

This Instrument Prepared by:
Sidney C. Summey, Attorney at Law
2112 11th Avenue South, Suite 219
Birmingham, Alabama 35205
(205) 326-4149

STATE OF ALABAMA)
JEFFERSON COUNTY)

MORTGAGE

· KNOW ALL MEN BY THESES PRESENTS:

THAT, WHEREAS, the undersigned James Lloyd (one and the same as James N. Lloyd) and wife, Elizabeth R. Lloyd (hereinafter called "Mortgagors" or "Mortgagor"), have become justly indebted to Walter Clark and Gail Clark (hereinafter called "Mortgagees" or "Mortgagee"), in the sum of **thirty five thousand and no/100 dollars (\$35,000.00)** evidenced by one promissory note (together with any extensions, replacements or renewal thereof the "Note: or "said note") of even date herewith;

WHEREAS, Mortgagor, is desirous of securing the prompt payment of said note and the monthly payments provided for in said note and any additional indebtedness accruing to Mortgagee on account of any future payments, advances or expenditures made by Mortgagee as hereinafter provided.

NOW, THEREFORE, in consideration of the premises the receipt, adequacy and sufficiency whereof are hereby acknowledged, and for the purpose of securing the prompt payments of said indebtedness as it becomes due, Mortgagor does hereby grant, bargain, sell, assign and convey unto said Mortgagee, its successor and assigns, the real property described as follows, to wit:

Lot 2, according to the Survey of Cedar Grove Estates, as recorded in Map Book 7, Page 91, in the Probate Office of Shelby County, Alabama.

TOGETHER with all improvements thereon, if any.

All of the hereinabove described real property, buildings and improvements to be constructed thereon, and personal property are hereinafter referred to as "Mortgaged Premises"

TO HAVE AND TO HOLD the same with all the right, privileges and appurtenances thereto belong or in anywise appertaining unto said Mortgagee, its successor and assigns forever.

And Mortgagor hereby covenants that Mortgagor is lawfully seized of said real property in fee simple, and has good right to sell and convey the same; that the property is free from all encumbrances, and that Mortgagor and Mortgagor's successors and assigns will forever defend the same unto Mortgagee and its successors and assigns against the claims of all persons whomsoever.

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

1. **Payments of Indebtedness.** Mortgagor shall pay the indebtedness evidenced by said note and interest thereon when and as it shall become due, whether in due course or under any condition, covenant or agreement herein contained; together with any other indebtedness which Mortgagor may owe to Mortgagee pursuant to the terms and provisions of the within the Mortgage or Note.

2. **Cost of Protecting Mortgagee's Lien.** Mortgagor shall immediately pay to Mortgagee all sums, including costs, expenses, reasonable agent's or attorney's fees which Mortgagee may expend or become obligated to pay in any proceedings, legal or otherwise, to prevent the commission of waste, or to which Mortgagee is made party because of its interest in the Mortgaged Premises, or to establish or sustain the lien of this Mortgage, or its priority

Inst # 1995-35159

1995-35159
12/07/1995
01:49 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
DOES SNA 71.00

to this mortgage; or in payment, settlement, discharge or release of any asserted lien, claim, right, easement or restrictions made upon advice of competent counsel that the same is superior to the lien of this Mortgage, either in law or in fact; or to enforce any obligation of or to foreclose this Mortgage, or to recover any sums hereby secured; and for payment of all sums due under this paragraph including interest at the rate equal to three percent (3%) per annum in excess of the applicable rate at such time until paid, this Mortgage shall stand as security in like manner and effect as for the payment of the said indebtedness.

3. **Taxes, Liens and Other Charges.** Mortgagor shall pay as the same shall become due all taxes and assessments that may be levied or accrue upon said Mortgaged Premises or any part thereof, or upon Mortgagee's interest therein, or upon this Mortgage, or the indebtedness or the evidence of indebtedness secured hereby, and all other charges might take precedence over this Mortgage to accrue and remain on the Mortgaged Premises, or any part thereof, or on the buildings and improvements thereon.

4. **Insurance.** Mortgagor will continuously maintain hazard insurance of such type or types and amounts as Mortgagee may from time to time require including fire and extended coverage insurance, builder's risk insurance, rents insurance, flood hazard insurance, and war risk insurance (if available from the United States Government or an agency thereof), on the improvements now or hereafter on the Mortgaged Premises, and Mortgagor will pay the promptly when due any premiums therefor. All insurance shall be carried in companies approved by Mortgagee and the policies and renewals thereof shall be delivered to and held by Mortgagee with loss payable clauses in favor of and in form acceptable to Mortgagee. Also, Mortgagor shall deliver to Mortgagee receipts for the premiums paid at least ten (10) days prior to the due day of such premiums. In the event of loss, Mortgagor will give immediate notice by mail to Mortgagee, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Mortgagee instead of to Mortgagor and Mortgagee jointly; and the insurance proceeds, or any part thereof, may be applied by Mortgagee, at its option, either to the reduction of the indebtedness hereby secured, or to the restoration or repair of the property damaged. In the event of foreclosure of this Mortgage or other transfer of title to the Mortgaged Premises in extinguishment of the indebtedness secured hereby, all right, title and interest of Mortgagor in and to any insurance policies then in force, and any and all proceeds due or which may become due thereon, shall pass to the purchaser or grantee.

5. **Municipal, Governmental Charges, Etc.** Mortgagor shall: (a) insure the Mortgaged Premises as hereinabove provided, (b) pay all or any part of said taxes or assessments so levied, accrued or assessed on and against the Mortgaged Premises, (c) pay immediately and discharge any and all liens, debts and charges which might become liens superior to this Mortgage, and (d) keep the Mortgaged Premises in good condition and repair. The failure of Mortgagor to perform any one or more of the covenants in this paragraph of the within Mortgage shall constitute an event of default hereunder, and this Mortgage shall be subject to foreclosure at the option of Mortgagee. Mortgagee may, however, at its option, insure the Mortgaged Premises and pay said taxes, assessments, debts, liens and charges, or enter upon the Mortgagee shall have so paid or become obligated to and shall constitute a debt to Mortgagee additional to the debt hereby specially secured and shall be secured by this Mortgage, and shall bear interest at a rate equal to three percent (3%) per annum in excess of the applicable rate at such time from date paid or incurred; and, at the option of Mortgagee, shall be immediately due and payable. Mortgagee shall have no obligation to procure such insurance, to pay such taxes, or assessments, debts, liens or charges, or make such repairs.

6. **Extension.** Mortgagee in its sole discretion may by agreement with Mortgagor extend the time for the repayment to it for any sum or sums advanced hereunder by Mortgagee for the alteration, modernization, improvements, maintenance or repair of the mortgaged Premises, for taxes or assessments against the same, and for any other purpose deliver a supplemental note or notes for the sum or sums advanced by Mortgagee for such purposes. Said note or notes shall be secured hereby on a parity with and as fully as if the advances evidenced thereby were included in the original principal indebtedness. Absent agreement to the contrary, the sum or sums so advanced shall be due payable thirty (30) days after demand by Mortgagee. In no event shall the maturity extend beyond the ultimate maturity of the original principal indebtedness as it may be extended; provided, however, that Mortgagee shall have no obligation whatsoever to waive any of the provisions of this instrument with respect to the reimbursement

of mortgagee for any of the outlays made by it, and unless such extension is made by notes executed by Mortgagor and accepted by Mortgagee as herein provided, Mortgagor shall repay Mortgagee the amount together with interest on each and every payment or advance made by Mortgagee on or before the next installment of said Mortgage debt as provided in said principal note hereby secured.

7. **No Waiver.** No failure of 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 rights to exercise such option or to declare such maturity by reason of any past or present default on the part of Mortgagor; and the procurement of insurance or the payment of taxes or other liens, debts or charges by 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 Mortgagor to procure such insurance or to pay such taxes, debts liens or charges; and this Mortgage shall remain in full force and effect during any postponement or extension of the time of payment of the indebtedness, or any part thereof, secured hereby.

8. **Condition Subsequent.** If 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 Mortgagor under the terms and provisions of this Mortgage, then this conveyance shall be and become null and void.

9. **Default Acceleration of Maturity.** If Mortgagor shall fail to pay or cause to be paid, as it matures, the indebtedness evidenced by said note and secured hereby or any part thereof, according to the terms thereof, or if 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 Mortgagee in the Mortgaged Premises become impaired by reason of the filing of or enforcement of any prior lien or encumbrance thereon, or if Mortgagor should become insolvent, or if Mortgagor should file or cause to be filed an insolvency or bankruptcy proceeding in a State or Federal court, or if at any time Mortgagor admits its inability to pay the indebtedness secured hereby as it becomes due, or if an involuntary petition in bankruptcy is filed against Mortgagor and same is not dismissed within thirty (30) days after such filing, or if Mortgagor make an assignment for the benefit of their creditors, then, in any one or more of such events, the whole indebtedness hereby shall, at the option of Mortgagee, and without notice, become immediately due and payable and this Mortgage shall be subject to foreclosure; and in any such event, Mortgagee shall have the right and is hereby authorized, to enter upon and take possession of the Mortgaged Premises, and after or without taking possession, to sell the same before the Main Entrance of the Jefferson County Courthouse in the City of Birmingham, Alabama, at public outcry for cash, first giving notice of the time, place and terms of said sale by publication once a week for three successive weeks prior to said sale in some newspaper published in Jefferson County, Alabama; and upon the payment of the purchase money, 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, and such purchaser shall not be held to inquire as to the application of the proceeds of such sale. Mortgagee may bid at the sale and purchase the Mortgaged Premises, if the highest bidder therefor. At said foreclosure sale, the Mortgaged Premises may be offered for sale and sold in any other manner as Mortgagee may elect. The presence of any of the above-described security at the time and place of sale is expressly waived. In addition to the remedies provided for herein or those provided by law, the Mortgagee may, at its election, foreclose the within Mortgage by judicial proceedings

10. **Application of Foreclosure Proceeds.** The proceeds of a foreclosure sale, judicial or otherwise, shall be applied: first to the expenses of advertising and selling, including reasonable attorney's fees as provided in said Note or Notes; second, to the repayment of any money with interest thereon, which Mortgagee may have paid or become liable to pay, or which it may then be necessary to pay for taxes, assessments, insurance or other charges, liens or debts as 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 party or parties appearing of record to be the owner of the Mortgaged Premises at the time of sale after deducting any expenses of ascertaining who is such owner. If this Mortgage be foreclosed in Chancery, such reasonable attorney's fees shall be paid out of the proceeds of the sale.

11. **Status of Mortgagor After Foreclosure.** After foreclosure of this First Mortgage and Security Agreement, Mortgagor and all holding under Mortgage shall become and be conclusively presumed to be tenants at will of the purchaser at the foreclosure sale.

12. **Care of Premises.** Mortgagor shall keep the Mortgaged Premises in good condition and repair, reasonable wear and tear excepted, shall not permit nor perform any act which would in any way impair the value of the Mortgaged Premises, shall not remove any fixture shall not remove or demolish any building or improvement located on the above-described land which would impair the value of the premises without the written consent of Mortgagee; and shall neither commit nor permit waste of the Mortgaged Premises.

13. **Right of Entry.** If Mortgagor shall default in the payment of any of the indebtedness hereby secured, or in the performance of any of the terms or conditions hereof, Mortgagee may, at its option, take immediate possession of the Mortgaged Premises and proceed to collect the rents, income and profits from the Mortgaged Premises, either with or without the appointment of a receiver. Any rents, income and profits collected by Mortgagee prior to foreclosure of this mortgage, less the costs of collecting the same, including any real estate commission or attorney's fees incurred, shall be credited on the indebtedness hereby secured in such manner or proportion as Mortgagee may elect.

14. **Waiver of Exemption.** Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured or that may be secured by this Mortgage including, but not limited to those contained in the Constitution of the State of Alabama; and Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgement or requiring that the value of the Mortgaged Premises be set off against any part of the indebtedness secured hereby.

15. **Rights Cumulative.** Any promises made by Mortgagor 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, Mortgagor waives all rights of exemption under the law and agrees to pay a reasonable attorney's fee for the collection thereof.

16. **Estoppel.** No delay or failure of Mortgagee to exercise an option herein given or reserved shall constitute a waiver of such option, or estop Mortgagee from afterwards exercising same, or any other option at any time and the payment or contacting to pay by Mortgagee of anything Mortgagor has herein agreed to pay shall not constitute a waiver of the default of Mortgagor in failing to make said payments, and shall not estop Mortgagee from foreclosing this Mortgage on account of such failure of Mortgagor.

17. **Eminent Domain.** Mortgagor hereby assigns to Mortgagee any and all awards or damages, actual and consequential, considerations or proceeds for the taking of any portion of all of the Mortgaged Premises, by the exercise of the right of eminent domain or condemnation, including but not limited to, damages or awards for changes to the grades of streets, or acquiring title to streets. The proceeds of such awards or damages, when received by Mortgagee shall be applied, at the option of Mortgagee, either in reduction of the Mortgage indebtedness, or shall be paid to Mortgagor or Mortgagors' assigns as reimbursement for amounts expended by Mortgagor in restoring the Mortgaged Premises following a condemnation. Notwithstanding that the assignment of awards referred to herein shall be deemed to be self-executing, Mortgagor, after the allowance of a condemnation claim or award, and the ascertainment of the amount due therein, and the issuing of a warrant by the condemnor for the payment thereof, shall execute at Mortgagee's request and forthwith deliver to Mortgagee, a valid assignment in recordable form, assigning all of such condemnation claims, awards or damages to Mortgagee, but not in excess of an amount sufficient to pay, satisfy and discharge the principal sum of this Mortgage then remaining unpaid, with interest therein, at the rate specified herein or in the Note which this Mortgage secures, to the date of payment, whether such remaining principal sum is then due or not by the terms of said note or of this Mortgage, and also, together with any other indebtedness which Mortgagors may owe to Mortgagee pursuant to the terms and provisions of the within Mortgage or other Loan Documents.

18. **Compliance With All Laws and Regulations.** Mortgagor, its successors and assigns, shall comply with and not violate any law, statute, ordinance, rule ore regulation,

enacted or enforceable by any governmental entity or subdivision thereof, having jurisdiction over the Mortgaged Premises, or Mortgagor.

19. **Bind and Inure; Definitions.** The covenants, conditions and agreements herein contained shall bind, and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto. Wherever used, the singular number shall include the plural, the plural the singular, the use of any gender shall include all genders, and the term "Mortgagee" shall include any Payee or Holder of the indebtedness hereby secured or any transferee thereof whether by operation of law or otherwise.

20. **Severability.** If any provision of this Mortgage or the application thereof to any person, legal entity or circumstance shall be invalid or unenforceable to any extent, the remainder of this Mortgage and the application of such provisions to other persons, legal entities or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

21. **Applicable Law.** This Mortgage is intended as a contract and conveyance under and shall be construed and enforced in accordance with the laws of the State of Alabama.

22. **Title.** Mortgagor warrants and represents unto Mortgagee that title to the Mortgaged premises is vested in Mortgagor.

23. **Entirety.** The Mortgage and the Note secured hereby and all other Loan Documents of even date herewith state the entire agreement between Mortgagor and Mortgagee and merges in this Mortgage and the Note secured hereby and all other Loan Documents, all statements, representations and covenants heretofore made, and any agreements not incorporated herein and in the Note and Loan Documents are void and of no force and effect.

24. **Time is of the Essence.** Time, whenever, wherever and however used in this Mortgage shall be of the essence.

25. **Special Provision.** Mortgagor shall not cut, cause to be cut, sever or remove any timber from the mortgaged premises, or commit any other waste, without prior written permission from mortgagee which shall not be unreasonably withheld if requested on an area not exceeding two acres for the purpose of clearing to construct a residence.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals on this 15 day of November, 1995.


James Lloyd


Elizabeth R. Lloyd

ACKNOWLEDGEMENT

State of Alabama)
Jefferson County)

I, the undersigned, a Notary Public in and for said State at large, hereby certify that James Lloyd and wife, Elizabeth R. Lloyd, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date that, being informed of the contents of said instrument, they executed the same voluntarily.

Given under my hand and official seal this 15th day of November, 1995.


Notary Public

My commission expires:

(Seal)

My Commission Expires September 16, 1997
12/07/1995-33195
01:49 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
005 SNA 71.00