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Shelby Cnty Judge of Probate,AL
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After Recordation Return to:
CADENCE BANK, N.A.
One Chase Corporate Center
Birmingham, AL 35244

# MORTGAGE

| BORROWER | MORTGAGOR |
|---|---|
| R & S Custom Homes, Inc | R & S Custom Homes, Inc |
| ADDRESS<br>12276 Old Highway 280<br>Chelsea, AL 35043 | ADDRESS<br>12276 Old Highway 280<br>Chelsea, AL 35043 |
| TELEPHONE NO. IDENTIFICATION NO. | TELEPHONE NO. IDENTIFICATION NO. |

In consideration of the loan or other credit accommodation specified and any future advances or future Obligations, as defined herein, which may be advanced or incurred, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor grants, warrants, bargains, sells, assigns, conveys, and mortgages to CADENCE BANK, N.A. One Chase Corporate Center, Suite 400, P.O. Box 361486, Birmingham, AL 35236 ("Lender"), its successors and assigns, with power of sale and right of entry and possession all of Mortgagor's present and future estate, right, title and interest in and to the real property described in Schedule A which is attached to this Mortgage and incorporated herein by this reference, together with all present and future improvements, chattels, and fixtures; all privileges, hereditaments, and appurtenances; all leases, licenses and other agreements; all rents, issues and profits; all water, well, ditch, reservoir and mineral rights and stocks pertaining to the real property (cumulatively "Property"), until payment in full of all Obligations secured hereby.

Moreover, in further consideration, Mortgagor does, for Mortgagor and Mortgagor's heirs, representatives, successors and assigns, hereby expressly warrant, covenant, and agree with Lender, its successors and assigns as follows:

**1. OBLIGATIONS.** This Mortgage shall secure the payment and performance of all present and future indebtedness, liabilities, obligations and covenants of Borrower or Mortgagor (cumulatively "Obligations") to Lender pursuant to:

(a) this Mortgage and the following promissory notes and other agreements:

| INTEREST RATE | PRINCIPAL AMOUNT/ CREDIT LIMIT | FUNDING/ AGREEMENT DATE | MATURITY DATE | CUSTOMER NUMBER | LOAN NUMBER |
|---|---|---|---|---|---|
| Variable | $698,564.00 | 05/03/06 | 05/10/07 | | 12604382115 |

(b) all other present or future written agreements with Lender which refer specifically to this Mortgage **(whether executed for the same or different purposes than the foregoing)**;

(c) any guaranty of obligations of other parties given to Lender now or hereafter executed which refers to this Mortgage;

(d) future advances, whether obligatory or optional, to the same extent as if made contemporaneously with the execution of this Mortgage, made or extended to or on behalf of Mortgagor or Borrower. Mortgagor agrees that if one of the Obligations is a line of credit, the lien created by this Mortgage shall continue until payment in full of all debt due under the line notwithstanding the fact that from time to time (but before termination of the line) no balance may be outstanding. At no time shall this Mortgage, not including sums advanced to protect the security of this Mortgage, exceed $ 698,564.00 ; and

(e) all amendments, extensions, renewals, modifications, replacements or substitutions to any of the foregoing.

**2. REPRESENTATIONS, WARRANTIES AND COVENANTS.** Mortgagor represents, warrants and covenants to Lender that:

(a) Mortgagor has fee simple marketable title to the Property and shall maintain the Property free of all mortgages, security interests, encumbrances and claims except for this Mortgage and those described in Schedule B which is attached to this Mortgage and incorporated herein by reference, which Mortgagor agrees to pay and perform in a timely manner;

(b) Mortgagor is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to "Hazardous Materials", as defined herein, and other environmental matters (the "Environmental Laws"), and neither the federal government nor the state where the Property is located nor any other governmental or quasi governmental entity has filed a lien on the Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Mortgagor's knowledge, threatened, which involve the Property. Neither Mortgagor nor, to the best of Mortgagor's knowledge, has any other party used, generated, released, discharged, stored, or disposed of any Hazardous Materials, in connection with the Property or transported any Hazardous Materials to or from the Property. Mortgagor shall not commit or permit such actions to be taken in the future. The term "Hazardous Materials" shall mean any substance, material, or waste which is or becomes regulated by any governmental authority including, but not limited to: (i) petroleum; (ii) friable or nonfriable asbestos; (iii) polychlorinated biphenyls; (iv) those substances, materials or wastes designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act or listed pursuant to Section 307 of the Clean Water Act or any amendments or replacements to these statutes; (v) those substances, materials or wastes defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act or any amendments or replacements to that statute; and (vi) those substances, materials or wastes defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments or replacements to that statute or any other similar state or federal statute, rule, regulation or ordinance now or hereafter in effect. Mortgagor shall not lease or permit the sublease of the Property to a tenant or subtenant whose operations may result in contamination of the Property with Hazardous Materials or toxic substances;

(c) All applicable laws and regulations including, without limitation, the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. (and all regulations promulgated thereunder) and all zoning and building laws and regulations relating to the Property by virtue of any federal, state or municipal authority with jurisdiction over the Property, presently are and shall be observed and complied with in all material respects, and all rights, licenses, permits, and certificates of occupancy (including but not limited to zoning variances, special exceptions for nonconforming uses, and final inspection approvals), whether temporary or permanent, which are material to the use and occupancy of the Property, presently are and shall be obtained, preserved and, where necessary, renewed;

(d) Mortgagor has the right and is duly authorized to execute and perform its Obligations under this Mortgage and these actions do not and shall not conflict with the provisions of any statute, regulation, ordinance, rule of law, contract or other agreement which may be binding on Mortgagor at any time;

(e) No action or proceeding is or shall be pending or threatened which might materially affect the Property; and

(f) Mortgagor has not violated and shall not violate any statute, regulation, ordinance, rule of law, contract or other agreement (including, but not limited to, those governing Hazardous Materials) which might materially affect the Property or Lender's rights or interest in the Property pursuant to this Mortgage.

**3. PRIOR MORTGAGES.** Mortgagor represents and warrants that there are no prior mortgages or deeds of trust affecting any part of the Property except as set forth on Schedule B attached to this Mortgage which Mortgagor agrees to pay and perform in a timely manner. If there are any prior mortgages or deeds of trust then Mortgagor agrees to pay all amounts owed, and perform all obligations required, under such mortgages or deeds of trust and the indebtedness secured thereby and further agrees that a default under any prior mortgage or deed of trust shall be a default under this Mortgage and shall entitle Lender to all rights and remedies contained herein or in the Obligations to which Lender would be entitled in the event of any other default.

**4. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN MORTGAGORS OR BORROWERS.** In the event of a sale, conveyance, lease, contract for deed or transfer to any person of all or any part of the real property described in Schedule A, or any interest therein, or of all or any beneficial interest in Borrower or Mortgagor (if Borrower or Mortgagor is not a natural person or persons but is a corporation, limited liability company, partnership, trust, or other legal entity), Lender may, at its option, declare the outstanding principal balance of the Obligations plus accrued interest thereon immediately due and payable. At Lender's request, Mortgagor or Borrower, as the case may be, shall furnish a complete statement setting forth all of its stockholders, members or partners, as appropriate, and the extent of their respective ownership interests.

**5. ASSIGNMENT OF RENTS.** Mortgagor absolutely assigns to Lender all present and future rents, royalties, income and profits which arise from the use or occupancy of all or any portion of the Property. Until Mortgagor is in default under this Mortgage or any of the Obligations, Mortgagor shall have a license to collect and receive the rents, royalties, income and profits. Upon any default under this Mortgage or any of the Obligations, Lender may terminate Mortgagor's license without notice and may thereafter proceed to collect the rents, royalties, income, and profits with or without the appointment of a receiver. All rents, royalties, income and profits collected by Lender or a receiver will be applied first to pay all expenses of collection, then to the payment of all costs of operation and maintenance of the Property, and then to the payment of the Obligations secured by this Mortgage in the order determined by Lender in its sole discretion.

**6. CONSTRUCTION MORTGAGE.** [X] If checked, this Mortgage is a construction mortgage that secures an Obligation incurred for the acquisition cost of the land and/or the construction of an improvement on land, and it will be subject to the terms of a construction loan agreement between Mortgagor and Lender. Any materials, equipment or supplies used or intended for use in the construction, development or operation of the Property, whether stored on or off the Property, shall also be subject to the lien of this Mortgage. Mortgagor shall obtain Lender's approval of all plans and specifications, and no changes to the plans and specifications or the nature of the construction project shall be permitted without the prior written approval of Lender.

**7. LEASES AND OTHER AGREEMENTS.** Mortgagor shall not take or fail to take any action which may cause or permit the termination or the withholding of any payment in connection with any Lease pertaining to the Property. In addition, Mortgagor, without Lender's prior written consent, shall not: (a) collect any monies payable under any Lease more than one month in advance; (b) modify any Lease; (c) assign or allow a lien, security interest or other encumbrance to be placed upon Mortgagor's rights, title and interest in and to any Lease or the amounts payable thereunder; or (d) terminate or cancel any Lease except for the nonpayment of any sum or other material breach by the other party thereto. If Mortgagor receives at any time any written communication asserting a default by Mortgagor under any Lease or purporting to terminate or cancel any Lease, Mortgagor shall promptly forward a copy of such communication (and any subsequent communications relating thereto) to Lender. All such Leases and the amounts due to Mortgagor thereunder are hereby assigned to Lender as additional security for the Obligations.

**8. COLLECTION OF INDEBTEDNESS FROM THIRD PARTY.** Lender shall be entitled to notify or require Mortgagor to notify any third party (including, but not limited to, lessees, licensees, governmental authorities and insurance companies) to pay Lender any indebtedness or obligation owing to Mortgagor with respect to the Property (cumulatively "Indebtedness") whether or not a default exists under this Mortgage. Mortgagor shall diligently collect the Indebtedness owing to Mortgagor from these third parties until the giving of such notification. In the event that Mortgagor possesses or receives possession of any instruments or other remittances with respect to the Indebtedness following the giving of such notification or if the instruments or other remittances constitute the prepayment of any Indebtedness or the payment of any insurance or condemnation proceeds, Mortgagor shall hold such instruments and other remittances in trust for Lender apart from its other property, endorse the instruments and other remittances to Lender, and immediately provide Lender with possession of the instruments and other remittances. Lender shall be entitled, but not required, to collect (by legal proceedings or otherwise), extend the time for payment, compromise, exchange or release any obligor or collateral, or otherwise settle any of the Indebtedness whether or not an Event of Default exists under this Mortgage. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Notwithstanding the foregoing, nothing herein shall cause Lender to be deemed a mortgagee in possession.

**9. USE AND MAINTENANCE OF PROPERTY.** Mortgagor shall take all actions and make any repairs needed to maintain the Property in good condition. Mortgagor shall not commit or permit any waste to be committed with respect to the Property. Mortgagor shall use the Property solely in compliance with applicable law and insurance policies. Mortgagor shall not make any alterations, additions or improvements to the Property without Lender's prior written consent. Without limiting the foregoing, all alterations, additions and improvements made to the Property shall be subject to the beneficial interest belonging to Lender, shall not be removed without Lender's prior written consent, and shall be made at Mortgagor's sole expense.

**10. LOSS OR DAMAGE.** Mortgagor shall bear the entire risk of any loss, theft, destruction or damage (cumulatively "Loss or Damage") to the Property or any portion thereof from any cause whatsoever. In the event of any Loss or Damage, Mortgagor shall, at the option of Lender, repair the affected Property to its previous condition or pay or cause to be paid to Lender the decrease in the fair market value of the affected Property.

**11. INSURANCE.** The Property will be kept insured for its full insurable value against all loss or damage caused by flood, earthquake, tornado and fire, theft or other casualty to the extent required by Lender. MORTGAGOR HAS THE RIGHT TO PROVIDE SUCH INSURANCE THROUGH AN EXISTING POLICY OR A POLICY INDEPENDENTLY OBTAINED AND PAID FOR BY MORTGAGOR, subject to the right of Lender to decline the insurance offered by Mortgagor for reasonable cause before credit is extended. The insurance policies shall require the insurance company to provide Lender with at least n/a days' written notice before such policies are altered or cancelled in any manner. The insurance policies shall name Lender as a loss payee and provide that no act or omission of Mortgagor or any other person shall affect the right of Lender to be paid the insurance proceeds pertaining to the loss or damage of the Property. In the event Mortgagor fails to acquire or maintain insurance, Lender (after providing notice as may be required by law) may in its discretion procure appropriate insurance coverage upon the Property and the insurance cost shall be an advance payable and bearing interest as described in Paragraph 22 and secured hereby. Mortgagor shall furnish Lender with evidence of insurance indicating the required coverage. Lender may act as attorney-in-fact for Mortgagor in making and settling claims under insurance policies, cancelling any policy or endorsing Mortgagor's name on any draft or negotiable instrument drawn by any insurer. All such insurance policies shall be immediately assigned, pledged and delivered to Lender as further security for the Obligations. In the event of loss, Mortgagor shall immediately give Lender written notice and Lender is authorized to make proof of loss. Each insurance company is directed to make payments directly to Lender instead of to Lender and Mortgagor. Lender shall have the right, at its sole option, to apply such monies toward the Obligations or toward the cost of rebuilding and restoring the Property. Any amounts may at Lender's option be applied in the inverse order of the due dates thereof.

**12. ZONING AND PRIVATE COVENANTS.** Mortgagor shall not initiate or consent to any change in the zoning provisions or private covenants affecting the use of the Property without Lender's prior written consent. If Mortgagor's use of the Property is or becomes a nonconforming use under any zoning provision, Mortgagor shall not cause or permit such use to be discontinued or abandoned without the prior written consent of Lender. Mortgagor will immediately provide Lender with written notice of any proposed changes to the zoning provisions or private covenants affecting the Property.

**13. CONDEMNATION.** Mortgagor shall immediately provide Lender with written notice of any actual or threatened condemnation or eminent domain proceeding pertaining to the Property. All monies payable to Mortgagor from such condemnation or taking are hereby assigned to Lender and shall be applied first to the payment of Lender's attorneys' fees, legal expenses and other costs (including appraisal fees) in connection with the condemnation or eminent domain proceedings and then, at the option of Lender, to the payment of the Obligations or the restoration or repair of the Property.

**14. LENDER'S RIGHT TO COMMENCE OR DEFEND LEGAL ACTIONS.** Mortgagor shall immediately provide Lender with written notice of any actual or threatened action, suit, or other proceeding affecting the Property. Mortgagor hereby appoints Lender as its attorney-in-fact to commence, intervene in, and defend such actions, suits, or other legal proceedings and to compromise or settle any claim or controversy pertaining thereto. Lender shall not be liable to Mortgagor for any action, error, mistake, omission or delay pertaining to the actions described in this paragraph or any damages resulting therefrom. Nothing contained herein will prevent Lender from taking the actions described in this paragraph in its own name.

**15. INDEMNIFICATION.** Lender shall not assume or be responsible for the performance of any of Mortgagor's obligations with respect to the Property under any circumstances. Mortgagor shall immediately provide Lender with written notice of and indemnify and hold Lender and its shareholders, directors, officers, employees and agents harmless from all claims, damages, liabilities (including attorneys' fees and legal expenses), causes of action, actions, suits and other legal proceedings (cumulatively "Claims") pertaining to the Property (including, but not limited to, those involving Hazardous Materials). Mortgagor, upon the request of Lender, shall hire legal counsel to defend Lender from such Claims, and pay the attorneys' fees, legal expenses and other costs incurred in connection therewith. In the alternative, Lender shall be entitled to employ its own legal counsel to defend such Claims at Mortgagor's cost. Mortgagor's obligation to indemnify Lender under this paragraph shall survive the termination, release, satisfaction or foreclosure of this Mortgage.

**16. TAXES AND ASSESSMENTS.** Mortgagor shall pay all taxes and assessments relating to the Property when due and immediately provide Lender evidence of payment of same. Upon the request of Lender, Mortgagor shall deposit with Lender each month one-twelfth (1/12) of the estimated annual insurance premium, taxes and assessments pertaining to the Property. So long as there is no default, these amounts shall be applied to the payment of taxes, assessments and insurance as required on the Property. In the event of default, Lender shall have the right, at its sole option, to apply the funds so held to pay any taxes or against the Obligations. Any funds applied may, at Lender's option, be applied in reverse order of the due date thereof.

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**17. INSPECTION OF PROPERTY, BOOKS, RECORDS AND REPORTS.** Mortgagor shall allow Lender or its agents to examine and inspect the Property and examine, inspect and make copies of Mortgagor's books and records pertaining to the Property from time to time. Mortgagor shall provide any assistance required by Lender for these purposes. All of the signatures and information contained in Mortgagor's books and records shall be genuine, true, accurate and complete in all respects. Mortgagor shall note the existence of Lender's beneficial interest in its books and records pertaining to the Property. Additionally, Mortgagor shall report, in a form satisfactory to Lender, such information as Lender may request regarding Mortgagor's financial condition or the Property. The information shall be for such periods, shall reflect Mortgagor's records at such time, and shall be rendered with such frequency as Lender may designate. All information furnished by Mortgagor to Lender shall be true, accurate and complete in all respects, and signed by Mortgagor if Lender requests.

**18. ESTOPPEL CERTIFICATES.** Within ten (10) days after any request by Lender, Mortgagor shall deliver to Lender, or any intended transferee of Lender's rights with respect to the Obligations, a signed and acknowledged statement specifying: (a) the outstanding balance on the Obligations; and (b) whether Mortgagor possesses any claims, defenses, set-offs or counterclaims with respect to the Obligations and, if so, the nature of such claims, defenses, set-offs or counterclaims. Mortgagor will be conclusively bound by any representation that Lender may make to the intended transferee with respect to these matters in the event that Mortgagor fails to provide the requested statement in a timely manner.

**19. EVENTS OF DEFAULT.** An Event of Default will occur under this Mortgage in the event that Mortgagor, Borrower, or any guarantor of the Obligations:

(a) fails to make any payment under this Obligation, any other document or instrument relating to the foregoing or executed in favor of Lender, or under any other indebtedness to Lender when due;
(b) fails to perform any obligations or breaches any warranty or covenant to Lender contained in this Mortgage or any other present or future written agreement regarding this or any other indebtedness to Lender;
(c) provides or causes any false or misleading signature or representation to Lender;
(d) sells, conveys, or transfers rights in the Property without the prior written approval of Lender;
(e) seeks to revoke, terminate or otherwise limit its liability under any continuing guaranty;
(f) has a garnishment, judgment, tax levy, attachment or lien entered or served against any of them or any of their property;
(g) dies, becomes legally incompetent, is dissolved or terminated, ceases to operate its business, becomes insolvent, makes an assignment for the benefit of creditors, or becomes the subject of any bankruptcy, insolvency or debtor rehabilitation proceeding;
(h) fails to provide Lender evidence of satisfactory financial condition; or
(i) has a majority of its outstanding voting securities or other ownership interest sold, transferred or conveyed to any person or entity other than any person or entity that has the majority ownership as of the date of the execution of this Mortgage.

In addition, an Event of Default will occur under the Obligations in the event that:

(a) the Property is used by anyone to transport or store goods, the possession, transportation, or use of which, is illegal;
(b) Lender reasonably deems itself insecure or reasonably believes the prospect of payment or performance is impaired due to a significant decline in the value of any of the Property or a material adverse change in Mortgagor's, Borrower's or any guarantor's business or financial condition; or
(c) any of the Property is destroyed, damaged or lost in any material respect or is subjected to seizure, confiscation, or condemnation.

**20. RIGHTS OF LENDER ON EVENT OF DEFAULT.** Upon the occurrence of an Event of Default under this Mortgage, Lender shall be entitled to exercise one or more of the following remedies without notice or demand (except as required by law):

(a) to declare the Obligations immediately due and payable in full, such acceleration to be automatic and immediate if the Event of Default is a filing under the Bankruptcy Code;
(b) to collect the outstanding Obligations with or without resorting to judicial process;
(c) to require Mortgagor to deliver and make available to Lender any personal property or Chattels constituting the Property at a place reasonably convenient to Mortgagor and Lender;
(d) to enter upon and take possession of the Property without applying for or obtaining the appointment of a receiver and, at Lender's option, to appoint a receiver without bond, without first bringing suit on the Obligations and without otherwise meeting any statutory conditions regarding receivers, it being intended that Lender shall have this contractual right to appoint a receiver;
(e) to employ a managing agent of the Property and let the same, in the name of Lender or in the name of Mortgagor, receive the rents, incomes, issues and profits of the Property and apply the same, after payment of all necessary charges and expenses, on account of the Obligations;
(f) to pay any sums in any form or manner deemed expedient by Lender to protect the security of this Mortgage or to cure any default other than payment of interest or principal on the Obligations;
(g) to foreclose this Mortgage under the power of sale and in accordance with the requirements of law or by judicial action, at Lender's election;
(h) to set-off Mortgagor's Obligations against any amounts owed Mortgagor by Lender including, but not limited to, monies, instruments, and deposit accounts maintained with Lender or any currently existing or future affiliate of Lender; and
(i) to exercise all other rights available to Lender under any other written agreement or applicable law.

If Mortgagor is in default under this Mortgage, this Mortgage shall be subject to foreclosure at Lender's option. Notice of the exercise of such option is expressly waived by Mortgagor, and Lender shall have the right to enter upon and take possession of the Property, and after, or without taking possession of the property, to sell the Property at the front or main door of the courthouse of the county where the Property is located, at public outcry for cash, after first giving notice of the description of the property to be sold and the time, place, and terms of such sale by publication once a week for three consecutive weeks prior to the sale in a newspaper published in the county or counties in which the property to be sold is located. Mortgagor waives any requirement that the Property be sold in separate tracts and agrees that Lender may sell the Property en masse regardless of the number of parcels conveyed by this Mortgage. The power of sale granted to Lender is a continuing power of sale and shall not be fully exercised until all of the Property not previously sold is sold or all of the Obligations are satisfied in full. Upon the payment of the purchase price, Lender or the auctioneer conducting the sale is authorized to execute a deed to the property in Mortgagor's name and deliver the deed to the purchaser at the foreclosure sale. Lender, its successors, assigns, agents or attorneys may bid all or any part of the debt owed and become the purchaser of the property at any sale hereunder.

The proceeds from the sale of the Property shall be applied as follows: first, to the expense of advertising, preparing, selling, and conveying the Property for sale, including reasonable attorney fees incurred by Lender in the foreclosure action or any injunction proceeding, bankruptcy, appeal, or other proceeding challenging the right of Lender to foreclose this Mortgage or sell any of the Property; second, to the payment of any amounts expended or that may be necessary to expend to pay insurance, taxes, assessments, and other liens and mortgages; third, in full or partial payment of the Obligations in such order as Lender may elect; and fourth, the balance, if any, to be paid in accordance with the requirements of law.

**21. SECURITY INTEREST UNDER THE UNIFORM COMMERCIAL CODE.** This Mortgage shall be considered a financing statement and a fixture filing pursuant to the provisions of the Uniform Commercial Code (as adopted by the state where the Property is located) covering fixtures, chattels, and articles of personal property now owned or hereafter attached to or to be used in connection with the Property together with any and all replacements thereof and additions thereto (the "Chattels"), and Mortgagor hereby grants Lender a security interest in such Chattels. The debtor is the Mortgagor described above. The secured party is the Lender described above. Upon demand, Mortgagor shall make, execute and deliver such security agreements (as such term is defined in said Uniform Commercial Code) as Lender at any time may deem necessary or proper or require to grant to Lender a perfected security interest in the Chattels, and upon Mortgagor's failure to do so, Lender is authorized to sign any such agreement as the agent of Mortgagor. Mortgagor hereby authorizes Lender to file financing statements (as such term is defined in said Uniform Commercial Code) with respect to the Chattels, at any time, without the signature of Mortgagor. Mortgagor will, however, at any time upon request of Lender, sign such financing statements. Mortgagor will pay all filing fees and taxes for the filing of such financing statements and for the refiling thereof at the times required, in the opinion of Lender, by said Uniform Commercial Code. If the lien of this Mortgage is subject to any security agreement covering the Chattels, then in the event of any default under this Mortgage, all the right, title and interest of Mortgagor in and to any and all of the Chattels is hereby assigned to Lender, together with the benefit of any deposits or payments now or hereafter made thereof by Mortgagor or the predecessors or successors in title of Mortgagor in the Property.

**22. REIMBURSEMENT OF AMOUNTS EXPENDED BY LENDER.** Lender, at Lender's option, may expend funds (including attorneys' fees and legal expenses) to perform any act required to be taken by Mortgagor or to exercise any right or remedy of Lender under this Mortgage. Upon demand, Mortgagor shall immediately reimburse Lender for all such amounts expended by Lender together with interest thereon at the lower of the highest rate described in any Obligation or the highest rate allowed by law from the date of payment until the date of reimbursement. These sums shall be included in the definition of Obligations herein and shall be secured by the beneficial interest granted herein. If the Obligations are paid after the beginning of publication of notice of sale, as herein provided, or in the event Lender shall, at its sole option, permit Mortgagor to pay any part of the Obligations after the beginning of publication of notice of sale, as herein provided, then, Mortgagor shall pay on demand all expenses incurred by the Lender in connection with said publication, including reasonable attorneys' fees, and this Mortgage shall be security for all such expenses and fees.

**23. APPLICATION OF PAYMENTS.** All payments made by or on behalf of Mortgagor may be applied against the amounts paid by Lender (including attorneys' fees and legal expenses) in connection with the exercise of its rights or remedies described in this Mortgage and then to the payment of the remaining Obligations in whatever order Lender chooses.

**24. POWER OF ATTORNEY.** Mortgagor hereby appoints Lender as its attorney-in-fact to endorse Mortgagor's name on all instruments and other documents pertaining to the Obligations or the Mortgage. In addition, Lender shall be entitled, but not required, to perform any action or execute any document required to be taken or executed by Mortgagor under this Mortgage. Lender's performance of such action or execution of such documents shall not relieve Mortgagor from any Obligation or cure any default under this Mortgage. All powers of attorney described in this Mortgage are coupled with an interest and are irrevocable.

**25. SUBROGATION OF LENDER.** Lender shall be subrogated to the rights of the holder of any previous lien, security interest or encumbrance discharged with funds advanced by Lender regardless of whether these liens, security interests or other encumbrances have been released of record.

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**26. PARTIAL RELEASE.** Lender may release its interest in a portion of the Property by executing and recording one or more partial releases without affecting its interest in the remaining portion of the Property. Nothing herein shall be deemed to obligate Lender to release any of its interest in the Property(except as required under Paragraph 34), nor shall Lender be obligated to release any part of the Property if Mortgagor is in default under this Mortgage.

**27. MODIFICATION AND WAIVER.** The modification or waiver of any of Mortgagor's Obligations or Lender's rights under this Mortgage must be contained in a writing signed by Lender. Lender may perform any of Borrower's or Mortgagor's Obligations, delay or fail to exercise any of its rights or accept payments from Mortgagor or anyone other than Mortgagor without causing a waiver of those Obligations or rights. A waiver on one occasion shall not constitute a waiver on any other occasion. Mortgagor's Obligations under this Mortgage shall not be affected if Lender amends, compromises, exchanges, fails to exercise, impairs or releases any of the Obligations belonging to any Mortgagor, Borrower or third party or any of its rights against any Mortgagor, Borrower or third party or any of the Property. Lender's failure to insist upon strict performance of any of the Obligations shall not be deemed a waiver, and Lender shall have the right at any time thereafter to insist upon strict performance.

**28. SUCCESSORS AND ASSIGNS.** This Mortgage shall be binding upon and inure to the benefit of Mortgagor and Lender and their respective successors, assigns, trustees, receivers, administrators, personal representatives, legatees and devisees.

**29. NOTICES.** Except as otherwise required by law, any notice or other communication to be provided under this Mortgage shall be in writing and sent to the parties at the addresses described in this Mortgage or such other address as the parties may designate in writing from time to time. Any such notice so given and sent by first class mail, postage prepaid, shall be deemed given the earlier of three (3) days after such notice is sent or when received by the person to whom such notice is being given.

**30. SEVERABILITY.** Whenever possible, each provision of this Mortgage shall be interpreted so as to be effective and valid under applicable state law. If any provision of this Mortgage violates the law or is unenforceable, the rest of the Mortgage shall remain valid.

**31. APPLICABLE LAW.** This Mortgage shall be governed by the laws of the state where the Property is located. Unless applicable law provides otherwise, Mortgagor consents to the jurisdiction of any court selected by Lender, in its sole discretion, located in that state.

**32. MISCELLANEOUS.** Mortgagor and Lender agree that time is of the essence. Mortgagor waives presentment, demand for payment, notice of dishonor and protest except as required by law. All references to Mortgagor in this Mortgage shall include all persons signing below. If there is more than one Mortgagor, their Obligations shall be joint and several. This Mortgage represents the complete integrated understanding between Mortgagor and Lender pertaining to the terms and conditions hereof.

**33. SATISFACTION.** Upon the payment of all of the Obligations, including all future advances and all sums advanced by Lender pursuant to this Mortgage, this Mortgage shall be void and Lender will mail or deliver to Mortgagor a written satisfaction in recordable form. Until such time, this Mortgage shall remain in full force and effect.

If this Mortgage secures an open end or revolving line of credit which provides for future advances, satisfaction of the Obligations shall not occur until there is no outstanding indebtedness under any of the Obligations secured by this Mortgage and no commitment or agreement by Lender to make advances or otherwise give value under any agreement evidencing the Obligations. Upon written request to satisfy this Mortgage signed by Mortgagor and all other persons who have a right to require Lender to extend value, and provided there is no outstanding Obligation at that time, Lender will cause this Mortgage to be satisfied in accordance with law. After the written request for satisfaction, neither Mortgagor nor any other person shall have any right to request or demand that Lender extend value under this Mortgage or any other agreements as Lender shall be released from all commitments to extend value thereunder. Until the request to satisfy this Mortgage is duly signed and delivered to Lender, this Mortgage shall continue in full force and effect.

Mortgagor shall pay any costs of recordation of the satisfaction.

**34. JURY TRIAL WAIVER. MORTGAGOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY CIVIL ACTION ARISING OUT OF, OR BASED UPON, THIS MORTGAGE.**

**35. ADDITIONAL TERMS.**

20060509000217630 4/5 $1070.90
Shelby Cnty Judge of Probate,AL
05/09/2006 11:36:17AM FILED/CERT

Mortgagor acknowledges that Mortgagor has read, understands, and agrees to the terms and conditions of this Mortgage, and acknowledges receipt of an exact copy of it.

Dated this 3rd day of May, 2006.

MORTGAGOR: R & S Custom Homes, Inc

By:
Ron Kelley
President

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

MORTGAGOR:

State of Alabama )
County of Shelby )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Ron Kelley

whose name(s) is/are signed to the foregoing instrument and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they/he/she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3rd day of May 2006

(Notarial Seal)

Notary Public

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Feb 3, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITER

State of Alabama )
County of )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that

whose name(s) is/are signed to the foregoing instrument and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they/he/she executed the same voluntarily on the day the same bears date.

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

(Notarial Seal)

Notary Public

State of Alabama )
County of )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that

whose name(s) as
of , a
is/are signed to the foregoing instrument, and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they/he/she, as such
and with full authority, executed the same voluntarily for and as the act of said
.

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

(Notarial Seal)

Notary Public

State of Alabama )
County of )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that

whose name(s) as
of , a
is/are signed to the foregoing instrument, and who is/are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they/he/she, as such
and with full authority, executed the same voluntarily for and as the act of said
.

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

(Notarial Seal)

Notary Public

## SCHEDULE A

The following described real property located in the County of Shelby, State of Alabama:

See Exhibit "A" attached to Deed of Trust/Mortgage
THE REAL PROPERTY DESCRIBED HEREIN DOES NOT CONSTITUTE THE HOMESTEAD OF THE UNDERSIGNED MORTGAGOR, NOR THE HOMESTEAD OF THE SPOUSE OF THE UNDERSIGNED MORTGAGOR. SOURE OF TITLE: DEED BOOK _____, PAGE _____

LOT 3206, ACCORDING TO THE MAP OF HIGHLAND LAKES, 32ND SECTOR, AN EDDLEMAN COMMUNITY, AS RECORDED IN MAP BOOK 35, PAGE 23 IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA

## SCHEDULE B

20060509000217630 5/5 $1070.90
Shelby Cnty Judge of Probate,AL
05/09/2006 11:36:17AM FILED/CERT

THIS DOCUMENT WAS PREPARED BY: CADENCE BANK, N.A. RON HENDRIX

AFTER RECORDING RETURN TO LENDER AT ITS ADDRESS DESCRIBED ABOVE.