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**ASSIGNMENT OF PARTNERSHIP INTEREST AS COLLATERAL**

THIS AGREEMENT is made by CLAUDE H. ESTES, III ("Assignor"), whose address is 1800 12<sup>th</sup> AVE. SO. BIRMINGHAM, AL 35205, Birmingham, Alabama \_\_\_\_\_, with FIRST COMMERCIAL BANK (the "Bank"), whose address is P.O. Box 11746, Birmingham, Alabama 35202-1746;

**WITNESSETH:**

WHEREAS, pursuant to the terms of the Partnership Agreement with Little Ridge (a copy of which is attached hereto as Exhibit "A") (the "Partnership Agreement"), Assignor is the owner of one-third of all rights and interests in and to the income, assets and distributions of every kind and nature in and from said partnership (the "Partnership"), including without limitation the real property described on the attached Exhibit "B"; and

WHEREAS, Bank has made a loan (the "Loan") to the Assignor which is evidenced by a Loan Agreement (the "Loan Agreement") and a Promissory Note (the "Note"), both dated on or as of the date hereof. This Loan will be secured by a mortgage (the "Mortgage") to be made by the Assignor to Bank. The Loan Agreement, the Note, the Mortgage and all other documents securing or evidencing the Loan are hereinafter referred to as the "Loan Documents."

WHEREAS, as collateral and additional security for the Loan the Assignor has agreed to assign to Bank all of his rights and interests in and to the income, assets and distributions of every kind and nature in and from the Partnership.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable considerations, the receipt of which by Assignor is hereby acknowledged and as additional collateral to secure the Loan and all other indebtedness of Assignor to Bank, Assignor does hereby assign, grant, bargain, sell, convey, transfer, and set over to Bank, its successors and assigns, all of his rights and interests in and to the income, assets and distributions of every kind and nature in and from the Partnership, and Assignor does hereby irrevocably appoint Bank and its successors and assigns as his true and lawful attorney-in-fact, with power of substitution and revocation, to demand and receive any income or distributions owing to him under the Partnership Agreement, to take out executions, and to take in the name of Assignor or in the name of Bank all lawful ways and means for the recovery of the money and assets due or to become due to him under the Partnership Agreement, and upon payment, to acknowledge satisfaction of or discharge the same. This is a present assignment and all such distributions of the Partnership which are owing to Assignor shall be made directly to Bank until Bank notifies the Partnership otherwise.

PROVIDED, HOWEVER, that if Assignor shall well and truly pay the Loan and any other indebtedness of Assignor to Bank, together with all interest and other lawful

charges thereon, or any extensions, renewals or substitutions therefor, this assignment shall be null and void; but until Assignor shall have repaid the Loan or any other indebtedness of Assignor to Bank, and all interest or other lawful charges thereon when due, or any note or notes now or hereafter evidencing Assignor's obligation to repay the same, whether at original maturity or upon acceleration of the due date thereof, Bank shall receive any income or distribution which would otherwise be owing to Assignor under the Partnership Agreement. Bank will apply all payments received first to the expenses (including reasonable attorneys' fees) incurred by Bank in collecting such payment or payments; second, to the payment of the Loan and the interest thereon, including the payment of any promissory note now or thereafter evidencing Assignor's obligation to repay the Loan and the interest thereon; third, to the payment of any other indebtedness then owing by Assignor to Bank; and fourth, the balance, if any, to Assignor or his assigns. Bank shall have no obligation to attempt to collect any income or distribution owing to Assignor under the Partnership Agreement.

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1. Covenants and Warranties. To induce Bank to accept this Assignment, Assignor covenants and warrants with Bank that (a) there are no prior assignments or encumbrances of the whole or any part of Assignor's interests in the Partnership and that Assignor has the free and unrestricted right to make this Assignment; (b) Assignor will not collect any payment made or to be made to him pursuant to the terms of the Partnership Agreement, nor compromise, release or discharge the same, nor breach or fail to perform Assignor's duties and obligations under the Partnership Agreement; (c) that Assignor shall not further assign or encumber his interest in and to the Partnership without the prior written consent of Assignee, so long as this Assignment shall be in force and effect. If any of the foregoing covenants or warranties are breached or shall be untrue, the Loan and all accrued interest thereon shall, at the election of Bank, become due and payable immediately without regard to any stated maturity thereof.

2. No Partnership. Assignor acknowledges and agrees that the Assignment herein made to Assignee shall in no manner created a partnership between Assignor and Assignee nor in any manner be deemed to make the Assignee a member of the Partnership or obligate Assignee for any of the obligations of the Partnership, the Assignor, or any other member of the Partnership.

3. Notification of Partners. Assignor agrees that Bank may, at Bank's discretion, notify any or all of the partners in the Partnership, that this Assignment has been made, and Assignor hereby authorizes said partners to make all distributions and payments directly to Bank solely on the basis of this Agreement and any such notification. Assignor agrees to join with Bank in any such notifications, and other such documents as Bank may hereafter request to further perfect its interest in the Partnership Agreement, but no such additional documents shall be necessary to authorize or enable Bank to receive payments.

4. Binding Effect. All of the covenants and agreements herein made by Assignor shall bind his heirs and assigns and every right and privilege herein given to the Assignee shall inure to the benefit of its successors and assigns.

5. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, Assignor has executed this agreement as an instrument under seal on this 23 day of DEC., 1988.

WITNESS:

Frank Lynch

Claude H. Estes, III

Claude H. Estes, III

The undersigned being partners in Little Ridge, an Alabama general partnership, hereby acknowledge and agree to the foregoing terms and provisions, and further agree, until notified by First Commercial Bank to the contrary, to make all partnership payments and distributions owing to Assignor directly to First Commercial Bank, and not to make any Partnership payments or distributions to Claude H. Estes, III in contravention hereof. The undersigned further agree: (a) to give written notice to First Commercial Bank of any future obligations to make contributions to the Partnership, which notice shall set forth the amount and the basis for all such contributions and shall give First Commercial Bank a period of at least thirty (30) days after receipt of said notice within which to pay such contributions, if First Commercial Bank determines, in its sole discretion, to do so; (b) not to attempt in any manner to reduce the interest of either James H. Estes or Claude H. Estes in the Partnership, as collaterally assigned to the Bank, below one-third (1/3), unless and until the aforesaid notice has been given and First Commercial Bank has determined not to fund the contributions to be made by James H. Estes or Claude H. Estes, III within said thirty (30) each day period; and (c) do hereby confirm the assignment previously made by James H. Estes to the First Commercial Bank concerning said Partnership and the continued validity thereof.

Date: 12/23/88  
Claude H. Estes, III

Claude H. Estes, III [L.S.]

Date: 12-23-88  
Kenneth B. Weygand

Kenneth B. Weygand [L.S.]

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STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Claude H. Estes, III, 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 23<sup>rd</sup> day of December 1988.

Letty T. Wilson  
Notary Public

My commission expires: June 26, 1991

STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Kenneth B. Weygand, 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 the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 23<sup>rd</sup> day of December 1988.

Letty T. Wilson  
Notary Public

My commission expires: June 26, 1991

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EXHIBIT "A"

STATE OF ALABAMA )  
JEFFERSON COUNTY )

PARTNERSHIP AGREEMENT  
OF  
LITTLE RIDGE, A PARTNERSHIP

THIS AGREEMENT made and entered into this the 15th day  
September, 1985 effective as of the 15th day of September, 1985  
by and among C. H. Estes, III, J. H. Estes and Kenneth B. Weygand.

WITNESSETH:

WHEREAS, on the 15th day of September, 1985 the parties here-  
to formed a partnership for the purpose of acquisition, development  
and sale of certain real property located in Jefferson County,  
Alabama, and to conduct such other business as the partners from  
time to time may agree upon;

WHEREAS, the partners deem it in their best interest to  
memorialize in writing their various agreements, rights and obli-  
gations regarding the ownership, operation and management of the  
affairs of the partnership;

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3218 MAR 944

NOW THEREFORE, in consideration of the premises and mutual covenants and undertakings of the parties hereto, it is agreed as follows:

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1. Name and Place of Business. The name of the partnership shall be Little Ridge a partnership. The principal place of business of the partnership shall be 2121 Highland Avenue So. Birmingham, AL and at such other place or places as the partners shall determine.

2. Duration. This partnership commenced on the 15th day of September, 1985 and shall continue until dissolved by mutual agreement or as hereinafter otherwise provided.

3. Purpose of Business. The partnership has acquired, developed and operated certain real estate investment projects and expects to do so in the future. The partnership may pursue such other business as the partners may from time to time agree upon.

4. Capital Contributions. At the time for the commencement of the partnership the partners contributed cash and substantial time and effort. The initial capital account of each Partner shall be One Hundred and no/100 Dollars (\$100.00 plus personal endorsement of several promissory notes on behalf of the partnership.

Interest shall not be paid on the initial or on any subsequent contributions to the capital of the partnership.

3218 Mar 945

5. Profit and Loss and Cash Flow.

(a) Ownership of all of the assets and liability for debts of the partnership shall be as set forth in item 5 (b) below.

(b) For income tax purposes, the net profits and losses of the partnership each year, and each item of income, gain, loss, deduction or credit, entering into the computation thereof has been and shall be allocated to the partners as follows:

	<u>Net Profits</u>	<u>Net Losses</u>
C. H. Estes, III	33 1/3 %	33 1/3 %
J. H. Estes	33 1/3 %	33 1/3 %
Kenneth B. Weygand	33 1/3 %	33 1/3 %

(c) The cash flow, meaning the net profits or net losses as shown on the books of the partnership increased by (1) any non-taxable income or receipts of the partnership and (2) deductions taken for depreciation and reduced by (1) payment upon notes made by the partnership and secured by mortgages on real estate owned by the partnership and (2) such reserves for new construction, capital improvements or replacements or for repairs and anticipated expenses as the partners shall deem to be reasonably necessary for the operation of the partnership, shall be allocated and distributed to the partners in the same manner as set forth in paragraph (b) above regarding net profits.



6. Fiscal Matters.

(a) The partnership has and shall maintain full and accurate books of account which shall be kept at the principal office of the partnership. Each partner shall have access thereto during normal business hours and shall have the right to copy such books and all other partnership records. The books have and shall be closed and balanced at the end of each accounting year and, if deemed necessary by the partners, shall be audited for each accounting year by a certified public accountant.

(b) The business of the partnership has and shall be conducted on a calendar year basis, and as of the last day of December of each year during the continuance of the partnership. Commencing \_\_\_\_\_ 19 a full, true and accurate account shall be made in writing of all of the assets and liabilities of the partnership, and of all of its receipts and disbursements, and the assets, liabilities, income and cash flow shall be ascertained.

(c) Any partner may withdraw his share of the cash flow at the end of each calendar year. If any partner shall not withdraw the whole or any part of his share of the cash flow, such cash flow unwithdrawn shall not be deemed an increase in his capital, or entitle such partner to an increase in the share of the profits, losses or cash flow of the partnership without the express written consent of all of the partners.



7. Compensation. No partner shall be entitled to a salary as such, but shall be entitled to compensation for services rendered in connection with the operation of the partnership business as may from time to time be agreed upon. The payment of compensation shall be an obligation of the partnership only to the extent that there are partnership assets available for them, and shall not be an obligation of the partners individually.

8. Management.

(a) The affairs of the partnership shall be managed and conducted by the partners. Except as herein otherwise provided, all questions relating to the conduct and management of the partnership business shall be decided by the partners, and the determination of the partners on any such questions (excepting, and not including, the determination of the interest or share of any partner in the capital, net profits, net losses or cash flow of the partnership or its claim against such partner) shall be binding on all partners.

(b) All checks, orders or withdrawals on any bank account of the partnership shall be governed by the following: (1) all checks or withdrawals for paying routine operating expenses not in excess of \$5,000.00 may be signed by any partner; (2) all other checks, orders or withdrawals shall be signed by any two partners.

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(c) No partner shall, except with the written consent of the other: (1) withdraw his capital contribution, in whole or in its part; (2) assign, mortgage, or sell his share in the partnership or in its capital, assets or property; (3) enter into any agreement as a result of which any other person, firm or corporation shall become interested with him in the partnership; or (4) do any act detrimental to the best interest of the partnership or which would make impossible the carrying on of the purpose of the partnership. Each partner shall inform the other partner in writing of all of his work for and transactions on behalf of the partnership and give full information to the other partners as to letters, accounts, writings or other things which may come into his hands or to his knowledge concerning the business of the partnership.

(d) Each partner may have other interests and may engage in any business, trade, profession or employment whatsoever, whether such business, trade, profession or employment is similar or competing with the purpose of the partnership, and shall not be required to devote any set amount of time to the partnership.

9. Death, Bankruptcy or Withdrawal of a Partner.

(a) A partner shall have the right to withdraw from the partnership upon not less than sixty (60) days written notice of the remaining partner, such withdrawal to

be effective as of the last day of any calendar month.

(b) Upon the death, bankruptcy or withdrawal of a partner, the remaining partners shall have an election either to continue the business of the partnership and to acquire the interest of the deceased, bankrupt or withdrawing partner, as hereinafter provided, or to dissolve and liquidate the partnership as of the sixth (6th) full calendar month after such death, bankruptcy or withdrawal occurs.

(c) If a partner shall elect to withdraw from the partnership, he shall serve written notice thereof upon the remaining partners not less than sixty (60) days prior to the effective date of such withdrawal. If a partner shall be adjudicated a bankrupt, he shall serve written notice thereof upon the remaining partners within fifteen (15) days of such determination. Upon the death of a partner, his legal representative shall serve notice thereof upon the remaining partners within fifteen (15) days of the death of such partner. If the remaining partners elect to continue the partnership business and to acquire the interest of the deceased, bankrupt or withdrawing partner, he shall give notice in writing of such election to the deceased, bankrupt or withdrawing partner or his legal representative within thirty (30) days after receipt of notice therefrom specified above (the "acceptance period").

The purchase price for such share shall be the book value thereof, as it appears on the books and records of the partnership at the end of the calendar year next preceding the calendar year in which the deceased, bankrupt or withdrawing partner or his legal representative serves notice as specified above, as adjusted by substituting the fair market value as of such date in place of the book value of real estate owned by the partnership, computed by a certified public accountant in accordance with accounting practices regularly followed by the partnership, and in cases not covered by such practices, in accordance with generally accepted accounting principles. No allowance shall be made for goodwill or other intangible assets, except as those assets have been regularly reflected on the partnership books. Such modified book value shall reflect and include the deceased, bankrupt or withdrawing partner's capital account as of the end of said calendar year, increased by such partner's share of undistributed cash flow. In making the adjustment for the fair market value of real estate, the certified public accountant shall rely on and use a written appraisal of a real estate appraiser selected for such purpose, such appraiser to be paid for his services by the partnership. A statement showing such modified book value as thus adjusted and the supporting items and computations shall be completed by the certified public accountant and copies shall be delivered to the deceased, bankrupt or withdrawing partner or his legal representative and to the

remaining partner. The modified book value as so determined shall be binding upon all parties hereto. In the absence of any other agreement between them, the remaining partners shall have the primary right to purchase the deceased, bankrupt or withdrawing partner's entire partnership interest according to its modified book value as computed above.

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The purchase price due from the remaining partners (hereinafter sometimes referred to as the "purchasers") shall be paid by such purchasers to the deceased, bankrupt or withdrawing partner or his legal representative as follows: thirty per cent (30%) thereof, in cash, on the closing date hereinafter defined; the balance, by such purchasers' execution and delivery of twelve (12) promissory notes, each dated as of the closing date, each in the principal amount of one-twelfth (1/12) of the balance of such purchase price, each payable with interest equal to The First National Bank of Birmingham prime rate on closing date to the order of the deceased, bankrupt or withdrawing partner or his legal representative, the first of such notes to be payable on the thirtieth (30th) day of January following the calendar year in which the closing date falls, and the remaining eleven (11) notes to be payable successively, one every month thereafter. Such notes shall provide for the privilege of prepayment at any time without premium or penalty, and shall recite that all such notes shall become due at the option of the holder if all

or any part of principal or interest due on any such note remains unpaid for thirty (30) days after the date on which the same become due by the terms of such notes. The closing date shall be the thirtieth (30) day after the expiration of the "acceptance period"; provided, however, that the purchaser shall have the right to advance the date of closing on five (5) days written notice to the deceased, bankrupt or withdrawing partner. The closing shall be held at the then principal office of the partnership or at any other place agreed to by the parties.

Simultaneously with the delivery to the deceased, bankrupt or withdrawing partner or his legal representative by the purchaser of the purchase price notes and the initial cash payments above provided for, the deceased, bankrupt or withdrawing partner or his legal representative shall deliver to the purchaser appropriate duly executed instruments of transfer and assignment, assigning and transferring good and marketable title to the portion or portions of the deceased, bankrupt or withdrawing partner's entire partnership interest thus purchased, free from any lien or encumbrances or rights of others therein. The deceased, bankrupt or withdrawing partner's entire partnership interest thus transferred shall compromise all of his right, title, and interest in and to the partnership, its firm name and all assets thereto, including but not limited to the deceased, bankrupt or withdrawing partner's capital account as of the date of

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notice and his share of any undrawn cash flow. The deceased, bankrupt or withdrawing partner's entire partnership interest shall not be deemed to include discretion as to whether to sell any partnership assets, including but not limited to real estate, and if so, whether at public or private sale and for what amount and on what terms, or whether (if sale thereof is not required to enable payment of debts, expenses of liquidation, loans by partners, and undrawn cash flow of the partners) to distribute and transfer the same to and among the partners and the estate of any deceased partner, in kind, by transferring interest therein in the respective percentages in which cash flow was shared immediately prior to the event which resulted in such liquidation. In the event that the partners determined to sell any real property, they shall have full right and discretion to determine the time, place, and manner in which such sale shall be had, having due regard to the activity and conditions of the real estate market and general financial and economic conditions.

10. Notices. Wherever provision is made in this Agreement for giving, service, or delivery of any notice, statement, or other instrument, such notice shall be deemed to have been duly given, served and delivered if mailed by United States registered or certified mail, addressed to the party entitled to receive the same at his address written at the end of this Agreement; provided, however, that any party hereto may change his mailing address by giving to the other



parties hereto, by United States registered or certified mail, written notice of election to change such address and of such new address. Except wherein otherwise specified in this Agreement, any notice, statement, or other instrument shall be deemed to have been given, served, and delivered on the date on which such notice was mailed as herein provided.

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11. Additional Contributions to Partnership. In the event that any call for additional capital contributions is made upon the partners, such call shall be made in good faith, shall be reasonably necessary for the carrying out of the purpose of the partnership, and shall be applied to the partners in proportion to their respective shares of cash flow. No partner shall be obligated to satisfy any such call, however. In the event that any partner does not agree to contribute the additional contribution called for, the partnership interest of such partner shall be diminished to the ratio which his total partnership contribution bears to the total contribution made by the other partners.

12. Entire Agreement. This Agreement contains the sole and entire agreement and understanding of the parties with respect to the entire subject matter thereof. Any and all proper discussions, negotiations, commitments, and understandings relating thereto are hereby merged herein.

This Agreement cannot be changed or terminated orally.

13. Applicable Law. This Agreement and the rights of the parties hereto shall be determined under the laws of the State of Alabama.

14. Benefits. The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, all as of the date first above written.

Sharon M. Donald  
Witness

C. H. Estes, III

J. H. Estes

Kenneth B. Weyand

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EXHIBIT "B"  
LITTLE RIDGE

Lots, 2, 3, 4. According to the survey of Little Ridge Estates, map book 9, Page 174 A and B. As recorded in the Probate Office of Shelby County Alabama.

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ALL OF ALABAMA  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 JAN -3 AM 11:20

*Roberta C. Cunningham*  
JUDGE OF PROBATE

1. Deed Tax	\$	—
2. Mtg. Tax		—
3. Recording Fee		45.00
4. Indexing Fee		1.00
TOTAL		46.00