

THIS INSTRUMENT PREPARED BY:

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2140 11th Ave. S. #300  
Birmingham, Alabama 35205

**SECOR**  
BANK

**MORTGAGE DEED - CONSTRUCTION**

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

KNOW ALL MEN BY THESE PRESENTS, that whereas BROOKSHIRE HOMES, INC.

(hereinafter referred to as "Mortgagors") have become justly indebted to SECOR BANK, FEDERAL SAVINGS BANK, a Corporation, organized and existing under the laws of the United States of America (hereinafter referred to as "Mortgagee"), in the principal sum of ONE HUNDRED EIGHTY THOUSAND and no/100's ----- Dollars, (\$180,000.00) as evidenced by negotiable note of even date herewith;

NOW, THEREFORE, in consideration of the premises and in order to secure the payment of the principal sum, including any and all additional advances and any renewals or extensions of the same or any other indebtedness, now or hereafter owed by Mortgagors to Mortgagee (hereinafter referred to as "indebtedness"), in compliance with all the stipulations hereinafter contained, the Mortgagors do hereby grant, bargain, sell and convey to the Mortgagee the following described real estate, situated in the County of Shelby, State of Alabama, viz:

Lot 69, according to the survey of Brook Highland, 2nd Sector, as recorded in Map Book 12, Page 63 A & B as recorded in the Office of the Judge of Probate of Shelby County, Alabama.

which has the address of: n/a

(Street, City, Zip Code)

together with all rents and other revenues thereof and all rights, privileges, easements, tenements, interests, improvements and appurtenances thereunto belonging or in any wise appertaining, including and after-

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BOOK 219 PAGE 194

REC'D SEC. REC. 1988

acquired title and easements and all rights, title and interest now or hereafter owned by the Mortgagors in and to all buildings and improvements, all lumber, brick, electrical, plumbing, heating and air-conditioning equipment and fixtures, roofing, paint, doors, windows, hardware, stoves, ranges, refrigerators, and all other materials, equipment, and chattels and things of every kind and character now or at any time hereafter located on the above described premises (hereinafter referred to as "Mortgaged Property"), for use or usable in the construction of the improvements on the Mortgaged Property, attached or appertaining to the Mortgaged Property, shall be deemed realty and conveyed to the Mortgagee.

TO HAVE AND TO HOLD the same and every part thereof unto the Mortgagee, its successors and assigns forever.

And for the purpose of further securing the payment of said indebtedness the Mortgagors covenant and agree as follows:

1. That they are lawfully seized in fee and possessed of the Mortgaged Property and have a good right to convey the same as aforesaid, that they will warrant and forever defend the title against the lawful claims of all persons whomsoever, and that the Mortgaged Property is free and clear of all encumbrances, easements and restrictions not herein specifically mentioned.

2. That they will pay all taxes, assessments, or other liens taking priority over this mortgage when imposed legally upon the Mortgaged Property and should default be made in the payment of same, or any part thereof, the Mortgagee may pay the same.

3. That they will keep the buildings on the Mortgaged Property continuously insured in such amounts, in such manner and in such companies as may be satisfactory to the Mortgagee against loss by fire and such other hazards as Mortgagee may specify, with loss, if any, payable to said Mortgagee, and will deposit with Mortgagee policies for such insurance and will pay premiums therefor as the same becomes due. Mortgagors shall give immediate notice in writing to Mortgagee of any loss or damages to said premises caused by any casualty. If Mortgagors fail to keep said property insured as above specified, the Mortgagee may insure said property for its insurable value against loss by fire and other hazards for benefit of the Mortgagee. The proceeds of such insurance shall be paid by insurer to Mortgagee which is hereby granted full power to settle and compromise claims under all policies and to demand, receive and receipt for all sums becoming due thereunder; said proceeds, if collected, to be credited on the indebtedness secured by this mortgage, less cost of collecting the same, are to be used in repairing or reconstructing the premises as the Mortgagee may elect; all amounts or any other prior liens shall become a debt due the Mortgagee, additional to the indebtedness and at once payable without demand upon or notice to any person, and shall be secured by the lien of this mortgage and shall bear interest at the highest legal rate from day of payment by the Mortgagee and at the election of the Mortgagee and without notice to any person, the Mortgagee may declare the indebtedness secured by this mortgage due and payable and this mortgage subject to foreclosure and same be foreclosed as hereinafter provided.

4. To take good care of the Mortgaged Property and not to commit or permit any waste thereon, and to keep the same repaired and at all times to maintain the same in as good condition as it now is, reasonable wear and tear alone excepted.

5. That no delay or failure of the Mortgagee to exercise any option to declare the maturity of any debt secured by this mortgage shall be taken or deemed as a waiver of the right to exercise such option or to declare such forfeiture either as to past or present default on the part of the Mortgagors, and that the procurement of insurance or payment of taxes by the Mortgagee shall not be taken or deemed as a waiver of the right to declare the maturity of the indebtedness hereby secured by reason of the failure of the Mortgagors to procure such insurance or to pay such taxes, it being agreed that no terms or conditions contained in this mortgage can

be waived, altered, or changed except as evidenced in writing signed by the Mortgagors and by the Mortgagee.

6. That they will well and truly pay and discharge any indebtedness hereby secured as it shall become due and payable including any future sums advanced by the Mortgagee, the note or notes above described, any renewals or extensions thereof, and any other notes or obligations of Mortgagors to Mortgagee whether now or hereafter incurred.

7. That after any default on the part of the Mortgagors, 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 at its option take immediate possession of the Mortgaged Property and proceed to collect the rent, income, and profits for the Mortgaged Property, either with or without the appointment of a receiver. 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's fee incurred, shall be credited on the advances with interest thereon, or in reduction of any indebtedness, including interest thereon, hereby secured in such manner or proportion as Mortgagee may elect.

8. That all the covenants and agreements of the Mortgagors herein contained shall extend to and bind their heirs, executors, administrators, successors and assigns, and that such covenants and agreements and all options, rights, privileges and powers herein given, granted or secured to the Mortgagee shall inure to the benefit of the successors or assigns of the Mortgagee.

9. That the indebtedness hereby secured shall at once become due and payable and this mortgage subject to foreclosure as herein provided at the option of the holder hereof when and if any statement of lien is filed under the statutes of Alabama relating to liens of mechanics and materialmen, without regard to the form and contents of such statement and without regard to the existence or non-existence of the debt or any part thereof, or of the lien on which such statement is based.

10. The principal amount is being advanced to the Mortgagors by the Mortgagee in accordance with a Loan Agreement dated the date hereof ("Loan Agreement"). Notwithstanding anything to the contrary contained in this mortgage or in the note or notes secured hereby, or in any other instrument securing the loan evidenced by said note or notes, the Mortgagee may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances by the Mortgagee hereunder, immediately due and payable in the event of a breach by the Mortgagors of any covenant contained in this mortgage, the note or notes secured hereby, or in the Loan Agreement, which the Loan Agreement is, by reference thereto, herein incorporated to the same extent and effect as though said Loan Agreement were set forth herein in full.

11. The Mortgagors irrevocably submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (the "Court") over any suit, action or proceeding arising out of or relating to this Agreement; and further, waives any objection that the Mortgagors may now or hereafter have based on improper venue, lack of jurisdiction, inconvenience of forum, in any action brought in any of the Court.

12. The Mortgagors, the Mortgagee, and any beneficiary or successor of any of them, do each hereby waive all rights to a trial by jury in any suit, action, or proceeding relating to any transaction, grievance or claim under this Mortgage or the indebtedness hereby secured. This waiver is knowingly, voluntarily and intentionally being entered into as part of the consideration of and a condition of the making of the Loan hereby secured, and the entering into of this Mortgage.

13. Neither the Mortgaged Property nor Mortgagors are in violation of or subject to any existing, pending, or threatened investigation or inquiry by any governmental authority, nor will the Mortgaged Property be maintained or used in violation of any remedial obligations under any applicable laws, rules or regulations pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and the Resource Conservation and Recovery Act of 1976, as amended

("RCRA"), and there are no facts, conditions or circumstances known to it which could result in any such investigation or inquiry if such facts, conditions and circumstances, if any, were fully disclosed to the applicable governmental authority. Mortgagors have not obtained and are not required to obtain any permits, licenses, or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment in connection with the Mortgaged Property by reason of any environmental laws, rules or regulations; and no oil, toxic or hazardous substances or solid wastes have been disposed of or released on the Mortgaged Property. Mortgagors agree that they will not in their use of the Mortgaged Property dispose of or release oil, toxic or hazardous substances or solid wastes on the Mortgaged Property (the terms "Hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste" and "disposal", "dispose" or "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein). Notwithstanding anything to the contrary herein, Mortgagors shall indemnify and hold Mortgagee harmless from and against any fines, charges, expenses, fees, attorney fees and costs incurred by Mortgagee in the event either the Mortgagors, the Mortgaged Property (whether or not due to any fault of Mortgagors), as hereafter determined to be in violation of any environmental laws, rules or regulations applicable thereto, and this indemnity shall survive any foreclosure or deed in lieu of foreclosure.

14. No modification, amendment, or waiver of any provision of the Mortgage, or any security agreement, nor any consent to any departure by the Mortgagor therefrom shall be effective unless the same shall be in writing and signed by the Mortgagee, and then such waiver of consent shall be effective only in the specific instance and for the purpose for which given.

15. Plural or singular words used herein to designate the undersigned Mortgagors shall be construed to refer to the Maker or Makers of this Mortgage, whether one or more persons or a corporation.

UPON CONDITION, HOWEVER, that if the Mortgagors shall well and truly pay and discharge the indebtedness hereby secured as it shall become due and payable and shall in all things do and perform all acts and agreements by, them herein agreed to be done shall be and become null and void; but should default be made in the payment of the indebtedness hereby secured or any renewals or extensions thereof or any part thereof or should any interest thereon remain unpaid at maturity, or should default be made in the repayment of any sum expended by the Mortgagee under the authority of any of the provisions of this mortgage, or should the Mortgagors breach the Loan Agreement, or should the interest of the Mortgagee in the Mortgaged Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon so as to endanger the indebtedness hereby secured, or should a petition to condemn any part of the Mortgaged Property be hereby secured, or should a petition to condemn any part of the Mortgaged Property be filed by any authority having power of eminent domain, or should any law, either federal or state, be passed imposing or authorizing the imposition of a specific tax upon this mortgage or the indebtedness hereby secured, or permitting or authorizing the deduction of any such tax from the principal or interest secured by this mortgage or by virtue of which any tax or assessment upon the Mortgaged Property shall be charged against the owner of this mortgage or should at any time any of the stipulations contained in this mortgage be declared invalid or inoperative by any court of competent jurisdiction or should the Mortgagors fail to do and perform any other act or thing herein required or agreed to be done, then in any of said events the whole of the indebtedness hereby secured, or any portion or part of same may not at said date have been paid, with interest thereon, shall at once become due and payable and this mortgage subject to foreclosure at the option of the Mortgagee, notice of the exercise of such option being hereby expressly waived; and the Mortgagee shall have the right to enter upon and take possession of the Mortgaged Property hereby conveyed and after or without taking such possession to sell the same in front of the Courthouse door of the County wherein the Mortgaged Property is situated, or a part thereof is situated; if the Mortgaged Property is situated in Jefferson County, Alabama, the sale will be conducted at the door of the Courthouse of Jefferson County, Alabama, in the City of Birmingham, Alabama, at the entrance thereof, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week

BOOK 219 PAGE 197

for three consecutive weeks prior to said sale in some newspaper published in said City, and upon the payment of the purchase money the Mortgagee, or owner of the debt and mortgage, or auctioneer, shall execute to the purchaser for and in the name of the Mortgagors a good and sufficient deed to the property sold; the Mortgagee shall apply the proceeds of said sale: First, to the expense of advertising, selling and conveying, including a reasonable attorney's fee; second, to the payment of any amounts that may have been expended or that may then be necessary to expend in paying insurance, taxes and other encumbrances, with interest thereon; third, to the payment in full of the indebtedness and interest thereon, whether the same shall or shall not have fully matured at the date of said sale; and fourth, the balance, if any, to be paid over to the Mortgagors or to whomsoever then appears of record to be the owner of said property. The Mortgagee may bid and become the purchaser of the Mortgaged Property at any foreclosure sale thereunder.

IN WITNESS WHEREOF, the Mortgagors have caused these presents to be executed on this the 13th day of December, 1988.

WITNESS:

BOOK 219 PAGE 198

James L. Berry  
 Brookshire Homes, Inc. by it's president  
 James L. Berry

STATE OF ALABAMA )  
 COUNTY OF Jefferson )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that James L. Berry, pres. Brookshire Homes, Inc. whose name is/are signed to the foregoing conveyance, and who is/are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, executed the same voluntarily on the date the same bears date.

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

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

STATE OF ALABAMA )  
 COUNTY OF \_\_\_\_\_ )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that JAMES L. BERRY whose name as president, of BROOKSHIRE HOMES, Inc., a corporation, is/are signed to the foregoing conveyance, and who is/are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance, he/they as such officer/s and with full authority executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, on this the 13th day of December 19 88.

Mark E. Tippins  
 Notary Public : Mark E. Tippins

NOTARY PUBLIC  
 I CERTIFY THIS INSTRUMENT WAS FILED

88 DEC 22 PM 2:11

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 JUDGE OF PROBATE

270.00  
 13.50  
 283.50

1. Deed Tax \$ \_\_\_\_\_  
 2. Mtg Tax 270.00  
 3. Recording Fee 12.50  
 4. Indexing Fee 10.00  
 TOTAL 283.50