

Vista Homes, Inc.
1027 Cahaba Forest Cove
Birmingham, AL 35242

MORTGAGOR
"I" includes each mortgagor shown above.

This instrument was prepared by
(Name) Clayton T. Sweeney of Corley, Moncus
(Address) 2100 South Bridge Parkway Suite 650
Birmingham, AL 35209
BANK OF ALABAMA
1209 DECATUR HIGHWAY
POST OFFICE BOX 340
FULTONDALE, ALABAMA 35068

MORTGAGEE
"You" means the mortgagee, its successors and assigns

REAL ESTATE MORTGAGE: For value received, I, Vista Homes, Inc., an Alabama Corporation, mortgage, grant, bargain, sell and convey to you, with power of sale, to secure the payment of the secured debt described below, on January 13, 1993, the real estate described below and all rights, easements, appurtenances, rents, leases and existing and future improvements and fixtures (all called the "property").

PROPERTY ADDRESS: 2069 Brook Highland Ridge, Birmingham, Alabama 35242
(Street) (City) (Zip)

LEGAL DESCRIPTION:

Lot 2021, according to the Survey of Brook Highland, an Eddleman Community, 20th Sector, as recorded in Map Book 16, Page 148, in the Probate Office of Shelby County, Alabama.

located in Shelby County, Alabama.

TITLE: I covenant and warrant title to the property, except for there are no exceptions, other than those listed in that certain title commitment issued by Cahaba Title, Inc. Binder #

SECURED DEBT: This mortgage secures repayment of the secured debt and the performance of the covenants and agreements contained in this mortgage and in any other document incorporated herein. Secured debt, as used in this mortgage, includes any amounts I owe you under this mortgage or under any instrument secured by this mortgage and all modifications, extensions and renewals thereof.

The secured debt outstanding on the date of this Mortgage is evidenced by (List all instruments and agreements secured by this mortgage and the dates thereof):

☒ Promissory Note dated January 13, 1993; Construction Loan Agreement and Continuing Guaranty executed by James B. Wagon, Jr., all dated January 13, 1993

☒ Future Advances: All amounts owed under the above agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

☐ Revolving credit loan agreement dated _____. All amounts owed under this agreement are secured even though not all amounts may yet be advanced. Future advances under the agreement are contemplated and will be secured and will have priority to the same extent as if made on the date this mortgage is executed.

The above obligation is due and payable on Oct. 1, 1993 if not paid earlier.

The total unpaid balance secured by this mortgage at any one time shall not exceed a maximum principal amount of: Two Hundred, Forty-Six Thousand, Seven Hundred, Fifty and no/100-----Dollars (\$ 246,750.00), plus interest, plus any disbursements made for the payment of taxes, special assessments, or insurance on the property, with interest on such disbursements.

☒ Variable Rate: The interest rate on the obligation secured by this mortgage may vary according to the terms of that obligation.

☒ A copy of the loan agreement containing the terms under which the interest rate may vary is attached to this mortgage and made a part hereof.

RIDERS: ☐ Commercial ☐ Home Equity ☐ _____

SIGNATURES: By signing below, I agree to the terms and covenants contained on both pages of this mortgage and in any riders described above signed by me.

(Seal) VISTA HOMES, INC., a corporation (Seal)

(Seal) BY: J.B. Wagon, Jr. (Seal)
Its: President

ACKNOWLEDGMENT: STATE OF ALABAMA, Jefferson County
I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that

James B. Wagon, Jr.

Individual

whose name(s) _____ signed to the foregoing conveyance, and who _____ known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____ executed the same voluntarily on the date the same bears date.

Corporate

whose name(s) as President of the Vista Homes, Inc., a corporation, is signed to the foregoing conveyance and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, _____ he _____, as such officer and will full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this the 13th day of January, 1993
My commission expires: 5/29/95

(Notary Public)

ALABAMA

1. **Payments.** I Agree to make all payments on the secured debt when due. Unless we agree otherwise, any payments you receive from me or for my benefit will be applied first to any amounts I owe you on the secured debt (exclusive of interest or principal), second, to interest and then to principal. If partial prepayment of the secured debt occurs for any reason, it will not reduce or excuse any scheduled payment until the secured debt is paid in full.
 2. **Claims against Title.** I will pay all taxes, assessments, liens and encumbrances on the property when due and will defend title to the property against any claims which would impair the lien of this mortgage. You may require me to assign any rights, claims or defenses which I may have against parties who supply labor or materials to improve or maintain the property.
 3. **Insurance.** I will keep the property insured under the terms acceptable to you at my expense and for your benefit. All insurance policies shall include a standard mortgage clause in favor of you. you will be named as loss payee or as the insured on any such insurance policy. Any insurance proceeds may be applied, within your discretion, to either the restoration or repair of the damaged property or to the secured debt. If you require mortgage insurance, I agree to maintain such insurance for as long as you require.
 4. **Property.** I will keep the property in good condition and make all repairs reasonably necessary.
 5. **Expenses.** I agree to pay all your expenses, including reasonable attorneys' fees if I break any covenants in this mortgage or in any obligation secured by this mortgage. Attorneys' fees include those awarded by an appellate court. I will pay these amounts to you as provided in Covenant 10 of this mortgage.
 6. **Default and Acceleration.** If I fail to make any payment when due or break any covenants under this mortgage, any prior mortgage or any obligation secured by this mortgage, you may accelerate the maturity of the secured debt and demand immediate payment and exercise any other remedy available to you. In the event that the indebtedness owing hereunder shall not be paid upon demand following any acceleration or maturity, then this mortgage shall be subject to foreclosure at your option, with notice to me of your exercise of such option being hereby expressly waived. In that event, you shall have the right to enter upon and take possession of the property and after or without taking such possession to sell the same, between the hours of 11:00 a.m. and 4:00 p.m. on the day designated for the exercise of the power to sell the property, before the courthouse door of the county (or division thereof) where the property, or any substantial part of the property, is located, at public outcry for cash, after first giving notice of the time, place and terms of such sale by publication once a week for three consecutive weeks prior to said sale in some newspaper published in said county. If the property is located in more than one county, a similar publication will be made in all counties where the property is located. Upon payment to you of the purchase price at such foreclosure, you are authorized to execute to the purchaser for and in our names a good and sufficient deed to the property sold. You agree to apply the proceeds of any such sale or sales under this mortgage as follows: (a) to the expenses of the sale, including, but not limited to, reasonable attorney's fees; (b) to the payment of any amounts that may have been expended or may be necessary to expend in paying insurance, taxes and other encumbrances; (c) to the payment of the secured debt hereby secured; and (d) the balance, if any, will be paid over to us or to whomsoever shall be legally entitled to it. You may bid and become the purchaser of the property at any foreclosure sale hereunder. Under this Mortgage, you are granted a "power to sell" and a "power of sale" (as those quoted terms are used in Article 1A of Title 35 of the Code of Alabama).
 7. **Assignment of Rents and Profits.** I assign to you the rents and profits of the property. Unless we have agreed otherwise in writing, I may collect and retain the rents as long as I am not in default. If I default, you, your agent, or a court appointed receiver may take possession and manage the property and collect the rents. Any rents you collect shall be applied first to the costs of managing the property, including court costs and attorneys' fees, commissions to rental agents, and any other necessary related expenses. The remaining amount of rents will then apply to payments on the secured debt as provided in Covenant 1.
 8. **Waiver of Homestead.** I hereby waive all right of homestead exemption in the property.
 9. **Leaseholds; Condominiums; Planned Unit Developments.** I agree to comply with the provisions of any lease if this mortgage is on a leasehold. If this mortgage is on a unit in a condominium or a planned unit development, I will perform all of my duties under the covenants, by-laws, or regulations of the condominium or planned unit development.
 10. **Authority of Mortgagee to Perform for Mortgagor.** If I fail to perform any of my duties under this mortgage, you may perform the duties or cause them to be performed. You may sign my name or pay any amount if necessary for performance. If any construction on the property is discontinued or not carried on in a reasonable manner, you may do whatever is necessary to protect your security interest in the property. This may include completing the construction. Your failure to perform will not preclude you from exercising any of your other rights under the law or this mortgage.
- Any amounts paid by you to protect your security interest will be secured by this mortgage. Such amounts will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect on the secured debt.
11. **Inspection.** You may enter the property to inspect if you give me notice beforehand. The notice must state the reasonable cause for your inspection.
 12. **Condemnation.** I assign to you the proceeds of any award or claim for damages connected with a condemnation or other taking of all of any part of the property. Such proceeds will be applied as provided in Covenant 1. This assignment is subject to the terms of any prior security agreement.
 13. **Waiver.** By exercising any remedy available to you, you do not give up your rights to later use any other remedy. By not exercising any remedy, if I default, you do not waive your right to later consider the event a default if it happens again.
 14. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** All duties under this mortgage are joint and several. If I co-sign this mortgage but do not co-sign the underlying debt I do so only to mortgage my interest in the property under the terms of this mortgage. I also agree that you and any party to this mortgage may extend, modify or make any other changes in the terms of this mortgage or the secured debt without my consent. Such a change will not release me from the terms of this mortgage.
- The duties and benefits of this mortgage shall bind and benefit the successor and assigns of either or both of us.
15. **Notice.** Unless otherwise required by law, any notice to me shall be given by delivering it or by mailing it by certified mail addressed to me at the Property Address or any other address that I tell you. I will give any notice to you by certified mail to your address on the front side of this mortgage, or to any other address which you have designated.
- Any notice shall be deemed to have been given to either of us when given in the manner stated above.
16. **Transfer of the Property or a Beneficial Interest in the Mortgagor.** If all or any part of the property or any interest in it is sold or transferred without your prior written consent, you may demand immediate payment of the secured debt. You may also demand immediate payment if the mortgagor is not a natural person and a beneficial interest in the mortgagor is sold or transferred. However, you may not demand payment in the above situations if it is prohibited by federal law as of the date of this mortgage.
 17. **Release.** When there shall occur the "payment or satisfaction of the real property mortgage debt" (as such term is defined in § 35-10-26 of the Code of Alabama), and all underlying agreements have been terminated, this mortgage will become null and void and you will release this mortgage.

VISTA HOMES, INC. 1027 Cahaba Forest Cove Birmingham, Al. 35242 TAX I.D.# BORROWER'S NAME AND ADDRESS *I includes each borrower above, jointly and severally.	BANK OF ALABAMA 1209 DECATUR HIGHWAY, P.O. BOX 340 FULTONDALE, ALABAMA 35068 LENDER'S NAME AND ADDRESS *You means the lender, its successors and assigns.	Loan Number _____ Date <u>January 13, 1993</u> Maturity Date <u>October 1, 1993</u> Loan Amount \$ <u>246,750.00</u> Renewal Of _____
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For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Two hundred, Forty-six Thousand, Seven Hundred, Fifty and no/100----- Dollars \$ 246,750.00

☐ Single Advance: I will receive all of this principal sum on _____. No additional advances are contemplated under this note.
☒ Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On January 13, 1993 I will receive the amount of \$ 79,739.66 and future principal advances are contemplated.

Conditions: The conditions for future advances are based on Construction Loan Agreement executed simultaneously herewith

☐ Open End Credit: You and I agree that I may borrow up to the maximum principal sum more than one time. This feature is subject to all other conditions and expires on _____.

☒ Closed End Credit: You and I agree that I may borrow (subject to all other conditions) up to the maximum principal sum only one time.

INTEREST: I agree to pay interest on the outstanding principal balance from January 13, 1993 at the rate of 7.00 % per year until the index rate changes as described below

☒ Variable Rate: This rate may then change as stated below.

☒ Index Rate: The future rate will be 1.0% above the following index rate: Prime Rate which is defined as the highest rate published from time to time, as the "Prime Rate" in The Wall Street Journal Money Tables.

☐ No Index: The future rate will not be subject to any internal or external index. It will be entirely in your control.

☒ Frequency and Timing: The rate on this note may change as often as daily
 A change in the interest rate will take effect immediately

☒ Limitations: During the term of this loan, the applicable annual interest rate will not be more than N/A % or less than 7.00 %.

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:

☒ The amount of each scheduled payment will change. ☐ The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a 360 day accrual basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:

☐ on the same fixed or variable rate basis in effect before maturity (as indicated above).

☒ at a rate equal to 18.0%

☒ LATE CHARGE: If a payment is made more than 10 days after it is due, I agree to pay a late charge of 5% of the payment amount.

☒ ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which ☒ are ☐ are not included in the principal amount above:
1.0% origination fee based on the original amount of Credit Committed and any and all other charges in association with the closing of this transaction.

PAYMENTS: I agree to pay this note as follows:

☒ Interest: I agree to pay accrued interest February 1, 1993 and monthly thereafter on the 1st day of each month until the maturity date, when any and all accrued interest is due and payable.

☒ Principal: I agree to pay the principal at maturity, i.e., October 1, 1993

☐ Installments: I agree to pay this note in _____ payments. The first payment will be in the amount of \$ _____ and will be due _____. A payment of \$ _____ will be due _____ thereafter. The final payment of the entire unpaid balance of principal and interest will be due _____.

PURPOSE: The purpose of this loan is Construction of single family residence

☐ Unpaid Interest: If checked and the original principal balance of this note is greater than two thousand dollars, then any accrued interest not paid when due (whether due by reason of a schedule of payments or due because of Lender's demand) will become part of the principal thereafter, and will bear interest at the interest rate in effect from time to time as provided for in this agreement.

ADDITIONAL TERMS:

Personal guaranty of James B. Wagon, Jr.

SECURITY INTEREST: I give you a security interest in all of the Property described below that I now own and that I may own in the future (including, but not limited to, all parts, accessories, repairs, improvements, and accessions to the Property), wherever the Property is or may be located, and all proceeds and products from the Property.

☐ Inventory: All inventory which I hold for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in my business.

☐ Equipment: All equipment including, but not limited to, all machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and recordkeeping equipment, and parts and tools. All equipment described in a list or schedule which I give to you will also be included in the secured property, but such a list is not necessary for a valid security interest in my equipment.

☐ Farm Products: All farm products including, but not limited to:

(a) all poultry and livestock and their young, along with their products, produce and replacements;

(b) all crops, annual or perennial, and all products of the crops; and

(c) all feed, seed, fertilizer, medicines, and other supplies used or produced in my farming operations.

☐ Accounts, Instruments, Documents, Chattel Paper and Other Rights to Payment: All rights I have now and that I may have in the future to the payment of money including, but not limited to:

(a) payment for goods and other property sold or leased or for services rendered, whether or not I have earned such payment by performance; and

(b) rights to payment arising out of all present and future debt instruments, chattel paper and loans and obligations receivable.

The above include any rights and interests (including all liens and security interests) which I may have by law or agreement against any account debtor or obligor of mine.

☐ General Intangibles: All general intangibles including, but not limited to, tax refunds, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customer lists, permits and franchises, and the right to use my name.

☐ Government Payments and Programs: All payments, accounts, general intangibles, or other benefits (including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance payments, diversion payments, and conservation reserve payments) in which I now have and in the future may have any rights or interest and which arise under or as a result of any preexisting, current or future Federal or state governmental program (including, but not limited to, all programs administered by the Commodity Credit Corporation and the ASCS).

☒ The secured property includes, but is not limited by, the following:

If this agreement covers timber to be cut, minerals (including oil and gas), fixtures or crops growing or to be grown, the description of the real estate is:

☐ If checked, file this agreement on the real estate records.

Record owner (if not me) _____

DISPOSITION OF FUNDS

Deposited to Account Number _____

Check Number _____

SIGNATURE FOR LENDER

The Property will be used for a ☐ personal ☒ business ☐ agricultural ☐ _____ purpose.

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Caution - IT IS IMPORTANT THAT YOU THOROUGHLY READ THIS CONTRACT BEFORE YOU SIGN IT.

Vista Homes, Inc.

BY: James B. Wagon, Jr.
 Its President, James B. Wagon, Jr.

UNIVERSAL NOTE AND SECURITY AGREEMENT

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(page 1 of 2)

01/20/1993-01880
 12:02 PM CERTIFIED
 SHELBY COUNTY JUDGE OF PROBATE
 003 #01 381.75

Inst # 1993-01880