

Birmingham

188 273

MORTGAGE

06/04/1999-23635
11:50 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
003 HRS 54.00

STATE OF ALABAMA

County ShelbyTHIS INDENTURE is made and entered into this 29th day of April, 19 99 by and betweenRobert H. Wheeler (married)

(hereinafter called "Mortgagor," whether one or more) and JIM WALTER HOMES, INC. (hereinafter called "Mortgagee").

WHEREAS, Robert H. Wheeler (married)

is (are) justly indebted to the Mortgagee in the sum

of Forty Three Thousand, One Hundred Fifty Six and - 80/100 - Dollars (\$ 43,156.80)
as evidenced by that certain promissory note of even date herewith, which is payable in accordance with its terms, and which has a final maturity date
of August 13th, 2011NOW, 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 (the aggregate amount of such debt, including any extensions and renewals, 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"):

The seller agrees to sell to buyer and buyer agrees to purchase from seller the existing display home known as the Madison presently located at 2789 Hwy 31 South, Pelham, AL 35124. The display home is to be moved by seller within a reasonable time to property owned by buyer and more fully described as follows:

SEE EXHIBIT "E" ATTACHED:

This instrument prepared by
Thomas E. Potts, Jr., Attorney
P.O. Box 3100
Tampa, FL 33631-3601

AMOUNT FINANCED

\$ 27,000

FINANCE CHARGE

\$ 16,156.80

TIME PRICE

\$ 43,156.80

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 mortgage.

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 is 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.

For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (1) pay all taxes, assessments, and other liens taking priority over this mortgage (hereinafter jointly called "Liens"), and if default is made in the payment of the Liens, or any part thereof, the Mortgagee, at its option, may pay the same; (2) keep the Real Estate continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagee, against loss by fire, vandalism, malicious mischief and other perils usually covered by a fire insurance policy with standard extended coverage endorsement, with loss, if any, payable to the Mortgagee, as its interest may appear; such insurance to be in an amount at least equal to the lesser of the actual cash value of the improvements located on the Real Estate or the indebtedness secured by this mortgage on said improvements; (3) pay any other cost or expense which will protect Mortgagee's security in the Real Estate and Mortgagee may, but is under no obligation to do so, make any advance or pay any cost or incur any expense which Mortgagee feels will protect its security under this mortgage (whether or not any charge it pays is valid).

The Mortgagor hereby assigns and pledges to the Mortgagee, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures said improvements, or any part thereof, together with all the right, title and interest of the Mortgagor in and to each and every such policy, including but not limited to all of the Mortgagor's right, title and interest in and to any premiums paid on such hazard insurance, including all rights to return premiums. If the Mortgagor fails to keep the Real Estate insured as specified above then, at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the entire Debt due and payable and this mortgage subject to foreclosure, and this mortgage may be foreclosed as hereinafter provided; and, regardless of whether the Mortgagee declares the entire Debt due and payable and this mortgage subject to foreclosure, the Mortgagee may, but shall not be obligated to, insure the Real Estate for its full insurable value (or for such lesser amount as the Mortgagee may wish) against such risks of loss, for its own benefit, the proceeds from such insurance (less cost of collecting same) if collected, to be credited against the Debt, or, at the election of the Mortgagee, such proceeds may be used in repairing or reconstructing the improvements located on the Real Estate. All amounts spent by the Mortgagee for insurance or for the payment of Liens or for the protection of its security, shall become a debt due by the Mortgagor to the Mortgagee and as once payable, without demand or notice to the Mortgagor, and shall be secured by the lien of this mortgage and shall bear interest from date of payment by the Mortgagee until paid at the Annual Percentage Rate set forth in the Sale Contract dated April 29, 1999 between Jim Walter Homes, Inc. and the Mortgagor.

As further security for the payment of the Debt, the Mortgagor hereby assigns and pledges to the Mortgagee the following described property, rights, claims, rents, profits, issues and revenues:

1. all rents, profits, issues, and revenues of the Real Estate from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to the Mortgagor, so long as the Mortgagor is not in default hereunder, the right to receive and retain such rents, profits, issues and revenues;
2. all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Real Estate, or any part thereof, under 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 for the voluntary sale of the Real Estate, or any part thereof, in lieu of the exercise of the power of eminent domain. The Mortgagee is hereby authorized on behalf of, and in the name of, the Mortgagor to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. The Mortgagee may apply all such sums so received, or any part thereof, after the payment of all the Mortgagee's expenses in connection with any proceeding or transaction described in this subparagraph 2, including court costs and attorneys' fees, on the Debt in such manner as the Mortgagee elects, or, at the Mortgagee's option, the entire amount, or 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.

The Mortgagor agrees to take good care of the Real Estate and all improvements located thereon and not to commit or permit any waste thereon and at all times to maintain such improvements in as good condition as they now are, reasonable wear and tear excepted.

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Notwithstanding 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 Mortgagee, upon the conveyance of the Real Estate, or any part thereof or any interest therein.

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, altered or changed except by a written instrument signed by the Mortgagor and signed on behalf of the Mortgagee by one of its officers.

After default on the part of the Mortgagor, the Mortgagee, upon bill filed or other proper legal proceeding being commenced for the foreclosure of this mortgage, shall be entitled to the appointment by any competent court, without notice of any party, of a receiver for the rents, issues, revenues and profits of the Real Estate, with power to lease and control the Real Estate, and with such other powers as may be deemed necessary.

UPON CONDITION, HOWEVER, that if the Mortgagor pays the Debt (which Debt includes the indebtedness evidenced by the promissory note or notes referred to hereinbefore and any and all extensions and renewals thereof and all interest on said indebtedness and on any and all such extensions and renewals) and reimburses the Mortgagee for any amounts the Mortgagee has paid in payment of Liens or insurance premiums, and interest thereon, and fulfills all of its obligations under this mortgage, this conveyance shall be null and void. But if: (1) any warranty or representation made in this mortgage is breached or proves false in any material respect; (2) default is made in the due performance of any covenant or agreement of the Mortgagor under this mortgage; (3) default is made in the payment of 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; (5) the interest of the Mortgagee in the Real Estate becomes endangered by reason of the enforcement of any prior lien or encumbrance thereon; (6) 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); (7) any law is passed imposing or authorizing the imposition of any specific 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, lien or assessment upon the Real Estate shall be chargeable against the owner of this mortgage; (8) any of the stipulations contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction; (9) Mortgagor, or any of them (a) shall apply for or consent to the appointment of a receiver, trustee or liquidator thereof or of 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, (c) fail, or admit in writing such Mortgagor's insolvency generally, to pay such Mortgagor's debts as they come due, (d) make a general assignment for the benefit of creditors, (e) file a petition or an answer seeking reorganization or any arrangement with creditors or taking advantage of any insolvency law, or (f) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against such Mortgagor in any bankruptcy, reorganization or insolvency proceedings; or (10) an order for relief or other 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 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 no interest shall be collected beyond the day of sale; and 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 the 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 in any other manner or it may be offered for sale and sold in any other manner the Mortgagee may elect.

For each installment not paid in full within fifteen (15) days of its scheduled due date, the Mortgagor shall pay to Mortgagee, or its assigns, a late charge of five percent (5%) of the unpaid amount of the installment in default or \$.50, whichever is greater, not to exceed \$100. If any check tendered to Mortgagee, or its assigns, by Mortgagor hereunder is not paid upon presentation or is dishonored by the bank or depository institution upon which it is drawn, Mortgagor agrees to pay Mortgagee a bad check charge of \$20.00 or the actual charge made by the depository institution for the return of the unpaid or dishonored instrument, whichever is greater, in accordance with Ala. Code (1975) § 8-8-15.

The Mortgagor agrees to pay all costs, including reasonable attorneys' fees not exceeding 15% of the unpaid debt after default and referral for collection to an attorney not a salaried employee of the Mortgagee, 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 herein expressly made subject to any such lien or encumbrance; and/or all costs incurred in the foreclosure of this mortgage, either under the power of sale contained herein, or by 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 Mortgagee, 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.

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 natural persons, corporations, associations, partnerships or other entities. All covenants and agreements herein made by the undersigned shall bind the heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagee, shall inure to the benefit of the Mortgagee's successors and assigns.

In witness whereof, the undersigned Mortgagor has (have) executed this instrument on the 29th day of April, 1999
Robert A. Wheeler

State of Alabama
County Shelby
I, the undersigned authority, a Notary Public, in and for said county in said state, hereby certify that Robert A. Wheeler
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
he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 29th day of April, 1999
Nancy J. Gordon
Notary Public

My commission expires:
MY COMMISSION EXPIRES JUNE 9 2002
NOTARY MUST AFFIX SEAL

EXHIBIT 'E'

Job Check Date / Time: 05/07/1999 / 12:05:10 PM

Branch: Birmingham
Job Name: ROBERT H WHEELER
Job Address: TBD SHELBY, AL 35051

Date of Sale: 03/29/1999
Model: Madison/130

THAT PART OF THE NORTH $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 20 SOUTH, RANGE 1 EAST, LYING SOUTH OF SHELBY COUNTY HIGHWAY NO. 56, AND EAST OF SPEARMAN BRANCH, DESCRIBED AS FOLLOWS:

BEGIN AT THE SW CORNER OF THE NE $\frac{1}{4}$ OF THE SW $\frac{1}{4}$ OF SECTION 26, TOWNSHIP 20 SOUTH, RANGE 1 EAST; THENCE EAST, ALONG THE SOUTH LINE OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ SECTION FOR A DISTANCE OF 160.00 FEET TO THE CENTER OF SHELBY COUNTY HIGHWAY NO. 56; THENCE ALONG THE CENTERLINE OF HIGHWAY NO. 56, THE FOLLOWING BEARING AND DISTANCES: NORTH 68 DEGREES 01 MINUTES 58 SECONDS WEST FOR A DISTANCE OF 49.33 FEET; NORTH 58 DEGREES 48 MINUTES 47 SECONDS WEST, FOR A DISTANCE OF 46.23 FEET; NORTH 50 DEGREES 35 MINUTES 37 SECONDS WEST FOR A DISTANCE OF 44.11 FEET; NORTH 49 DEGREES 05 MINUTES 52 SECONDS WEST FOR A DISTANCE OF 294.14 FEET; NORTH 48 DEGREES 27 MINUTES 50 SECONDS WEST FOR A DISTANCE OF 132.49 FEET; NORTH 48 DEGREES 11 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 259.67 FEET; NORTH 49 DEGREES 04 MINUTES 22 SECONDS WEST FOR A DISTANCE OF 57.95 FEET; NORTH 54 DEGREES 34 MINUTES 39 SECONDS WEST FOR A DISTANCE OF 52.02 FEET; NORTH 64 DEGREES 04 MINUTES 32 SECONDS WEST FOR A DISTANCE OF 28.80 FEET; NORTH 77 DEGREES 34 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 60.00 FEET; NORTH 81 DEGREES 04 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 70.00 FEET; NORTH 82 DEGREES 00 MINUTES WEST FOR A DISTANCE OF 100.00 FEET; NORTH 84 DEGREES 25 MINUTES 43 SECONDS WEST FOR A DISTANCE OF 90.13 FEET TO THE CENTER LINE OF SPEARMAN BRANCH; THENCE ALONG THE CENTERLINE OF SPEARMAN BRANCH, THE FOLLOWING BEARINGS AND DISTANCES: SOUTH 00 DEGREES 02 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 58.00 FEET; NORTH 71 DEGREES 36 MINUTES 31 SECONDS WEST FOR A DISTANCE OF 63.25 FEET; SOUTH 5 DEGREES 40 MINUTES 01 SECONDS WEST FOR A DISTANCE OF 50.25 FEET; SOUTH 58 DEGREES 49 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 29.15 FEET; SOUTH 21 DEGREES 24 MINUTES 49 SECONDS EAST FOR A DISTANCE OF 123.49 FEET; SOUTH 81 DEGREES 20 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 99.14 FEET; SOUTH 42 DEGREES 48 MINUTES 43 SECONDS EAST FOR A DISTANCE OF 54.49 FEET; SOUTH 26 DEGREES 19 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 128.35 FEET; SOUTH 34 DEGREES 03 MINUTES 45 SECONDS EAST FOR A DISTANCE OF 48.26 FEET; SOUTH 43 DEGREES 26 MINUTES 06 SECONDS WEST FOR A DISTANCE OF 108.93 FEET; SOUTH 67 DEGREES 42 MINUTES 35 SECONDS EAST FOR A DISTANCE OF 200.00 FEET; SOUTH 66 DEGREES 18 MINUTES 20 SECONDS WEST FOR A DISTANCE OF 52.40 FEET; SOUTH 00 DEGREES 02 MINUTES 35 SECONDS EAST FOR A DISTANCE OF 47.37 FEET TO THE SOUTH LINE OF THE NW $\frac{1}{4}$ OF THE SW $\frac{1}{4}$ OF SAID SECTION 26; THENCE EAST ALONG THE SOUTH LINE OF SAID $\frac{1}{4}$ - $\frac{1}{4}$ SECTION FOR A DISTANCE OF 781.00 FEET TO THE POINT OF BEGINNING.

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003 RMS 54.00