

STATE OF ALABAMA )  
COUNTY OF SHELBY )

REAL ESTATE MORTGAGE

THIS MORTGAGE, made and entered into on this 3rd day of December, 1998, by and between  
STYLEMARK HOMEBUILDERS INC  
(hereinafter referred to as "Mortgagor") and COLONIAL BANK  
(hereinafter referred to as "Mortgagee")

Witnesseth:

WHEREAS, Mortgagor is justly indebted to Mortgagee, and hereby executes this Mortgage to secure the payment of \$230,900.00  
Two Hundred Thirty Thousand Nine Hundred And 00/100 Dollars  
as evidenced by promissory note of even date herewith and payable in accordance with the terms of said note.

WHEREAS, Mortgagor may hereafter become further indebted to Mortgagee as may be evidenced by promissory note(s) or otherwise, and it is the intent of the parties hereto that this mortgage shall secure any and all indebtedness(es) of Mortgagor to Mortgagee, whether now existing or hereafter arising, due or to become due, in whole or in part, liquidated or unliquidated, direct or indirect, and this mortgage is to secure not only the indebtedness evidenced by the note hereinabove specifically referred to, but any and all other debts, obligations or liabilities of Mortgagor to Mortgagee, now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, whether evidenced by note, open account, endorsement, guaranty, pledge or otherwise.

NOW, THEREFORE, Mortgagor and all others executing this mortgage, in consideration of the premises, and to secure the payment of said indebtedness evidenced by note hereinabove specifically referred to, and any and all other indebtedness(es) due or to become due as hereinabove generally referred to, and the covenants and stipulations herein contained, has bargained and sold, and does hereby grant, bargain, sell, alien, convey, transfer and mortgage unto Mortgagee, its successors and assigns, the following described real estate, together with buildings and improvements thereon (hereinafter sometimes called the "real estate" or the "mortgaged real estate"), lying and being situated

in the County of SHELBY, State of Alabama, and more particularly described as follows, to-wit:  
LOT 1107, ACCORDING TO THE SURVEY OF EAGLE POINT 11TH  
SECTOR, AS RECORDED IN MAP BOOK 24, PAGE 124, IN THE PROBATE  
OFFICE OF SHELBY COUNTY, ALABAMA.

Inst # 1998-51558

12/28/1998-51558  
11:31 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MEL 362.35

together with all awards received through eminent domain, and payments upon any insurance policies covering the real estate, and all rights, privileges, tenements, and appurtenances thereto belonging or in anywise appertaining to said real estate including easements and rights-of-way appurtenant thereto and all gas, steam, electric and other heating, cooling and lighting apparatus, elevators, iceboxes, plumbing, stoves, doors and other fixtures appertaining to the real estate and all improvements located thereon, all of which shall be deemed realty and conveyed by this mortgage.

TO HAVE AND TO HOLD the above real estate and every part thereof, unto Mortgagee, its successors and assigns forever. And Mortgagor covenants with Mortgagee that it is lawfully seized of the real estate in fee simple and has a good right to sell and convey the same as aforesaid; that the real estate is free of all encumbrances except as herein set out, and Mortgagor will warrant and forever defend the title to the real estate unto Mortgagee, its successors and assigns, against the lawful claims of all persons whomsoever.

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

1. That Mortgagor shall pay the said indebtedness(es) secured hereby and interest thereon when and as it (they) shall become due, whether in course or under any condition, covenant or agreement herein contained, together with any other indebtedness(es) which Mortgagor may owe to Mortgagee, it being further agreed that any statement, any note or obligation that is secured by this mortgage shall be conclusive evidence of such fact.

2. That Mortgagor shall procure, maintain and deliver to Mortgagee policies of fire insurance (with extended coverage), and such other insurance as Mortgagee may from time to time require in companies, form, types, and amounts, and shall assign, with endorsements satisfactory to Mortgagee, all insurance policies of any kind or in any amount now or hereafter issued or then the 30 day following the expiration date of any and all such insurance policies and at any time upon request of Mortgagee. Mortgagor shall furnish Mortgagee certificates of insurance issued by insurance companies satisfactory to Mortgagee showing that the amount and type of insurance required by Mortgagee hereunder is in effect. All renewal policies, with premiums paid, shall be delivered to Mortgagee at least thirty (30) days before the expiration of the old policies. If any insurance, or any part thereof, shall expire,



real estate to prevent or delay, by any means, the exercise of said power of sale on the foreclosure of this mortgage; (b) to the payment of whatever sum or sums Mortgagee may have paid out or become liable to pay, in carrying out the provisions of this mortgage, together with interest thereon; (c) to the payment and satisfaction of all indebtedness(es) secured by this mortgage and (d) the balance, if any, shall be paid over to Mortgagor, or Mortgagor's successors or assigns. In any event, the purchaser under any foreclosure sale, as provided herein, shall be under no obligation to see to the proper application of the purchase money.

15. That in the event of the enactment of any law by the State of Alabama, after the date of this mortgage, deducting from the value of the real estate lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness(es) secured hereby, or changing in any way the laws relating to the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby, and in the event Mortgagor fails to pay such obligation, the whole of the principal sum secured by this mortgage, together with the interest thereon, shall, at the option of Mortgagee, without notice to any party, become immediately due and payable.

16. That should Mortgagor be insolvent or bankrupt; or should a receiver of Mortgagor's property be appointed; or should Mortgagee remove any improvements upon said mortgaged real estate; or should it be discovered after the execution and delivery of this instrument that there is a defect in the title to or a lien or encumbrance of any nature on the real estate prior to the date hereof; or in the case of an error or defect in the acknowledgment of this mortgage or in the execution or the acknowledgment thereof; or if a homestead claim be set up to the real estate or any part thereof; or if the said Mortgagor shall fail for thirty (30) days after demand by the Mortgagee, or other holder or holders of said indebtedness(es), to correct such defects in the title or to remove any such lien or encumbrance or

homestead claim; or to correct any error in said note or this instrument or its execution, then, upon any such default, failure or contingency, the Mortgagee, or other holder or holders of said indebtedness(es), or any part thereof, shall have the option or right, without notice or demand, to declare all of said indebtedness(es) then remaining unpaid immediately due and payable, and may immediately or at any time thereafter foreclose this mortgage by suit, as such Mortgagee, or other holder or holders of said indebtedness(es), may elect.

17. That no right, title or interest in or to the mortgaged real estate, or any part thereof, shall be sold, transferred, assigned, conveyed, mortgaged or otherwise disposed of by Mortgagor or any person claiming by, through or under Mortgagor, until the payment in full of the indebtedness(es) secured hereby without first obtaining the prior written consent of Mortgagee; and any such sale, transfer, assignment, conveyance, mortgage or other disposition shall be void and of no effect; and the Mortgagee and appraiser shall be within Mortgagee's sole discretion; that in the event of any violation of this provision, the indebtedness(es) secured hereby, together with all interest thereon, shall become due and payable immediately at the option of Mortgagee, and shall be recoverable by Mortgagee forthwith or at any time thereafter without stay of execution or to pay all monies to Mortgagee secured by this mortgage shall be an act of default entitling Mortgagee to foreclose this mortgage in accordance with the terms hereof.

18. That it is the intent of the Mortgagor and Mortgagee to secure any and all indebtedness(es) of said Mortgagor to Mortgagee, now existing or hereafter arising, due or to become due, absolute or contingent, liquidated or unliquidated, direct or indirect, and this mortgage is intended and does secure, not only the indebtedness hereby specifically referred to, but also any and all other debts, obligations and liabilities of said Mortgagor to Mortgagee, now existing or hereafter arising, and any and all extensions or renewals of same, or any part thereof, at any time before the date of the execution of this mortgage in the Probate Office where recorded, and whether the same be evidenced by promissory note, judgment, pledge agreement, or otherwise; that it is expressly agreed that any indebtedness at any time incurred by Mortgagor, whether or not secured hereby, shall be deemed to be secured hereby, and that any part of the security herein described may be waived or released without in any way affecting the force, effect or lien of this mortgage; and this mortgage shall continue as a first lien on all of the real estate owned by Mortgagor, and no security subsequently taken to secure the payment of said indebtedness(es) or any part thereof shall in any manner be impaired or affected by this execution of this mortgage; and no security subsequently taken by Mortgagee or other holder or holders of said indebtedness(es) shall in any manner impair or affect the security given by this mortgage; and all security for the payment of said indebtedness(es) or any part thereof shall be taken, considered and held as security for the payment of said indebtedness(es) or any part thereof.

19. That Mortgagor agrees, for himself, his heirs, assigns, and all persons claiming by, through or under Mortgagor, that if it or any one or more of them shall hold possession of the real estate described in this mortgage subsequent to foreclosure hereunder, it or the parties so holding possession shall become and be deemed to be tenants at will of the purchaser or purchasers at such foreclosure sale; and any such tenant failing or refusing to surrender possession of the real estate, and shall be liable to such purchaser or purchasers for reasonable rental of the real estate, and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages which may be sustained by any such purchaser or purchasers thereof being hereby expressly waived.

20. That Mortgagor agrees to fully and lawfully perform all the covenants of the lessor or landlord under present and future leases affecting the mortgaged real estate, and neither do nor permit to be done, anything which may diminish or impair their value, or the rents provided for therein, or the interest of the lessor or of the mortgagor thereunder.

21. That Mortgagor shall furnish to Mortgagee within Thirty ( 30 ) days after the close of each fiscal year of Mortgagor, such financial records as the holder of this mortgage may require including, but not limited to, an annual statement of the operation of the real estate which shall include annual statements itemizing the income and expenses, an itemized rent roll, together with a complete financial statement of Mortgagor's assets and liabilities and its profit and loss statement. Such statement shall be prepared by certified public accountant acceptable to Mortgagee, and Mortgagor's discretion be supported by the affidavit of Mortgagor. Said information shall be given to Mortgagee at the expense of Mortgagor.

22. That if the indebtedness secured by the note specifically referred to hereinabove is being advanced by Mortgagee to Mortgagor under the terms and provisions, and in accordance with a loan agreement or construction loan agreement ("agreement"), the terms and provisions of said agreement are hereby incorporated by reference as part of this mortgage as if fully set out herein, and any default in the performance of the provisions between Mortgagor and Mortgagee, shall constitute a default hereunder entitling Mortgagee to exercise the remedies provided herein, including the right to foreclose this mortgage in accordance with the terms hereof; that each FUTURE ADVANCE advanced by Mortgagee to Mortgagor is being advanced in accordance with an agreement dated Dec. 3, 1998.

23. That in the event this mortgage is second, not subordinate to any prior mortgage(s) and in the event the Mortgagor should fail to make any payments which become due on said prior mortgage(s), or should default in any of the other terms, provisions and conditions of said prior mortgage(s), the Mortgagee hereunder shall constitute an event of default under the terms and provisions of this mortgage, and the Mortgagee hereunder may, at its option, declare the entire indebtedness(es) secured by this mortgage immediately due and payable and if payment is not promptly made, then declare this mortgage in default and subject to foreclosure, provided that the Mortgagee herein may, at its option, make, on behalf of Mortgagor, any such payments connected with said prior mortgage(s), or incur any such expense or obligations on behalf of Mortgagor, in order to prevent the foreclosure of said prior mortgage(s), and all such amounts so expended by the Mortgagee hereunder shall become a debt to the Mortgagee and shall be secured by this mortgage and shall bear interest from the date of payment at the legal rate of interest from time to time permitted by the laws of the State of Alabama, and shall be at once due and payable, including the interest thereon, and the Mortgagee shall be entitled to exercise all the rights and remedies provided herein, including, at Mortgagee's option, the right to foreclose this mortgage.

24. That provided a duly authorized agent or assignee of Mortgagee, or its successors and assigns, for any interest in any taxes, assessments, insurance premiums, and other charges, shall be paid, this mortgage shall be null and void, and the Mortgagee shall be under no obligation to see to the proper application of the purchase money.

25. That any promise 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 debt the Mortgagor waives all rights of exemption under the laws and Constitution of the State of Alabama and agrees to pay as permitted by law, a reasonable attorney's fee for the collection thereof.

26. That any delay or failure by Mortgagee to exercise any option herein given or reserved shall constitute a waiver of such option or estop Mortgagee from afterwards exercising the same or any other option at any time, and the payment, or contracting to pay, by Mortgagee of anything shall not constitute a waiver of default of Mortgagor in failing to make said payments and shall not estop Mortgagee from foreclosing this mortgage in accordance with such failure of Mortgagor.

27. That notice of demand and when notice or demand shall be given or served by any party, such notice or demand shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, addressed as follows:

To Mortgagor: MARK H. BUILDERS INC  
100 W. WATKINS PARK ROAD  
BIRMINGHAM, AL 35242

To Mortgagee: Colonial Bank

28. That singular or plural words used herein to designate the Mortgagor shall be construed to include the Mortgagor, its successors and assigns, and all covenants and agreements herein contained shall bind the successors and assigns of the Mortgagor, and the benefit of the rights and remedies herein reserved or secured to Mortgagee shall inure to the benefit of its successors and assigns.

29. That the unenforceability or invalidity of any provision or provisions of this mortgage shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Mortgagee hereunder are cumulative and in addition to those provided by law.

IN WITNESS WHEREOF, the undersigned (has) (have) set (its) (his) (her) (their) hand(s) and seals, on the day and year first above written.

WITNESSES:

Martin R. Burr

STYLEMARK HOMEBUILDERS INC. (SEAL)

BY: [Signature] PRESIDENT (SEAL)

(SEAL)

LHB/wp

Inst # 1998-51558

12/28/1998-51558  
11:31 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
DOUG NEL 362.35

STATE OF ALABAMA )  
 )  
COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that  
whose name(s) (is) (are) signed to the foregoing conveyance and who (is) (are) known to me, a Notary Public, on this day that, being informed of the contents of the conveyance, (he) (she) (they) executed the same voluntarily on the day then and before me.  
Given under my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
\_\_\_\_\_  
Notary Public

STATE OF ALABAMA )  
 )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that **JOE N. ROBERTS**  
whose name as **PRESIDENT** of **STYLEMARK HOMEBUILDERS INC** is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, 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 **3RD** day of **DECEMBER** 19 **98**  
[Signature]  
Notary Public

MY COMMISSION EXPIRES JULY 3, 2002

This instrument prepared by: FELICIA REDD

Colonial Bank  
1928 1ST AVENUE NORTH  
BIRMINGHAM, AL 35203