

JAMSouth®

STATE OF ALABAMA

Shelby COUNTY

11/03/1999
Mortgage Construction Loans *11/03/1999-45377* **THIS IS A FUTURE
ADVANCE MORTGAGE**
10:57 AM CERTIFIED

This mortgage hereinafter called the "mortgage" is made and entered into this 2nd day of November, 1999 at 400.50 by and between Stylemark Homebuilders, Inc.

PO BOX 382694, Birmingham, AL 35238-2694 and AmSouth Bank (hereinafter called the "Mortgagor"), whose address is

1900 5th Ave. North AST 10th Floor, Birmingham, AL 35203, Attention: Residential Construction Lending

Whereas, the Mortgagor is or hereinafter shall be justly indebted to the Mortgagor in the principal sum of Two Hundred Sixty Thousand and
no/100ths 260,000.00 dollars (\$

as evidenced by a promissory note (the "Note") of even date herewith, which note bears interest as provided therein and is payable as set forth therein, and

WHEREAS, this is a FUTURE ADVANCE MORTGAGE and the Note evidences a construction loan (the "Loan"), the proceeds of which are to be advanced by the Mortgagor to the Mortgagor pursuant to a construction loan agreement of even date herewith (the "Construction Loan Agreement"), and, in addition to the indebtedness evidenced by the Note, this mortgage shall also secure all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagor, whether now existing or hereafter arising; and

WHEREAS, the Mortgagor, in order to secure the Note, and in order to induce the Mortgagor to extend credit to the Mortgagor under the Construction Loan Agreement on the strength of the security provided by this mortgage and in order to convey the property described herein to the Mortgagor as hereinafter set forth, has agreed to execute and deliver this mortgage to the Mortgagor.

NOW, THEREFORE, in consideration of the premises, the Mortgagor hereby agrees with the Mortgagor as follows:

I. DEBT AND GRANTING CLAUSES

SECTION 1.01. Debt. This Mortgage is given to secure and shall secure the payment of the following (hereinafter collectively referred to as the "Debt")

(a) the payment of the indebtedness evidenced by the Note, and interest thereon and any and every extension, renewal and modification thereof;

(b) all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagor of every kind and description whatsoever, arising directly between the Mortgagor and the Mortgagor or acquired outright, as a participation or as collateral security from another by the Mortgagor, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arose or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, member of a partnership, syndicate, joint venture, association or other group, or otherwise, and any and all extensions, renewals and modifications of any of the same; and

(c) the compliance with all the stipulations, covenants, agreements, representations, warranties and conditions contained in this mortgage.

SECTION 1.02. Granting Clauses. As security for the payment of the Debt the Mortgagor does hereby grant, bargain, sell and convey unto the Mortgagor, its successors and assigns, the property and interests in property described in the following Granting Clauses (a) through (e), both inclusive, and does grant to the Mortgagor a security interest in, said property and interests in property

(a) The real estate described on Exhibit A attached hereto and made a part hereof (the "Real Estate") and all improvements, structures, buildings and fixtures now or hereafter situated thereon (the "Improvements").

(b) All permits, easements, licenses, rights-of-way, contracts, privileges, immunities, tenements and hereditaments now or hereafter pertaining to or affecting the Real Estate or the Improvements.

(c) (i) All leases, written or oral, and all agreements for use or occupancy of any portion of the Real Estate, the Improvements or any of the Personal Property described below with respect to which the Mortgagor is the lessor, including any and all extensions and renewals of said leases and agreements and any and all further leases or agreements, now existing or hereafter made, including subleases thereunder, upon or covering the use or occupancy of all or any part of the Real Estate or the Improvements, all such leases, subleases, agreements and tenancies heretofore mentioned being hereinafter collectively referred to as the "Leases";

(ii) any and all guarantees of the Lessee's and any sublessee's performance under any of the Leases;

(iii) the immediate and continuing right to collect and receive all of the rents, income, receipts, (revenues, issues and profits now due or which may become due or to which the Mortgagor may now or shall hereafter (including during the period of redemption, if any) become entitled or may demand or claim, arising or issuing from or out of the Leases or from or out of the Real Estate or any of the Improvements, or any part thereof, together with any and all rights and claims of any kind that the Mortgagor may have against any such lessee under the leases or against any subtenants or occupants of the Real Estate or any of the Improvements, all such moneys, rights and claims in this paragraph described being hereinafter referred to as the "Rents"; and,

(iv) any award, dividend or other payment made hereafter to the Mortgagor in any court procedure involving any of the lessees under the Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court and any and all payments made by lessees in lieu of rent. The Mortgagor hereby appoints the mortgagor as the Mortgagor's irrevocable attorney in fact to appear in any action and to collect any such award, dividend or other payment.

(d) All building materials, equipment, fixtures, tools, apparatus and fittings of every kind and character now owned or hereafter acquired by the mortgagor for the purpose of, or used or useful in connection with, the Improvements, wherever the same may be located, including, without limitation, all lumber and timber products, bricks, stones, building blocks, sand, cement, roofing materials, paint, doors, windows, hardware, nails, wire, wiring, engines, boilers, hummers, tanks, motors, generators, switchboards, elevators, escalators, plumbing, plumbing fixtures, air-conditioning and heating equipment and appliances, electrical and gas equipment and appliances, stoves, refrigerators, dishwashers, hot water heaters, garbage disposers, trash compactors, other appliances, carpets, rugs, window treatments, lighting fixtures, pipes, piping, decorative fixtures, and all other building materials, equipment and fixtures of every kind and character used or useful in connection with the Improvements.

(e) Any and all other real or personal property of every kind and nature from time to time hereafter by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred to mortgagor, or in which the Mortgagor is granted a security interest, as and for additional security hereunder by the Mortgagor, or by anyone on behalf of, or with the written consent of, the Mortgagor.

(All of the property and interests in property described in the foregoing Granting Clauses (a) through (e), both inclusive, of this Section 1.02 are herein sometimes collectively called the "Property". The personal property described in Granting Clause (d) of this Section 1.02 and all other personal property covered by this mortgage is herein sometimes collectively all the "Personal Property".)

SUBJECT, HOWEVER, to the liens, easements, rights-of-way and other encumbrances described on Exhibit B hereto ("Permitted Encumbrances").

To have and to hold the Property unto the Mortgagor, its successors and assigns forever.

II. REPRESENTATIONS AND WARRANTIES

The Mortgagor represents and warrants to the Mortgagor that:

SECTION 2.01. Warranties of Title. (a) The Mortgagor is lawfully seized in fee simple of the Real Estate and is the lawful owner of, and has good title to, the Personal Property, Improvements and other Property and has a good right to sell and convey the Property as aforesaid; (b) the Property is free of all taxes, assessments, liens, charges, security interests, assignments and encumbrances, (collectively, "Liens") [other than permitted encumbrances]; and (c) the Mortgagor will warrant and forever defend the title to the Property unto the Mortgagor against the lawful claim of all persons.

SECTION 2.02. Rents and Leases. (a) The Mortgagor has good title to the Rents and Leases hereby assigned and good right to assign the same, and no other person, corporation or entity has any right, title or interest therein; (b) the Leases are not in default (on the part of the Mortgagor or the lessee); (c) the Mortgagor has not previously sold, assigned, transferred, mortgaged or pledged the Leases or the Rents; (d) no Rents or deposits have been collected in advance or waived, released, set-off, discharged or compromised; and (e) no Lease is in existence on the date of this mortgage except as heretofore disclosed in writing to the Mortgagor.

III. COVENANTS AND AGREEMENTS OF MORTGAGOR

The Mortgagor covenants and agrees with the Mortgagor as follows:

SECTION 3.01. Maintenance of Lien Priority. The Mortgagor shall take all steps necessary to preserve and protect the validity and priority of the liens on, security interests in, and assignment of, the Property created hereby. The Mortgagor shall execute, acknowledge and deliver such additional instruments as the mortgagor may deem necessary in order to preserve, protect, continue, extend or maintain the liens, security interests and assignments created hereby as first liens on, security interests in, and assignments of, the Property, except as otherwise permitted under the terms of the mortgage. All costs and expenses incurred in connection with the protection, preservation, continuation, extension or maintaining of the liens, security interests and assignments hereby created shall be paid by the Mortgagor.

SECTION 3.02. Liens and Insurance. For the purpose of further securing the payment of the Debt, the Mortgagor agrees to: (a) pay all taxes, assessments, and other Liens taking priority over this mortgage, and if default is made in the payment of the Liens, or any part thereof, the Mortgagor, at its option, may pay the same; (b) keep the Property continuously insured, in such manner and with such companies as may be satisfactory to the Mortgagor, against loss by flood (if the Property is located in flood-prone areas), fire, windstorm, vandalism and malicious mischief and other perils usually covered by fire insurance policy with standard extended coverage endorsement, with loss, if any, payable (pursuant to loss payable clauses in form and content satisfactory to the Mortgagor) to the Mortgagor, as its interest may appear, subject to the rights of the holders of any prior mortgages. Such insurance shall be in an amount of least equal to the full insurable value of the Personal Property and Improvements unless the Mortgagor agrees in writing that such insurance may be in a lesser amount. The original insurance policy and all replacements therefore, shall be delivered to, and held by, the Mortgagor, until the Debt is paid in full. The original insurance policy and all replacements therefore must provide that they may not be canceled without the insurer's giving at least fifteen days' prior written notice of such cancellation to the Mortgagor.

SECTION 3.03. Assignment of Insurance Policies, etc. The Mortgagor hereby assigns and pledges to the Mortgagor, as further security for the payment of the Debt, each and every policy of hazard insurance now or hereafter in effect which insures the Property, or any part thereof (including without limitation the Personal Property and Improvements, or any part thereof) together with all right, title and interest of the Mortgagor in and to each and every such policy, including, but not limited to, all the Mortgagor's right, title and interest in and to any premium paid on each such policy, including all rights to return premium if the Mortgagor fails to keep the Property insured as specified above, then, at the election of the Mortgagor and without notice to any person, the Mortgagor may, but shall not be obligated to, insure the Property for its full insurable value (or for such lesser amount as the Mortgagor may wish) against such risks of loss and for its own benefit. The proceeds from such insurance (less the costs of collecting the same), if collected, shall be credited against the Debt, or, at the election of the Mortgagor, such proceeds may be used to purchase additional Personal Property to replace Personal Property which has been damaged or destroyed and to repair or reconstruct the Improvements. All amounts spent by the Mortgagor for insurance or for the payment of Liens shall become a debt due by the Mortgagor to the Mortgagor and, if once payable, without demand upon, or notice to, the Mortgagor, and shall be secured by this mortgage, and shall bear interest at the rate of interest set forth in the note, or such lesser rate of interest as shall then be the maximum amount permitted by law, from the date of payment by the Mortgagor until paid by the Mortgagor.

SECTION 3.04. Assignment of Condemnation Proceeds, etc. As further security for the Debt and the full and complete performance of each and every obligation, covenant, agreement and duty of the Mortgagor contained herein, and to the extent of the full amount of the Debt secured hereby and of the costs and expenses (including reasonable attorney's fees) incurred by the Mortgagor in the collection of any award or payment, the Mortgagor hereby assigns to the Mortgagor any and all awards or payments, including all interest thereon, together with the right to receive the same, that may be made to the Mortgagor with respect to the Property as a result of (a) the exercise of the right of eminent domain, (b) the alteration of the grade or of any street or (c) any other injury to or decrease in value of the Property. Subject to the rights of the holders of any prior mortgages, all such damages, condemnation proceeds and consideration shall be paid directly to the Mortgagor, and, after first applying such sums to the payment of all costs and expenses (including reasonable attorney's fees) incurred by the Mortgagor in obtaining such sums, the Mortgagor may, at its option, apply the balance on the Debt in any order and amount and whether or not then due, or hold such balance as a cash collateral reserve against the Debt, or apply such balance to the restoration of the Property, or release the balance to the Mortgagor. In such application, holding in reserve or release shall cure or waive any default of the Mortgagor.

SECTION 3.05. Waste; Inspection. The Mortgagor agrees to take good care of the Real Estate and all Improvements and Personal Property and not to commit or permit any waste thereon, on or at times to maintain such Improvements and Personal Property in as good condition as they now are, reasonable wear and tear excepted. The Mortgagor may, at the Mortgagor's discretion, inspect the Property, or have the Property inspected by Mortgagor's servants, employees, agents or independent contractors, at any time, and the Mortgagor shall pay all costs incurred by the Mortgagor in inspecting any such inspection.

SECTION 3.06. Rents and Leases. The Mortgagor covenants and agrees that the Mortgagor shall: (a) comply with all of its obligations under the terms of the Leases and give prompt notice to the Mortgagor of any default of the Mortgagor or any lessee; (b) enforce the performance of the obligations to be performed by an lessee under the terms of the Leases; (c) appear in and defend any action or proceeding related to the Leases (upon request by the Mortgagor), in the name and on behalf of the Mortgagor but at the expense of the Mortgagor) and pay all costs and expenses of the Mortgagor including reasonable attorneys' fees, in any action or proceeding in which the Mortgagor may appear; (d) not receive or collect any Rents for a period of more than one month in advance, or pledge, transfer or mortgage or otherwise encumber or assign future payments of the Rents; (e) not waive, compromise or in any manner release or discharge any lessee of any obligations under any Lease; (f) not cancel, terminate or amend any lease, without the prior written consent of the Mortgagor; (g) not renew or otherwise extend the term of any Lease; (h) promptly upon the execution by the mortgagor of any lease furnish the Mortgagor with a copy of such lease, and execute all such further assignments of such Lease and the Rents therefrom as the Mortgagor may require; and (i) not enter into any lease without the prior written consent of the Mortgagor, which consent may be withheld for any reason whatsoever in the sole discretion of the Mortgagor, and nothing contained in this mortgage shall be construed as a consent by the mortgagor for the Mortgagor to enter into or execute any lease.

SECTION 3.07. Sale, Lease or Transfer, etc. Notwithstanding any other provisions of this mortgage or the Note, if the Real estate or the Improvements, or any part thereof, or any interest therein, is sold, leased, conveyed or transferred, without the Mortgagor's prior written consent, or if the Real Estate or the Improvements, or any part thereof, or any interest therein, becomes subject to any additional mortgage or other encumbrance, either voluntarily or involuntarily, without the Mortgagor's prior written consent, the Mortgagor may, at its sole option, (a) declare the Debt immediately due and payable in full, or (b) require the payment, after the date of such sale, lease conveyance or transfer, of a higher rate of interest on the unpaid principal portion of the Debt as a condition to not exercising such option or accelerate the Debt, whether such rights be exercised by the Mortgagor to obtain a higher rate of interest on the Debt or to protect the security of this mortgage.

SECTION 3.08. Hazardous Materials. (a) As used in this mortgage, the term "Hazardous Substances" shall mean and include, without limitation, any asbestos, any formaldehyde, flammable materials, flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, prohibited or restricted by any local, state or federal law, rule or regulation, whether now or hereafter in effect and as may be amended from time to time, pertaining to environmental regulation, environmental hazard or disclosure, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, and the rules and regulations of the Occupational Safety and Health Administration pertaining to exposure to asbestos. The Mortgagor covenants, warrants and represents and shall be deemed to continue to covenant, warrant and represent during the term of this mortgage that, except as is hereinafter disclosed in writing to the Mortgagor with specific reference to this paragraph, (a) there are not now and shall not in the future be any Hazardous Substances on or under the Property; (b) Hazardous Substances have been or will be stored upon or utilized in operations on the Real Estate or utilized in the construction of the Improvements; (c) there are not underground storage tanks, in use or not in use, located in, on or under any part of the Real Estate; (d) there are no pending claims or threats of claims by private or governmental or administrative authorities relating to Hazardous Substances, environmental impairment, conditions, or regulatory requirements with respect to the Property; (e) the Property and its use fully complies with all applicable building and zoning, urban planning, land use regulations, any applicable environmental laws or regulations, and any other applicable laws or regulations; (f) no part of the Real Estate has been officially filled; and (g) the Mortgagor will give immediate oral and written notice to the Mortgagor of its receipt of any notice of a violation of any law, rule or regulation covered by this paragraph, or of any notice of any other claim relating to Hazardous Substances or the environmental condition of the Property, or of the Mortgagor's discovery of any matter which would make the representations, warranties and/or covenants herein inaccurate in any respect.

(b) The Mortgagor hereby agrees to indemnify and hold the Mortgagor harmless from all loss, cost, damage, claim and expense incurred by the Mortgagor on account of (i) the untrue statement or representation, warranty or covenant set forth in the preceding paragraph (a), (ii) the Mortgagor's failure to perform any obligations of the preceding paragraph (a), (iii) the Mortgagor's failure to maintain the Property, to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter resulting from the presence of Hazardous Substances on, under or affecting the Property. This indemnification shall survive the closing of the Loan, payment of the Debt, the exercise of any right or remedy under this instrument or any document evidencing or securing the Loan, any subsequent sale or transfer of all or any part of the Property, and all similar or related events or occurrences.

SECTION 3.09. Compliance with Laws. The Mortgagor shall comply with and shall cause the Property (excluding), without limitation, the improvements, to comply with any and all applicable federal or local laws, rules and regulations, including, without limitation, the federal Americans With Disabilities Act. If the Mortgagor or the Property fails to so comply, then, at the election of the Mortgagor, without notice to any person, the Mortgagor may, but shall not be obligated to, take such action as the Mortgagor may deem necessary or desirable to effect such compliance. All costs, expenses and attorney's fees incurred by the Mortgagor in connection with causing the Mortgagor to effect such compliance shall become a debt due by the Mortgagor to the Mortgagor and at once payable, without demand upon or notice to the Mortgagor, next shall be an additional mortgage, and shall bear interest at the rate of interest set forth in the Note, or such lesser rate of interest as shall then be the minimum amount permitted by law, from the date of payment by the Mortgagor until paid by the Mortgagor.

IV. DEFEASANCE, DEFAULT AND REMEDIES

SECTION 4.01. Defeasance and Default. This mortgage is made upon the condition that if the Mortgagor pays the Debt, as defined in this Mortgage (which Debt includes all taxes and expenses now or hereafter imposed by the Note, and interest thereon, and all other indebtedness, obligations and liabilities of the Mortgagor to the Mortgagor of every kind and description whatsoever, due or to become due, now or hereafter incurred, contracted or arising), and reimburses the Mortgagor for any amounts the Mortgagor has paid in respect of taxes or insurance premiums, and interest thereon, due or to become due, now or hereafter incurred, contracted or arising, and reimburses the Mortgagor for any amounts the Mortgagor has paid in respect of fees or insurance premiums, and interest thereon, due or to become due, now or hereafter incurred, contracted or arising, this conveyance shall be null and void. But the Mortgagor shall be deemed in default hereunder upon the occurrence of any of the following events: (i) Event of Default: (a) the Mortgagor shall fail to pay to the Mortgagor when due the principal or interest on the Debt evidence by the Note or any other sum due under the Construction Loan Agreement or any of the other Security Documents (as defined in the Construction Loan Agreement), or any other Debt secured hereby, or (b) if in the judgment of the Mortgagor any of the proceeds of the Loan are being or have been, diverted to a purpose other than the payment or discharge of expenses related to the Project as defined in the Construction Loan Agreement, which expenses have been approved by the Mortgagor; or (c) if the Mortgagor fails to comply with any of the provisions of this mortgage or of the Note, the Construction Loan Agreement or the other Security Documents; or (d) if any statement or representation or warranty contained in this mortgage, the Construction Loan Agreement or any of the other Security Documents or any report, certificate or other instrument delivered in connection with any of the same shall be untrue in any material respect as of the time made; or (e) if the Mortgagor conveys or further encumbers all or part of the Collateral (as defined in the Construction Loan Agreement); or (f) if any Lien, statement of lien or suit to enforce a lien is filed against any of the Collateral and the Mortgagor fails to have such lien satisfied or paid, judgments for the amount of the amount claimed thereby by a bond, letter of credit or other security satisfactory to the Mortgagor within ten days after the filing thereof; (g) if the Mortgagor fails to complete the Project, or abandons the Project, or ceases to work thereon for a period of more than ten consecutive calendar days; (h) fails diligently to prosecute the work on the Project, so that any delay in the construction and development of the Project and the Improvements occurs, whether as the result of energy shortages, any governmental law, regulation or ruling relating to energy, sewage treatment, zoning, energy conservation or other matter, lack of utilities (including but not limited to gas, electricity, water, etc.) or any other cause which may occur to the Mortgagor that, upon completion of the Project, energy and utilities will not be available therefor; (i) fails to pay taxes to prevent the spending of the funds of the Project by a trustee, surety, or guarantor of the Note or any of the other Debts (hereinafter collectively called the "Obligors") and to qualify such unpaid taxes to prevent the spending of the funds of the Project by a receiver, trustee, liquidator or other custodian appointed for any Obligor or for any of the property of any Obligor; or (j) if the plan of reorganization or arrangement (under a court's corners plan or otherwise) is filed by or against any Obligor, or if any Obligor applies for the benefit of such plan or arrangement, or if the individual or corporation making such plan or arrangement withdraws, or makes an assignment for the benefit of creditors, or (l) if any Obligor dies (if an individual), or dissolves or ceases to exist or partnership or joint venture is dissolved, or withdraws, or, if a corporation, any principal officer thereof becomes insolvent, dies or ceases to be employed by such corporation or dies or ceases to be engaged in the business of such corporation by reason of the enforcement of any prior lien thereon, or (m) any law is passed imposing or authorizing the collection of any tax or other charge upon the principal or interest of the Debt or upon the deduction of any such tax from the principal of, interest on, the Debt, or by virtue of which any tax, fee or assessment is paid on the property of the Project by any of the parties to this mortgage, or if any stipulation contained in this mortgage is declared invalid or inoperative by any court of competent jurisdiction, or if any of the conditions precedent to the making of this mortgage are violated, or if any of the other Security Documents, or (o) if the Mortgagor at any time in good faith claims shall not be liable for any of the debts or obligations of the Mortgagor.

SECTION 4.02. Rights and Remedies of Mortgagor Upon Default.

(a) Acceleration of Debt. Upon the occurrence of an Event of Default, or at any time thereafter during the period of the original term of this Note, the entire principal amount of this Note, together with all accrued interest thereon, and any part of the Debt immediately due and payable, whereupon all such Debt shall forthwith become due and payable, notwithstanding any provision to the contrary contained in this Note, any of the other Security Documents and applicable law. The Mortgagor covenants hereby and agrees to pay to the Lender, upon demand, all sums necessary to satisfy the Lender of any of its rights under this mortgage, the Note, any of the other Security Documents and applicable law.

(b) Operation of Property by Mortgagor. Upon the occurrence of an Event of Default as defined above, the Mortgagor shall have the right to operate, manage and control the Property, or any part thereof, or any portion or all or any part of the Property, or any part thereof, and hold, use, administer, manage and operate the same to the extent that the Mortgagor is and shall remain entitled to the Mortgagor's interest therein, collect, receive and receipt of all proceeds occurring from such operation and management, make stipulations, contracts, credit and priority and otherwise do every act and thing with respect to the Property.

(c) Judicial Proceedings; Right to Receiver. Upon the occurrence of an Event of Default, or at any time thereafter, the Mortgagor, or the Lender, or any addressee of any notice hereinafter given, may proceed by suit to foreclose its lien on, security interest in, and assignment of, the Property, to sue the Mortgagor for damages on account of the nonpayment of any sum due, or for breach, or for specific performance of any provision contained herein, or to enforce any other appropriate legal or equitable right or remedy. The Mortgagor shall be entitled to a writ of attachment, garnishment, or garnishee bill filed or other proper legal proceedings being commenced for the foreclosure of this mortgage, to the appointment by any competent court or tribunal, without regard to the Mortgagor's right, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

(d) **Foreclosure Sale.** Upon the occurrence of any Event of Default, or of any time thereafter, this mortgage shall be subject to foreclosure and may be foreclosed by a public sale of past due mortgages, and the Mortgagor shall be authorized, at its option, whether or not possession of the Property is taken, after giving twenty-one days' notice by publication in some newspaper published in the county wherein the Property is located (or in which any part of the Property is located in more than one county), to sell the Property (or such part or parts thereof as the Mortgagor may from time to time direct it to sell) in lot(s) of the entire or any part of the same, in which the Property to be sold (or any portion thereof if the Property to be sold is located in more than one county) is located, at public outcry to the highest bidder for cash. The Mortgagor, or its assigns, may bid at any sale or sales had under the terms of this mortgage and may purchase the Property, or any part thereof, if the highest bidder thereof is the purchaser, in which case the sales shall be under no obligation to see to the proper application of the purchase money. At any foreclosure sale, any part or all of the Property, real, personal or mixed, may be offered for sale in parcels or in masses for one total price, the proceeds of any such sale en masse to be accounted for in one account without distinction between the items included therein or with respect thereto, and in any proportion of such proceeds, the Mortgagor hereby waiving the application of any doctrine of marshaling or like proceeding. In case the Mortgagor, in the exercise of the power hereinabove granted, elects to sell the Property in parts or parcels, sales thereof may be held from time to time, and the power of sale granted herein shall not be fully exercised until all of the Property is so disposed of, which have been sold or all the Debt secured hereby shall have been paid in full.

(e) Personal Property and Fixtures. On the happening of any Event of Default or at any time thereafter, the Mortgagor shall have and may exercise with respect to the Personal Property, fixtures included in the Property (the "PP&F Collateral") all rights, remedies and powers of a secured party under the Alabama Uniform Commercial Code with reference to the PP&F Collateral and any other items in which a security interest has been granted herein, including without limitation the right and power to sell or public or private sale or sales or otherwise dispose of, merge or utilize the PP&F Collateral and any part or parts thereof in any manner to the fullest extent authorized or permitted under the Alabama Uniform Commercial Code after default hereunder, without regard to preservation of the PP&F Collateral or its value and without the necessity of a court order. The Mortgagor shall have, among other rights, the right to take possession of the PP&F Collateral and to enter upon the premises where the same may be situated for the purpose of repossessing the same without being guilty of trespass and without liability for damages occasioned thereby, and to take any action deemed appropriate or desirable by the Mortgagor, at its option and its sole discretion, to repair, restore or otherwise prepare the PP&F Collateral for sale, lease or other use or disposition. All the Mortgagor request, the mortgagor shall assemble any other disposition of the PP&F Collateral and any rights or remedies of the Mortgagor with respect to, and the formalities prescribed by law relative to, the sale or disposition of the PP&F Collateral or to the exercise of any other right or remedy of the Mortgagor existing after default. To the extent that such notice is required and cannot be avoided, the Mortgagor agrees that if such notice is given to the Mortgagor in accordance with the provisions of Section 5.14 below, at least five days before the time of the sale or other disposition, such notice shall be reasonable and shall fully satisfy any requirement for giving said notice.

The Mortgagor agrees that the Mortgagee may proceed to sell or dispose of both the real and personal property comprising the Property in accordance with the rights and remedies granted under the mortgage with respect to the real property covered hereby. The Mortgagor hereby grants the Mortgagee the right at its option after default hereunder, to transfer at any time to itself or its nominees the whole or any part thereof and to receive the monies, income, proceeds and benefits attributable to the same and to hold the same as Collateral or to apply it on the Debt in such order and manner as the Mortgagee may elect. The Mortgagor covenants and agrees that all recitals in any instrument transferring, assigning, leasing or making other disposition of the Collateral or any part thereof shall be true and correct to the best of the knowledge and belief of the Mortgagor as to the facts at the time of execution of such instrument, without regard to any subsequent change in the facts, and that the Mortgagor shall be liable to the Mortgagee for any loss or damage suffered by the Mortgagee by reason of any statement made by the Mortgagor in any such instrument which is untrue or which is misleading in any material particular, provided that the Mortgagor shall not be liable for any such loss or damage if the same arises from the negligence or willful misconduct of the Mortgagee. The Mortgagor further agrees that the Mortgagee may file a certificate of record in any office where such certificates are filed, setting forth the facts recited in any instrument referred to in the preceding sentence, and that the same shall be prima facie evidence of the facts so stated, and no other proof of the matters stated therein and no other proof shall be required to establish the legal propriety of the sale or other action taken by the Mortgagee and that all prerequisites of sale shall be deemed conclusively to have been performed or to have occurred.

(f) Rents and Leases. Upon the occurrence of an Event of Default or at any time thereafter.

(i) The Mortgagor, at its option, shall have the right, power and authority to exercise and enforce any or all of the following rights and remedies with respect to Rents and Taxes.

(A) to terminate the license granted to the Mortgagor in Granting Clause (c) (ii) hereof to collect the Rents and, without taking possession, in the Mortgagor's own name to demand, sue for, attach and levy the rents, to give proper receipts, releases and acquittances thereby, and after deducting all necessary and reasonable costs and expenses of collection, including reasonable attorney fees, to apply the net proceeds thereof to the Right as at any and every time the Mortgagor may have to hold the same.

(B) without regard to the adequacy of the security, with or without any action or proceeding, through any person or by agent, or by a receiver to be appointed by a court to enter upon, take possession of, manage and operate the Property or any part thereof for the account of the Mortgagor, make, modify, enforce, cancel or accept surrender of any lease, remove and evict any lessee or sublessees, increase or reduce rents, decorate, clean and make repairs, and otherwise do any act or incur any cost or expense the Mortgagor shall deem proper to protect the security hereof as fully and to the same extent as the Mortgagor could do it in possession, and in such event to apply any funds so collected to the operation and management of the Property (including payment of reasonable management, brokerage and attorney's fees) and payment of the Debt in such order and amounts as the Mortgagor may choose (or hold the same in a reserve as security for the Debt);

(c) to take whatever legal proceedings may appear necessary or desirable to enforce any obligation or agreement or payment of the Mortgagor under the mortgage.

(ii) to take whatever legal proceedings may appear necessary or convenient to enforce any obligation or covenant or agreement of the Mortgagor under this mortgage;

(iii) the collection of the Rents and application thereof (or holding thereof in reserve) as aforesaid or the entry upon and taking possession of the Property or both shall not preclude any default or waive, modify or affect any notice of default under this mortgage, or invalidate any act done pursuant to such notice, and the enforcement of such right or remedy by the mortgagor, once exercised,

shall continue for so long as the Mortgagor shall elect, notwithstanding that the collection and application aforesaid of the Rents may have cured the original default. If the mortgagor shall thereafter elect to discontinue the exercise of any such right or remedy, the same or any other right or remedy hereunder may be exercised at any time and from time to time following any subsequent default.

(g) Application of Proceeds. All payments received by the Mortgagor as proceeds of the Property, or any part thereof, or well as any and all amounts realized by the Mortgagor in connection with the enforcement of any right or remedy under or with respect to this mortgage, shall be applied by the Mortgagor as follows: (i) to the payment of all necessary expenses incident to the execution of any foreclosure sale or sales or other remedies under this mortgage, including reasonable attorneys' fees as provided herein and in the Note, the Construction Loan Agreement and the other Security Documents; (ii) to the payment in full of any of the Debt that is then due and payable (including without limitation principal, accrued interest and all other sums secured hereby); and to the payment of attorneys' fees as provided herein and in the note, the Construction Loan Agreement and the other Security Documents; (iii) to a cash collateral reserve fund to be held by the mortgagor in an amount equal to, and as security for, any of the Debt that is not then due and payable; and (iv) the remainder, if any, shall be paid to the Mortgagor or such other person or persons as may be entitled thereto by law, after deducting therefrom the cost of ascertaining their identity.

(h) Multiple Sales. Upon the occurrence of any Event of Default or at any time thereafter, the mortgagor shall have the option to proceed with foreclosure, either through the courts or by proceeding with foreclosure as provided for in this mortgage, but without declaring the whole Debt due. Any such sale may be made subject to the unsecured part of the Debt secured by this mortgage, and such sale, if so made, shall not in any manner affect the unmatured part of the Debt secured by this mortgage, but as to such unmatured part of the Debt the mortgage shall remain in full force and effect as though no sale had been made under the provisions of this paragraph. Several sales may be made under the provisions of this paragraph without exhausting the right of sale for any remaining part of the Debt whether then matured or unmatured, the purpose hereof being to provide for a foreclosure and sale of the Property for any matured part of the Debt without exhausting any power of foreclosure and the power to sell the Property for any other part of the Debt, whether matured or the time or subsequently maturing.

(i) Waiver of Appraisement Laws. The Mortgagor waives, to the fullest extent permitted by law, the benefit of all laws now existing or hereafter enacted providing for (i) any appraisement before sale of any portion of the Property (commonly known as appraisement laws), or (ii) any extension of time for the enforcement of the collection of the Debt or any creation or extension of a period of redemption from any sale made in collecting the Debt (commonly known as stay laws and redemption laws).

(j) Prerequisites of Sales. In case of any sale of the Property as authorized by this Section 4.02, all prerequisites to the sale shall be presumed to have been performed, and in any consequence given hereunder all statements of facts, or other recitals therein made, as to the nonpayment of any of the Debt or as to the advertisement of sale, or the time, place and manner of sale or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true.

V. MISCELLANEOUS

SECTION 5.01. Collection Costs. The Mortgagor agrees to pay all costs, including reasonable attorneys' fees, incurred by the Mortgagor 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 on the Property, unless this mortgage is herein expressly made subject to any such Lien, 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 (including without limitation any costs of title examination, notice of foreclosure and appraisal). The full amount of such costs incurred by the Mortgagor shall be a part of the Debt and shall be secured by this mortgage.

SECTION 5.02. No Obligations with Respect to Lessees. The Mortgagor shall not by virtue of this mortgage or otherwise assume any duties, responsibilities, liabilities or obligations with respect to leases the Improvements, the Personal Property, the Real Estate or any of the other Property (unless expressly assumed by the Mortgagor under a separate agreement in writing), and this mortgage shall not be deemed to confer on the Mortgagor any duties or obligations that would make the Mortgagor directly or derivatively liable for any person's negligent, reckless or willful conduct. The Mortgagor agrees to defend, indemnify and save harmless the Mortgagor from and against any and all claims, causes of action and judgments relating to the Mortgagor's performance of its duties, responsibilities and obligations under Leases and with respect to the Real Estate, the Improvements, the Personal Property, or any of the other Property.

SECTION 5.03. Construction of Mortgage. This mortgage is and may be construed as a mortgage, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of them, in order fully to effectuate the lien hereof and the assignment and security interest created hereby and the purposes and agreements herein set forth.

SECTION 5.04. Successors and Assigns. All covenants and agreements herein made by the undersigned shall bind the undersigned and their heirs, personal representatives, successors and assigns of the undersigned; and every option, right and privilege herein reserved or secured to the Mortgagor shall inure to the benefit of the Mortgagor's successors and assigns.

SECTION 5.05. Waiver and Election. The exercise by the Mortgagor of any option given under the terms of this mortgage shall not be considered as a waiver of the right to exercise any other option given herein, and the filing of a suit to foreclose the lien, security interest and assignment granted by this mortgage, either on any matured portion of the Debt or for the whole of the Debt, shall not be considered an election so as to preclude foreclosure under power of sale after a dismissal of the suit; nor shall the publication of notices for foreclosure preclude the prosecution of a later suit thereon. No failure or delay on the part of the Mortgagor in exercising any right, power or remedy under this mortgage shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder or thereafter. The remedies provided in this mortgage and in the other Security Documents are cumulative and not exclusive of any remedies provided by law. No amendment, modification, termination or waiver of any provisions of this mortgage or any of the Security Documents, nor consent to any departure by the Mortgagor therefrom, shall be effective unless the same shall be in writing and signed by an executive officer of the Mortgagor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Mortgagor in any case shall entitle the Mortgagor to any other or further notice or demand in similar or other circumstances.

SECTION 5.06. Landlord-Tenant Relationship. Any sale of the Property under this mortgage shall, without further notice, create the relationship of landlord and tenant of sufferance between the purchaser the Mortgagor.

SECTION 5.07. Enforceability. If any provision of this mortgage is now or at any time hereafter becomes invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and the remaining provisions hereof shall be construed in favor of the Mortgagor to effectuate the provisions hereof.

SECTION 5.08. Application of Payments. If the lien, assignment or security interest created by this mortgage is invalid or unenforceable as to any part of the Debt or is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Debt shall be completely paid prior to the payment of the remaining and secured or partially secured portion of the Debt, and all payments made on the Debt, whether voluntary or under foreclosure or other enforcement action or procedures, shall be considered to have been first paid on and applied to the full payment of that portion of the Debt which is not secured or not fully secured by said lien, assignment or security interest created hereby.

SECTION 5.09. Other Mortgages Encumbering the Real Estate. The Mortgagor hereby authorizes the holder of any other mortgage encumbering the Real Estate or the Improvements to due date to the Mortgagor from time to time and at any time the following information: (a) the amount of Debt secured by such mortgage, (b) the amount of such Debt that is unpaid, (c) whether such Debt is or has been in arrears; (d) whether there is or has been any default with respect to such mortgage or the Debt secured thereby, and (e) any other information regarding such mortgage or the Debt secured thereby that the Mortgagor may request from time to time.

The Mortgagor expressly agrees that if default should be made in the payment of principal, interest or any other sum secured by any other mortgage encumbering the Real Estate or the Improvements, the Mortgagor may (but shall not be required to) pay off or any part of such amount in default without notice to the Mortgagor. The Mortgagor agrees to repay any such sum advanced upon demand, with interest from the date such advance is made at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and any sum so advanced with interest shall be a part of the Debt secured by the Mortgage.

SECTION 5.10. Meaning of Particular Terms. Whenever used, the singular number shall include the plural and the plural the singular, and pronouns of one gender shall include all genders, and the words "Mortgagor" and "Mortgagors" shall include their respective successors and assigns. Plural or singular words used herein to designate the undersigned shall be construed to refer to the maker or makers of this instrument, whether one or more natural persons, corporations, associations, partnerships or other entities.

SECTION 5.11. Advances by the Mortgagor. If the Mortgagor shall fail to comply with the provisions hereof with respect to the securing of insurance, the payment of Liens, the keeping of the Property in repair, the performance of this mortgagor's obligations under any Lease, the payment of any prior mortgage, or the performance of any other term or covenant herein contained, the Mortgagor may (but shall not be required to) make advances to perform the same, and where necessary enter the Property for the purpose of performing any such term or covenant. The Mortgagor agrees to repay all such sums advanced upon demand, with interest from the date such advances are made, at the rate provided for in the Note, or the highest rate permitted by law, whichever shall be less, and all sums so advanced with interest shall be a part of the Debt and shall be secured hereby. The making of any such advances shall not be construed as a waiver by the Mortgagor of any Event of Default resulting from the Mortgagor's failure to pay the amounts paid.

SECTION 5.12. Release or Extension by the Mortgagor. The Mortgagor, without notice to the mortgagor and without in any way affecting the rights of the Mortgagor hereunder as to any part of the Property not expressly released, may release any part of the Property or any person liable for any of the Debt and may agree with any party with an interest in the Property to extend the time for payment of all or any part of the Debt or to waive the prompt and full performance of any term, condition or covenant of the Note, the Construction Loan Agreement, any of the Security Documents, the mortgage or any other instrument evidencing or securing the Debt.

SECTION 5.13. Partial Payments. Acceptance by the Mortgagor of any payment of less than the full amount due on the Debt shall be deemed acceptance on account only, and the failure of the mortgagor to pay the entire amount then due shall be and continue to constitute an Event of Default, and at any time thereafter and until the entire amount due on the Debt has been paid, the Mortgagor shall be entitled to exercise all rights conferred on it by the terms of this mortgage in case of the occurrence of an Event of Default.

SECTION 5.14. Addressees for Notices. All notices, requests, demands and other communications provided for hereunder shall be in writing or by letter, telegram or cable and shall be effective when mailed, sent or delivered to the applicable party at its address indicated on the first page of this mortgage or at such other address as shall be designated by such party in a written notice to the other parties thereto.

SECTION 5.15. Titles. All section, paragraph, subparagraph or other titles contained in this mortgage are for reference purposes only, and the mortgage shall be construed without reference to said titles.

SECTION 5.16. Satisfaction of Mortgage. The Mortgagor agrees to pay all costs and expenses associated with the release or satisfaction of this mortgage.

IN WITNESS WHEREOF, the undersigned Stylemark Homebuilders, Inc.

President

has executed this instrument (has caused this instrument) to be executed by its duly authorized _____ on the date first written above.

[Corporate or Partnership Signature]

Stylemark Homebuilders, Inc.


Joe N. Roberts

[Individual Signature]

ATTEST:

By _____

Ms. _____

STATE OF ALABAMA

COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____ whose name 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 said instrument, he/she executed the same voluntarily, the day the same bears date.

Given under my hand and official seal this _____ day of _____,

Notary Public

PPX SEAL

y Commission Expires: _____

[Corporate]

STATE OF ALABAMA

SHELBY COUNTY)

I, Peggy I. Murphree, a Notary Public in and for said County in said State, hereby certify
at Joe N. Roberts, whose name is _____, President

Stylemark Homebuilders, Inc., a 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 said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and on the act of said corporation.

Given under my hand and official seal this 2nd day of November,

1999

Notary Public

PPX SEAL

y Commission Expires: 2-20-03

PEGGY I. MURPHREE
MY COMMISSION EXPIRES FEBRUARY 20, 2003

[Partnership]

STATE OF ALABAMA

COUNTY)

I, _____, a Notary Public in and for said County in said State, hereby certify
at _____, whose name as general partner of _____

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 said instrument, he/she, as such general
partner and with full authority, executed the same voluntarily for and on the act of said partnership.

Given under my hand and official seal this _____ day of _____,

Notary Public

PPX SEAL

y Commission Expires: _____

This instrument prepared by:

EXHIBIT A

(Real Estate Description)

Lot 1412, according to the Survey of Eagle Point, 14th Sector, as recorded in Map Book 26 page 34 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama. Mineral and mining rights excepted.

JM

Inst # 1999-45377

11/03/1999-45377
10:57 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
105 CHI 466.50