the point of beginning; being situated in Shelby County, Alabama.





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## **EXHIBIT B**

### **Permitted Encumbrances**

1. Mortgage given by Mitchell Investment Company, LLC to First Commercial Bank, in the amount of \$465,750.00, dated January 13, 2004, filed for record January 16, 2004, and recorded in Instrument #20040116000031290, together with Assignment of Rents and Leases in Instrument #20040116000031300 and UCC-1 Financing Statement in Instrument #20040116000031310, in the Probate Office of Shelby County, Alabama.
2. Mortgage given by Mitchell Investment Company, LLC to First Commercial Bank, in the amount of \$51,750.00, dated January 13, 2004, filed for record January 16, 2004, and recorded in Instrument \$20040116000031320, in the Probate Office of Shelby County, Alabama.
3. Restrictions, covenants and conditions as set out in instrument(s) recorded in Deed Book 352, Pages 805 and 818 and Real 136, Page 619.
4. Right(s)-of-Way(s) granted to Shelby County by instrument(s) recorded in Deed 244, Page 129 and Deed 239, Page 237.
5. Easement(s) to Alabama Power Company as shown by instrument recorded in Real 149, Page 41.
6. Title to all minerals within and underlying the premises, together with all mining rights and other rights, privileges and immunities relating thereto, together with any release of liability for injury or damage to persons or property as a result of the exercise of such rights as recorded in Deed 352, Page 805.