

STATE OF ALABAMA )

COUNTY OF SHELBY )

975

### MORTGAGE AND SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT (hereinafter called "Mortgage") made and entered into this 9th day of August, 19 85, by and among: Ken Mitchell Builders, Inc.

(whether one or more persons, partnerships, or corporations, herein called "Borrower"); and CAMERON-BROWN COMPANY, a North Carolina corporation having its principal office and place of business in Charlotte, Mecklenburg County, North Carolina (herein called "Lender").

WITNESSETH: THAT WHEREAS, Lender has agreed to lend to Borrower and has available for the benefit of Borrower, the sum of Ninety Thousand Seven Hundred Fifty and no/100th DOLLARS (\$90,750.00), advanced, or to be advanced from time to time in installments pursuant to a written Construction Loan Agreement between Lender and Borrower of even date herewith (herein called "Loan Agreement"), said loan being evidenced by a note of the Borrower of even date herewith in the above stated amount (herein called "Note"), payable with interest, as, and at the rate specified therein; and

WHEREAS, the Borrower desires to secure the performance of the Loan Agreement and to secure payment of the Note with interest and any renewal or extension thereof, in whole or in part, by a conveyance of the property hereinafter described; and

NOW, THEREFORE, for and in consideration of the premises and for the purposes aforesaid, and in further consideration of the sum of One Dollar (\$1.00) paid to the Borrower by the Lender, the receipt and sufficiency of which is hereby acknowledged, the Borrower has given, granted, bargained and sold, and by these presents does hereby GIVE, GRANT, BARGAIN, SELL and CONVEY unto the Lender, its successors and assigns, the following described lot or parcel of land lying and being in the County of Shelby, and State of ALABAMA, and more particularly described as follows:

Lot 14, Block 2, Woodford Addition to Inverness Subdivision as shown in Plat Book 8, page 51, in the Probate Office of Shelby County, Alabama.

A portion of the proceeds of this Mortgage are being used to acquire the Property and, therefore, THIS IS A PURCHASE MONEY MORTGAGE.

TOGETHER WITH all easements, rights, privileges, tenements, hereditaments and appurtenances thereunto belonging, and all buildings and improvements now or hereafter located thereon, all right, title and interest of Borrower in and to land lying in public streets or roads abutting the above described property. All of said property, including said land and the improvements, are herein collectively referred to as "Property".

TOGETHER WITH the fixtures and personal property now or hereafter located on the Property. The following items are specifically included: All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Borrower for the purpose of or used or useful in connection with the improvements located, or to be located, on the herein described Property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to said Property or not, and whether in storage or otherwise, wheresoever the same may be located. The personal property conveyed and mortgaged shall include, without limitation, all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, pipes and piping ornamental and decorative fixtures, carpets, stoves, ovens, refrigerators, freezers, dishwashers, washing machines, dryers, compactors, and similar appliances, and in general, all building material and equipment of every kind and character used or useful in connection with the said improvements and together with all the rights, privileges, tenements and appurtenances thereunto belonging, or in any wise appertaining. All of the foregoing being hereinafter called "Personal Property".

TO HAVE AND TO HOLD, the Property and Personal Property, with all the rights, privileges and appurtenances thereunto belonging or appertaining, unto the Lender, its successors and assigns, in fee simple, forever, upon the conditions hereinafter set out.

And the Borrower covenants with the Lender that it is lawfully seized of the Property and Personal Property in fee simple and has the right to convey the same in fee simple; that the same are free and clear of all encumbrances (unless otherwise stated above), and that Borrower will warrant and defend the title to the same from and against the lawful claims of all persons whomsoever.

*Courtney Mason*

THIS CONVEYANCE IS MADE UPON THE CONDITION, that if the Borrower shall pay the Note and all other indebtedness secured hereby in accordance with its terms, together with interest thereon, and shall comply with all the covenants, terms and conditions of this Mortgage, and the Loan Agreement, then this conveyance shall be null and void and may be cancelled of record at the request and at the cost of the Borrower. In case of the failure of the Lender to release this Mortgage, all claims for statutory penalties or damages are hereby waived. If, however, there shall be any default in any of the terms and conditions of the Note or any other indebtedness hereby secured, or of the terms, conditions or covenants contained in this Mortgage, or contained in the Loan Agreement, or in the event of actual or threatened demolition or injury or waste to the Property or Personal Property which may impair the value of the security conveyed hereby, or if a receiver shall be appointed for, or a petition in bankruptcy filed by or against the Borrower (or any one of them), then and in any of such events, the indebtedness secured hereby shall, at the option of the Lender, become at once due and payable, regardless of the maturity date thereof, and the Lender is hereby authorized and empowered to expose to sale and to sell the Property or Personal Property, or both, at public sale for cash, after having first complied with the requirements of law with respect to sales under powers of sale contained in mortgages, and upon such sale, the Borrower 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, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. The Property may be sold as a whole, or in such parcels or portions as the Lender may direct irrespective of the form of the legal descriptions contained herein. Lender may bid at the sale and purchase said Property if the highest bidder therefor. After retaining all expenses incurred by Lender, including reasonable attorney's fees for legal services actually performed, the Lender shall apply the residue of the proceeds first to the payment of all sums expended by the Lender under the terms of this Mortgage and the Loan Agreement; second, to the payment of the Note and all other indebtedness secured hereby and interest thereon, and the balance, if any, shall be paid in accordance with law. If the Personal Property is sold hereunder, it need not be at the place of sale.

In the event foreclosure is started and no sale is actually held, the Lender shall receive all expenses incurred by them, including reasonable attorney's fees for legal services actually performed, and the same shall be secured in a like manner as other charges and expenses advanced under the terms of this Mortgage and bear interest at the rate stated in the Note. In the event of foreclosure of this Mortgage, all right, title, and interest of the Borrower in and to any insurance policies then in force, abstracts, surveys, plans and specifications, and similar documents relating to the Property shall pass to the purchaser at said foreclosure sale.

It is further covenanted and agreed among the parties hereto as follows:

1. That the Borrower will pay when due all taxes, assessments and any other liens against the Property and will deliver promptly the official receipts therefor to Lender.

2. That the Borrower will keep all improvements and Personal Property which are now or may hereafter be upon said land unceasingly insured for the benefit of the Lender, in such manner and in such amounts as the Lender may from time to time require, and in such companies as the Lender may select or approve of, until the debt secured hereby is fully paid, and will deliver the policy or policies and all renewals thereof, with satisfactory mortgagee loss payable clause attached, to the Lender, and will pay all premiums thereon when due; provided that, should Borrower fail to maintain any such insurance, Lender may, at its option, cause such insurance to be maintained; and provided further that any action taken by the Lender in this regard shall not release the Borrower of the obligation to fully protect and insure the improvements and Personal Property for the benefit of the Lender; and provided further, Lender shall have no responsibility whatsoever to the Borrower, any Guarantor or Endorser, or any other party, to obtain partial or full insurance coverage of any property or improvements, and in the event that the Lender undertakes to obtain any insurance, the Lender has no responsibility whatsoever to the Borrower, any Guarantor or Endorser, or other party that any coverage obtained will be adequate or that it provide any protection whatsoever to the Borrower. If the improvements and Personal Property conveyed hereby, or any part thereof, shall be damaged by fire or other hazard against which insurance is held, as herein provided, the amounts paid by any insurance company pursuant to the contracts of insurance, shall, to the extent of the indebtedness then remaining unpaid, be paid to the Lender, and at the Lender's option, may be applied to the debt or released for the repairing or rebuilding of said improvements and replacing said Personal Property.

3. That the Borrower will protect all improvements which are now or may hereafter be upon said land by proper repair and maintain the same in good repair and condition, and will not do, permit, or suffer any act or thing whatsoever whereby the security herein conveyed might or could be impaired. That the Borrower will not remove any fixtures, improvements, or Personal Property on the premises hereby conveyed, so long as any of the indebtedness hereby secured remains unpaid.

4. That the Lender may, at its discretion, before or after default hereunder, advance and pay such sums as may be proper and necessary to satisfy taxes or other levies, assessments or liens on any part of the Property and Personal Property, to maintain insurance and repairs, and protect and preserve the Property and Personal Property, and such amount so paid shall, at the option of the Lender, become part of the principal debt, be a lien on the Property and Personal Property, and be secured and collectible hereby, without waiver of any right arising from the breach of any covenant or agreement herein contained, notwithstanding the fact that any sums so advanced, when added to all advancements under the Loan Agreement, shall exceed the face amount of the Note. That in the event Borrower causes or permits any event of default to occur Lender, immediately without notice while such default (or other default) exists, and without liability therefor to Borrower may do or cause to be done any or all of the following:

- (i) Take physical possession of the premises, Property and Personal Property conveyed hereby;
- (ii) Collect the rents and profits derived from said Property and Personal Property;
- (iii) Enter into contracts for the completion, repair or maintenance of the improvements thereon;
- (iv) Expend any loan funds and any rents, income and profits derived from the Property or Personal Property for payment of any taxes, insurance premiums, assessments and charges for completion, repair and maintenance of the improvements, for the preservation of the quality of the first priority lien intended to be established hereby and for the satisfaction and fulfillment of any liabilities or obligations of Borrower arising out of or in any way connected with the construction of improvements on the Property whether or not such liabilities and obligation in any way affect, or may affect, the lien of this Mortgage;

Any of the foregoing rights and privileges of Lender may be exercised at any time, and independently of the exercise of any other such rights and privileges, and Lender may continue to exercise any or all such rights and privileges until the default or defaults of Borrower are cured with the consent of Lender or until this Mortgage is foreclosed.

5. That if the Lender retains counsel for the purpose of collecting any monies which may be due under the Note or this Mortgage, or to recover the mortgaged property, or to protect Lender's interest therein by reason of the happening of any of the contingencies set forth herein, or if the Lender shall be made a party to any condemnation proceedings, or to any suit involving the title, or assisting in settling or removing any cloud on the title to the Property or Personal Property, or if this Mortgage be foreclosed in Equity, or under a power of sale, or to enforce any right (including, but not limited to, rights arising from default), then Lender shall be saved harmless and shall be reimbursed by Borrower for any amounts paid, including all reasonable costs, charges and attorney's fees incurred, and the same shall be secured by the lien of this Mortgage in addition to the indebtedness specially secured hereby and shall bear interest at the rate specified in the Note from the date it is paid or incurred and shall be at once due and payable. Any proceeds of any award or claim in connection with any condemnation of all or any part of the Property are hereby assigned to and shall be paid to the Lender, and shall be applied to reduce the amount of the debt, at the option of the Lender.

6. That any funds owed Lender under the provisions of this Mortgage upon which a due date is not stated shall be deemed to be payable on demand. The interest rate on any such obligation shall be the same as provided in the Note.

7. That the provisions of the Loan Agreement are incorporated herein by reference as fully and to the same extent as though set out herein verbatim; that a default in the Loan Agreement shall be treated as a default in this Mortgage; and that this Mortgage shall, and does, secure any and all obligations of the Borrower under the Loan Agreement, including, but not limited to, any and all obligations of the Borrower provided for therein.

8. That the Property shall be kept free and clear of any contractors', subcontractors', suppliers', mechanics' or laborers' liens of any and all type and description. Upon the recording of any such lien, and the same not having been cleared or bonded of record within ten (10) days after the filing thereof, the entire debt secured hereby shall, at the option of the Lender, immediately become due and payable.

9. That if any part of the Property or Personal Property is transferred, assigned or further encumbered in any manner without the Lender's prior written consent, then, at the option of the Lender, the entire indebtedness hereby secured shall immediately become due and payable.

10. That the Borrower hereby assigns and sets over unto the Lender, all rents, issues and profits hereafter accruing from the Property and Personal Property as additional security for the indebtedness secured hereby; provided, however, that, until there is a default under the terms of the Note, Loan Agreement, or this Mortgage, the Borrower may continue to collect and enjoy said rents, issues, or profits without accountability to the Lender.

11. That this Mortgage also constitutes a security agreement under the Uniform Commercial Code of Alabama, and creates a security interest in all Personal Property described hereinabove (and the proceeds thereof), including that property which might be deemed fixtures or personal property. The Borrower shall execute, deliver, file and refile any financing statements, continuation statements, or other security agreements the Lender may require from time to time to confirm the lien of this Mortgage with respect to such property. Without limiting the foregoing, the Borrower hereby irrevocably appoints the Lender as attorney-in-fact for the Borrower to execute, deliver and file such instruments for and on behalf of the Borrower. In the event of a default under this Mortgage, the Lender shall, in addition to all other rights and remedies herein provided, have all the remedies accorded a secured party and Borrower shall have all of the obligations of a debtor under said Uniform Commercial Code. At any sale conducted by reason of default hereunder, personalty may be sold, at the option of the Lender, separately or as a part of any real estate on which it is situated. If notice is required under said Uniform Commercial Code, five (5) days' written notice shall be deemed reasonable.

12. That upon any default by the Borrower in this Mortgage, the Note or the Loan Agreement, the Lender shall have the right, before or after the commencement of any action to enforce the lien herein given, to have appointed by a court of competent jurisdiction a receiver to take possession of the Property and Personal Property and collect the said rents, issues, and profits arising therefrom. This provision is a right created by this contract and is cumulative of, and is not to affect in any way, any right given the Lender by law for the appointment of a receiver.

13. That no sale of the Property or Personal Property, and no forbearance on the part of the Lender, and no extension of time for the payment of the debt secured hereby given by Lender, shall operate to release, discharge, modify, change or affect the original liability of the Borrower, or any Guarantor or Endorser, either in whole or in part.

14. That the Lender shall have the right to make partial release or releases of the Property or Personal Property conveyed hereby without notice to, or the consent, approval or agreement of other parties in interest, including endorsers or guarantors of the obligation secured hereby and junior lienors, which partial release or releases shall not impair in any manner the validity or priority of this Mortgage on the security remaining, nor release the Borrower or any Guarantor or Endorser from personal liability for the obligation hereby secured.

15. Any promise made by the Borrower herein to pay money may be enforced by a suit at law, and the security of this Mortgage shall not be waived thereby, and as to such debts the Borrower waives all right of exemption under the law.

16. That the covenants, terms, and conditions herein contained shall bind, and the benefits and powers hereby conveyed shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used herein, the singular number shall include the plural, the plural the singular, the use of one gender all genders, and the term "Lender" shall include any holder or payee of the indebtedness hereby secured and any transferee or assignee thereof, whether by operation of law or otherwise. In addition, the term "Note" shall include the Note hereinabove described and any additional note executed by Borrower as evidence of obligations secured hereby, and all renewals thereof and supplements thereto.

IN WITNESS WHEREOF, the Borrower has executed this indenture under seal as of the day and year first above written.

\_\_\_\_\_[SEAL]  
\_\_\_\_\_[SEAL]  
\_\_\_\_\_[SEAL]

Corporate Borrower:

KEN MITCHELL BUILDERS, INC.

By: [Signature]  
Its PRESIDENT

ATTEST:

Its \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said State and County (State of Alabama at Large,) hereby certify that \_\_\_\_\_, whose name(s) \_\_\_\_\_ signed to the foregoing instrument, and who \_\_\_\_\_ 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 the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Notarial Seal)

\_\_\_\_\_  
Notary Public

MY COMMISSION EXPIRES:

STATE OF ALABAMA )

COUNTY OF SHELBY )

I, the undersigned, a Notary Public in and for said State and County, (State of Alabama at Large,) hereby certify that Ken Mitchell, whose name as President of Ken Mitchell Builders, Inc., an Alabama 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 the instrument \_\_\_\_\_ he, as such officer and with full authority, executed the same voluntarily for and the act of said corporation.

GIVEN under my hand and official seal, this the 9th day of August, 1985.

(Notarial Seal)

[Signature]  
Notary Public

MY COMMISSION EXPIRES:

4/9/87

Prepared by Courtney H. Mason, Jr.  
P. O. Box 360187  
Birmingham, AL 35236-0187

STATE OF ALABAMA  
1000  
INSTR.

1985 AUG 19 AM 8:52

[Signature]

RECORDING FEES

Mortgage Tax	\$ <u>136.20</u>
Deed Tax	_____
Mineral Tax	_____
Recording Fee	<u>10.00</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>147.20</u>