

1997-13570

State of Alabama }  
Shelby County.**MORTGAGE**THIS INDENTURE is made and entered into this 1st day of May, 19 97 by and between  
J. Elliott Corporation(hereinafter called "Mortgagor," whether one or more), and AmSouth Bank of Alabama  
(hereinafter called "Mortgagee").WHEREAS, J. Elliott Corporation

(is/are) justly

indebted to the Mortgagee in the principal sum of Two Hundred Fifty Thousand and No/100ths  
dollars (\$ 250,000.00) as evidenced by that certain promissory note of even date herewith, which bears interest as provided  
therein, which is payable in accordance with its terms, and which has a final maturity date of April 1, 1998.NOW, THEREFORE, in consideration of the premises, and to secure the payment of the debt evidenced by said note and any and all extensions  
and renewals thereof, or of any part thereof, and all interest payable on all of said debt and on any and all such extensions and renewals and,  
if the Real Property is not a consumer's principal dwelling within the meaning of the Truth in Lending Act, 15 USC Sections 1601 et seq.,  
to secure all other indebtedness, obligations and liabilities owing by the maker of the note or the Mortgagor to the Mortgagee, whether now  
existing or hereafter incurred or arising, whether absolute or contingent, and whether incurred as maker or guarantor, (the aggregate amount  
of such debt and interest thereon, including any extensions and renewals and the interest thereon, is hereinafter collectively called "Debt")  
and the compliance with all the stipulations herein contained, the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagee,  
the following described real estate, situated in Shelby  
County, Alabama (said real estate being hereinafter called "Real Estate"):Lots 56, 57, 58, 59, 60, 62, 63, 67, 77, 78, 79, 80 and 81, according to the  
map of Forest Hills, 2nd Sector, as recorded in Map Book 21 page 50 A & B, in the  
Probate Office of Shelby County, Alabama; being situated in Shelby County,  
Alabama.The proceeds of this loan have been applied on the purchase price of the property  
described herein.

Inst # 1997-13570

05/02/1997-13570  
10:05 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 SNA 391.00

together with all the rights, privileges, tenements, appurtenances and fixtures appertaining to the Real Estate, all of which shall be deemed Real Estate and shall be conveyed by this instrument.

TO HAVE AND TO HOLD the Real Estate unto the Mortgagee, its successors and assigns forever. The Mortgagor covenants with the Mortgagee, that the Mortgagor  
lawfully seized in fee simple of the Real Estate and has a good right to sell and convey the Real Estate as aforesaid, that the Real Estate is free of all encumbrances, unless otherwise  
set forth above; and the Mortgagor will warrant and forever defend the title to the Real Estate unto the Mortgagee, against the lawful claims of all persons.

As further security for the payment of the Debt, the Mortgagor hereby assigns and pledges to the Mortgaggee the following described properties, rights, issues and revenues:

- E. all rents, profits, issues, and revenues of the Real Estate from time to time occurring, whether under leases or tenancies now existing or hereafter created, and to the  
the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;

F. all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, by virtue  
of the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Real Estate, or any part thereof, or to any rights appurtenant thereto;  
including any award for change of grade of streets, and all payments made for the voluntary sale of the Real Estate, or any part thereof, in view of the exercise of the power  
of eminent domain. The Mortgagor is hereby authorized on behalf of, and in the name of, the Mortgagor to execute and deliver valid acquittances for, and assignments  
of any such judgments or awards. The Mortgagor may apply all such sums so received, or any part thereof, after the payment of all the Mortgagor's expenses, to the balance  
of any proceeding or transaction described in this subparagraph E, including court costs and attorneys' fees, on the Debt in such manner as the Mortgagor shall  
at the Mortgagor's option, the entire amount of any part thereof, so received may be released or may be used to rebuild, repair or restore any or all of the improvements  
located on the Real Estate.

If complete & applicable This mortgage is junior and subordinate to the following mortgage or mortgages:

Date: December 19, Recorded in Book Page: Volume: Volume: Value:  
19, Recorded in Book Page: Volume: Value:  
19, Recorded in Book Page: Volume: Value:

The Mortgagor hereby authorizes the holder of a prior mortgage encumbering the Real Estate, if any, to disclose to the Mortgagor the following information, at the time:

(1) whether there is or has been any default with respect to such mortgage; (2) the amount of such indebtedness that is unpaid; (3) whether any amount owed on such indebtedness is due; (4) the date of maturity of such indebtedness; (5) any other information regarding such prior mortgage; and (6) whether there is or has been any default with respect to such mortgage or the indebtedness secured thereby, and (5) any other information regarding such prior mortgage.

If this mortgage is subordinate to a prior mortgage, the Mortgagor expressly agrees that it default should be made in the payment of principal, interest or any other sum payable under the terms and provisions of such prior mortgage, or if any other event of default or event which upon the giving of notice of lapse of time or by the written consent of the holder of such prior mortgage, would constitute an event of default should occur thereunder, the Mortgagor may, but shall not be obligated to, cure such default, without notice to or demand, by paying all sums so payable.

As used in this mortgage, the term "Hazardous Substances" shall mean and include, without limitation, any asbestos, urea formaldehyde foam insulation, thorium dioxide, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled by, or prohibited by any local, state or federal law, rule or regulation, whether now or hereafter in effect and as may be amended from time to time, pertaining to the protection of the environment, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Occupational Safety and Health Administration pertaining to occupational exposure to asbestos. The Mortgagor covenants, warrants and represents and shall be deemed to continually covenant, warrant and represent during the term of this mortgage that, except as has been heretofore disclosed above, (a) the Mortgagor with specific reference to this paragraph, (i) there are not now and shall not in the future be any Hazardous Substances on or under the Real Estate or (ii) no improvements on the Real Estate, and no Hazardous Substances have been or will be stored upon or utilized in operations on the Real Estate or (b) (i) there are no underground storage tanks, whether in use or not in use, located in or on or under any part of the Real Estate or (ii) no part of the improvements on the Real Estate, (b) there are no pending claims or threats of claims by private or governmental or administrative authorities relating to Hazardous Substances, environmental damage or liability, or (c) there are no pending claims or threats of claims by private or governmental or administrative authorities relating to the Real Estate, (d) the Real Estate and its use fully complies with all applicable building and zoning codes and other local laws, rules or regulations with respect to the Real Property, (d) the Real Estate and its use fully complies with all applicable environmental laws, rules or regulations, and any other applicable laws or regulations, (e) no part of the Real Estate has been artificially filled, (f) no regulations, any applicable environmental laws or regulations, and any other applicable laws or regulations, (f) no part of the Real Estate has been artificially filled, (g) the Mortgagor shall give immediate oral and written notice to Mortgagor of its receipt of any notice of a violation of any law, rule or regulation or (h) the Mortgagor shall give immediate oral and written notice to Mortgagor of its discovery of any matter which would reasonably indicate any notice of any other claim relating to Hazardous Substances or the environmental condition of the Real Estate, or of its discovery of any matter which would reasonably indicate any representation, warranties and/or covenants herein inaccurate or misleading in any respect.

Mortgagor hereby agrees to indemnify and hold Mortgagor harmless from all loss, cost, damage, claim and expense incurred by Mortgagor or in connection with the Real Estate, including, but not limited to, (i) any representation, warranty or covenant set forth in the preceding paragraph, (ii) Mortgagor's failure to perform any obligation of the preceding paragraph, and (iii) or the Real Estate's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or with any other matter related to environmental conditions or Hazardous Substances on, under or affecting the Real Estate. This indemnification shall survive the closing of the Lender's interest in the Real Estate, payment of the Debt, the exercise of any right or remedy under this mortgage or any other document evidencing or securing the Lender's interest, the sale or transfer of the Real Estate, and all similar or related events or occurrences.

Mortgagor may, at Mortgagor's discretion, inspect the Mortgaged Property, or have the Mortgaged Property inspected by Mortgagee's servants, employees, agents or contractors.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereto, and at no time to let it

No such notice, or any other provision of this mortgage or the note or notes evidencing the Debt, the Debt shall become immediately due and payable at the option of

The Mortgagor agrees that no delay or failure of the Mortgagee to exercise any option to declare the Debt due and payable shall be deemed a waiver of the Mortgagee's right to exercise such option, either as to any past or present default, and it is agreed that no terms or conditions contained in this mortgage may be waived, suspended or otherwise modified.

After default on the part of the Mortgagor, the Mortgagor, upon bill filed or other proper legal proceeding being commenced for the foreclosure of the mortgage, by  
any competent court, without notice to any party, of a receiver for the rents, issues and profits of the Real Estate, with power to lease and

1 UPON CONDITION, HOWEVER, that if the Mortgagor pays the Debt (which Debt includes the indebtedness evidenced by the promissory note or notes and the Real Estate, and with such other powers as may be deemed necessary.

to the Mortgagee of any sum paid by the Mortgagee under the authority of any provision of this mortgage; (4) the Debt, or any part thereof, remains unpaid at maturity, whether by acceleration or otherwise; (5) any installment of principal or interest due on the Debt, or any deposit for taxes and assessments or insurance premiums due before its due date, or any other sums to be paid by the Mortgagor hereunder or under any other instrument securing the Debt is not paid, as and when due and payable, or, if a grace period is provided, within such applicable grace period; (6) the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior lien or encumbrance provided, within such applicable grace period; (7) any statement of lien is filed against the Real Estate, or any part thereof, under the statutes of Alabama relating to the liens of mechanics and materialmen without regard to the existence or nonexistence of the debt or the lien on which such statement is based; (8) any law is passed imposing or authorizing the imposition of any tax, or a tax upon this mortgage or the Debt or permitting or authorizing the deduction of any such tax from the principal or interest of the Debt, or by virtue of which any tax, or a tax upon the Real Estate shall be chargeable against the owner of this mortgage; (9) any of the stipulations contained in this mortgage is violated and, if any tax, or an assessment upon the Real Estate or of all or a substantial part of such Mortgagor's assets, (b) be adjudicated a bankrupt or insolvent or file a voluntary petition in bankruptcy or fail to answer in writing such Mortgagor's inability generally, to pay such Mortgagor's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a certificate of an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law, or (f) file an answer admitting the material allegations of an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law, or (f) an order for relief, or consent to, or default in answering, a petition filed against such Mortgagor in any bankruptcy, reorganization or insolvency proceedings; or (11) an order for relief, or consent to, or default in answering, a petition filed against such Mortgagor in any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Mortgagor, or any of them; a judgment or decree shall be entered by any court of competent jurisdiction, approving a petition seeking liquidation or reorganization of the Mortgagor, or any of them; if more than one, or appointing a receiver, trustee or liquidator of any Mortgagor or of the Real Estate or of all or a substantial part of the assets of any Mortgagor, then, upon the happening of any one or more of said events, at the option of the Mortgagee, the unpaid balance of the Debt shall at once become due and payable and this mortgage shall be subject to foreclosure and may be foreclosed as now provided by law in case of past-due mortgages, and the Mortgagee shall be authorized to take possession of the Real Estate and, after giving at least twenty-one days' notice of the time, place and terms of sale by publication once a week for three consecutive weeks in some newspaper published in the county in which the Real Estate is located, to sell the Real Estate in front of the courthouse door of said County, at public outcry, to the highest bidder for cash, and to apply the proceeds of said sale as follows: first, to the expense of advertising, selling and conveying the Real Estate and foreclosing this mortgage, including a reasonable attorney's fee; second, to the payment of any amounts that have been spent, or that it may then be necessary to spend, in paying insurance premiums, liens or other encumbrances, with interest thereon; third, to the payment in full of the balance of the Debt whether the same shall or shall not have fully matured at the date of said sale, but not exceeding the amount of the Debt, with interest thereon; fourth, the balance, if any, to be paid to the party or parties appearing of record to be the owner of the Real Estate at the time of sale, after deducting the cost of ascertaining who is such owner. The Mortgagor agrees that the Mortgagee may bid at any sale had under the terms of this mortgage and may purchase the Real Estate if the highest bidder therefor. At the foreclosure sale the Real Estate may be offered for sale and sold as a whole without first offering it for sale in other manner or it may be offered for sale and sold in any other manner the Mortgagee may elect.

The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagee in collecting or securing or attempting to collect or secure the Debt, or any part thereof, or in defending or attempting to defend the priority of this mortgage against any lien or encumbrance on the Real Estate, unless this mortgage is foreclosed, expressly made subject to any such lien or encumbrance; and for all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or in virtue of the decree of any court of competent jurisdiction. The full amount of such costs incurred by the Mortgagee shall be a part of the Debt and shall be secured by this mortgage. The purchaser at any such sale shall be under no obligation to see to the proper application of the purchase money. In the event of a sale hereunder, the Mortgagor, or the owner of the Debt and mortgage, or auctioneer, shall execute to the purchaser, for and in the name of the Mortgagor, a statutory warranty deed to the Real Estate.

The Mortgagor agrees to pay all costs and expenses associated with the release or satisfaction of this mortgage.

Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this mortgage, whether one or more individuals, partnerships, corporations, associations, or other entities. All covenants and agreements herein made by the undersigned shall bind the heirs, personal representatives, executors, administrators, successors and assigns of the undersigned, and every option, right and privilege herein reserved or secured to the Mortgagee, shall move to the benefit of the Mortgagee's successors and assigns.

In witness whereof, the undersigned Mortgagor has (have) executed this instrument on the date first written above.

J. Elliott Corporation

By: ~~J. C. Elliott~~  
James W. Elliott, President

## **ACKNOWLEDGEMENT FOR PARTNERSHIP**

State of Alabama }  
                      County }

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that

whose name(s) as (general)(limited) \_\_\_\_\_ partner(s) of \_\_\_\_\_ (general)(limited) \_\_\_\_\_  
a(n) \_\_\_\_\_

partner(s), day that, being informed of the contents of said instrument, he as such executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Notary Public

My commission expires:

**NOTARY MUST AFFIX SEAL.**

### ACKNOWLEDGEMENT FOR INDIVIDUAL(S)

State of Alabama      }  
Shelby      County,      }

I, the undersigned authority, 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

Notary Public

My commission expires:

NOTARY MUST AFFIX SEAL

### ACKNOWLEDGEMENT FOR CORPORATION

State of Alabama      }  
Shelby      County,      }

I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that James W. Elliott

whose name as President of J. Elliott Corporation 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, and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 1st day of May, 19 97

Notary Public

My commission expires:

NOTARY MUST AFFIX SEAL

Inst # 1997-13570

05/02/1997-13570  
10:05 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
391.00

### MORTGAGE DEED

STATE OF ALABAMA

County

Office of the Judge of Probate

I hereby certify that the within mortgage was filed in this office for record on the \_\_\_\_\_

day of \_\_\_\_\_, 19 \_\_\_\_

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.L. and was duly

recorded in Volume \_\_\_\_\_ of Mortgages,

at page \_\_\_\_\_, and examined.

Judge of Probate