

STATE OF LOUISIANA

334213

8270

334214

PARISH OF ORLEANS

NOTICE OF CONSTRUCTION LIEN AND LIS PENDENS

Notice is hereby given pursuant to Miss. Code Ann. § 85-7-131, et seq., that Ellis Construction, Inc., a Louisiana corporation ("Ellis"), has and claims a lien on the structure and real property known as The Storage Center, which is more particularly described on Exhibit "A" attached hereto (the "Property"), to which certain construction and improvements were performed for Brookwood Properties ("Brookwood"). The Property covered by said lien is situated and being in Madison County, State of Mississippi and is owned by Brookwood Properties.

On or about August 26, 1999, Ellis started work on the Property pursuant to an agreement between Ellis, 1215 Prytania Street, Suite 223, New Orleans, Louisiana 70130-4399, and Brookwood for renovations and related construction work at the above described Property. Brookwood's address is Post Office Box 14745, 1925 Ryder Drive, Baton Rouge, Louisiana 70898-4745.

Ellis has substantially performed the contract and there is currently due and owing to Ellis under the contract the sum of at least \$332,481.26, plus applicable interest, attorneys' fees and expenses. Ellis has filed suit to collect the debt referenced herein. Said suit has been filed in the Circuit Court of Madison County, Mississippi pursuant to Miss. Code Ann. § 85-7-141. A true and correct copy of the suit filed by Ellis to enforce its lien is attached as Exhibit "B." This lien is filed on the date set forth below. Ellis believes that William C. Smith, III, as Trustee, and Union Planters Bank, National Association, Beneficiary, claim an interest in the Property

affected by this construction lien pursuant to that certain deed of trust recorded at Book 1232,
Page 681 in the Office of the Chancery Clerk of Madison County, Mississippi.

This lien will be filed as soon as possible after the date set forth below.

An affidavit of lien and mailing is attached hereto as Exhibit "C."

EXECUTED on this the 18th day of April, 2001.

ELLIS CONSTRUCTION, INC., a
Louisiana corporation

By: 

Name: Bret C. Ellis

Title: President

1215 Prytania Street, Suite 223
New Orleans, Louisiana 70130-4399

STATE OF LOUISIANA

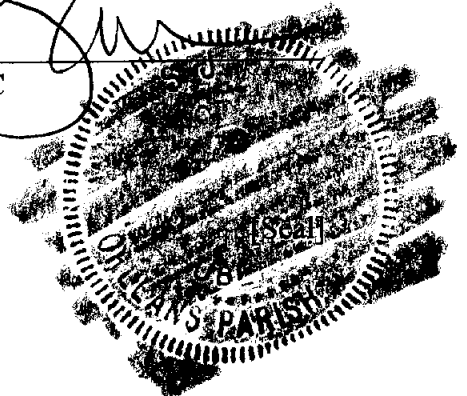
PARISH OF ORLEANS

PERSONALLY APPEARED BEFORE ME the undersigned authority in and for the
said county and state, on this 18th day of April, 2001, within my jurisdiction, the within named
Bret C. Ellis, who acknowledged that he is President of Ellis Construction, Inc., a Louisiana
corporation, and that for and on behalf of the said corporation, and as its act and deed he
executed the above and foregoing instrument, after first having been duly authorized by the
corporation so to do.


NOTARY PUBLIC

My Commission Expires:





This Instrument Prepared By:

Cheri T. Gatlin
OTT & PURDY, P.A.
Suite 1100, Mtel Centre South
200 South Lamar Street (Zip--39201)
Post Office Drawer 1079
Jackson, Mississippi 39215-1079
Telephone: (601) 969-4140

Please index this instrument as affecting Lots 10 and 11 of Tougaloo Addition in the Southeast ¼ of Section 36, Township 7 North, Range 1 East, Ridgeland, Madison County, Mississippi. Also, please index this instrument in the Notice of Construction Lien Book.

EXHIBIT 'A'

A parcel of land containing 4.432 acres (193,050.9 square feet), more or less, lying and being situated in the City of Ridgeland, Madison County, Mississippi, described as: A parcel of land being a part of Lot 10 of Tougaloo Addition in the Southeast 1/4 of Section 36, Township 7 North, Range 1 East, Ridgeland, Madison County, Mississippi, said Tougaloo Addition being recorded in Land Deed Book AAA at Page 138 thereof in the Chancery Clerk's office for Madison County, Mississippi, reference to said plat being hereby made in aid of and as a part of this description, and which parcel of land is more particularly described as:

Begin at an iron rod marking the Northwest corner of Lot 10 of Tougaloo Addition and run thence South 87 degrees, 16 minutes 14 seconds East along the North line of Lot 10 a distance of 260.0 feet; thence South for a distance of 130.00 feet; thence South 87 degrees 16 minutes 14 seconds East for a distance of 50.00 feet; thence South for a distance of 313.84 feet to the original North line of Centre Street; thence North 87 degrees 29 minutes, 05 seconds West along said North line for a distance of 309.95 feet; thence North for a distance of 645.00 feet to the POINT OF BEGINNING.

TOGETHER WITH: That certain non-exclusive easement fifteen (15') feet in width over, along, and across the following described parcel, to-wit:

An easement over a parcel of land situated in the City of Ridgeland, Madison County, Mississippi, described as: A parcel of land being a part of Lots 10 and 11 of Tougaloo Addition in the Southeast 1/4 of Section 36, Township 7 North, Range 1 East, in Ridgeland, Madison County, Mississippi, a plat of said Addition being recorded in Land Deed Book AAA at Page 138 thereof in the Chancery Clerk's office of Madison County, Mississippi, reference to which is hereby made in aid of and as a part of this description, which easement is more particularly described as: Commence at an iron rod marking the Northwest corner of Lot 10 of Tougaloo Addition and run thence South 87 degrees 16 minutes 14 seconds East along the North line of Lot 10 a distance of 260 feet; thence South for a distance of 130.0 feet; thence South 87 degrees 16 minutes 14 seconds East for a distance of 50 feet; thence South for a distance of 120 feet to the POINT OF BEGINNING of a 15 foot wide drainage easement lying adjacent to and south of a line described as: South 87 degrees 16 minutes 14 seconds East for a distance of 350.00 feet to a Point of Terminus on the West right of way of Ridgewood Road.

Said easement is for the purpose of installation, repair, maintenance, or improvement of a drainage line to facilitate the drainage of natural surface water of, and is an appurtenance to, only that certain 4.432 acre parcel above described, and shall run with the title thereto in perpetuity. Said easement is described further in that certain deed to Aaron Rents, Inc., of record in Deed Book 371 at Page 619.

*S E **

STATE OF MISSISSIPPI, COUNTY OF MADISON:

I certify that the within instrument was filed for record in my office this 19 day
of Apr, 1980, at 1:40 o'clock P. M., and was duly recorded.

TOTAL P.02

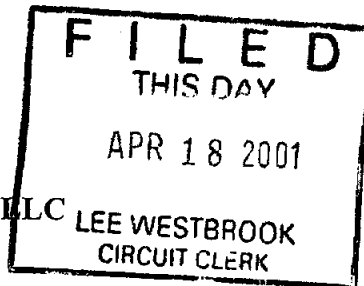


IN THE CIRCUIT COURT OF MADISON COUNTY, MISSISSIPPI

ELLIS CONSTRUCTION, INC.

V.

BROOKWOOD PROPERTIES, LLC



PLAINTIFF

CAUSE NO. CI 2001-0080

DEFENDANT

COMPLAINTJURY TRIAL DEMANDED

COMES NOW, Ellis Construction, Inc. ("Ellis") and files its Complaint pursuant to Miss. Code Ann. § 85-7-141 and other applicable law. In support of its Complaint, Ellis would show the following:

PARTIES

1.

Ellis is a Louisiana corporation registered to do and doing business in the State of Mississippi.

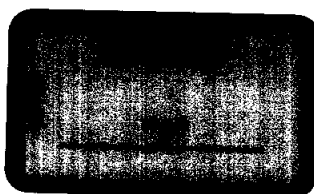
2.

Defendant is Brookwood Properties, LLC ("Brookwood"). Brookwood is a Louisiana corporation that is registered to do and doing business in Mississippi. Brookwood may be served with process in this matter by delivering the same to its registered agent for service of process, CT Corporation System, 631 Lakeland Drive East, Flowood, Mississippi 39208.

JURISDICTION AND VENUE

3.

Jurisdiction and venue are proper in this court pursuant to Miss. Code Ann. § 85-7-14 because the property on which Ellis asserts a lien is situated in Ridgeland, Madison County, Mississippi.



CLAIM FOR ENFORCEMENT OF CONSTRUCTION LIEN

4.

By agreement dated August 26, 1999 (the "Contract"), a copy of which is attached hereto as Exhibit "A," Ellis agreed to perform certain construction services for Brookwood regarding the construction of a project known as The Storage Center in Ridgeland, Mississippi (the "Project").

5.

On or about August 26, 1999, Ellis started work on the Property pursuant to the Contract between Ellis, 1215 Prytania Street, Suite 223, New Orleans, Louisiana 70130-4399 and Brookwood for renovations and related construction work at the above described property. Brookwood's address is Post Office Box 14745, 1925 Ryder Drive, Baton Rouge, Louisiana 70898-4745.

6.

Ellis performed construction work for Brookwood on the Project in accordance with the Contract and the express instructions and directions of Brookwood and its representatives.

7.

Ellis completed its work on the Project in May of 2000.

8.

Disputes have arisen between Ellis and Brookwood over the Project. These disputes are currently pending in litigation in the 24th Judicial District Court, Parish of Jefferson, State of Louisiana, Civil Action Number 556-046.

As of this date, there is currently due and owing to Ellis on the Project the sum of at least \$332,481.26, plus applicable interest, attorneys' fees and expenses.

10.

Pursuant to Miss. Code Ann. § 85-7-131, et seq., Ellis claims a lien on the structure and real property known as The Storage Center, which is more particularly described on Exhibit "B" attached hereto (the "Property"), to which certain construction and improvements were performed for Brookwood. The Property covered by said lien is situated and being in Madison County, State of Mississippi, and is owned by Brookwood.

11.

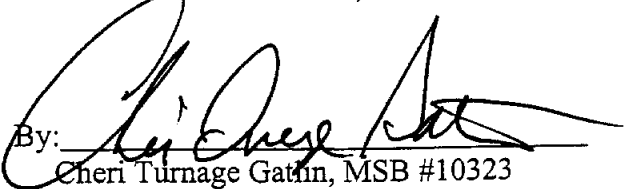
Pursuant to Miss. Code Ann. § 85-7-141, Ellis commences this suit to enforce its lien in the amount of at least \$332,481.26, plus applicable interest, attorneys' fees and expenses. A statement of particulars setting forth the amount involved and the amount paid to date is attached hereto as Exhibit "C."

WHEREFORE, PREMISES CONSIDERED, Ellis Construction, Inc. demands judgment on its construction lien in the amount of not less than \$332,481.26, together with costs and attorneys' fees, the exact amount to be shown at trial.

THIS the 18th day of April, 2001.

Respectfully submitted,

ELLIS CONSTRUCTION, INC.

By: 
Cheri Turnage Gatlin, MSB #10323
Its Attorney

OF COUNSEL:

OTT & PURDY, P.A.
Suite 1100, Skytel Centre South
200 South Lamar Street (Zip—39201)
Post Office Drawer 1079
Jackson, MS 39215-1079
(601) 969-4140 (Telephone)
(601) 353-0185 (Telecopier)

AIA DOCUMENT A111-1997

Standard Form of Agreement Between Owner and Contractor

where the basis for payment is the **COST OF THE WORK PLUS A FEE** with a negotiated **Guaranteed Maximum Price**

AGREEMENT made as of the **twenty-sixth** day of **August**
in the year **Nineteen-Ninety-Nine**
(In words, indicate day, month and year)

BETWEEN the Owner:

(Name, address and other information)

Brookwood Properties
P.O. Box 14745
1925 Ryder Dr.
Baton Rouge, LA 70898-4745

and the Contractor:

(Name, address and other information)

Ellis Construction, Inc.
1215 Prytania St., Ste. 223
New Orleans, LA 70130-4399

The Project is:

(Name and address)

The Storage Center
Phase II
Centre Street
Ridgeland, MS

The Architect is:

(Name, address and other information)

CSRS
6767 Perkins Road, Ste. 200
Baton Rouge, LA 70808

The Owner and Contractor agree as follows.

EXHIBIT

"A"

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.



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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

4.2 The Contract Time shall be measured from the date of commencement.



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4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 150 days from the date of commencement, or as follows:
 (Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

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, subject to adjustments of this Contract Time as provided in the Contract Documents.
 (Insert provisions, if any, for liquidated damages relating to failure to complete on time, or for bonus payments for early completion of the Work.)

- inclement weather
- product delivery delays not contracted by Ellis Cons.
- delays created by local municipalities or utility providers
- additions to the contract

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee, and describe the method of adjustment of the Contractor's Fee for changes in the Work.)

6%

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the Work and the Contractor's Fee is ~~guaranteed~~ ^{estimated} by the Contractor not to exceed _____ Dollars (\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.
 (Insert specific provisions if the Contractor is to participate in any savings.)

5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
 (State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A



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5.2.3 Unit prices, if any, are as follows:

N/A

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5.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

N/A

5.2.5 Assumptions, if any, on which the ~~Guaranteed Maximum~~ ^{estimated} Price is based are as follows:

-any utility connection fees are by owner

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.



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6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and



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fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.



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7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment



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and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:



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12.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment to the Contractor not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than days after the Architect receives the Application for Payment.

12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;
- 2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 add the Contractor's Fee, less retainage of percent (%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 4 subtract the aggregate of previous payments made by the Owner;
- 5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- 6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.



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12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than _____ percent (_____ %). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

1. the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
2. a final Certificate for Payment has been issued by the Architect.

12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand arbitration within this 30-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work,



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the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.



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14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.
(Insert rate of interest agreed upon, if any.)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

14.3 The Owner's representative is:
(Name, address and other information.)

Craig Smith
Brookwood Properties
P.O. Box 14745
1925 Ryder Drive, Baton Rouge, LA 70898-4745

14.4 The Contractor's representative is:
(Name, address and other information.)

Bret Ellis
Ellis Construction, Inc.
1215 Prytania St., Ste. 223
New Orleans, LA 70130

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

Project Superintendent: Tony Catalano

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.



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15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

| Document | Title | Pages |
|----------|-------|-------|
|----------|-------|-------|

N/A

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

| Section | Title | Pages |
|---------|-------|-------|
|---------|-------|-------|

N/A

15.15 The Drawings are as follows, and are dated
different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

unless a

| Number | Title | Date |
|--------|-------|------|
|--------|-------|------|

See Addendum "A"



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Pages

[illegible]

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

General Liability: general aggregate \$2,000,000.00

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

CAUTION: You should sign an original AIA document or a licensed reproduction. Originals contain the AIA logo printed in red; licensed reproductions are those produced in accordance with the Instructions to this document.



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EXHIBIT "A"

A parcel of land containing 4.432 acres (193,050.9 square feet), more or less, lying and being situated in the City of Ridgeland, Madison County, Mississippi, described as: A parcel of land being a part of Lot 10 of Tougaloo Addition in the Southeast 1/4 of Section 36, Township 7 North, Range 1 East, Ridgeland, Madison County, Mississippi, said Tougaloo Addition being recorded in Land Deed Book AAA at Page 138 thereof in the Chancery Clerk's office for Madison County, Mississippi, reference to said plat being hereby made in aid of and as a part of this description, and which parcel of land is more particularly described as:

Begin at an iron rod marking the Northwest corner of Lot 10 of Tougaloo Addition and run thence South 87 degrees, 16 minutes 14 seconds East along the North line of Lot 10 a distance of 260.0 feet; thence South for a distance of 130.00 feet; thence South 87 degrees 16 minutes 14 seconds East for a distance of 50.00 feet; thence South for a distance of 313.84 feet to the original North line of Centre Street; thence North 87 degrees 29 minutes, 05 seconds West along said North line for a distance of 309.95 feet; thence North for a distance of 645.00 feet to the POINT OF BEGINNING.

TOGETHER WITH: That certain non-exclusive easement fifteen (15') feet in width over, along, and across the following described parcel, to-wit:

An easement over a parcel of land situated in the City of Ridgeland, Madison County, Mississippi, described as: A parcel of land being a part of Lots 10 and 11 of Tougaloo Addition in the Southeast 1/4 of Section 36, Township 7 North, Range 1 East, in Ridgeland, Madison County, Mississippi, a plat of said Addition being recorded in Land Deed Book AAA at Page 138 thereof in the Chancery Clerk's office of Madison County, Mississippi, reference to which is hereby made in aid of and as a part of this description, which easement is more particularly described as: Commence at an iron rod marking the Northwest corner of Lot 10 of Tougaloo Addition and run thence South 87 degrees 16 minutes 14 seconds East along the North line of Lot 10 a distance of 260 feet; thence South for a distance of 130.0 feet; thence South 87 degrees 16 minutes 14 seconds East for a distance of 50 feet; thence South for a distance of 120 feet to the POINT OF BEGINNING of a 15 foot wide drainage easement lying adjacent to and south of a line described as: South 87 degrees 16 minutes 14 seconds East for a distance of 350.00 feet to a Point of Terminus on the West right of way of Ridgewood Road.

Said easement is for the purpose of installation, repair, maintenance, or improvement of a drainage line to facilitate the drainage of natural surface water of, and is an appurtenance to, only that certain 4.432 acre parcel above described, and shall run with the title thereto in perpetuity. Said easement is described further in that certain deed to Aaron Rents, Inc., of record in Deed Book 371 at Page 619.

EXHIBIT

"B"

STATE OF MISSISSIPPI, COUNTY OF MADISON:

I certify that the within instrument was filed for record in my office this 19 day of Apr, 1980, at 1:40 o'clock P.M., and was duly recorded.

TOTAL P. 02



THE STORAGE CENTER – RIDGELAND, MISSISSIPPI

Statement of Amount Due

| | |
|--|-------------------|
| Total Labor and Materials Provided by Ellis Pursuant to Contract with Brookwood | \$880,908.34 |
| Amount Paid by Brookwood to Date | <u>548,427.08</u> |
| Amount Due to Ellis and For Which Lien is Claimed | \$332,481.26 |

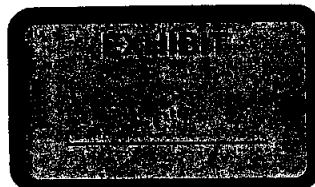


EXHIBIT "C"

AFFIDAVIT OF LIEN AND MAILING

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned Notary Public, personally came and appeared Bret C. Ellis, as the duly authorized President of Ellis Construction, Inc., a Louisiana corporation ("Ellis"), whose mailing address is 1215 Prytania Street, Suite 223, New Orleans, Louisiana 70130-4399, which said Affiant did depose and declare as follows:

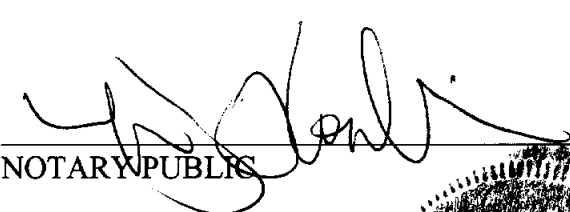
1. On or about August 26, 1999, Ellis started work under a contract (the "Contract") between Ellis and Brookwood Properties ("Brookwood") for renovations and related construction work at the property known as The Storage Center ("the Project"). Ellis supplied labor and materials and otherwise performed the work covered by the Contract.
2. There is past due and owing the sum of not less than \$332,481.26 for such labor and materials. Accordingly, Ellis files and asserts the above lien, the allegations of which are true and correct to the best of my information and belief.
3. A copy of this lien will be mailed on the date the Lien and Notice of Lis Pendens is filed by certified United States mail, return receipt requested, to Brookwood Properties, Post Office Box 14745, 1925 Ryder Drive, Baton Rouge, Louisiana 70898-4745.
4. This statement is made and filed for the purpose of creating and preserving the above-referenced lien of Ellis in accordance with the Mississippi Construction Lien Statutes.

ELLIS CONSTRUCTION, INC.
a Louisiana Corporation

By: 
Name: Bret C. Ellis
Title: President
1215 Prytania Street, Suite 223
New Orleans, Louisiana 70130-4399

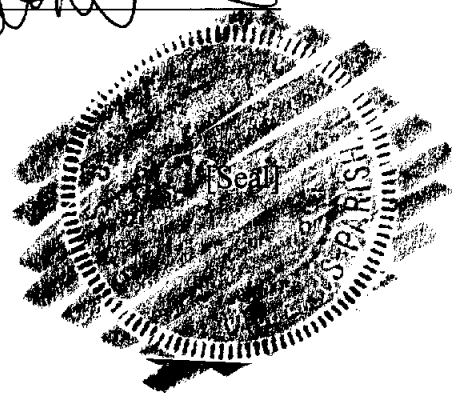
Sworn to AND SUBSCRIBED before me, Notary Public, and reading of same, this the 18th day of April, 2001
My Commission Expires at death.

SWORN TO AND SUBSCRIBED before me, Notary Public, after a due reading of same,
this the 18 day of April, 2001.


NOTARY PUBLIC

My Commission Expires:






STATE OF MISSISSIPPI, COUNTY OF MADISON



I certify that the within instrument was filed for record in my office this 19 day
of April, 2001, at 3 o'clock P M., and was duly recorded
on the APR 19 2001, Book No. 11, Page 331.

STEVE DUNCAN, CHANCERY CLERK

BY:



D.C.


STATE OF MISSISSIPPI, COUNTY OF MADISON



I certify that the within instrument was filed for record in my office this 19 day
of April, 2001, at 3 o'clock P M., and was duly recorded
on the APR 19 2001, Book No. 11, Page 549.

STEVE DUNCAN, CHANCERY CLERK

BY:



D.C.