



20070214000068660 1/10 \$149.00
Shelby Cnty Judge of Probate,AL
02/14/2007 12:11:20PM FILED/CERT

THIS INSTRUMENT PREPARED BY:

Christina A. Graham, Esq.
Burr & Forman LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, Alabama 35203
(205) 251-3000

STATE OF ALABAMA)
COUNTY OF SHELBY)

RESIDENTIAL MORTGAGE AND SECURITY AGREEMENT

THIS RESIDENTIAL MORTGAGE AND SECURITY AGREEMENT (the "Mortgage") is made and entered into as of the 14th day of February, 2007, from **DENT M. MORTON**, an individual married man, and **KIMBERLY C. MORTON**, an individual married woman, respectively, husband and wife, (collectively, the "Borrowers"), as grantors, whose mailing address is 2598 Willow Brook Circle, Birmingham, Alabama, to **WILLIAM D. CONINE, III**, an individual, and **ELLEN JO CONINE**, an individual, (collectively, the "Lenders"), whose mailing address is 34 Shiny Pebble Place, The Woodlands, Texas 77381.

WITNESSETH:

WHEREAS, Borrowers are indebted to Lenders in the maximum outstanding principal sum of Seventy - Four Thousand and No/100 Dollars (\$74,000.00) together with interest thereon, as evidenced by that certain Amended and Restated Mortgage Note, executed by Borrowers and delivered to Lenders, as the same may be extended, renewed, modified or amended (as so extended, renewed, modified or amended, the "Note") and which by reference is made a part hereof to the same extent as though set out in full herein; and

WHEREAS, proceeds of the Note shall be made available to Borrowers in accordance with the Note.

NOW, THEREFORE, (a) in order to secure the performance and observance by Borrowers of all covenants and conditions contained in the Note, and in any renewals, extensions or modifications thereof, in this Mortgage, and in all other instruments securing the Note; and (b) in order to also secure all future advances and readvances that may subsequently be made to Borrowers by the Lenders pursuant to the Note, and all renewals and extensions thereof;

provided, however; the maximum principal indebtedness secured by this Mortgage will not exceed \$74,000; and (c) in order to also charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and No/100ths (\$1.00) Dollars paid by Lenders to Borrowers this date, and for other valuable consideration, the receipt of which is acknowledged, Borrowers do hereby **GRANT, BARGAIN, SELL, ALIEN, REMISE, RELEASE, CONVEY, ASSIGN, TRANSFER, MORTGAGE, HYPOTHECATE, PLEDGE, DELIVER, SET OVER, WARRANT and CONFIRM** unto Lenders, its successors and assigns forever, all right, title and interest of Borrowers in and to the following property (collectively, the "Property"):

A. The Lot. The lot and other real property interests located in Shelby County, Alabama, more particularly described on Exhibit A attached hereto and incorporated herein by reference, and including such lot or lots as may hereafter be mortgaged to the Lenders by means of amendments, modifications or addenda to this Mortgage, or otherwise (the "Lots" or a "Lot"); and

B. The Improvements. All single-family residences, and other related on-site improvements, to be constructed on the Lots (the "Improvements"); and

C. Easements or Other Interests. All easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrowers, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Borrowers of, in and to the same, including, but not limited to, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property or any part thereof, or to any rights, appurtenant thereto (together the "Easements and Other Interest").

Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Lots are located. Information concerning the security interest created by this instrument may be obtained from the Lenders, as Secured Party, or the Borrowers, as Debtor, at the addresses shown herein. The Debtor has no organizational I.D. # required to be entered on the UCC-1 financing statement.

TO HAVE AND HOLD the same, together with all privileges, hereditaments, easements and appurtenances thereunto belonging, to the Lenders and the Lenders' successors and assigns to secure the indebtedness herein recited, and should the indebtedness secured hereby be paid according to the tenor and effect thereof when the same shall be due and payable and should the Borrowers timely and fully discharge its obligations hereunder, then the Property hereby granted,

mortgaged and assigned shall cease and be void, but shall otherwise remain in full force and effect.

The Borrowers and the Lenders covenant, represent and agree as follows:

ARTICLE I **THE LOAN**

1.1 Loan. The indebtedness secured by this Mortgage is the result of a loan of money in the maximum outstanding principal amount of Seventy - Four Thousand and No/100 Dollars (\$74,000.00) together with interest thereon (hereafter referred to as the "Loan") disbursed or to be disbursed by the Lenders to the Borrowers pursuant to the Note.

1.2 Note. The Loan is evidenced by the Note as referenced above executed by the Borrowers and payable to the order of the Lenders.

1.3 Payment of Note. Payment by the Borrowers of principal and interest on the Loan will be in accordance with the Note.

ARTICLE II **BORROWERS' COVENANTS, REPRESENTATIONS AND AGREEMENTS**

2.1 Title to Property. The Borrowers represent and warrant that they have seized of the Property (and any fixtures) in fee (and has title to any appurtenant easements) and have the right to convey, mortgage and encumber the same; that title to each of the Lots is free and clear of all encumbrances, except for those encumbrances of record (the "Permitted Encumbrances") and that it will warrant and defend the title to the Lots against the claims of all persons or parties except for the Permitted Encumbrances.

2.2 Performance of Loan Documents. Borrowers shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, (collectively, with the foregoing, the "Loan Documents").

2.3 Transfer of Property. Borrowers shall not sell, convey, transfer, lease or further encumber any interest in or any part of the Property, without the prior written consent of Lenders. Borrowers shall not, without the prior written consent of Lenders, further assign the rents from the Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof.

2.4 Maintenance of Property. The Borrowers will maintain the Property in good condition and repair, reasonable wear and tear excepted.

2.5 Compliance with Law. The Borrowers will do, or cause to be done, all such things as may be required by law in order fully to protect the security and all rights of the Lenders under this Mortgage. The Borrowers shall not cause or permit the lien of this Mortgage to be impaired in any way.

ARTICLE III
EVENTS OF DEFAULT

3.1 Event of Default. An "Event of Default" shall be the Borrowers' failure to pay the obligations set forth in the Note pursuant to the terms therein or the Borrowers' failure to observe the terms and conditions set forth in this Mortgage.

ARTICLE IV
REMEDIES UPON AN EVENT OF DEFAULT

4.1 Acceleration of Loan; Foreclosure. Upon the occurrence of an Event of Default the entire balance of the Loan, including all accrued interest, shall, at the option of the Lenders, become immediately due and payable. Upon failure to pay the Loan in full at any stated or accelerated maturity, the Lenders may foreclose the lien of this Mortgage and take such other actions as provided by law or in the Loan Documents or by judicial proceedings.

4.2 Lenders' Power of Enforcement. If an Event of Default shall have occurred, Lenders may, either with or without entry or taking possession as hereinafter provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Lenders shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Lenders may determine.

4.3 Lenders' Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Borrowers, upon demand of Lenders, shall forthwith surrender to Lenders the actual possession, and if and to the extent permitted by law, Lenders itself, or by such officers or agents as it may appoint, may enter and take possession of all the Property, and may exclude Borrowers and its agents and employees wholly therefrom, and may have joint access with Borrowers to the books, papers and accounts of Borrowers.

(b) If Borrowers shall for any reason fail to surrender or deliver the Property or any part thereof after Lenders' demand, Lenders may obtain a judgment or decree conferring on Lenders the right to immediate possession or requiring Borrowers to deliver immediate possession of all or part of the Property to Lenders along with all books, papers and accounts of Borrowers, the entry of which judgment or decree is hereby specifically consented to by the Borrowers.

(c) Borrowers shall pay to Lenders, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Lenders, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Lenders may hold, store, use, operate, manage and control the Property and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Property insured;

(iii) manage and operate the Property and exercise all the rights and powers of Borrowers in its name or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein granted Lenders:

all as Lenders in its reasonable judgment from time to time may determine; and Lenders may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Lenders in such priority as Lenders may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other proper charges upon the Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Lenders shall surrender possession of the Property to Borrowers only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.4 Leases. Lenders, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to make any such tenants parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Borrowers to be, a defense to any proceedings institute by Lenders to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property.

4.5 Enforcement; Power of Sale.

(a) If an Event of Default shall exist, Lenders may sell the Property at public outcry to the highest bidder for cash in front of the Court House door in the county where the Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county, and, upon payment of the purchase money, Lenders or any person conducting the sale for Lenders is authorized to execute to the purchaser at said sale a deed to the Property so purchased. Lenders may bid at said sale and purchase said Property, or any part thereof, if the highest bidder therefor. 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 Lenders may elect.

(b) With respect to any personal property or fixtures included in or located on the Property, Lenders may, at its option, sell or otherwise dispose of the same by public or private proceedings, separate from the sale of the real property, in accordance with the provisions of the Uniform Commercial Code of the State of Alabama, and Lenders may with respect to such personal property and fixtures exercise any other rights or remedies of a secured party under the Alabama Uniform Commercial Code.

4.6 Purchase by Lenders. Upon any such foreclosure sale, Lenders may bid for and purchase the Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.7 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Lenders may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Lenders under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

4.8 Receiver. If an Event of Default shall have occurred, Lenders, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Property to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Property is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Lenders shall be liable to account only for such rents, issues and profits actually received by Lenders, whether received pursuant to this Section or Section 4.3. Notwithstanding the appointment of any receiver or other custodian, Lenders shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Lenders.

4.9 Suits to Protect the Property. Lenders shall have the power and authority to institute and maintain any suits and proceedings as Lenders may deem advisable (a) to prevent any impairment of the Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Lenders' interest.

4.10 Borrowers to Pay the Note on Any Default in Payment; Application of Monies By Lenders.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage, or any other Loan Document, then, upon Lenders' demand, Borrowers will pay to Lenders the whole amount due and payable under the Note and all other sums secured hereby; and if Borrowers shall fail to pay the same forthwith upon such demand, Lenders shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Lenders' agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Lenders shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Lenders to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof.

(b) In case of a foreclosure sale of all or any part of the Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Lenders shall be entitled to enforce payment of, and to receive all amounts then remaining due and unpaid and to recover judgment for, any portion thereof remaining unpaid, with interest.

(c) Borrowers hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Lenders and no attachment or levy of any execution upon any of the Property or any other property shall in any way affect the lien of this Mortgage upon the Property or any part thereof or any lien, rights, powers or remedies of Lenders hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

4.11 Discontinuance of Proceedings; Position of Parties Restored. If Lenders shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lenders, then and in every such case Borrowers and Lenders shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lenders shall continue as if no such proceeding had occurred or had been taken.

4.12 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Lenders by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE V
GENERAL CONDITIONS

5.1 Terms. The singular used herein shall be deemed to include the plural; the masculine deemed to include the feminine and neuter; and the named parties deemed to include their heirs, personal representatives, successors and assigns.

5.2 Notices. Any notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes (a) when personally delivered (to the person or department specified), (b) three (3) days following the date sent by registered or certified mail, postage prepaid, return receipt requested, or (c) one (1) Business Day following the date sent by FedEx or other national overnight courier, all fees prepaid, and addressed to any party hereto at its address stated in the preamble on the first page of this Mortgage or at such other address which it shall have notified the party giving such notice in writing. Actual receipt shall not be necessary for effective receipt.

5.3 Invalidation of Provisions. Invalidation of any one or more of the provisions of this Mortgage shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

5.4 Headings. The captions and headings herein are inserted only as a matter of convenience and for reference and in no way define, limit, or described the scope of this Mortgage nor the intent of any provision hereof.

5.5 Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Borrowers and Lenders relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.6 Governing Law. This Mortgage is made by Borrowers and accepted by Lenders in the State of Alabama, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

[REST OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Borrowers have caused this Mortgage to be duly executed and delivered as of the day and year first above written.

BORROWERS:


DENT M. MORTON

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DENT M. MORTON, an individual married man, 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, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14th day of February, 2007.

Charlotta A Dyer

Notary Public

My commission expires: 11/28/09

[NOTARY SEAL]

Kimberly C. Morton

KIMBERLY C. MORTON

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that KIMBERLY C. MORTON, an individual married woman, 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, she executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 14th day of February, 2007.

Charlotta A Dyer

Notary Public

My commission expires: 11/28/09

[NOTARY SEAL]

20070214000068660 10/10 \$149.00
Shelby Cnty Judge of Probate, AL
02/14/2007 12:11:20PM FILED/CERT

EXHIBIT A

Legal Description

LOT 31, ACCORDING TO THE SURVEY OF WILLOWBROOK, AS RECORDED IN MAP BOOK 11, PAGE 48 A & B, IN THE OFFICE OF THE JUDGE OF PROBATE OF SHELBY COUNTY, ALABAMA; BEING SITUATED IN SHELBY COUNTY, ALABAMA.

THIS MORTGAGE IS SECOND, JUNIOR AND SUBORDINATE TO THAT CERTAIN MORTGAGE OF BORROWERS IN FAVOR OF LIBERTY MORTGAGE DATED FEBRUARY 17, 2003 IN AN ORIGINAL OUTSTANDING PRINCIPAL AMOUNT OF \$269,200.