

**MODIFICATION OF
MASTER MORTGAGE**

STATE OF ALABAMA)

SHELBY COUNTY)

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS INDENTURE, (herein this "Mortgage") made this 23rd day of November, 1998, between, the undersigned, AMERICAN HOMES & LAND CORPORATION, a Corporation, (hereinafter called the "Mortgagor"), and NEW SOUTH FEDERAL SAVINGS BANK, (hereinafter called "Mortgagee") state that the undersigned became justly indebted to NEW SOUTH FEDERAL SAVINGS BANK, (hereinafter called "Mortgagee"), in the sum of Five Million and No/100 Dollars, (\$5,000,000.00) for money lent, as evidenced by a promissory note dated April 30, 1998, and increased to Seven Million Five Hundred Thousand and No/100 Dollars, (\$7,500,000.00), as evidenced by a Modified Mortgage and Modified Promissory Note dated September 18, 1998, both signed by the Mortgagor, herewith bearing interest from date at the rate provided in said notes, payable in such amounts as the notes provides to the order of the Mortgagee, at its office in Birmingham, Alabama, and to become due as provided in said notes. If not sooner due, any indebtedness hereby secured shall be due and payable ON DEMAND.

THIS MODIFICATION OF MASTER MORTGAGE IS GIVEN FOR THE PURPOSE ONLY OF ADDING CERTAIN LOTS AS ADDITIONAL SECURITY TO THAT CERTAIN MORTGAGE DATED APRIL 30, 1998, AND RECORDED IN INSTRUMENT #1998-16459 IN SAID PROBATE OFFICE. SAID MORTGAGE WAS AMENDED BY INSTRUMENT RECORDED ON JUNE 2, 1998 AND RECORDED IN INSTRUMENT #1998-21921 IN SHELBY COUNTY PROBATE OFFICE. SAID MORTGAGE WAS AMENDED ON JUNE 22, 1998 AND RECORDED IN INSTRUMENT #1998-23810 IN SHELBY COUNTY PROBATE OFFICE. SAID MORTGAGE WAS FURTHER AMENDED ON JULY 1, 1998 AND RECORDED IN INSTRUMENT #1998-26428, IN SHELBY COUNTY PROBATE OFFICE. SAID MORTGAGE WAS FURTHER AMENDED ON JULY 30, 1998 AND RECORDED IN INSTRUMENT #1998-29479, IN SHELBY COUNTY PROBATE OFFICE. SAID MORTGAGE WAS FURTHER AMENDED BY MODIFICATION RECORDED IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA ON AUGUST 27, 1998 IN INSTRUMENT #1998-33458. SAID MORTGAGE WAS AMENDED BY MODIFICATION RECORDED IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA ON SEPTEMBER 18, 1998 IN INSTRUMENT #1998-37088. SAID MORTGAGE WAS AMENDED BY MODIFICATION RECORDED IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA ON OCTOBER 23, 1998 IN INSTRUMENT #1998-42106. SAID MORTGAGE WAS LAST AMENDED BY MODIFICATION RECORDED IN THE PROBATE OFFICE OF SHELBY COUNTY, ALABAMA ON NOVEMBER 9, 1998 IN INSTRUMENT # 1998-44887.

WHEREAS, the Mortgagor agreed, in incurring the said indebtedness, that this Mortgage should be given to secure the same;

NOW THEREFORE, in consideration of the premises and in further consideration of Five Dollars (\$5.00) to the Mortgagor cash in hand paid by the Mortgagee, the receipt of which is hereby acknowledged, the said AMERICAN HOMES & LAND CORPORATION has bargained and sold and does hereby grant, bargain, sell and convey unto NEW SOUTH FEDERAL SAVINGS BANK the following described real estate situated, lying and being in Shelby County, Alabama, to-wit:

Parcel I

Lots 601-610, Lots 638, 639, 640, 641, 642, 643, 644, 646, 648 and 649, according to the Survey of Old Cahaba, Westchester Sector, as recorded in Map Book 23, page 150, in the Probate Office of Shelby County, Alabama.

Parcel II

Lots 703, 713, 716, 718, 719, 720, 721, 722, 723, 724, 725, 727, 728, 729, 730, 732, 735 and 740, according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, page 11, in the Probate Office of Shelby County, Alabama.

Parcel III

Lots 705, 706, 710, and 712, according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, page 11, in the Probate Office of Shelby County, Alabama.

Parcel IV

Lots 612, 613 and 636, according to the Survey of Old Cahaba Westchester Sector, Phase II, as recorded in Map Book 24, page 68, in the Probate Office of Shelby County, Alabama.

Parcel V

Lots 101, 103, and 104, according to the Survey of Old Cahaba Winter Crest Sector, as recorded in Map Book 24, page 69, in the Probate Office of Shelby County, Alabama.

Parcel: VI

Lots 701, 702, 704, 714, 715, 731, 743, 744, 745, and 746 according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, page 11, in the Probate Office of Shelby County, Alabama.

Parcel VII:

Lots 106, 115 and 118, according to the Survey of Old Cahaba Winter Crest Sector, as recorded in Map Book 24, page 69, in the Probate Office of Shelby County, Alabama.

Parcel VIII:

Lots 105, 107, 109 and 110, according to the Survey of Old Cahaba Winter Crest Sector, as recorded in Map Book 24, Page 69, in the Probate Office of Shelby County, Alabama.

Parcel IX:

Lots 707, 711, 733, 734, 737, 741, 747 and 748 according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, Page 11, in the Probate Office of Shelby County, Alabama.

Parcel X:

Lots 708, 717 and 739, according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, Page 11, in the Probate Office of Shelby County, Alabama.

Parcel XI:

Lots 102, 108 and 114, according to the Survey of Old Cahaba Winter Crest Sector, as recorded in Map Book 24, Page 69, in the Probate Office of Shelby County, Alabama.

LOTS TO BE ADDED AS ADDITIONAL SECURITY ARE AS FOLLOWS:

Parcel XII:

Lots 709, 736, 738 and 742, according to the Survey of Old Cahaba Cedar Crest Sector, as recorded in Map Book 24, Page 11, in the Probate Office of Shelby County, Alabama.

Mortgagor shall be entitled to receive a partial release from the lien on this Mortgage on a per lot basis by paying to the Mortgagee all sums advanced against that lot as more particularly described in the Construction Loan Agreement and exhibits attached hereto. The Mortgagee will not be required to give a release if the Mortgage or any loan documents are in default. The partial release shall also include any and all unpaid interest accruing on the advances allocated to the lot requested to be released.

The maximum amount of indebtedness will not exceed the face amount of the mortgage, \$7,500,000.00.

TO HAVE AND TO HOLD the same with all the rights, privileges, improvements and appurtenances therunto belonging, and all fixtures now located on or in said property or hereafter placed on or in said property, unto the said Mortgagee and assigns, forever. And said Mortgagor covenants that the Mortgagor is lawfully seized in fee and possessed of said property is free from all encumbrances and that the Mortgagors will warrant and forever defend the title thereto against the lawful claims of all persons whomsoever.

THIS MORTGAGE IS MADE, however, subject to the following covenants, conditions, and agreements, that is to say:

- 1. So long as any of the indebtedness secured hereby shall remain unpaid, in whole or in part, the Mortgagor agrees to keep said premises and the improvements thereon in good condition and repair, and pay all assessments that may be levied or accrue upon said property, and all other charges that may become liens upon or accrue upon said property, and all other charges that may become liens upon said premises, and not to permit any lien, which might take precedence over the lien of this Mortgage, to accrue and remain on said premises, or any part thereof, or on the improvements thereon, and to neither permit nor perform any act which would in any way impair the value of the security given by this instrument.**
- 2. The Mortgagor agrees to pay all taxes that may be assessed upon said property or upon the Mortgagee's interest therein or upon this Mortgage or the moneys secured hereby, any law to the contrary notwithstanding. Upon any violation of this undertaking, or the passage or any law imposing upon the Mortgagee the payment of any part of the taxes aforesaid, or upon the rendition by any court of last resort of a decision that the undertaking to pay the taxes as aforesaid is legally inoperative then, in any such event, the debt hereby secured shall at the mortgagee's option, become immediately due and payable, without deduction, any law heretofore or hereafter enacted to the contrary notwithstanding.**

3. The Mortgagor agrees to keep and all improvements now on said property or that may hereafter be placed thereon insured against fire and such other hazards as the Mortgagee may require in companies satisfactory to the Mortgagee, in such amounts and for such periods of time as the Mortgagee may require, loss, if any, payable to the Mortgagee as Mortgagee's interest may appear under terms of a clause satisfactory to Mortgagee without contribution, and to deposit said insurance policies with the Mortgagee. In case of loss and payment by an insurance company, the proceeds of all such insurance policies shall be applied, at the Mortgagee's election, on the indebtedness secured hereby or in rebuilding or restoring the property. In the event of foreclosure of this Mortgage or a transfer in extinguishment of the debt, all right, title and interest of the Mortgagor to insurance policies then in force shall pass to the purchaser or grantee.
4. The Mortgagee may collect a "late charge" not to exceed four cents (4) for each one dollars (\$1.00) of each payment more than fifteen days in arrears to cover the additional expense involved in handling delinquent payments.
5. If the Mortgagor fails to keep the improvements in good repair or to insure said property as hereinabove provided, or to pay all or any part of the taxes or assessments levied, accrued, or assessed upon or against said property or to fail to pay or post a bond or other forms of security acceptable to the Mortgagee which indemnifies and unconditionally agrees to pay the Mortgagee for any such claims immediately and discharge any and all liens, debts or charges which might become liens superior to the lien of this Mortgage or fails to pay the items hereafter provided in Paragraph 8 or provided in any prior Mortgage acknowledged herein the Mortgagee may at its option repair, or insure said property or pay said taxes, assessments, debts, liens or charges, or any times secured hereby and any money which the Mortgagee shall have so paid or become hereby specifically secured, shall be also secured by this Mortgage, shall bear interest at the default rate established in the Note from date paid or incurred, and shall be immediately due and payable, if the Mortgagee elects to declare it so. In case the Mortgagee employs an attorney to collect any item listed herein or in Paragraph 8, the Mortgagee shall recover from the Mortgagor a reasonable attorney fee therefor.
6. No failure of the Mortgagee to exercise any option herein given to declare the maturity of the debt hereby secured, shall be taken or construed as a waiver of its right to exercise such option or to declare such maturity by reason of any past or present default on the part of the Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts, or charges by the Mortgagee shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagor to procure such insurance or to pay such taxes, debts, liens, or charges.
7. If the Mortgagor shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall do and perform all acts and agreements to be done and performed by the Mortgagor under the terms and provisions of the Mortgage, then this convenience shall be and become null and void.
8. All expenses incurred by the Mortgagee, including attorney fees, in compromising, adjusting, or defending against lien claims or encumbrances sought to be fixed upon the property hereby conveyed, whether such claims or encumbrances be valid or not, shall become a part of the debt hereby secured.
9. The undersigned waives all right of exemption as to real or personal property under the laws of Alabama as to any of the terms secured or that may be secured by the terms of this instrument, and agrees to pay a reasonable attorney fee to the Mortgagee, should the Mortgagee employ an attorney to collect the same. The Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment, or requiring that the value of the property conveyed hereby be set off against any part of the debt secured hereby.

10. As long as any of the indebtedness hereby secured shall remain unpaid the Mortgagor will neither commit nor permit waste to be committed on the premises hereby conveyed; and upon the commission of any waste thereon the Mortgagee may, at its option, declare the entire indebtedness hereby secured to be at once due and payable. Nor will the Mortgagor remove any of the fixtures on the premises hereby conveyed so long as any of the indebtedness hereby secured shall remain unpaid.
11. All the rents, income and profits from the premises are hereby transferred, assigned, set over and conveyed to the Mortgagee and if the Mortgagor defaults in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof the Mortgagee may proceed to collect the rent, income and profits from the premises upon such default either with or without the appointment of a receiver; but the Mortgagee shall not thereby become bound by the terms of the lease then existing on the premises by electing to collect the rents thereunder but may at any time terminate the same. Any rents, income and profits collected by the Mortgagee prior to foreclosure of this indebtedness, less the cost of collecting the same including any real estate commission or attorney fee incurred, shall be credited first, to the costs of necessary repairs, the advances with interest thereon, then upon the interest, and the remainder, if any, upon the principal debt hereby secured. The Mortgagor will not permit any tenant to pay any rent in advance of the due date of such rent, not permit the payment of rent in any medium other than lawful money of the United States, nor anticipate, discount, compromise, forgive, encumber, pledge, or assign the rents of any part thereof, or any lease, or any interest therein.
12. If the Mortgagor shall fail to pay, or cause to be paid, at maturity, the indebtedness hereby secured or any part thereof, according to the terms thereof, or if the Mortgagor shall fail to do or perform any other act or thing herein required or agreed to be done or performed, or if the interest of the Mortgagee in said property becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon, then, in any such event, the whole indebtedness hereby secured shall immediately become due and payable, and this Mortgage subject to foreclosure at the option of the Mortgagee without notice; and the possession of said property, and after or without taking possession, to sell the same before the Court House door in the county where such property is located at public outcry, first giving notice of the time, place, and terms of said sale in a publication once a week for three successive weeks immediately prior to said date in some newspaper published in said county, and upon the payment of the purchase money, the Mortgagee or any person conducting said sale for it is authorized to execute to the purchaser at said sale a deed to the property so purchased. The Mortgagee may bid at the sale and purchase said property, if the highest bidder therefor.
13. The proceeds of said sale shall be applied: First, to the expense of advertising and selling including reasonable attorney fees; Second, to the repayment of any money with interest thereon, which the Mortgagee may have paid or become liable to pay or which it may then be necessary to pay for taxes, assessments, insurance, and/or other charges, liens, or debts hereinabove provided; Third, to the payment and satisfaction of the indebtedness hereby specially secured with interest, but interest to date of sale only shall be charged; Fourth, the balance, if any, shall be paid to the Mortgagor. If this Mortgage be foreclosed in Chancery, the Mortgagee shall have and recover of the Mortgagor as a part of the debt hereby secured, in addition to the debt hereby specially secured, a reasonable attorney fee for such foreclosure.
14. In consideration of the making of the loan secured by this mortgage, the Mortgagor, being all of the undersigned, covenant and agree that in respect of the indebtedness secured hereby, they will forever waive, and they do hereby waive and give up all benefits, privileges, options, and rights of every kind and nature given to or which inure to the benefit or advantage of the undersigned or either of the undersigned if more than one, under and by virtue of House Bill No. 422 of the Legislature of Alabama of 1935, elected into law and approved on June 24, 1935, commonly

referred to as the Deficiency Judgment Act; no further agreement to waive and forego like or similar rights, benefits, and options hereafter conferred upon mortgage debtors by law hereafter enacted; and further covenant and agree that the indebtedness hereby accrued and all extensions and renewals thereof, and this mortgage shall each been enforceable in accordance with their respective terms and conditions, without reference to and in spite of any provisions to the contrary in said Act of the Legislature of Alabama and any and all other laws of like or similar purport which may hereafter be enacted.

15. Any sale of the property herein described without the written consent of the Mortgagee shall, at the option of the Mortgagee, constitute a default and the whole indebtedness hereby secured may immediately become due and payable and the mortgage subject to foreclosure.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

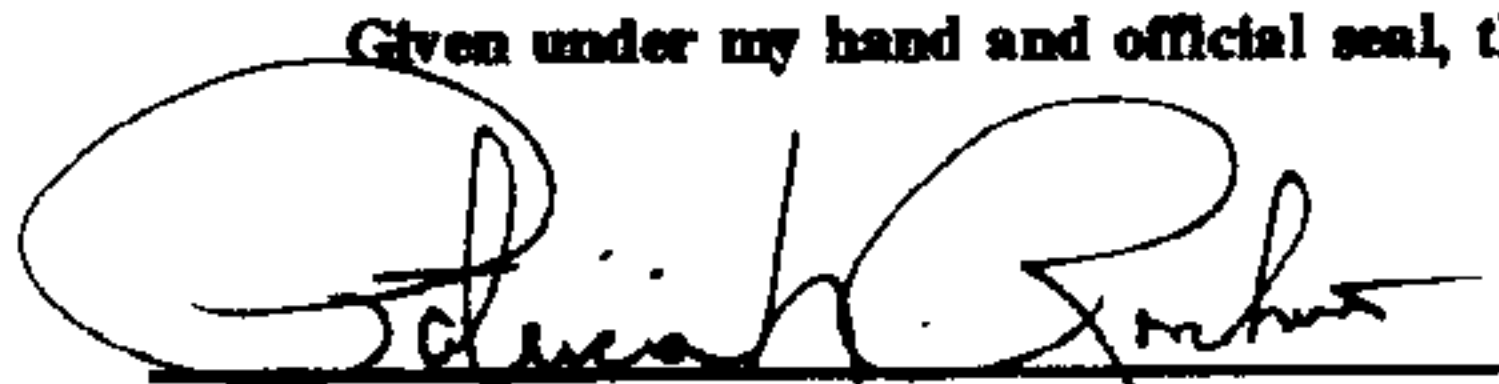
American Homes & Land Corporation

 (SEAL)
BY: Gary W. Thomas
ITS: President

STATE OF ALABAMA)
:
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Gary W. Thomas, whose name as President of AMERICAN HOMES & LAND CORPORATION, a 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 such 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 the 23rd day of November, 1998.


NOTARY PUBLIC
MY COMMISSION EXPIRES: 2-20-2001

This instrument prepared by:
Richard W. Theibert, Attorney
Najjar Denaburg, P.C.
2125 Morris Avenue
Birmingham, Alabama 35203

Inst # 1998-47214

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11/30/1998-47214
09:56 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 CRH 22.00